MARYLAND

CONSTITUTIONAL LAW

BY

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To
J. N. and M. W. N.,
who have read much of the
proof of this work as
a "labor of love,"
this book is
affectionately dedicated.

AUTHOR'S PREFACE.

This book was written primarily because its author is engaged in teaching Maryland Constitutional law in a law school and desires a text-book for his classes.

It is, therefore, rather a school book than a serious attempt to scientifically consider and expound the fundamental law of our state.

Its purpose will have been accomplished if Maryland law students who read it carefully will have gained a working idea of the provisions of the Constitution under which they are living, and of the construction given it by our courts.

Owing mainly to outside persuasion, I have agreed that it be published in such a form that others than actual law school attendants may purchase it if they so desire, and it is certainly my hope that it may be found useful. At the same time I feel that I ought to say that this is not the book which it was my dream at some time to prepare in the "discharge of my duty to the profession."

Written in the intervals of a life which was more or less absorbed in other duties and to some extent breaking the ground in a heretofore uncultivated field, it has been impossible to prepare it with sufficient care to make me feel any confidence that there are not many mistakes which have been overlooked, or that many of the views set forth are not questionable or erroneous.

The arrangement adopted, whereby each section of the constitution is set forth in its order and commented upon, is, of course, not logical. But my own experience is that such arrangement serves better than any other to fix the Constitution in the mind of the ordinary student.

Such an arrangement visualizes the document, while a philosophical treatment is apt to lead to vagueness and uncertainty.

To my own classes I desire to make the request that whenever in the text they meet with a note marked with an asterisk (*), indicating an "Illustration," they at once read this illustration in connection with the text.

Finally, I would like to say that if any reader discovering any mistake, or omission, or misconception will so notify me, I will feel deeply indebted to him as a helper in a line of study that has become to me full of interest.

I must acknowledge an indebtedness which it is hard to overstate to my friend and associate, Chester F. Morrow, for his assistance both with the text and in regard to all the details pertaining to the publication of this work. I wish also to gratefully acknowledge the work of George S. Yost in the preparation of the index and the appendix.

ALFRED S. NILES.

TABLE OF CONTENTS

Page.

I.

HISTORICAL PREFACE..... 1

II.

CONSTITUTION OF 1867—Introductory 10

III.

CONSTITUTION OF 1867—Declaration of Rights..... 12

IV.

CONSTITUTION OF 1867—General Analysis..... 85

V.

CONSTITUTION OF 1867—Article I, Elective Franchise 86

VI.

CONSTITUTION OF 1867—Article II, Executive Department 103

VII.

CONSTITUTION OF 1867—Article III, Legislative Department 133

VIII.

CONSTITUTION OF 1867—Article IV, Judiciary Department 233

IX.

CONSTITUTION OF 1867—Article V, Attorney-General and State's Atorneys..... 287

X.

CONSTITUTION OF 1867—Article VI, Treasury Department 298

XI.

CONSTITUTION OF 1867—Article VII, County Commissioners, Surveyor, State Librarian, Commissioner of the Land Office, Wreck-master..... 303

XII.

CONSTITUTION OF 1867—Article VIII, Education.... 307

XIII.

CONSTITUTION OF 1867—Article IX, Militia and Military Affairs..... 310

XIV.

CONSTITUTION OF 1867—Article X, Labor and Agriculture 312

XV.

CONSTITUTION OF 1867—Article XI, City of Baltimore 313

XVI.

CONSTITUTION OF 1867—Proposed Article XIA, Local Legislation 322

XVII.

CONSTITUTION OF 1867—Article XII, Public Works. 326

XVIII.

CONSTITUTION OF 1867—Article XIII, New Counties 328

XIX.

CONSTITUTION OF 1867—Article XIV, Amendments to the Constitution..... 333

XX.

CONSTITUTION OF 1867—Article XV, Miscellaneous.. 337

XXI.

CONSTITUTION OF 1867—Proposed Article XVI, Referendum 348

XXII.

CONSTITUTION OF 1867—Vote on the Constitution.. 351

XXIII.

APPENDIX—Constitutions of Maryland, 1776, 1851, 1864, 1867, and amendments thereto..... 353

TABLE OF CASES.

(References are to pages.)

A

A. & G. Ck. Coal Co. v. Md. Coal Co., 248, 284.
Albert v. State, 246, 247.
Alexander v. Baltimore, 194.
Alexander v. Gill, 30.
Allegany County v. Warfield, 178, 179.
Allen v. Harford County, 32
Allen v. National State Bank, 35, 210, 211, 230.
Allgeyer v. Louisiana, 23.
American Telephone & Telegraph Co. v. Pearce, 198, 201.
Anderson v. Baker, 10, 19, 39, 177.
Anderson v. Levely, 205.
Annapolis v. Harwood, 146
Annapolis v. State, 155.
Anne Arundel County v. United Rys. Co., 167, 207.
Appeal Tax Court v. Gill, 35.
Appeal Tax Court v. Patterson, 35.
Appeal Tax Court v. Rice, 32.
Archer v. State 97, 102, 157, 299, 302, 303.
Arnsperger v. Crawford, 47, 194, 196, 197.
Ash v. McVey, 109, 112, 115, 130.

B

B. C. & A. Ry. Co. v. Wicomico County, 213.
B. & D. P. R. R. Co. v. Pumphrey, 214, 215, 231.
B. & E. S. R. R. v. Spring, 34, 48, 74, 215.
B. & H. De G. T. Co. v. U. R. R. Co., 194.
B. & L. P. Ferry Co. v. Hankey, 62.
B. & P. R. R. v. Magruder, 197.
B. & P. R. R. v. Reaney, 195.
B. & Y. T. Co. v. State, 342.
Baldwin v. Washington, County, 35, 210, 211, 212, 231.
Baltimore Belt R. R. v. Baltzell, 200.
Baltimore City v. Allegany County, 211, 212, 230.
Baltimore v. Canton Company, 32.
Baltimore v. Clunet, 134.
Baltimore City v. Flack, 154, 165.
Baltimore v. Garrett, 200.
Baltimore v. Gill, 292, 319, 321.
Baltimore City v. Gorter, 313, 320.
Baltimore v. Greenmount Cemetery, 195.
Baltimore v. Horn, 20, 68.
Baltimore City v. Johnson, 28.
Baltimore v. Keeley Institute, 161, 321.
Baltimore v. Latrobe, 200.
Baltimore v. Megary, 200.
Baltimore v. Merryman, 196.
Baltimore v. Reitz, 152, 157.
Baltimore City v. Safe Deposit Co., 210, 211, 212.
Baltimore City v. Starr Church, 27, 28, 72, 186.
Baltimore v. State, 12, 21, 47, 109, 125, 217, 278.
Baltimore v. Stoll, 158.
Baltimore v. Ulman, 22.
Baltimore v. Williams, 17, 66.
Baltimore County v. Winand, 31.
Baltzell v. Church Home, 58, 81.
Bandel v. Isaac, 217.
Banks v. State, 204, 338.
Barron v. Smith, 166, 176, 222.
Bassett v. Ocean City, 30.
Baugher v. Nelson, 38, 76.
Baun v. Warden of Jail, 44.
Beard v. State, 38, 77, 340, 342.
Beasley v. Ridout, 19, 21, 69, 260, 282.
Bel Air Social Club v. State, 245.
Bell v. State, 340, 342, 346.
Benning's Case, 194.
Berrett v. Oliver, 20, 21.
Berry v. Baltimore & Drum Point R. R. Co., 146, 149, 221.
Billingsley v. State, 302.
Black v. State, 94.
Blackburn v. Cranfurd, 239.
Bloomer v. State, 341, 342, 346.
Blum v. State, 46, 50.
Board of Supervisors v. Todd, 21, 52, 70.
Bonaparte v. State, 212, 231.
Bond v. Baltimore, 168, 197.
Bond v. M. & C. C. of. Baltimore, 153.
Bond v. State, 161.
Bonsal v. Yellott, 188, 215, 305.
Bradford v. Jones, 53, 79, 238.
Bradshaw v. Lankford, 133, 134, 220.
Bramble v. State, 204, 227.
Broadbent v. State, 45.
Broll v. State, 340, 341,

(References are to pages.)

Brooke v. Widdicombe, 250.
Brown v. Brooke, 304.
Brown v. C. & O. Canal Co., 328.
Brown v. Md. Telephone Co., 164.
Brown v. State, 49, 182, 183.
Brown v. Thompkins, 59.
Buckingham v. Davis, 239, 283.
Burgess v. Pue, 134.

C

C. & P. Telephone Co. v. Mackenzie, 199.
Caledonian Fire Ins. Co. v. Traub, 246, 343.
Calder v. Bull, 38.
Calvert County v. Hellen, 115, 160.
Calvert v. Williams, 22.
Campbell's Case, 64.
Canal Co. v. R. R. Co, 195.
Cantwell v. Owens, 52, 112, 117, 280.
Carstairs v. Cochran, 28, 34, 72, 75.
Cathcart v. Robinson, 17.
Catholic Cathedral v. Manning, 57, 58, 60, 84, 160.
Cearfoss v. State, 156.
Cecil v. Anne Arundel Co., 338.
Chancellor's Case, The, 21, 22.
Chappell v. Edmondson Ave. Co., 245.
Chappell Chem. Co. v. Sulphur Mines Co., 244, 274.
Chesapeake Club v. State, 46.
Cholley v. State, 62.
Christmas v. Warfield, 174.
Church Extension M. E. Church v. Smith, 58, 80, 81.
Citizens Security and Land Co. v. Uhler, 217, 232.
Clark v. Harford Agri. & Breeders Assn., 22, 97, 100.
Clark v. Maryland Institute, 63, 308.
Clark v. Tower, 165.
Clark v. Wooton, 203.
Claude v. Wayson, 115, 130, 278.
Cochran v. State, 147, 342.
Commissioners v. Bladensburg, 158.
Commissioners of Public Schools v. County Commissioners, 305.
Compton v. Susquehanna R. R., 193.
Cooke v. Cooke, 242, 243, 244, 245.
Cook v. Moffat, 66.
Corry v. Baltimore City, 35.
Costigan v. Bond, 261.
County Commissioners v. Farmers and Mechanics' Bank, 31.
County Commissioners v. Meekins, 157, 176, 177, 184.
Covington v. Buffett, 139, 144, 221.
Cox v. Bryan, 95.
Crane v. Meginnis, 19, 20, 182.
Crapo v. Kelly, 66.
Cross v. Kent, 241.
Cull v. Wheltle, 110, 111, 116, 117, 131, 216.
Cumberland v. Willison, 195, 196.
Curtis v. Mactier, 28, 29, 72, 175.
Curtis v. Piersol, 240.
Curtis Estate v. Piersol, 284.

D

Daly v. Morgan, 25, 27, 29, 73, 329.
Danner v. State, 44.
Dashiell v. Attorney-General, 17.
Davidson v. Brice, 56, 80, 96, 300.
Davis v. Helbig, 22, 47, 182.
Davis v. State, 41, 109, 126, 152, 154, 155.
Day v. State, 17, 45.
Deems v. Baltimore, 48.
De Ford v. State, 246.
De Lauder v. Baltimore County, 195.
De Murgiondo v. Frazier, 244.
Desche v. Gies, 241, 247.
Dickerson v. Kirk, 60.
Doe v. Manning, 66.
Downs v. State, 242, 243, 247, 260.
Dowling v. Smith, 271.
Dorsey v. Gary, 21, 256.
Dorsey v. Gilbert, 182.
Douglass v. Turnpike Co., 199.
Drenner v. Banks, 152, 161.
Dulaney v. Tilghman, 182.
Dunn v. Brager, 179.
Dyer v. Bayne, 113, 114.
Dykes v. Banks, 269.

E

Egan v. Charles Co. Court, 26.
Elliott v. Elliott, 38, 76.
Ellicott Machine Co. v. Speed, 160.
England v. Prince George's Parish, 58, 82.
Esterline v. State, 340.

F

Faust v. Building Assn., 29, 73, 210.
Fell v. State, 133, 134, 329.
Field v. Clark, 145.
Foote v. State, 37, 159.
Ford v. State, 44.
Forwood v. State, 341.
Fout v. Frederick Co., 153, 165.
Franklin v. State, 155, 340, 343.

G

Gabelein v. Plaenker, 258.
Gambrill v. Parker, 260.
Gans v. Carter, 152, 161, 185.

(References are to pages.)

Gardner v. McNeal, 58.
Garitee v. Bond, 94.
Garlitz v. State, 340.
Garrett v. Lake Roland R. R. Co., 195, 225.
Garrison v. Hill, 162.
Geekie v. Harbourd, 245.
Germania v. State, 33.
Gibbons v. Cherry, 269, 286.
Gluck v. Baltimore, 202, 226.
Goeller v. State, 41.
Goldsborough v. Lloyd, 339, 345.
Gough v. Pratt, 20.
Gould v. Baltimore, 279.
Graff v. Baltimore, 200, 201.
Green v. C. & S. R. R. Co., 195.
Green v. State, 338.
Green's Estate, 22.
Gregg v. Public Service Commission, 21, 234.
Griffin v. Leslie, 242, 246, 247.
Groff v. Frederick City, 195.
Groome v. Gwinn, 216, 250, 289.
Grove v. Disciples, 59.
Grove v. Todd, 38, 47.
Groverman v. Spencer, 256.
Gump v. Sibley, 60.
Guy v. State, 44, 46, 78.

H

Hagerstown v. Dechert, 234.
Hagerstown v. Groh, 195.
Hagerstown v. Schner, 38, 39.
Hall v. Schuchart, 241.
Hamilton v. A. E. R. R., 193.
Hamilton v. Carroll, 133, 162, 185, 205.
Hamilton v. R. R. Co., 197.
Hamilton v. State, 121, 178.
Hammond v. Haines, 133, 134.
Hanna v. Young, 86, 87, 98, 207.
Hannis Distilling Co. v. Baltimore City, 34.
Hardesty v. Taft, 53, 154.
Harmon v. Harwood, 117.
Harness v. C. & O. Canal, 21, 46, 193.
Harris v. Whitely, 203, 226.
Harrison v. State, 38.
Hawkins v. State, 295, 297.
Helfrich v. Catonsville Water Co., 195, 224.
Hendrik v. State, 253, 254.
Hepburn's Case, 192.
Herbert v. Baltimore County, 163, 184, 277.
Himmel v. Eichengreen, 166, 204.
Hiss v. B. & H. R. R. Co., 199.
Hodges v. Baltimore Union P. Ry. Co., 185, 199, 206.
Hoffman v. State, 14.
Hooper v. Baltimore, 211.
Hooper v. New, 320.
Hopkins v. Barber, 211.
Hopkins v. Baker, 211.
Horsey v. State, 233.
Hoshall v. Hoffacker, 245.
Houston v. Wilcox, 241.
Howard v. Skinner, 91, 100.
Howell v. State of Md., 34.
Hoye v. Swan, 193.
Hoyer v. Colton, 242, 245.

I

Ijams v. Duvall, 250, 275, 285.

J

Jackson v. State, 267, 296.
Jackson v. Walsh, 206, 207, 228.
Jeffers v. Annapolis, 165, 199.
Jessup v. M. & C. C. of Baltimore, 146.
Johns v. Johns, 256.
Johns v. State, 41, 42.
Jordan v. Reynolds, 203.
Judefind v. State, 55, 80.
Jules v. State, 340, 342.
Jump v. Spence, 97, 101, 251.

K

Kafka v. Wilkinson, 172.
Kane v. Baltimore, 198.
Keller v. State, 33, 155.
Kelso v. Stigar, 48, 59, 83.
Kemp v. Owens, 87, 88, 89, 98.
Keyser v. Upshur, 96.
Kilbourn v. Thompson, 19.
Kimball v. Harman, 242, 243, 245.
Kinehart v. Powers, 212.
Kingan Packing Assn. v. Lloyd, 48, 167.
Knee v. Passenger Railway, 18, 40, 67, 343.
Koontz v. Nabb, 17.
Kroh v. Smoot, 112 113, 128.
Kroh v. Somerville, 111.

L

Lanasa v. State, 37.
Lancaster v. Herbert, 92.
Lancaster v. State, 44.
Langhammer v. Munter, 89, 90, 99.
Lankford v. Somerset County, 119, 120, 124, 160, 185, 209.
Larrabee v. Talbott, 15, 66.
Latrobe v. Baltimore, 212.

(References are to pages.)

Laurel Canning Co. v. B. & O. R. R., 40.
Lawrence v. Hicks, 254.
Lawrence v. State, 46.
Legg v. Annapolis, 178.
Legum v. Blank, 265.
Leonard v. Wiseman, 181, 223.
Leser v Wagner. 30, 74.
Levin v. Hewes, 110, 115, 151, 169, 189, 277, 278, 279.
Little v. Schull, 97, 102, 279, 280, 302, 303.
Lucas v. McBlair, 189.
Luman v. Hitchens Bros., 172.
Lynn v. State, 38.

M

Madigan v. Building Asso., 38.
Magruder v. Swann, 104, 239, 250.
Manly v. State, 11, 17, 247.
Marshall v. Harwood, 147, 306.
Maryland Agricultural College v. Keating, 159.
Md. Jockey Club v. State, 48.
Md. Trust Co. v. Mechanics' Bank, 191.
Mayor and City Council of Baltimore v. County Commissioners of Allegany County, 185.
Mealey v. Hagerstown, 153, 163, 207.
Meloy v. Squires, 258.
Merrick v. Baltimore, 200, 226.
Merrill v. Garrett County, 115.
Miller v. Gittings, 190, 224.
Miller v. State, 20, 21.
Miller v. Wicomico County, 166, 185. 210.
Miles v. Bradford, 21, 103, 125.
Miles v. Stephenson, 117.
Mills v. Zion Chapel, 60.
Mincher v. State, 95.
Mister v. Thomas, 191.
Mitchell v. Mitchell, 21.
Mitchell v. State, 37, 156.
Moale v. Baltimore, 194.
Montague v. State, 33, 38, 158, 182, 223.
Monticello Co. v. Baltimore City, 34, 47, 75.
Mt. Vernon Co. v. Frankford Co., 167.
Munroe v. Wells, 111, 127, 216.
Murphy v. Eney, 88.
Muskrat v. United States, 255.
Myer v. Baltimore County, 211.

McBlair vs. Bond, 117, 311.
McCall's Ferry Co. v. Price, 256.
McColgan v. Baltimore Belt R. Co., 40, 77.
McCoy v. Johnson, 344, 347.
McCubbin v. Stanford, 203.
McCulloh v. Maryland, 34.
McCurley v. McCurley, 191.
McCrea v. Roberts, 22, 52.
McGrath v. State, 152, 156, 184.
McLane v. Hobbs, 87, 91.
McMillan v. State, 245, 247.
McPherson v. Leonard, 150, 151, 180, 181, 213, 222.

N

Neal v. Delaware, 18, 87.
Negley v. Farrow, 61.
Negro Jerry v. Townshend, 242.
New Central Coal Co. v. George's Creek Co., 193, 196, 197, 200.
Norris v. Baltimore, 200, 201.
Nowell v. Harrington, 119, 132, 180.
Nutwell v. Anne Arundel Co., 174.

O

O'Brian, vs. County Commissioners, 38, 109, 185.
O'Brien v. Baltimore Belt R. R., 195.

P

P. R. R. v. B. & O. R. R., 195.
Painter v. Mattfeld, 153, 175.
Parker v. State, 164.
Parkinson v. State, 152, 155, 179, 180.
Partridge v. Dorsey, 21.
People v. Brooklyn, 194.
Peter v. Prettyman, 249 285.
Phinney v. Sheppard etc. Hospital, 153, 162, 206, 207.
Pinckney v. Lanahan, 16, 66.
Pitznogle v. W. M. R. R., 193, 194, 197.
Poole v. Falls Road R. R. Co., 195, 199.
Pope v. Williams, 87, 93.
Postal Telegraph Co. vs. State, 151.
Price v. Liquor License Commissioners, 163.
Price v. Nesbitt, 242.
Prince George's County v. B. & O. R. R., 151, 186.
Prince George's County v. Laurel, 28, 30, 71, 158, 184.
Prince George's County vs. Mitchell, 21, 70, 248.
Prout v. Berry, 20, 21, 255.
Pumphrey v. Baltimore, 184, 292, 320.

(References are to pages.)

Q

Queen's Anne County v. Talbot County, 20, 68, 163.

R

Raab v. State, 242, 314.
Reddall v. Bryan, 198.
Reed v. Baltimore Trust & Guar. Co., 207.
Reed v. Stouffer, 59.
Reese v. Hawks, 265.
Regents v. Calvary Church, 59, 60, 82.
Revell v. Annapolis, 185, 308, 320.
Railroad v. Appeal Tax Court, 211.
Ridgeley v. Baltimore City, 146, 169, 179, 200, 225.
Ridgely v. State, 342.
Ringgold v. Barley, 90.
Risewick v. Davis, 180.
Robey v. Prince George's Co., 21, 69.
Roche v. Waters, 20, 68.
Rock Hill College v. Jones, 185.
Rogers v. Sisters of Charity, 59.
Rohr v. Anderson, 265.
Rohr v. Gray, 33.
Roth v. House of Refuge, 47, 269.
Ruggles v. State, 33, 169, 190.

S

St. John's College v. State, 254.
Sappington v. Slade, 111, 112, 115, 129.
Sausbury v. Middleton, 263.
Savings Bank v. Weeks, 47, 48.
Scharf v. Tasker, 47, 170.
Schley v. Lee, 25.
Scholle v. State, 108, 109, 126.
School Commissioners v. Goldsborough, 97, 115, 131.
School Commissioners v. School Commissioners, 331.
Scott v. Leary, 217.
Second German-American Building Assn. v. Newman, 157.
Second Universalist Soc. v. Dugan, 59.
Seth v. Chamberlain, 246, 248.
Sevinskey v. Wagus, 215, 253, 254.
Shaeffer v. Gilbert, 87, 90, 91, 99.
Shafer v. Mumma, 22, 234, 283.
Shipley v. B. & P. R. R. Co., 200.
Shully v. Stoner, 261.
Short v. State of Maryland, 26.
Silver v. Magruder, 104.
Simpson v. Hopkins, 32.
Singer v. State, 48.
Sittig v. Birkistack, 246.
Slaughter-house Cases, 63.
Slymer v. State, 41, 159.
Smith v. Devecmon, 22, 306.
Smith v. State, 17, 246, 247.
Smith v. Stephan, 95.
Smith v. Thursby, 104.
Smith v. Turner, 263.
Smoot v. Somerville, 110, 111, 114, 116, 127.
Somerset County v. Pocomoke Bridge Co., 174.
Southerland v. Norris, 87, 88, 92.
State v. Applegarth, 33, 162.
State v. B. & O. R. R., 244.
State v. Bank of Maryland, 17.
State v. Benzinger, 171.
State v. Bixler, 94.
State v. Buchanan, 17.
State v. Carter, 291.
State v. C. & P. R. R., 25, 26, 27, 33, 70.
State v. Chase, 21.
State v. Consol. Coal Co., 201.
State v. County Commissioners of Baltimore County, 184.
State v. Cumberland & Pa. R. R. Co., 173.
State v. Dalrymple, 33, 35, 36.
State v. Dashiell, 242.
State v. Dycer, 251.
State v. Floto, 94.
State v. Fox, 158.
State v. German Savings Bank, 173.
State v. Glenn, 42, 190, 215, 258, 340.
State v. Gore, 244.
State v. Graves, 198, 200.
State v. Green, 338.
State v. Gurry, 152.
State v. Hendrickson, 188.
State v. Jarrett, 205, 300.
State v. Kiefer, 41, 78.
State v. Loden, 18, 67, 169.
State v. Mace, 190.
State v. Mayhew, 11, 22, 28, 47.
State v. Mercer, 54.
State v. McNay, 22.
State v. Norris, 159.
State v. Northern Central Railway, 22, 30, 208, 229, 255.
State v. Norwood, 38.
State v. P. W. & B. R. R., 28, 30, 74.
State v. Schillinger, 242, 314.
State v. Schultz Co., 171.
State v. Shields, 254, 255, 286.
State v. Sterling, 29, 30.
Steenken v. State, 172.
Steuart v. Baltimore, 200, 201, 343.
Stevens v. State, 163.

(References are to pages.)

Stiefel v. Maryland Institute for Blind, 170.
Strauss v. Heiss, 156.
Swann v. State, 341, 342, 346.

T

Talbot County v. Queen Anne's County, 157.
Taylor v. Hebden, 110, 115, 254.
Tax Cases, 28, 32.
Temmick v. Owings, 150.
Thistle v. Frostburg Coal Co., 39.
Thomas v. Owens, 97, 181, 222, 298, 302.
Thomas v. Warner, 92, 93.
Tidewater Canal Co. v. Archer, 194, 199.
Tinges v. Moale, 241.
Toomer v. State, 37.
Townsend v. Kurtz, 117, 123.
Turner v. Crosby, 91.
Turnpike Road v. R. R. Co., 195.
Trayhern v. Hamill, 245.
Tyson v. State, 33.
Trustees, etc., v. Jackson Square Church, 60.

U

Ulman v. Baltimore, 47.
United Railways v. Baltimore, 154. 176.
U. S. Electric Power & Light Co. v. State, 31, 32, 40.
University of Md. v. Williams, 21, 47, 79.

V

Vandiver v. Warfield, 334, 335.
Vansant v. Roberts, 57, 58.
Vansant v. State, 204, 227, 272, 338.
Van Witzen v. Gutman, 196, 197, 199.

W

Walters v. B. & O. R. R., 196.
Warehouse Co. v. Lumber Co., 144, 146, 149.
Warfield v. Vandiver, 104, 121, 236, 334, 335.
Waring v. Waring, 193.
Washington County v. Franklin R. R. Co., 156, 208.
Washington County v. Nesbit, 305.
Washington Hospital v. Mealey, 206.
Waters v. State, 28, 30.
Watkins v. Watkins, 110.
Webster v. Cambridge Seminary, 206.
Webster v. Pole Line Co., 194.
Webster v. Susquehanna P. L. Co., 197.
Weddle v. School Commissioners, 309.
Weiskittle v. State, 244.
Wells v. Hyattsville, 27, 28, 71.
Wells v. Munroe, 250, 263.
Western Maryland R. R. v. Owings, 201.
Weyler v. Gibson, 40, 48, 78, 202.
Wheeler v. State, 340, 341.
Whiteley v. Baltimore City, 168.
Whitman v. State, 171.
Whittington v. Polk, 233, 276.
Wilderson v. Baltimore, 39.
Wilkens Co. v. Baltimore City, 31.
Williar v. Loan Asso., 217.
Willis v. Hodson, 38.
Wilson v. Hardesty, 38.
Worcester County v. School Commissioners, 167.
Worman v. Hagan, 304, 334, 336.
Wright v. Hamner, 155, 242, 246, 314.
Wright v. State, 62.
Wright v. Wright, 22, 46, 47, 182.

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Zion Church v. Hilken, 60, 84.

HISTORICAL PREFACE.

Almost a century and a half has elapsed since 1776, when the State of Maryland adopted its first constitution.

During that period the government of England has changed from an aristocratic monarchy to a democracy, and scarcely any other important nation in the world has escaped at least one revolution.

It is, therefore, to be expected that a great difference will be found between the institutions and political ideas now existing in our own State, and those which were established and dominant at its birth, and in looking for differences we will not be disappointed.

The remarkable feature is that the changes have been so slight.

DECLARATION OF RIGHTS.

The expression of the fundamental rights of freemen as set forth in the Declaration of Rights of 1776, differs from their expression in our present constitution, mainly in the following particulars:

1. *Right to Vote.*

In 1776 because "the right of the people to participate in the legislature" was supposed to be "the best security of liberty and the foundation of all free government" it was declared that "every person having *property in,* a common interest with, and an attachment to the community ought to have a right of suffrage."

In 1851, following up an amendment to the constitution adopted in 1810, the holding of property as a necessary qualification for voting was eliminated, and for the same reasons as were given in the article from the Constitution of 1776 quoted above, the suffrage was declared to be the right of "every free white male citizen having the qualifications prescribed by the constitution."

In the Constitution of 1864, the word "free" was stricken out, and by the fifteenth amendment to the Federal constitution the word "white" was stricken out.

The net result has been practically to strike out the idea of anything except citizenship and manhood as being a qualification for the franchise.[1]

2. *Rights of Persons Accused and Convicted of Crime.*

(a) It was not until 1864 that compulsory self-incrimination was forbidden. In the earliest two constitutions the matter was left to the discretion of the legislature.[2]

(b) In the Constitution of 1776 forfeiture of estate was allowed on conviction and attainder for murder or treason against the State. This was changed by the constitution of 1851,[3] and all such forfeitures abolished.

3. *Religious Equality.*

In the Declaration of Rights of 1776 it was only "persons professing the Christian religion" who were stated to be equally entitled to protection in their religious liberty,[4] but such sectaries as Quakers, Dunkers or Menonists, even though they professed the Christian religion, were not admitted as witnesses in capital criminal cases.[5] In furtherance of this general thought that

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1 Declaration of Rights, 1776, Article V: 1851, Article V: 1864, Article VII: 1867, Article VII.

2 Declaration of Rights, 1776, Article XX; 1851, Article XX; 1864, Article XXII; 1867, Article XXII.

3 Declaration of Rights, 1776, Article XXIV; 1851, Article XXIV.

4 Declaration of Rights, 1776, Article XXXIII. Changed in Declaration of Rights, 1851, Article XXXIII.

5 Declaration of Rights, 1776, Article XXXVI. Changed by amendment ratified in 1798.

religious toleration which included all those persons who professed the Christian religion, went quite far enough, the Declaration of Rights of 1776 gave expressly the power to the legislature to "lay a general and equal tax, for the support of the Christian religion, leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county,"[6] and provided that no *other* religious test be required as a qualification for office than a declaration of belief in the Christian religion.[7]

FORM OF GOVERNMENT.

The main changes in the organization of the different great departments of government have been as follows:

A. The Executive.

Under the Constitution of 1776 the executive was vested in a governor and council.

The governor was elected annually by the General Assembly on joint ballot, and must have had a property qualification of five thousand pounds. He was eligible for three successive years and afterward not eligible for the next four years.[8]

He exercised either by himself or with the concurrence of the council all the usual executive powers of government,[9] but had no veto power.

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6 Declaration of Rights, 1776, Article XXXIII. Changed by amendment ratified in 1810.

7 Declaration of Rights, 1776, Article XXXV. According to our present constitution a declaration of belief in the existence of God may be required as a qualification for office. Declaration of Rights, 1867, Article XXXVII.

8 Constitution of 1776, Article XXV.

9 Constitution of 1776, Article XXXIII.

The council was composed of "five of the most sensible, discreet and experienced men" of the State. They were required to have a property qualification of one thousand pounds and were annually elected by the two Houses of Assembly on joint ballot.[10]

The concurrence of the council was necessary "to embody the militia,"[11] and to confirm the appointment of chancellor, judges and practically all officers civil and military.[12]

In the case of vacancy in the office of governor the first named of the council for the time being was to act as governor until a new election.[13]

It will be noticed, therefore, that under our first Constitution, although containing in its Declaration of Rights a provision requiring the separation of the legislative, executive and judicial powers of government, the executive was elected by the legislature and not by the people.

In 1810 the property qualifications both for voting and for holding office were abolished.

In 1837 the whole structure of government so far as the executive department was concerned was changed.

The "council" was abolished altogether, leaving the whole executive power to the governor alone, and in case of vacancy in the gubernatorial office, making the Secretary of State, the President of the Senate and the Speaker of the House, in this order, the acting governor *ad interim*.[14]

The governor was to be elected by the people and his term of office was made three years.

The State was divided into three gubernatorial districts known as the Eastern, Southern and Northwestern, and from

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10 Constitution of 1776, Article XXVI.

11 Constitution of 1776, Article XXXIII.

12 Constitution of 1776, Article XLVIII.

13 Constitution of 1776, Article XXXII. See also amendment adopted in 1809.

14 Constitution of 1851, Sections I-V.

each of these districts the governor was to be elected at every third election in regular rotation.

Practically the same arrangement was continued under the Constitution of 1851, except that the term of office was extended to four years.[14]

By the adoption of the Constitution of 1864, the gubernatorial districts were abolished but the office of Lieutenant Governor (who was also President of the Senate) was created.[15]

Our present constitution eliminated the office of Lieutenant Governor, did not restore the gubernatorial districts, and conferred upon the governor the veto power.

B. The Legislature.

From 1776 to the present time the General Assembly of Maryland has been composed of two Houses called, respectively, Senate and House of Delegates.

From 1776 to 1837 the Senate was not elected by popular vote, but two persons from each county and one person from the City of Annapolis and "Baltimore town," respectively, were chosen electors of the Senate every fifth year by those voters who were qualified to vote for members of the House of Delegates, and these electors elected nine Senators from the Western shore and six Senators from the Eastern shore, thus making a Senate with a total membership of fifteen.

The House of Delegates has always been elected directly by the voters, but as already stated, from 1776 to 1810 a property qualification was required.

Of course, as population shifted, new arrangements as to the basis of representation have been made, and as conditions of life have changed such matters as corporations, exemption of wife's property from the debts of the husband, and the like appear in those articles in the later constitutions which relate to the legislative branch.

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14 Constitution of 1851, Sections I-V.

15 Constitution of 1864, Sections I-X.

C. The Judiciary.

In 1776 it was provided that the chancellor, all judges, the attorney-general, clerks of the county courts, the registers of land office and register of wills, should have a life tenure in their respective offices and should be removable only for misbehavior on conviction in a court of law.[16] The clerks of the general court and of the county courts were to be appointed by the judges.

The judicial system in 1776 consisted of a Court of Appeals, a General Court, a Court of Chancery, a Court of Admiralty, and County Courts.[17]

In 1805 this system was remodeled. The Court of Admiralty, of course, had become obsolete by reason of the adoption of the Federal Constitution. The amendment adopted in 1805, divided the State into six judicial districts and provided for the appointment of three judges in each district, one being a chief judge and the other two, associate judges. These three judges composed the County Courts in each district and were to hold office during good behavior.

The chief judges of the several judicial districts were made the Court of Appeals, and the General Court was abolished, leaving in existence as the constitutional courts of record, the Court of Appeals, the Court of Chancery and the County Courts.

In the Constitution of 1851 the term of the judges of the Court of Appeals and of the Circuit Courts was fixed at ten years, and they were to be elected by the people. The judicial power was vested in the Court of Appeals, Circuit Courts, special courts for Baltimore City and justices of the peace. The Court of Appeals consisted of a chief justice and three associate justices, with a clerk to be appointed by the court. The State was divided into four districts and in each district one of the judges of the Court of Appeals was to be elected, the chief justice being designated by the governor, by and with the advice and consent

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16 Declaration of Rights, 1776, Article XXX. Form of Government, 1776, Article XL.

17 Form of Government, 1776, Section XLVI.

of the Senate. The State was also divided into eight judicial circuits, the fifth of which circuits was Baltimore City. In all these circuits except the fifth, one judge was to be elected as a circuit judge, and to have all the power of the old County Courts and of the Court of Chancery within their respective circuits. The Court of Chancery was to be abolished after two years, it being continued for that time simply in order to wind up pending business. In Baltimore City there were established the Court of Common Pleas, the Superior Court and the Criminal Court.

Under the Constitution of 1864, the term of the judges was extended to fifteen years. The Court of Appeals was made to consist of a chief justice and four associate judges, and the State was divided into five districts for the purpose of their election, instead of four as under the previous constitution. The State was divided into thirteen judicial circuits, of which the City of Baltimore was the thirteenth, and in each circuit, except the thirteenth, there was one judge, while in Baltimore City there were to be the Superior Court, the Court of Common Pleas, the Circuit Court and the Criminal Court, each court consisting of one judge.

In 1867 there was an apparent reversion to the system established in 1805, and in effect from that time until 1851. This system, which is still in force, provides for eight judicial circuits of which Baltimore City is the eighth, and Baltimore and Harford Counties are the third. In all these circuits, except the third and eighth, there is a chief judge and two associate justices. In the third there is a chief judge and three associate judges. These judges form the circuit courts for the counties in their respective circuits and the chief judge of each of these seven circuits is *ex officio* a member of the Court of Appeals. In Baltimore City a judge is elected to the Court of Appeals, forming the eighth judge, and there is a Supreme Bench now composed of ten members, who are the judges in the special courts provided for Baltimore City. All the judges are elected for a term of 15 years.

GENERAL CHARACTER OF CHANGES.

The object of this historical preface is not to go over in detail the changes made in the successive constitutions. So far as these

changes come within the scope of this book they may be considered hereafter. The object now is simply to point out some broad and radical differences which indicate the lines along which our political thought has progressed in a hundred and forty years of peaceful evolution.

Our government when it was founded, was one in which persons without property had no right of franchise at all, and even those persons who had property sufficient to qualify them for the franchise could vote directly for no member of the legislative, executive or judiciary, except members of the House of Delegates, and a few other officers, of whom the sheriff was most important. Members of the Senate, and the Governor and Council were voted for indirectly, and most of the other offices were filled by appointment. A tax for the benefit of the Christian religion was allowed, no person except a Christian was entitled to hold office, and even certain Christians like the Quakers were not allowed to give evidence in certain important cases. A man's property might be forfeited for treason or murder. A person accused of crime might be made to give evidence against himself. Almost every important office was not only filled by appointment, but held for the life of the incumbent.

Under our present form of government there can be no such thing as forfeiture of property for crime, no such thing as a property qualification either for exercise of the franchise or for holding office, no such thing as a tax for the support of any kind of religion, no religious test for either office holder or witness, except in the one case, belief in the existence of God, and in the other case, such belief coupled with a belief in a system of rewards and punishments. In our government no one holds his official position for life, almost no office is filled permanently by appointment, and scarcely any officer is chosen in any other way except election by the people.

When these contrasts are made, the fact becomes very striking that our governmental evolution has been almost wholly in the direction of greater democracy, greater protection of personal rights, and fuller religious equality.

The same change can be noted in the adoption of the constitution itself and in the provision for its amendment.

The Constitution of 1776 was never submitted to the people, nor was any provision made for the submission to the people of any proposed change in the form of government prior to the Constitution of 1851. Now the change of our constitution without the sanction of a popular vote would be almost inconceivable.

Stated briefly, in 1915 our State government rests upon the will of the mass of our male citizens; in 1776 it was semi-aristocratic, reflecting only the sentiments of the propertied class.

MARYLAND CONSTITUTION.

INTRODUCTORY.

The first constitution of Maryland was framed in the same year as that wherein the Declaration of Independence was adopted by Congress, and is called "The Constitution of 1776."

This constitution, as amended from time to time, remained the fundamental law of our State until 1851, when a second constitution was adopted, which was succeeded by the Constitution of 1864, and that by the Constitution of 1867, which is still in force.

The original Constitution of 1776 was a comparatively short, simple and inartificial document, but many of its provisions, especially those contained in its Declaration of Rights, are still in force.

During the period of seventy-four years succeeding its adoption it was greatly amended, and in 1851 the necessity of an entire new Constitution was apparent.

The constitution then adopted is that under which—broadly speaking—we still live; the Constitution of 1864 and 1867 being in reality not much more than the Constitution of 1851 with amendments.

The Constitution of 1864 represents the thought of the northern and union element of the State during the Civil War, our Court of Appeals in Anderson v. Baker, 23 Md., 531, expressly declaring that the chief distinguishing characteristics of this constitution are "the declaration of the fundamental principle that 'every citizen of this State owes paramount allegiance to the Constitution and government of the United States and is not bound by any law or ordinance of this State in contravention or subversion thereof,' its incorporation with the right of suffrage; and the abolition of involuntary servitude except for crime."

The Constitution of 1867 represents the successful effort of the southern and conservative element to regain control of the state affairs.

When we speak of the "Constitution of Maryland," we mean the Constitution of 1867.

Before taking up the Constitution in detail, it may be well to advert to two canons of construction that have been laid down by our Maryland courts.

The first is contained in this quotation from the case of *Manly v. State,* 7 Maryland 135; 147:

"Constitutions are not to be interpreted according to the words used in particular clauses. The whole must be considered, with a view to ascertain the sense in which the words were employed, and its terms must be taken in their ordinary and common acceptation, because they are presumed to have been so understood by the framers and by the people who adopted it. This is unquestionably the correct rule of interpretation. It, unlike the acts of our legislature, owes its whole force and authority to its ratification by the people, and they judged of it by the meaning apparent on its face, according to the general use of the words employed where they do not appear to have been used in a legal or technical sense."

The second canon is taken substantially from the opinion of the court in *State v. Mayhew,* 2 Gill 497:

A contemporaneous construction of the Constitution of long duration, continually practiced under, and through which innumerable rights of property have been acquired, ought not to be shaken but upon the ground of manifest error and cogent necessity.

The Constitution of Maryland is divided into—

1—The Declaration of Rights;

2—The Constitution proper.

THE DECLARATION OF RIGHTS.

The Declaration of Rights is divided into a Preamble and forty-five articles. The Preamble is as follows:

"We, the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare:"

It will be seen that there is no legal force in this Preamble except so far as it recognizes the existence of God and thereby implies that the government is a Christian, or at least, a deistic government.

The forty-five articles may be divided into four classes.

CLASS A.

Declarations of abstract principles whose sole practical effect is to declare from what standpoint the law shall be considered and in what spirit interpreted.

In this class may be placed articles one, four, six, nine, twelve, twenty, twenty-nine, thirty, thirty-four, thirty-nine, forty-three and forty-four.

In relation to these articles, the language of the court in *Baltimore v. State,* 15 Md. 376, 459, is most appropriate. "We are to bear in mind that the Declaration of Rights is not to be construed by itself according to its literal meaning; it and the Constitution compose our form of government, and they must be interpreted as one instrument. The former announces principles on which the government about to be established will be based. If they differ, the Constitution must be taken as a limitation or qualification of the general principle previously declared according to the subject and the language employed."

To some extent this is true as to every article in the Declaration of Rights. But as to the articles in this class it is especially true, and in reality they amount to little more than a statement as to the *point of view* from which the court is expected to look at any particular concrete question.

CLASS B.

Exact duplications of provisions found in the Federal Constitution.

In this class are to be found articles two, three, seventeen, eighteen, nineteen, twenty-three, twenty-four and forty-two.

The verbiage in some of these articles is slightly different from the wording of the similar provisions in the Federal Constitution, but in fact the matters covered by them are substantially covered by the Federal Constitution, and for all practical purposes the provisions in the Maryland Declaration of Rights add nothing to what the law would be without them.

CLASS C.

Limitations on the power of the State similar to those limitations prescribed in the United States Constitution for the Federal Government.

In this class are to be found articles 8, 10, 13, 14, 16, 20, 21, 22, 25, 26, 28, 31, 32, 36, 40, 45 and in part 35.

These articles are, of course, of great importance. In regard to their construction, the decisions of the United States Court, in reference to the corresponding provisions of the Federal Constitution, are adopted by our court as authority which is very persuasive, although not necessarily controlling. The Federal constitutional law, therefore, construing these articles of the Federal Constitution is pertinent upon the construction of articles of this class in our State Declaration of Rights.

As matter of fact, all the provisions in the first ten amendments to the United States Constitution, limiting the power of the United States, are found substantially in our State Contitution limiting the power of Maryland, and most of these provisions are embodied in the Declaration of Rights. It is advisable, however, in any actual case, to compare the exact wording, which is different in some cases.

Thus, although in the Maryland Constitution the right to petition is granted, there is no express provision as to the right to assemble.

There is no provision in express terms that no person shall

twice be put in jeopardy for the same offence, but our courts have held that this is a maxim embodied in the very elements of the common law, and consequently in force here.[1a]

The provision that: "Private property shall not be taken for public use without just compensation" appears in our Maryland Constitution in article III "Legislative Department" Section 40, and requires that this compensation shall be *first paid or tendered* before the property is taken. The provision for the right of trial by jury in civil cases appears in article XV "Miscellaneous" Section 6, and secures the right *"inviolate"* where the amount involved exceeds *five* dollars.

CLASS D.

Concrete rules peculiar to Maryland, which have substantially equal force and equal practical value with any other part of the Maryland Constitution.

To this class belong articles five, seven, eleven, fifteen, twenty-seven, thirty-three, thirty-five, thirty-seven, thirty-eight and forty-one. Some of these articles have given rise to much litigation, knowledge of which is essential to every lawyer qualified to practice in this State.

1a *Hoffman v. State,* 20 Md. 425.

ARTICLE I.

"That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient."

This article is perhaps a typical example of the class, above termed "Class A," to which it belongs. It furnishes rather an argument for or against proposed legislation than constitutes in and of itself a rule of law governing the conduct of individuals.

ARTICLE II.

"The Constitution of the United States, and the Laws made or which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby, anything in the Constitution or Law of this State to the contrary notwithstanding."

This article is a typical illustration of articles which are above classified as "Class B." It is simply a repetition of the second section of article six of the Federal Constitution.

In the case of *Larrabee v. Talbott,* 5 Gill 426, decided before this article was inserted in the Constitution, our Court of Appeals held that "the decisions of the Supreme Court of the United States upon all questions of constitutional law are to be received as conclusive in" this state. In other words, the courts of our state recognize that the Constitution and laws of the United States cannot have their proper supremacy provided the courts of Maryland can interpret the Constitution according to their own view of its effect. This fact has been recognized, since the beginning of the government, by Congress, and has led to the legislation which provides for an appeal on constitutional questions from the highest court of any state to the United States Supreme Court. Our Maryland courts do not wait until a Maryland decision is reversed by the Supreme Court, but if our courts should decide a question arising, we will say under the bankruptcy law, in a certain way, and afterwards a decision of the United States Supreme Court should be rendered repudiating the view of the Maryland court, our Maryland

courts will in a subsequent case reverse their former rulings and follow the Supreme Court's last decision.[1]*

ARTICLE III.

"The Powers not delegated to the United States by the Constitution thereof, nor prohibited by it to the States, are reserved to the States respectively, or to the People thereof."

This article belongs to Class B, and is an exact copy of the tenth amendment to the Federal Constitution.

ARTICLE IV.

"That the people of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State."

This is another typical article of Class A; without effect, except so far as it indicates what ought to be the point of view of both legislature and judiciary.

ARTICLE V.

"That the inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from or under the Charter granted by His Majesty, Charles the First, to Caecilius Calvert, Baron of Baltimore."

This article belongs to Class D, and is a rule of substantially equal force with any other part of the Constitution.

In a slightly different form this article appeared in the Constitution of 1776 as the third article, and in the succeeding constitutions it has appeared exactly as it now stands.

Originally it ran "That the inhabitants of Maryland are en-

1 *Pinckney v. Lanahan,* 62 Md. 447. *Illustration I.

titled to the Common Law of England and the trial by Jury according to the course of that law, and to the benefit of such of the English statutes *as existed at the time of their first immigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great Britain and have been introduced, used and practiced by the Courts of Law or Equity.*"[2]

By this article, the common law as distinguished from statutes was adopted "in mass," so far at least as it is "not inconsistent with the principles of" our constitution "and the nature of our political institutions."

In 1882, *Dashiell v. Attorney-General,* 5 H. & J. 401, the Court of Appeals thought the only evidence to be found in relation to the question "which of the statutes by experience had been found applicable" was furnished by "*Kilty's Report of the Statutes,*" and that this book "was compiled, printed and distributed under the sanction of the State for the use of its officers, and is a safe guide in exploring an otherwise very dubious path."

This book is now obsolete, but its place has been taken by "*Alexander's British Statutes,*" which is now our "guide" along the path mentioned by the court.

In 1834[3] it was held that the adoption of the common law under this article includes the preference given by the common law to the King as a creditor; the State of Maryland, however, taking the place of the King of England.

The authority in Maryland of English decisions construing the English statutes differs according to the time when they were rendered. If rendered before the Revolution, these decisions are considered as accompanying the statutes themselves, and forming an integral part of them. But subsequent decisions, although entitled to great respect, are not to be received as absolute authority.[4*]

In 1848[5] the point was made that under this article as it first stood in the Bill of Rights, the whole common law of England as it existed in Maryland at the time of the Revolution was adopted as part of the Constitution, so that no part thereof could

2 *State v. Buchanan,* 5 H. & J. 358.

3 *State v. Bank of Maryland,* 6 G. & J. 205.
Affirmed in *Smith vs. State,* 5 Gill 45.

4 *Koontz v. Nabb,* 16 Md. 549 (1861); *Baltimore v. Williams,* 6 Md. 235; *Illustration II; *Cathcart v. Robinson,* 5 Peters 280; *Manly v. State,* 7 Md. 149.

5 *Day v. State,* 7 Gill 321.

be abolished or changed by a mere act of the legislature. But the court held this to be a novel and extraordinary proposition for which the article mentioned furnished no foundation.

The trial by jury, to which the inhabitants of Maryland are entitled, is the system of jury trial as recognized by the common law; and reasonable rules and restrictions are not within the inhibition[6*] of the provision.

ARTICLE VI.

"That all persons invested with the Legislative or Executive powers of Government are Trustees of the Public, and as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought to reform the old, or establish a new Government: the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind."

This is another typical illustration of those articles which are grouped in Class A.

ARTICLE VII.

"That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose elections ought to be free and frequent, and every [white] male citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage."

This article is placed under Class D, because, in addition to the general principle declared in the first part of the article, the concrete rule is laid down of manhood suffrage under such qualifications as may be prescribed by the Constitution. The word "white" is considered as having been eliminated by the fifteenth amendment to the Federal Constitution. The voters of Maryland never either approved the fifteenth amendment, nor by their votes struck out the word "white" from this article, and cases are now pending before the Supreme Court in which the argument is made that the fifteenth amendment does not have this effect. For our purposes, however, the word may be considered as stricken out in accordance with the Supreme Court's decision in *Neal v. Delaware,* 103 U. S. 370.

This article has been in all the constitutions of Maryland.

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6 *Knee v. Passenger Railway,* 87 Md. 623; *Illustration III; *State v. Loden,* 117 Md. 373; *Illustration IV.

In *Anderson v. Baker,* 23 Md. 531, the provisions of the registration laws passed under the Constitution of 1864 which disqualified, among other classes, all those who had "at any time been in armed hostility to the United States"[6½] were attacked as being in conflict with this article and therefore void. But the Court of Appeals held that the registration statute was justified by, and merely "a legislative enactment of," certain sections of the Constitution proper; and that being so, the Constitution, and such statutes as merely gave effect to the Constitution, would control in case of any variance between them and the Declaration of Rights.

ARTICLE VIII.

"That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

This article we have included with those in Class C as containing substantially the same limitation upon the power of the state as is placed by the United States Constitution upon the Federal Government.

The limitation upon the Federal Government is, however, not found in the words of the Constitution itself, but is simply an unavoidable consequence from all its provisions taken together.[7]

The language of our Maryland Declaration of Rights, above quoted, is clear and explicit; and our courts have been alert to oppose even the first steps toward usurpation by one department of the powers or duties of either of the others, in one case declaring *ex mero motu,* a law unconstitutional and void on this ground, although the point was not made by counsel.[8]

The leading case on this subject is *Crane v. Meginnis,* 1 G. & J. 463, decided in 1829, in which Judge Earle uses the following language: "The Constitution of this State, composed of the Declaration of Rights and Form of Government, is the immediate work of the people, in their sovereign capacity, and contains standing evidences of their permanent will. It portions out supreme power, and assigns it to different departments, prescribing to each the authority it may exercise, and specifying that from the exercise of which it must abstain. The pub-

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6½ Cons. 1864, Art. 1, Sec. 4.
7 *Kilbourn v. Thompson,* 103 U. S. 190.
8 *Beasley v. Ridout,* 94 Md. 641.

lic functionaries move then in a subordinate character, and must conform to the fundamental laws or prescripts of the creating power. When they transcend defined limits, their acts are unauthorized, and being without warrant, are necessarily to be viewed as nullities. If considered as valid acts, the distinction between unlimited and circumscribed authority is done away, the derivative exerts original power, and of constitutional law nothing is left but the name.

The legislative department is nearest to the source of power, and is manifestly the predominant branch of the government. Its authority is extensive and complex, and being less susceptible on that account of limitation, is more liable to be exceeded in practice. Its acts out of the limit of authority, assuming the garb of law, will be pronounced nullities by the courts of justice; it being their province to decide upon the law arising in questions judicially before them, and upon the Constitution as the paramount law; but this is more in fulfilment of their own duty, than to restrain the excesses of a co-ordinate department of the government. The check to legislative encroachments is to be found in the declaration that the legislative, executive, and judicial powers ought to be kept separate and distinct; and in the solemn obligations of fidelity to the Constitution, under which all legislative functions are performed.''

Originally the article read simply ''That the legislative, executive and judicial powers of Government ought to be forever separate and distinct from each other.'' The concluding clause ''and no person exercising the functions of one of said departments, shall assume or discharge the duties of any other'' was added by the convention which framed the Constitution of 1851 and was adopted into that instrument.

Under this article, acts of assembly have been declared void:

1st: Because of the assumption of judicial power by the legislature.[9]*

And if the legislature in a statute state what has been the previous law upon a particular subject, such legislative interpretation is not binding on the courts.[10]

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9 *Crane v. Meginnis,* 1 G. & J. 463; *Berrett v. Oliver,* 7 G. & J. 191; *Miller v. State,* 8 Gill 145; *Prout v. Berry,* 2 Gill 147; *Balto. v. Horn,* 26 Md. 194. *Illustration V.; *Roche v. Waters,* 72 Md. 264. *Illustration VI,; *Queen Anne's Co. v. Talbott Co.,* 108 Md. 188; *Illustration VII.

10 *Gough v. Pratt,* 9 Md. 526, 533.

2nd: Because non-judicial duties were thereby imposed upon the courts.[11]*

The Court of Appeals in 1821[12] states: "New judicial duties may often be unnecessarily imposed and services not of a judicial nature may sometimes be required. In the latter case, a Judge is under no legal obligation to perform them."

Should the court assume to itself legislative or executive powers the same reasoning would lead to its action being declared void.

In *Mitchell v. Mitchell,* 1 Gill 66, 84, the Court of Appeals comments upon a rule of court as conferring in their judgment, "a power upon the commissioners which was intended by the Legislature to be exclusively exercised by the Courts or the Judges thereof;" and the evident implication is that such rule of court would be void.

Other cases involving the construction of this article, are referred to in the note[13], and it may truly be said that this article has been very effective in preserving the proper limitations of the different departments of Government.

A rather curious development of late years is the establishment of certain agencies of government, regarding which it is difficult to tell to which great department they belong.

The Public Service Commission of Maryland, for example, has functions that are partly judicial, partly administrative and partly legislative.

In *Gregg v. Public Service Commission,* 121 *Md.* 1, the counsel for the commission argued that it discharged administrative functions, but the Court of Appeals while upholding his general contention, held that "the order of the Public Service Commission complained of in this case was a legislative, rather than a judicial or administrative act or a combination of any two of them."

It may be, therefore, in the future, that the difficulty of clas-

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11 *Robey v. Prince George's County,* 92 Md. 150, *Illustration VIII; *Beasley v. Ridout,* 94 Md. 641, *Illustration IX: *Board of Supervisors v. Todd,* 97 Md. 247, *Illustration X: *Prince George's County v. Mitchell,* 97 Md. 330, *Illustration XI.

12 *State v. Chase,* 5 H. & J. 297, 304.

13 For construction of this article generally see *Partridge v. Dorsey,* 3 H. & J. 302; *Baltimore v. State,* 15 Md. 376; *Miles v. Bradford,* 22 Md. 170; *The Chancellors Case.* 1 Bland 595; *Harness v. C. & O. Canal Co.,* 1 Md. Ch. 248. For cases where the acts were held void as usurping judicial power: *Berrett v. Oliver,* 7 G. & J. 191; *Univ. of Md. v. Williams,* 9 G. & J. 365; *Prout v. Berry,* 2 Gill 147; *Miller v. State,* 8 Gill 145; *Dorsey v. Gary,* 37 Md. 64. Cases where the acts were attacked as being unconstitutional under

sifying a governmental agency will lead to difficulties in applying the rule as laid down in this section of the Declaration of Rights. Nevertheless the rule itself is firmly established, not only by the plain words of the article, but by the decisions of the court giving these words their fullest force and effect, and probably the sentiment of the bar is still in accord with the following words of Chancellor Bland:[14]

"The Declaration of Rights declares, 'that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other.' This division and separation is the peculiar characteristic and great excellence of our government. It is the grand bulwark of all our rights, and every citizen has the deepest interest in its most sacred preservation. Each of these several departments should be kept, and should feel it to be its highest honor, to keep strictly within the constitutional boundaries assigned to it. The legislature should not encroach upon the judiciary, nor upon the executive, nor should either of those departments trench upon each other, or upon the legislative."

ARTICLE IX.

"That no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed."

This article evidently belongs to Class A.

ARTICLE X.

"That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature."

This article evidently belongs to Class C. It corresponds with the provision in Section 6 of Article 1 of the Federal Constitution that "for any speech or debate in either House, they (i. e. Senators and Representatives) shall not be questioned in any other place," and although slightly different in language, has practically the same meaning.

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this article but held good: *State v. Mayhew,* 2 Gill 487; *Wright v. Wright,* 2 Md. 429; *Calvert v. Williams,* 10 Md. 478; *Shafer v. Mumma,* 17 Md. 331; *State v. Northern Central Ry.,* 18 Md. 193; *Davis v. Helbig,* 27 Md. 452; *Smith v. Devecmon,* 30 Md. 473; *Green's Estate,* 4 Md. Ch. 349; *Baltimore v. Ulman,* 79 Md. 469, 483; *McCrea v. Roberts,* 89 Md. 238; *State v. McNay,* 100 Md. 622; *Clark v. Harford &c. Asso.,* 118 Md. 608.

14 *The Chancellor's Case,* 1 Bland 595, 672.

ARTICLE XI.

"That Annapolis be the place of meeting of the Legislature; and the Legislature ought not to be convened, or held at any other place but from evident necessity."

This article evidently belongs to Class D, and is a concrete rule peculiar to Maryland. Its meaning is very plain, but what the result would be should the legislature actually be convened in any other place and pass laws at such meeting, has never been determined. A comparison of this article with Section 16 of Article II of the Constitution indicates that the "evident necessity" for removal only arises when for some cause Annapolis becomes an "unsafe place," and that as to the existence of this necessity the Governor is sole judge.

ARTICLE XII.

"That for redress of grievances, and for amending, strengthening and for preserving the laws, the Legislature ought to be frequently convened."

This article belongs to Class A. It may be questioned whether if a new Declaration of Rights were to be framed to-day, without reference to previous documents, this article would find a place in it.

ARTICLE XIII.

"That every man hath a right to petition the Legislature for the redress of grievances in a peaceful and orderly manner."

This article belongs to Class C, and covers practically the same ground covered by the clause in the first amendment to the Federal Constitution, stating that "Congress shall make no law * * * * abridging * * the right of the people peaceably to assemble and to petition the Government for a redress of grievances." As already stated, our Maryland article does not provide for the right to assemble, but that is no doubt secured by the fourteenth amendment to the Federal Constitution, which forbids a State to deprive any person of his liberty without due process of law.[15]

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15 *Allgeyer v. Louisiana,* 165 United States 578.

ARTICLE XIV.

"That no aid, charge, tax, burthen or fees ought to be rated, or levied, under any pretence, without the consent of the Legislature."

This article seems properly to fall under Class C, although as we have stated in regard to article 8th of the Maryland Declaration of Rights, there is no express provision in the Federal Constitution similar to this. In both Constitutions, it is implied that the levying of taxes is an exercise of the legislative power, and in neither nation nor state, would the levy of taxes, without the consent of the legislature, be valid even without this article.

ARTICLE XV.

"That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the Government; but every person in the State, or person holding property therein ought to contribute his proportion of public taxes for the support of the Government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community."

This article is perhaps the most important in the whole Declaration of Rights. It has in substance been in all our constitutions, the Declaration of Rights in 1776 having for its 13th article the following: "That the levying taxes by the poll is grievous and oppressive and ought to be *abolished;* that paupers ought not to be assessed for the support of Government, but every other person in the State *ought* to contribute his proportion of public taxes for the support of Government according to his actual worth in real or personal property *within the State;* yet fines, duties or taxes may properly and justly be imposed or laid with a political view for the good government and benefit of the community."

In the Constitution of 1851 the word "abolished" was stricken out and the word "prohibited" inserted, the word "other" was stricken out in the third clause, probably because unnecessary,

the words "or person holding property therein" were inserted in the same clause, and the words "within this State" in the same clause were stricken out; otherwise the article in our present Declaration of Rights has remained unchanged since the time of our first Constitution.

In 1874[16] Judge Alvey speaking for the majority of a divided court says: "This declaration of the right of the citizen is not simply directory to the legislature, to be observed or not as that department of the government may determine or think proper; but it is a positive limitation or restriction on the power, and whenever it is transcended or disregarded, it becomes the duty of the courts to declare the act void. Hence, this court has repeatedly declared that taxes, if imposed in violation of this fundamental rule, would be illegal and void."

In the same case, Judge Stewart in giving a dissenting opinion in which Bowie and Robinson concurred, laid down his views as follows: "The fifteenth article prescribes a rule to control the legislature in the exercise of the taxing power. The limitation provided by this article from the nature of the case must be mainly directory, and designed to impose its moral restraint upon the consciences of the members of the legislature affected by their official oath and responsibility to their constituents, and rarely reviewable in any case by the courts."

No doubt the law has theoretically been settled in accordance with Judge Alvey's views, [16½] and it may be laid down as a principle that this article is not merely directory but is a positive limitation upon the power of the Legislature. It is therefore unquestionably to be included among the articles in Class D. At the same time, there have been so many exceptions, or at least apparent exceptions, which have been recognized by our courts, and there has been so much of apparent contradiction in the decisions, that it can hardly be said that the views expressed by Judge Stewart are without any basis.

Indeed in 1888, Chief Judge Alvey,[16a] in commenting upon a decision then rendered, expresses himself in these terms: "I dissent from the opinion because the practical effect of it is to *nullify that most valuable guaranty,* found in the Constitution

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16 *State v. C. & P. R. R.,* 40 Md. 22, 50.

16½ See *Schley v. Lee,* 106 Md. 390, 402.

16a Dissenting opinion in *Daly v. Morgan,* 69 Md. 473.

of the State, designed to restrain the power of unequal and arbitrary taxation."

In considering the article, it may be well to sub-divide it under three heads:

First: Prohibition of the poll tax;

Second: The rule of equality as to ordinary taxation;

Third: The allowance of special taxes laid with political view.

First. Prohibition of Poll Tax.

Under the act of 1715 which continued in force down to the Revolution, the commissioners of the several county courts were directed to levy a specified sum on all persons, male or female, free or slave, above the age of sixteen years, for public purposes; and by the act of 1702 there was a tax for the use of the Church of England of forty pounds of tobacco per poll, and this act continued down to the Revolution. These were the taxes that were in the minds of the members of the Constitutional Convention when they framed this article,[17] and it is only similar taxes which would be construed within the prohibition.

Thus in 1793 a majority of the General Court decided that an act requiring lawyers to take out a license and pay for the same before practicing, does not impose a poll tax,[18] and in 1895 a road tax levied upon all residents of a county over twenty and under fifty years of age, requiring them to labor at least two days on the roads, or furnish a substitute, or pay to the roads supervisors seventy-five cents per day for every day the person is called upon to labor was held not to be a poll tax.[19]

Second. The Rule of Equality as to Ordinary Taxation.

In the case above mentioned,[20] Chief Judge Alvey says in reference to this article: "This is a fundamental declaration of the right of the citizen against unequal and undue assessments of taxes by the government. It was not deemed a sufficient guarantee that no tax should be imposed but by the representatives of the citizen in the legislature, but in order to prevent abuse

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17 *Short v. State of Maryland,* 80 Md. 392.
18 *Egan v. Charles Co. Court,* 3 H. & McH 169.
19 *Short v. State of Maryland,* 80 Md. 392.
20 *State v. C. & P. R. R. Co.,* 40 Md. 22.

of the power, which would otherwise be unlimited, the legislature is required to cause all public taxation for the support of the government to be fair and equal in proportion to the value of the property assessed, so that no class or species of property shall be unequally or unduly taxed.''

This case was decided on March 5th, 1874. The language, already quoted from the case of *Daly v. Morgan,* shows how Judge Alvey felt that the force and effect of this article had been weakened by the decisions of our Court of Appeals during the twenty-one years prior to 1895.

Nevertheless in 1906,[21] our Court of Appeals states the effect of the article practically as Judge Alvey stated it, viz: ''This provision has, with a slight but not material change of phraseology, been a part of the organic law of Maryland for considerably more than a century. Its predominant object is to provide, by a fixed enactment, equality in taxation, and to prevent, as far as possible, the burden of supporting the government from falling upon some individuals to the exclusion or exemption of others. It prohibits unjust discriminations, and whilst it remains in force the landowner, be his possessions large or small, will have an absolute and complete guaranty that public taxes cannot be imposed upon him, while others who are equally responsible in the law, may have themselves relieved of this burden by the partiality of legislative enactment without subserving any public policy. Its theory is that the distribution of the burden over every class of property alike will lessen the proportion of each individual's contribution, whereby oppressive exactions from the owners of any particular class of property will be impossible. This has been the uniform and consistent principle always followed in Maryland, eminently just in itself, as a sound and long accepted axiom of political economy, it has been incorporated in her organic law since November 3rd, 1776; it has been upheld by her courts and steadily and tenaciously adhered to by her conservative people.''

By virtue of its provisions, there have been declared void a law levying taxes upon one species of property only,[22] a law exempting real estate in an incorporated town from being taxed for general county purposes;[23*] a law allowing the exemption of

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21 *Baltimore City v. Starr Church,* 106 Md. 281. Quoting from *Wells v. Hyattsville,* 77 Md. 125.

22 *State v. C. & P. R. R. Co.,* 40 Md. 22. *Illustration XII.

all personal property and improvements to real estate from a town tax and introducing single tax[24] as the revenue system of that town, and a law incorporating a village, a portion of which was exempted from village taxation except by assent of the taxpayers of the portion so exempted.[25]* In accordance with this line of decisions, our court has held that the uniformity required by this article as a vital element of just taxation "cannot be attained unless *all* the tangible property in the State is so valued and assessed, and unless its owner, wherever he may be, does contribute his proportion according to the value of that property.[26]*

This general rule has been limited in our courts in its completeness to tangible property, Chief Justice Boyd stating that "It is well settled that there may be 'property' in the State" e. g. a franchise or a seat on the Stock Exchange which is not covered by that provision.[27]

The apparent exceptions to this general rule of equality, which sometimes seem to annul in great part its effectiveness, may be grouped under six general heads:

(a) The power of the legislature to assess property directly and levy a fixed tax upon the property so assessed;

(b) The power of the legislature to create different taxing districts in the same county or city;

(c) Special assessments for local improvements;

(d) Franchise taxes;

(e) The power of the legislature to tax two or more persons on account of their different interests in the same property;

(f) The power of the legislature to make exemptions.

A. Power of the Legislature to Make a Direct Assessment and Levy.

As early as 1843[28] the court sustained what it called a "legislative levy" and upheld the power of the legislature to make

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23 *Prince George's Co. v. Laurel*, 70 Md. 443. *Illustration XIII.

24 *Wells v. Hyattsville*, 77 Md. 125. Illustration XIV.

25 *Curtis v. Maetier*, 115 Md. 386. *Illustration XV.

26 *Carstairs v. Cochran*, 95 Md. 488. *Illustration XVI; *Baltimore City v. Starr Church*, 106 Md. 281. *Illustration XVII.

27 *Baltimore City v. Johnson*, 96 Md. 737, 747; *State v. P. W. & B. R. R.*, 45 Md. 361, 379.

28 *State v. Mayhew*, 2 Gill 487. See also the *Tax Cases*, 12 G. & J. 117 (1841). *Waters v. State*, 1 Gill 302.

such levy by express legislative enactment, and stated that the levy was ordinarily made by the "levy courts and county commissioners" simply because it could be more conveniently and advisedly done by them.

In 1864[29] this power of directly ascertaining taxable values and assessing and collecting the taxes thereon by acts of the legislature was expressly affirmed; and the principle has since been extended so far as to uphold a law providing that mortgagees should pay a tax of a fixed percentage upon the gross amount of interest covenanted to be paid each year, one-fourth to go to the state and three-fourths to the county or city of Baltimore as the case may be.[30*] It is evident that such a tax is not levied at the same rate upon the principal of a mortgage bearing four per cent as upon the principal of a mortgage bearing six per cent, and it is also evident that, in all probability, such a tax would never correspond with the amount of state, or city, or county taxes levied upon property of equal value with the principal of the mortgage debt. Apparently the tax was sustained on the ground that, by a sort of legal fiction, the legislature determined the value of any particular mortgage to be exactly equal to the value of property of any other kind that, under the existing law, paid the amount of taxes assessed on the mortgage by the legislature.

B. The Power to Create Different Taxing Districts.

Our Court of Appeals has laid down the proposition that "equality and uniformity as between different taxing districts, whether the district be an entire city or parts of a city, is not required in local taxation. Each city, county, or taxing district may have its own rate of taxation." All that is required is that the rates of assessment and taxation be equal and uniform as to all the property within the taxing district,[31*] and that the taxing district must be legally subjected to some taxes that it cannot escape.[32]

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29 *State v. Sterling,* 20 Md. 502.

30 *Faust v. Building Association,* 84 Md. 186, *Illustration XVIII.

31 *Daly v. Morgan,* 69 Md. 460, *Illustration XIX.

32 *Curtis v. Mactier,* 115 Md. 386.

C. Special Assessments for Local Improvements.

Special assessments for local improvements are allowed upon a somewhat different theory from ordinary taxes. The citizen who pays ordinary taxes is not supposed to receive any equivalent for his taxes except the common benefits of government. On the other hand, the owner of property who pays a special assessment receives, in theory, an equivalent in the form of an increase in the value of his property for all he pays by way of assessment.[33*]

Such assessments are, therefore, legally speaking, not a contribution "for the support of government" at all, but are more in the nature of a compulsory purchase at or below its fair price, of values offered by the government. Of course, therefore, as to these assessments, the general rule of this article could not apply.

These assessments have always been held valid in Maryland,[34] even though in some cases the theory upon which their validity depends was hardly consistent with the facts.

D. Franchise Taxes.

The power of the legislature to levy franchise taxes has been many times upheld.[35] In one case the tax held to be a valid franchise tax was the sole tax which the corporation was required to pay.[36*] Yet in that case as also in other cases, the franchise tax appeared to be laid with no reference whatever to the rate of tax paid by other persons upon their property.

Probably this can be sustained as a direct legislative assessment and levy like the tax upon mortgages.[37]

E. Right to Tax Two Different Persons on Account of Their Different Interests in the Same Property.

In *State v. Sterling,* 20 Md. 502, already cited, the court said that the article we are now considering was "a bar to double

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33 *Leser v. Wagner,* 120 Md. 671, *Illustration XX.

34 *Alexander v. Gill,* 5 Gill 383; *Bassett v. Ocean City,* 118 Md. 114, and many other cases. See also *Prince George's Co., v. Laurel,* 51 Md. 457.

35 *State v. N. C. R.,* 44 Md. 131; *State v. P. W. & B. R. R.,* 45 Md. 361.

36 *State v. P. W. & B. R. R.,* 45 Md. 361, *Illustration XXI.

37 See *Waters v. State,* 1 Gill 302.

taxation," and in the case of the *County Commissioners v. Farmers & Mechanics Bank,* 48 Md. 121, the court speaks of "double taxation forbidden by our organic law," but in the case of the *U. S. Electric Power & Light Company v. State,*[37a] the court held that double taxation was not necessarily void. "The Declaration of Rights requires equality in taxation, and in so far as a double tax destroys that equality it is invalid, but not otherwise. * * * * * * * The imposition of a tax twice upon one person for the same purpose because of his ownership of a particular piece of property would be a double tax which, in consequence of its inequality, would not be sustained. But when the same property represents distinct values belonging to different persons, be those persons natural or artificial, both persons may be lawfully taxed, and the amounts of their separate contributions would be fixed by the values which the same property represented in the hands of each respectively. And this would not be double taxation in the sense in which it is obnoxious to the organic law."

This language has been quoted and affirmed in *Wilkens Company v. Baltimore City,* 103 Md. 312, where the court states that "the subsequent decisions in this State all seem to be in harmony with the case just cited."

The theory, according to which this result is reached, is that "taxes are levied upon the individual and not upon property, though the value of the property owned by him is the standard by which the extent of the individual's liability is ascertained and measured."[38]

In applying this rule, the courts have felt justified in taxing one person because of his ownership of a particular piece of property on the full value of that property, even though some other person was taxed upon an interest owned by him in the same property, which interest diminished the real value of the property to the first party to the full extent of the incumbrancer's interest.

Thus the mortgagor can be taxed upon the full value of the land in which he owns an equity of redemption and, at the same

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37a 79 Md. 63.

38 *United States Electric Power & Light Company v. State,* 79 Md. 63; *Wilkens Company v. Baltimore City,* 103 Md. 293, 312; *Baltimore County v. Winand,* 77 Md. 522.

time, the mortgagee can be taxed upon the mortgage held by him.[39]

So the stockholders of a corporation may be subjected to a tax on the full value of their stock, which represents the worth of all the property, including the franchises of the corporation, and the corporation itself may be required to pay in addition, a franchise tax upon its gross receipts.[40]

F. Exemptions.

Our court has held that this article constitutes no bar to the right of the legislature to exempt certain kinds of property from taxation when that exemption is not an arbitrary discrimination in favor of a particular class. This exception seems to be somewhat hard to maintain on principle, but as our court has said, the power of the legislature to grant such exemption "has been exercised from the origin of the government."[41]

Thus it has been held that bonds of foreign corporations secured by mortgage of property within this state may be exempted from taxation, while bonds of home corporations owned by its own citizens are subject to be taxed.[42]

Third—The Allowance of Special Taxes Laid with a Political View.

The last clause in the 15th article of the Declaration of Rights is considered as enlarging the taxing power of the legislature. And taxes laid under this enlargement of power are of a different class from the "property taxes" which we have been considering. The rule of equality is applicable to "property taxes." "Taxes laid with a political view" are not "property taxes," but are such taxes as the legislature may levy, not upon property, but upon occupations, privileges, contracts and things of that nature, and as to these the rule of equality is not applicable.

Under this power, collateral inheritance taxes have been sus-

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39 *The Tax Cases,* 12 G. & J. 117; *Appeal Tax Court v. Rice,* 50 Md. 302, 319; *Baltimore v. Canton Co.,* 63 Md. 218, 237; *Allen v. Harford County,* 74 Md. 294.

40 *U. S. Electric Power & Light Co. v. State,* 79 Md. 63.

41 *Simpson v. Hopkins,* 82 Md. 478.

42 *Simpson v. Hopkins,* 82 Md. 478.

tained;[43] also a tax upon "persons keeping or exhibiting for use a billiard table or tables;"[44] also the imposition of license fees upon restaurant keepers;[44½] also traders' licenses,[45] also licenses on oyster canners;[46] and license fees for chauffeurs, imposed upon professionals, at one rate, and upon other operators of motor vehicles, at another rate.[47]

Summing up the rule and its exceptions, we may say, in a general way, that the courts, in construing this article, have separated the taxation which may be levied upon the inhabitants of Maryland into two kinds; the one, taxes upon the individual according to his property; the other, taxes laid with a political view for the good government and benefit of the community. As to taxes of the first class, the legislature is prohibited from taxing the same individual twice in regard to the same piece of property. It is also prohibited from taxing different individuals in the same taxing district at different rates in regard to similar property. It may, however, exempt certain classes of property with a view to the good of the community, provided the classification is reasonable, and the exemption does not produce material inequality. The legislature may assess property directly, and levy a fixed tax upon the property so assessed, and from such assessment or rate, there will be no appeal. Subject to this legislative assessment, subject also to a diversity as between different taxing districts, and to the right of the legislature to make reasonable exemptions, so far as property taxes are concerned, "it is not competent to the legislature to discriminate as between the different species of property and to tax some by one rule and some by another," but "one person shall not be taxed more nor less than another, because he may happen to own a different species of property from that owned by another."[47½]

In regard to the second class, namely, taxes "laid with a political view for the good government and benefit of the community," there seems to be no limitation laid upon the power of the

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43 *Tyson v. State,* 28 Md. 577; *Montague v. State,* 54 Md. 481; *State v. Dalrymple,* 70 Md. 294.

44 *Germania v. State,* 7 Md. 1.

44½ See *Keller v. State,* 11 Md. 525.

45 *Rohr v. Gray,* 80 Md. 274.

46 *State v. Applegarth,* 81 Md. 293.

47 *Ruggles v. State,* 120 Md. 553.

47½ *State v. C. & P. R. R. Co.,* 40 Md. 22, 52.

legislature by this article, except that such taxes are not to be laid upon property as such.

These taxes are, of course, subject to the provisions in the State and Federal Constitutions, forbidding the taking of property without due process of law, and the denial of the equal protection of the law.

Other Constitutional Limitations on the Taxing Power. Not expressed in this article.

(*a*) *Public Purpose Required.*

By this article of the Declaration of Rights "as well as by the fundamental maxims of free government, taxes can only be imposed to raise money for public purposes."[48]*

(*b*) *Notice Required.*

Personal notice is not necessary, but there must be some reasonable notice and an opportunity to be heard, or the tax laid will be invalid. This notice may be given by a law designating the time and place where the parties may contest the justice of the valuation.[49]*

(*c*) *Property Must be Within the Jurisdiction.*

In 1845[50] our court quoted with approval from the opinion of Chief Justice Marshal in *McCullough v. Maryland,* that "all subjects over which the sovereign power of a state extends are objects of taxation, but those over whom it does not extend, are upon the soundest principles, exempted from taxation."

Of course, it is plain that real estate and tangible personal property situated within the State are subjects over which the sovereign power of a state extends. The difficult questions arise when the rule "*mobilia sequuntur personam*" is sought to be applied by a state to reach either personal property owned by a non-resident but alleged to have a *situs* in the State, or to reach personal property situated outside of the State belonging to a resident therein.

In the case cited[51], it was held that a state could tax property in ships belonging to citizens of Maryland.

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48 *Baltimore & Eastern Shore R. R. v. Spring,* 80 Md. 510, *Illustration XXII.

49 *Monticello Co. v. Baltimore City,* 90 Md. 416; *Carstairs v. Cochran,* 95 Md. 488, *Illustration XXIII. See also *Hannis Distilling Co. v. Balto. City,* 114 Md. 678.

50 *Howell v. State of Md.,* 3 Gill 14, 22.

51 *Howell v. State of Md.,* 3 Gill 14.

In 1879[52] it was held that the State could tax bonds and stocks of other states, or of corporations created by other states, belonging to citizens of Maryland, even though those stocks and bonds were exempted by the home states of the corporation from taxation, or although taxes upon them had been or might have been paid to the state of their creation.

And in 1903 the converse was definitely decided, viz: that stock in Maryland corporations was taxable in this State even though the owners are non-residents.[52½]

In 1889[53] certain personal property consisting of National Bank Stock, Baltimore City Stock, Missouri State Bonds and cash were held by a resident of Maryland; and he dying, they became the property of his brother. Before this property was distributed to the brother, he also died, leaving all his property to one not related to him. The personal property having been paid over to the administrators of the non-resident brother appointed in this State, our courts held that it was properly subject to the Maryland collateral inheritance tax, inasmuch as the property was situated in the State of Maryland.

In 1897[54] a guardian appointed in Washington County, was compelled to pay taxes in Maryland upon the property of his ward until his final account was passed, although the guardian lived in New York State, the ward lived in New York State and the property, consisting of bonds, etc., was in New York State.

In 1901[55] a non-resident mortgagee was held liable to pay the Maryland mortgage tax. The mortgage being in Maryland a legal estate in the land, was held to have its *situs* in this State.

The rule deducible from these cases would seem to be that the State of Maryland can tax all property, whether real or personal, which can be held either actually or legally to have its *situs* in this State. This would include real estate and tangible personal property here situate, shares of stock in Maryland corporations, all choses in action belonging to residents of the State and such choses in action belonging to non-residents of the State as, by virtue of some exceptional circumstance such as existed in

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52 *Appeal Tax Court v. Gill,* 50 Md. 377, See also *Appeal Tax Court v. Patterson,* 50 Md. 354, 372.

52½ *Corry v. Balto. City,* 96 Md. 310.

53 *State v. Dalrymple,* 70 Md. 294.

54 *Baldwin v. Washington County,* 85 Md. 145.

55 *Allen v. National State Bank,* 92 Md. 509.

the *Dalrymple case,* may be considered as having a *situs* of their own in the place where they may be actually found, irrespective of the residence of their owner.

It is possible that a good deal of the learning in regard to this section of the Bill of Rights may become obsolete by the adoption of an amendment to the Constitution proposed by the legislature of 1914 and contained in chapter 390 of the acts of that year.

The proposed amendment is to substitute for the present article, the following:

"That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for separate assessment of land and classification and sub-classifications of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community."

ARTICLE XVI.

"That sanguinary Laws ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter."

This article ought properly to be considered in connection with the last clause of article XXV; article XVI forbidding the passage of any *law* inflicting unusual pains and penalties and the last clause of article XXV prohibiting the *court* from inflicting cruel and unusual punishments, even though the law might upon its face be unobjectionable.

Article XVI falls under Class C, and its effect is substantially equivalent to the last clause in the 8th amendment to the Federal Constitution, forbidding "cruel and unusual punishments."

Our Court of Appeals held in 1883[56] that the penalty of whipping imposed upon persons found guilty of wife beating was not in conflict with this article.

In 1896[57] the court imposed a sentence of fifteen years in jail upon a person convicted of an attempt to commit rape upon a child under circumstances of great atrocity. In considering whether or not this sentence was obnoxious to this article of the Declaration of Rights, our court says: "It is impossible in the abstract to mark the boundaries which separate cruelty from just severity. If the circumstances accompanying a crime are of unusual aggravation the punishment ought to be unusually severe. But the courts must adopt the methods of punishment prescribed by law. No one ought to imagine that in a free country a court would have the power to devise new and singular modes of punishment. Its duty is *dicere non facere legem.* Even where the law confides to the judge the imposition of the sentence without definite limit, it still may be possible to violate the Declaration of Rights. If the punishment is grossly and inordinately disproportionate to the offence so that the sentence is evidently dictated not by a sense of public duty, but by passion, prejudice, ill-will or any other unworthy motive, the judgment ought to be reversed, and the cause remanded for a more just sentence."

In that case, however, the court held that the sentence was justified.

In 1909[58] a sentence of ten years for conspiracy to wilfully and maliciously destroy the property of another was sustained under the special circumstances of that case; and in 1910[59] a sentence of ten years in the penitentiary imposed upon a prisoner convicted of threatening to burn a man's building unless money be paid to him, was held not a cruel and unusual punishment.

ARTICLE XVII.

"That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed or required."

We have included this article in Class B. as adding nothing

56 *Foote v. State,* 59 Md. 264.
57 *Mitchell v. State,* 82 Md. 527.
58 *Lanasa v. State,* 109 Md. 602.
59 *Toomer v. State,* 112 Md. 285.

substantially to the provision in the United States Constitution:[60] "No State shall * * pass any * * *ex post facto* law."

The Federal Supreme Court has held that the *ex post facto* laws referred to in the United States Constitution embrace only laws imposing a criminal penalty.[61]

Our Court of Appeals in 1850[62]* adopting the same construction, says: "This article by its very terms is confined to retrospective criminal laws meaning *ex post facto laws.* It is a recognition of the right in the legislature to pass retrospective laws, so far as they relate to civil cases and contracts. *Expressio unius exclusio alterius.* Our books of statutes are filled with retrospective laws, healing imperfect deeds, or validating defective acknowledgments, which have been rarely impeached, and when assailed have been invariably sustained by the decisions of the Courts."

In 1864[63] our Court of Appeals affirming this doctrine goes on to say: "Although retrospective laws are said to be generally unjust, we do not concur in their indiscriminate condemnation. A large class of these laws are eminently wise, conservative and necessary, nor are they, because retrospective, essentially judicial."

This language is especially appropriate to curative laws which have always been held valid when curing defects and irregularities in proceedings, so as to promote honesty and fair dealing.[64]

A law, furthermore, is not invalid as *ex post facto,* even though it does change a criminal penalty, provided the change is for the manifest advantage of the accused,[65] but a law will be held invalid as *ex post facto,* if the minimum penalty contained therein, is greater than the minimum penalty in the law as it stood when the crime was committed, and this even in the case where the holding of the latter law invalid, would, as matter of fact, be to the detriment of the accused.[66]*

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60 *Article I, Section* 10.

61 *Calder v. Bull,* 3 Dallas 386.

62 *Baugher v. Nelson,* 9 Gill 299, *Illustration XXIV. See also *Wilson v. Hardesty,* 1 Md. Ch. 66; *Elliott v. Elliott,* 38 Md. 357, *Illustration XXV.

63 *Harrison v. State,* 22 Md. 468.

64 *Madigan v. Building Asso.,* 73 Md. 317; *O'Brien v. County Commissioners,* 51 Md. 15; *Hagerstown v. Schner,* 37 Md. 180; *Montague v. State,* 54 Md. 481; *State v. Norwood,* 12 Md. 195; *Willis v. Hodson,* 79 Md. 327; *Grove v. Todd,* 41 Md. 633.

65 *Lynn v. State,* 84 Md. 67.

66 *Beard v. State,* 74 Md. 130, *Illustration XXVI.

Retrospective laws, however, will not be sustained when their effect is to divest vested rights, except when they fall under the head of curative statutes, and accomplish just and equitable results. Thus if a devise in a will is invalid, so that the estate vests at once in the residuary legatee, it has been held that a subsequent act of the legislature cannot divest these vested rights of the residuary legatees.[67]

So it has been decided that the legislature cannot say that the mere possession of a tort-feasor, without actual enclosure, shall divest the real owner of his title, except in regard to subsequently occurring cases.[68]

These last mentioned cases are, however, not decided because coming within the prohibition of the article we are now considering, but rather upon the broad ground that it is "not within the scope of the legislative power to give to a law the effect of taking from one man his property and giving it to another by any new rule of tenure, retroactive in its character."[69]

ARTICLE XVIII.

"That no law to attaint particular persons of treason or felony, ought to be made in any case, or at any time, hereafter."

This article belongs to Class B as being a practical duplication of the provision found in the Federal Constitution,[70] that "No State shall * * * pass any bill of attainder."

Our Court of Appeals in *Anderson v. Baker*,[71] has adopted Story's definition of bills of attainder as follows: "Such special acts of legislation as inflict capital punishments, or pains or penalties, upon persons supposed to be guilty of an offense, without any conviction in the ordinary course of judicial proceedings."

ARTICLE XIX.

"That every man, for any injury done to him in his person or property ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to Law of the Land."

This article, whose ancestry can be directly traced to *Magna*

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67 *Wilderman v. Baltimore*, 8 Md. 551.

68 *Thistle v. Frostburg Coal Co.*, 10 Md. 129.

69 *Thistle v. Frostburg Coal Co.*, 10 Md. 129, 144; *Hagerstown v. Sehner*, 37 Md. 180.

70 *Article I, Section* 10.

71 23 Maryland, 531, 623.

Charta, together with article 23 of the Declaration of Rights, protects those fundamental rights which are now covered by the 14th amendment to the Federal Constitution. It is therefore included in Class B.

Our courts have decided that a requirement of the payment of a fee to the counsel of the State in cases brought by the State for the recovery of a tax where the decision is in favor of the State, is not contrary to this article, even though such fees are not required to be paid in other cases, and although if the State were unsuccessful, it would not be obliged to pay a corresponding fee.[72]

So it has been held that a requirement that a plaintiff successful in a lower court should, if his case on appeal should be reversed and sent back for a new trial, pay the costs then incurred before a new trial could be held, was not obnoxious to the provisions of this article as practically requiring a purchase of his right to a new trial, and thus denying him his remedy "freely and without sale."[72½]

Nor is a rule of court requiring a case brought to be tried within a reasonable time on penalty of being abated in conflict with the rights secured by this article.[72¾]

While this article purports to guarantee to every man a remedy for any injury done to him, it does not insure that this remedy will in all cases[73*] be adequate.

It has been held, however, that it will in connection with article 23 of our Declaration of Rights, Sec. 40 of Article 3 of our Constitution, and the 14th Amendment to the Federal Constitution, prevent a citizen from being remediless at law as against a state official who may unlawfully withhold property from him.[74*]

ARTICLE XX.

"That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People."

We have placed this article in both Class A as a mere declaration of abstract principles, and in Class C as putting upon the

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72 *U. S. Electric Power & Light Co. v. State,* 79 Md. 63.
72½ *Knee v. City Passenger Railway,* 87 Md. 623.
72¾ *Laurel Canning Co. v. B. & O. R. R.,* 115 Md. 638.
73 *McColgan v. Baltimore Belt R. R.,* 85 Md. 519, *Illustration XXVII.
74 *Weyler v. Gibson,* 110 Md. 636, *Illustration XXVIII.

State government a limitation similar to that put upon the United States government in the Federal Constitution.

Its form of words seems to indicate a mere generality, but it may be contended that the effect of these words is to secure, at least in criminal cases, subject to such proper limitations as the right of removal, a trial by a court and jury drawn from the general neighborhood in which the crime is alleged to have been committed, corresponding to the right of an accused in a Federal court secured by the 6th Amendment, to be tried "by an impartial jury of the state and district, wherein the crime shall have been committed."

ARTICLE XXI.

"That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or Charge in due time (if required) to prepare for his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty."

This article also belongs to Class C, and is very similar both in language and effect to the 6th amendment to the Federal Constitution.

(a) In regard to the "right to be informed of the accusation against him," our Court of Appeals has held that a mere general accusation is not sufficient, but that every presentment should "clearly inform the accused of the charge preferred against him,"[75*] and in another case our court[76] quotes with approval Lord Denman to the effect "that the first principles of the law require that such charge be so preferred as to enable the court to see that the facts amount to a violation of law, and the prisoner to understand what it is he is to answer and disprove."

(b) In regard to the accused being "confronted with the witnesses against him," it was contended[77] that this provision would prevent anything else except oral evidence, under oath

75 *State v. Kiefer,* 90 Md. 165, *Illustration XXIX.

76 *Slymer v. State,* 62 Md. 237. See also *Goeller v. State,* 119 Md. 61; *Davis v. State,* 39 Md. 355, 385.

77 *Johns v. State,* 55 Md. 350.

and subject to cross examination, from being received at any criminal trial.

In the particular case where the point was made, Johns was indicted as a defaulter under an act of the legislature which provided that the certificate of the comptroller of the State, or the respective certificates of the county commissioners, showing the accused to be a defaulter should be received as *prima facie* evidence of such defalcation, and the court held that the act was valid, and the certificate admissible in evidence, stating: "In declaring that the party accused shall have the right to be confronted with the witnesses against him, that provision of the Declaration of Rights is not to be understood as excluding all other evidence except oral evidence of witnesses produced in court. Such has never been its interpretation, nor does the language warrant it. It is only where the prosecution is to be maintained by the testimony of living witnesses that they are required to be produced in court, confronted with the accused, and deliver their testimony under the sanction of an oath, and be subject to cross examination. In other words, no witness shall give his testimony in secret, or out of the presence of the accused; and no party shall be put upon his trial upon mere hearsay evidence; but the witness shall be produced, and be subject to all the tests that the law has devised for the full disclosure of the truth. In all this, however, there is nothing to exclude other evidence recognized and sanctioned by the law, as fit and appropriate means of establishing the truth of the charge against the accused."

(c) As to the right of trial by jury, our courts have held that it is not every criminal prosecution that comes within the provisions of the article.

The leading case is *State v. Glenn,*[78] in which, after full consideration, it was held that the Act of 1879 which provided that a justice of the peace might cause to be arrested, and on due proof, commit any vagrant or habitually disorderly person to the House of Correction for a period not less than two nor more than six months, was a valid act.

Margaret Glenn was convicted under the terms of this statute with "being habitually a disorderly person leading a dissolute

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78 54 Maryland 572.

and disorderly course of life,'' and was sentenced by a justice of the peace to the Maryland House of Correction for six months.

In holding the conviction and sentence valid, the court says: ''The meaning of the provisions of the Declaration of Rights would seem to be plain. When it is declared that the party accused has the right to be informed of the charge against him, and to a copy of the indictment or charge, if required to enable him to prepare for his defense, that simply means, that no prosecution can be conducted in secret; but that all prosecutions shall be open and public, upon specific charges set forth by way of indictment, or in such other form as the nature of the prosecution may require; and that the party shall not be denied full opportunity to make his defense. And when it is declared that the party is entitled to a speedy trial by an impartial jury, that must be understood as referring to such crimes and accusations as have, by the regular course of the law and the established modes of procedure, as heretofore practised, been the subjects of jury trial. It could never have been intended to embrace every species of accusation involving either criminal or penal consequences. If that were the construction, then, all cases of contempts, instead of being the subjects of a summary jurisdiction, as they have always been treated, could only be tried by jury. The design, manifestly, of the provisions of the Declaration of Rights to which we have referred, was simply to declare and make firm the pre-existing rights of the people, as those rights had been established by usage and the settled course of law. If all cases of a penal or criminal nature, where conviction may involve as a consequence, either directly or alternatively, the imprisonment of the party, must be tried upon indictment and by jury, how is the police power in the hands of the various municipal corporations to be enforced? If the State has no power to provide by law for the summary trial and conviction of vagrant and disorderly persons by justices of the peace, it would clearly follow that no such power could be granted to be exercised under charters or ordinances of municipal corporations; and the consequence would be that, for the violation of all mere police ordinances, prescribing penalties for their infraction, it would be the right of the party

accused to insist upon indictment and trial by jury. Such a mode of proceeding, if it were practicable, has never been contended for; nor could such contention be maintained for a moment.

"We are therefore of opinion that the provision of the Act of 1878, ch. 415, sec. 10, conferring jurisdiction upon justices of the peace to try, convict, and commit to the House of Correction, vagrant and habitually disorderly persons, is constitutional, and that the judge below was in error in holding otherwise."

In 1899[79] it was held that cases of petit larceny were not such minor offenses, jurisdiction to try which could be given to a justice of the peace, and in the particular case referred to the conviction was avoided even though the charge was the larceny of only one dollar's worth of corn, though both the states' attorney and the accused waived a jury trial, and though the sentence was only thirty days in jail.

In the same year the question came before the Court of Appeals[80] as to whether assault and battery was such a minor offense as not to require a trial by jury like the offense of being a disorderly person, or whether, like larceny, it came within the class of criminal prosecutions so serious as to require a trial by jury.

In this case the charge was first made of assault with intent to kill, but before trial the words "with intent to kill" were stricken out, the case heard on the trial of assault, the traverser was found guilty, and was sentenced to eighteen months in jail beside a fine of ten dollars.

The Court of Appeals upheld the conviction, classing simple assault and battery as one of those offenses, jurisdiction to try which could properly be conferred upon a magistrate.

(d) As to the requirement of an impartial jury, if bias be alleged, there must be some substantial grounds for the allegation, and a connection with the matter on trial, which would only remotely suggest a lack of impartiality, is not sufficient.[81]*

(e) As to the unanimous consent of the jury, our court in 1859 gave a very strict construction to this requirement.[82]

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79 *Lancaster v. State,* 90 Md. 211. See also *Baum v. Warden of Jail,,* 110 Md. 579.

80 *Danner v. State,* 89 Md. 220.

81 *Guy v. State,* 96 Md. 692, *Illustration XXX.

82 *Ford v. State,* 12 Md. 514.

A person was tried for murder and the jury having agreed upon their verdict and coming into court, answered through their foreman, that they found the traverser "guilty" and nothing more. Thereupon a demand was made that the jury should be polled; which was done. The foreman answered that he found the traverser "guilty of murder in the first degree." Each of the remaining jurors responded simply "guilty" without naming a degree.

It was held that inasmuch as only the foreman gave a verdict of murder in the first degree, there was no unanimous finding of the jury to that effect, and consequently the court held that there had been a mis-trial.

ARTICLE XXII.

"That no man ought to be compelled to give evidence against himself in a criminal case."

This article is substantially equivalent, in reference to the State of Maryland, to the clause in the fifth Amendment to the United States Constitution, that no person "shall be compelled in any criminal case to be a witness against himself." It therefore belongs in Class C and Federal constitutional law may be looked to, to determine the character of the rights secured by it.

In the Declaration of Rights of 1776 and the Constitution of 1851, the corresponding article ran "That no man ought to be compelled to give evidence against himself *in a Court of Common law or in any other court, but in such cases as have been usually practised in this State or may hereafter be directed by the Legislature.*" While such was the wording of the article it was decided[83] that a law was valid which required a party, from whom a certain fine was sought to be recovered for illegal dealings in lottery tickets, to answer on oath a bill of discovery as to such dealings, filed by the commissioner of lotteries in the name of the State.

In the opinion filed in this case, however, Chief Justice Le Grand forcibly commented on the danger of giving to the legislature the power to compel a party to give evidence

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83 *Day v. State,* 7 Gill 321 (1848). See also *Broadbent v. State,* 7 Md. 416.

against himself, and the necessity for the most cautious and jealous exercise of this power by the legislature. The Constitutional Convention of 1864 withdrew this power from the legislature altogether in criminal cases, and placed in the Declaration of Rights the article as it now stands.

Under the present phraseology the decision of a case similar in its facts to the one last mentioned, would in all probability be different.[83½]

In *Guy v. State*[84] our court held that if an accused takes the witness stand on his own behalf he waives his privilege and is subject to cross-examination "concerning any matter pertinent to the issue on trial regardless of the extent of the direct examination."

The use against a traverser of his books of account and papers has been held to be forbidden by this article.[85]

ARTICLE XXIII.

"That no man ought to 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 by the Law of the Land."

The rights secured by this article are now covered by the 14th Amendment to the United States Constitution, and consequently it may be properly termed a mere duplication of provisions found in that instrument and we have, therefore, placed it in Class B.

We must, however, remember that from 1776 down to 1868 the provisions of the 14th Amendment did not exist, and during all that time this article belonged in Class C, being a limitation upon the power of Maryland similar to the limitation upon the power of the Federal Government contained in that provision of the 5th Amendment that no person shall "be deprived of life, liberty or property without due process of law."

Our court has expressly held[86] that "the judgment of his peers" means a trial by jury, and the words "by the law of the land" which are copied from *Magna Charta* are understood

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83½ See *Chesapeake Club v. State,* 63 Md. 446.
84 90 Md. 29.
85 *Blum v. State,* 94 Md. 375; cf. *Lawrence v. State,* 103 Md. 17.
86 *Wright v. Wright,* 2 Md. 429; *Harness v. C. & O. Canal Co.,* 1 Md. Ch. 248.

to mean "due process of law according to the course and usage of the common law."

Under the provisions of this article, an act of the legislature which took the property of a private eleemosynary corporation from its then trustees and gave it to another and entirely different board has been held void.[87*]

The following laws have likewise been held invalid, viz: a law validating acknowledgments as against a married woman's dower right which she had conveyed by a defectively acknowledged deed;[88] laws levying a special assessment upon real property, and a tax on certain tangible personal property without notice to the owner or opportunity to him to be heard;[89] a law providing that the owners of "unassessed military lots" should "establish their title thereto" by a certain time, under penalty of forfeiture of their property;[90] a law providing for the condemnation of land for private roads;[91] a law which provided for the grant of letters of administration upon the estate of absentees unheard of for seven years, and for the distribution of such estates, without safeguarding the rights of such absentees should they in fact prove to be living.[92]

On the other hand, the following laws, although attacked as in contravention of this article, have been sustained, viz: A legislative tax levy at a certain rate upon bank stock;[93] an act divorcing a wife from her husband without notice being given to him;[94] an act abolishing the police system of Baltimore and transferring to a state board all the police property;[95] a special act authorizing the partition of a decedent's estate and the conversion into money, by sale, of a portion of the real estate so allotted to a daughter of said decedent and her children;[96] an act incorporating the House of Refuge and empowering justices of the peace to commit boys to its custody;[97] an act forbidding any person from engaging in the business of plumbing, without

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87 *University of Md. v. Williams,* 9 G. & J. 365, *Illustration XXXI.
88 *Grove v. Todd,* 41 Md. 633.
89 *Ulman v. Baltimore,* 72 Md. 587; *Monticello Co. v. Baltimore,* 90 Md. 416.
90 *Scharf v. Tasker,* 73 Md. 378.
91 *Arnsperger v. Crawford,* 101 Md. 247.
92 *Savings Bank v. Weeks,* 103 Md. 601.
93 *State v. Mayhew,* 2 Gill 487.
94 *Wright v. Wright,* 2 Md. 429.
95 *Baltimore v. State,* 15 Md. 376.
96 *Davis v. Helbig,* 27 Md. 452.
97 *Roth v. House of Refuge,* 31 Md. 329.

a certificate as to his competency and qualification from the "State Board of Commissioners of Practical Plumbing";[98] a law providing for the inspection of milk and forbidding the sale and requiring the destruction of milk falling below a certain standard;[99] a law providing for administering upon the estates of absentees unheard of for seven years, there being proper safeguards of the rights of such absentees should they prove to be in fact living;[100] a law providing that redeemable ground rents, held by a trust estate, may be redeemed in an action where the trustee alone represents the estate.[101]

The cases above cited are sufficient to indicate the construction placed upon this article by our Maryland courts, although there are many other cases where laws have been attacked as being beyond the scope of legislative power, the determination of which cases throw light upon the meaning of this[102] article, and the almost innumerable cases arising under the similar clause in the 14th Amendment are practically direct authorities, while similar provisions in the constitutions of sister states also add their list of precedents.

Of course, the article is as much a restraint upon the executive and judicial as upon the legislative department of the government.

ARTICLE XXIV.

"That slavery shall not be reestablished in this State; but having been abolished, under the policy and authority of the United States, compensation, in consideration thereof, is due from the United States."

This article adds nothing, in legal effect, to the provisions of the 13th Amendment to the Federal Constitution, and is, therefore, included in Class B. Our constitution went into effect on October 5, 1867, while the 14th Amendment declared to have been adopted by proclamation dated July 28, 1868, was pending. Under the second clause of Section Four of the 14th Amendment the United States is expressly forbidden to assume or pay "any claim for the loss or emancipation of any slave." The ex-

98 *Singer v. State*, 72 Md. 464.
99 *Deems v. Baltimore*, 80 Md. 164.
100 *Savings Bank v. Weeks*, 110 Md. 78.
101 *Kingan Packing Asso. v. Lloyd*, 110 Md. 619.
102 For example: *B. & E. S. R. R. v. Spring*, 80 Md. 510; *Kelso v. Stigar*, 75 Md. 376; *Weyler v. Gibson*, 110 Md. 636; *Md. Jockey Club v. State*, 106 Md. 413.

istence, therefore, of the last clause in this article is an anachronism.

In the constitution of 1864 the 24th article of the Bill of Rights read as follows: "Hereafter, in this State, there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor as slaves, are hereby declared free," and in 1865[103] our court decided that the provisions contained in the Code of 1860 in regard to "Negro Apprentices," authorizing the child of any free negro to be bound out by the Orphans Court to some white person until the age twenty-one years if a male, or the age of eighteen, if a female, provided that these provisions should not apply when the parents have the "means and the willingness to support the child and keep the same employed so as to teach habits of industry" were not in conflict with the provision of the constitution of 1864 just cited.

The "Negro Apprentice" law no longer appears on our statute book, and a similar law would almost certainly now be held unconstitutional under the 13th Amendment.

ARTICLE XXV.

"That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted by the Courts of Law."

This article contains almost the exact language used in the 8th Amendment to the Federal Constitution. It is, therefore, included in Class C, and authorities upon the the 8th Amendment would be persuasive in regard to the construction of this article. As to the last clause of this article, the cases arising thereunder in Maryland have been already considered in connection with article 16. It would, indeed, seem as if the existence of article 16 in the same constitution with this article was unnecessary.

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103 *Brown v. State,* 23 Md. 503.

ARTICLE XXVI.

"That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted."

This article is very similar in its verbiage to the 4th Amendment to the Federal Constitution, and is included in Class C.

The unreasonable searches and seizures condemned in this article, are almost always made for the purpose of compelling a man to give evidence against himself, and, there is, therefore, a very intimate connection between this article and article 22 of the Declaration of Rights.[104]

ARTICLE XXVII.

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

We have considered this article as properly belonging in Class D, as being a concrete rule peculiar to Maryland. In the Federal Constitution a somewhat similar provision is found in the second clause of section three of article three, but the words of this article in our Maryland Declaration of Rights, applying as they do to all convictions, without any limitation whatever, are so much broader as to seem to justify calling the article a rule peculiar to Maryland.

The penalties provided against, however, belong to the old time conception of criminal law, and would not now be likely to be imposed under any circumstances.

ARTICLE XXVIII.

"That a well-regulated Militia is the proper and natural defence of a free Government."

Although, by its terms, this article would seem to be a mere declaration of general principles, its verbiage is so similar to the

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104 *Blum v. State,* 94 Md. 375, 382.

2nd Amendment to the Federal Constitution as to make it likely that any judicial decision under that Federal Amendment would be very persuasive in reference to this article.

We have, therefore, included it in Class C.

ARTICLE XXIX.

"That Standing Armies are dangerous to liberty, and ought not to be raised, or kept up, without the consent of the Legislature."

This article would seem to be properly included in Class A, as a declaration of abstract principles.

Under our scheme of government, the legislature holds the purse strings, and without the consent of the legislature it would appear to be very difficult to raise or keep up an army, and under section 10 of article 1 of the Federal Constitution, the consent of Congress is required before, in time of peace, Maryland can keep an army at all.

ARTICLE XXX.

"That in all cases, and at all times, the military ought to be under strict subordination to, and control of, the civil power."

This, also, would seem to be clearly a statement of an abstract principle, and is properly included in Class A.

ARTICLE XXXI.

"That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, except in the manner prescribed by Law."

This article contains exactly the same words as the 3rd Amendment to the Federal Constitution, and is, therefore, properly included in Class C.

ARTICLE XXXII.

"That no person except regular soldiers, marines, and mariners in the service of this State, or militia, when in actual service, ought, in any case, to be subject to, or punishable by, Martial Law."

This article contains substantially, if not absolutely, the same provisions as to Maryland as are contained in reference

to the Federal Government in the first clause of the 5th Amendment, viz: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."

The article would seem, therefore, properly included in Class C.

ARTICLE XXXIII.

"That the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People; wherefore, the Judges shall not be removed, except in the manner, and for the causes, provided in this Constitution. No Judge shall hold any other office, civil or military or political trust, or employment of any kind whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them; or receive fees, or perquisites of any kind, for the discharge of his official duties."

Although a part of this article is simply the statement of general principles, there are concrete rules laid down therein as to:

(a) The removal of judges;
(b) The holding by judges of any other office;
(c) The receipt by judges of fees or perquisites.

We have, therefore, included this article in Class D.

In the case of *Cantwell v. Owens*,[105] it would seem as if justices of the peace were included within the provisions of the article corresponding to this, in the Constitution of 1851.

The provision prohibiting a judge from holding any other office, or trust, or employment, either under the nation or the state, emphasizes and reinforces the provisions of the 8th article of the Declaration of Rights, which we have already considered.[106]

The provision prohibiting a judge from receiving fees or perquisites has been held to refer only to such fees or perquisites as might be increased by judicial action, or be special compensation for particular services rendered.

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105 14 Md. 215.

106 *Board of Supervisors v. Todd*, 97 Md. 247, 263; *McCrea v. Roberts*, 89 Md. 238, 251.

A tax for the payment of judicial salaries, so levied as to make the salaries dependent on the amount of business of the court, but in no wise dependent on the action of the judge, would not be objectionable.[107]*

ARTICLE XXXIV.

"That a long continuance in the Executive Departments of power or trust is dangerous to liberty; a rotation, therefore, in those Departments is one of the best securities of permanent freedom."

This article is simply a mere statement of general principles, and without practical effect, therefore belonging to Class A. It would certainly seem that in spite of this article, a governor could be renominated.

ARTICLE XXXV.

"That no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State; nor shall any person in public trust receive any present from any foreign Prince or State, or from the United States, or any of them, without the approbation of this State."

The first clause of this article states a concrete rule peculiar to Maryland, and we have, therefore, included this article in Class D. The last clause of the article is very similar to the last part of the 8th Clause of Section 9 of Article 1 of the Federal Constitution, viz: "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."

According to legislative construction, an official of Baltimore City, such as city solicitor, can also be a senator of the State of Maryland.

As to the consequences which would arise if the same person should hold two offices in contravention of this article, there has been no decision. How far the acts of such an official would be rendered invalid by this disregard of constitutional provisions is expressly left unanswered by our court.[108]

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107 *Bradford v. Jones,* 1 Md. 351. *Illustration XXXII.
108 *Hardesty v. Taft,* 23 Md. 512, 530.

ARTICLE XXXVI.

"That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor in this world or the world to come."

This article is practically the same in its application to Maryland as is in relation to the Federal Government, the first clause of the first Amendment, viz: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." We have, therefore, included it in Class C, although in so far as it may be construed to require a certain belief on the part of jurors and witnesses, it may be held to establish a concrete rule peculiar to Maryland.

The modifications made in this article since 1776 illustrate quite sharply, and in an interesting way, the gradual broadening of the conception of religious toleration into religious liberty. Down to 1776 there was an enforced contribution to the established church, being then the Church of England. The adoption of the corresponding article (Article 33) in the Declaration of Rights in 1776, whereby toleration for all "persons professing the Christian religion" was provided, was itself a step in advance, and probably if the present Constitution were rewritten there would be a further step taken by striking out as a qualification for witness or juror, belief in God, moral accountability, and rewards and punishments for good and evil deeds. Under the existing article an indictment is void if one of the grand jurors is an agnostic or an atheist.[108½]

108½ *State v. Mercer,* 101 Md. 535.

This article does not prevent the passage and enforcement of Sunday laws. These laws are sustained merely as "civil regu-" lations," and the fact that they have a tendency to foster and encourage the Christian religion is held to be merely an incidental result, and one which does not affect the validity of the laws.[109]*

ARTICLE XXXVII.

"That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution."

This article is very similar to the 3rd clause of Article VI of the Federal Constitution, viz: "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."

But the requirement of a belief in the existence of God and the clear cut provision at the end of this article that the legislature shall not have the power to prescribe any other oath of office than the oath prescribed by the Constitution, seems to make it come properly under Class D as a concrete rule peculiar to Maryland.

In none of the constitutions of Maryland previous to 1867 was there a denial of power to the legislature to impose other oaths appropriate to the special office, in addition to the general oath prescribed by the Constitution.

But the Constitutional Convention of 1867 sat in reconstruction days, and many of its members had, no doubt, personal experiences of the working of those "Oaths of Loyalty" which, in Maryland as well as elsewhere, had aroused much opposition and were considered as productive of great injustice. They wanted to make plain that, so far as qualification for office was concerned, the official oath should never be used to accomplish indirectly what could not be done directly.

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109 *Judefind v. State,* 78 Md. 510, *Illustration XXXIII.

They, therefore, deliberately omitted the authority contained in every previous Declaration of Rights, giving the legislature the power to impose an official oath, and to give emphasis to this design introduced the positive prohibition as we now find it.[110]

The application of this article is to all offices whether created by the constitution or by act of legislature.[111]

There are, as a matter of fact, additional oaths taken by certain officials, such as the police commissioners of Baltimore City, which are required by statute.

But while these oaths if voluntarily taken may bind the conscience of the officials, and may serve to indicate in what manner the legislature expected them to discharge their duties, it would seem to be plain that any officer having taken the constitutional oath could not be prevented from performing the duties of his office *de jure,* simply because he neglected or refused to take some other oath which the legislature required of him.[112*]

ARTICLE XXXVIII.

"That every gift, sale or devise of land to any Minister, Public Teacher or Preacher of the Gospel, as such, or to any Religious Sect, Order or Denomination, or to, or for the support, use or benefit of, or in trust for, any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination; and every gift or sale of goods or chattels, to go in succession, or to take place after the death of the Seller or Donor, to or for such support, use or benefit; and also every devise of goods or chattels to or for the support, use or benefit of any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination, without the prior or subsequent sanction of the Legislature, shall be void; except always, any sale, gift, lease or devise of any quantity of land, not exceeding five acres, for a church, meeting-house, or other house of worship, or parsonage, or for a burying-ground, which shall be improved, enjoyed or used only for such purpose; or such sale, gift, lease or devise shall be void."

This article lays down a concrete rule peculiar to Maryland, and is, therefore, embraced in Class D. Except article 15, it is

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110 *Davidson v. Brice,* 91 Md. 681, 690.
111 *Davidson v. Brice,* 91 Md. 681, 690.
112 *Davidson v. Brice,* 91 Md. 681, 690, *Illustration XXXIV.

perhaps the most important in the Declaration of Rights, and has furnished a considerable amount of litigation.

Its general intention has been stated[113] to be, "analogous to the British statutes of *mortmain,* which were introduced to check or prevent ecclesiastics from accumulating in perpetuity, in *mortua manu,* or hands that never die, the lands or property of the kingdom, and thereby withdrawing them from public and feudal charges."

This article, with slight changes, has been in every Constitution of the state. Previous to the constitution of 1864, the requirement in order to validate the transfers of property mentioned, was the "leave" of the legislature instead of "the prior or subsequent sanction of the legislature," but the courts have construed the two phrases as meaning practically the same thing.[113½]

The quantity of land which is now, "not exceeding five acres," was formerly two acres; and the use of such land for a "parsonage" was allowed by the Constitution of 1851; otherwise the Article in the Declaration of Rights of 1776 was the same as it now is.

(*a*) *The grantees within the meaning of this article.*

So far as the grantees, to which this article applies, are concerned, it has had quite a strict construction. Thus inasmuch as the object of the article is merely the protection of the people of Maryland from similar evils to those arising from the holdings of land by ecclesiastical bodies in England, it has been held that where the property is personal, even though it be derived from the sale of land, if the grantee is a *foreign* religious corporation, it is not within the meaning of this article. "It might be very important to the people of this State, that a foreign religious corporation should not be permitted to hold large bodies of real estate within our own limits, but as personal property follows the *locus* of the owner, we cannot see why it should be a matter of concern to Maryland that the personal property of her citizens should not pass away to foreign corporations any more than to individuals living abroad. Nor is it a matter of

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113 *Vansant v. Roberts,* 3 Md. 119, 128.
113½ *Cathedral v. Manning,* 72 Md. 116.

concern to our state, in legal contemplation, whether property should accumulate in the hands of foreign corporations or not."[114]*

So a devise to a "Minister, Public Teacher or Preacher of the Gospel, as such" has been strictly limited to those gifts which might be made to him in his character as a minister or preacher, and not in his personal individual character.[115]*

In like manner, the words "Religious Sect, Order or Denomination" have been strictly construed, and held not to apply to a charitable corporation, even though under the control of the members of a particular church.[116]*

(*b*) *Consent of the Legislature.*

Our court has held that it is implied that a reasonable time should be allowed for obtaining the consent of the legislature to such devises and bequests. If an act is passed, giving such consent, at the legislature's next session, this will be sufficient.[117]*

As to whether the sanction of the legislature must be given to each particular grant or devise intended to be sanctioned, a distinction has been made between deeds and wills.

In 1881[118] the Court of Appeals through Chief Judge Bartol said: "In our opinion the sanction of the Legislature contemplated and required by that Article must be expressly given to each particular devise or bequest in order to render it valid."

But in 1890,[119] our Court of Appeals, through Judge McSherry, draws a distinction between "devises and bequests," and "conveyances upheld by *adequate considerations,*" and held that an invalid purchase of six and one-half acres of land to be added to a burial-ground, purchased under the authority of the legislature, was sanctioned by a subsequent act authorizing the enlargement of the burial-ground as it existed with the six and one-half acres added, even though the purchase of the six and one-half acres was not specially referred to in the act.

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114 *Vansant v. Roberts,* 3 Md. 119, 129. See also *Church Extension M. E. Ch. v. Smith,* 56 Md. 362, *Illustration XXXV.

115 *Church Extension M. E. Ch. v. Smith,* 56 Md. 362, 391 *Illustration XXXVI.

116 *Baltzell v. Church Home,* 110 Md. 244, *Illustration XXXVII. See *Gardner v. McNeal,* 117 Md. 27.

117 *England v. Prince George's Parish,* 53 Md. 466, *Illustration XXXVIII.

118 *Church Extension M. E. Ch. v. Smith,* 56 Md. 362, 392.

119 *Catholic Cathedral v. Manning,* 72 Md. 116, 131.

In 1903[120] the court, Chief Justice McSherry delivering the opinion, took one further step, and declared that when the title has been conveyed by deed, *even though the consideration is a nominal one,* "a prior or subsequent *general* sanction without particularizing the grants is all that is needed to gratify the requirement of the Declaration of Rights."

It may, therefore, now be stated that where the property is conveyed by deed a general sanction is sufficient; where it is conveyed by will, the sanction must be given to each particular devise or bequest.

(c) *Title to Real Estate.*

1st: Under this article a deed conveying land to a grantee, within the prohibition of this article, is absolutely void no matter what the size of the lot conveyed, and no matter for what purpose the land is in fact used, *unless* the *deed specifies* upon its face that the lot shall be used only for a "church, meeting-house or other house of worship, or parsonage, or for a burying-ground."[121]*

2nd: If the deed does so state upon its face, and the size of the lot is within the limit allowed, no consent of the legislature is required but a "base fee" is passed to the religious body, to continue so long as the land is used in accordance with the terms of the deed; and a reverter remains in the grantor and his heirs, under which they will be seized again of the title to the property when it is used for any other purposes than those specified in the deed.[122]

3rd: This reverter is property, and cannot be destroyed by the passing by the legislature of confirmatory acts purporting to allow the religious body to sell and convey good title.[123]*

4th: The power of the legislature to give its sanction is full and unqualified. The sanction may be general, or it may prescribe certain uses for which alone the religious body shall hold the land.

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120 *Rogers v. Sisters of Charity,* 97 Md. 550, 554. See also *Brown v. Thompkins,* 49 Md. 423.

121 *Grove v. Disciples,* 33 Md. 451; *Regents v. Calvary Church,* 104 Md. 635. *Illustration XXXIX.

122 *Reed v. Stouffer,* 56 Md. 236.

123 *Second Universalist Soc. v. Dugan,* 65 Md. 460; *Kelso v. Stigar,* 75 Md. 376, *Illustration XL.

If the only qualification to the legislative assent is that certain uses of the land are prescribed by the legislature, no reverter is thereby given to the grantor. He is absolutely divested of his former title and the only parties interested in the continuance of the use of the land, for the purposes prescribed, are the state and the religious body. This being so, the legislature can at any time repeal or modify these requirements with the consent of the religious body and it may thereby obtain an unqualified title.[124]*

If the sanction is general, the religious body obtains the same unqualified title as would be obtained by any other person or corporation.[125]

5th: A religious body within the terms of this article has capacity to acquire title by adverse possession without consent of the legislature.

When, therefore, a deed of real estate is made to such a body, and the proper uses are not specified upon its face, no matter what other clauses of reverter or conditions may be there,[126] the deed with all its qualifications being absolutely void, no title at all passes. If the religious body enters upon the land it does so under claim of title, the statute of limitations begins to run at once in its favor, and, twenty years after the date of the deed, its title becomes perfect as against its grantor or persons claiming under him.[127]*

6th: When a deed is made from one religious body to another, an assent to this conveyance implies an assent to the conveyances by which the grantor corporation obtained its title.[128]

ARTICLE XXXIX.

"That the manner of administering the oath or affirmation to any person ought to be such as those of the religious persuasion, profession, or denomination, of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being."

This is evidently a declaration of abstract principles, and is,

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124 *Catholic Cathedral v. Manning,* 72 Md. 116, *Illustration XLI.

125 *Catholic Cathedral v. Manning,* 72 Md. 116.

126 *Regents v. Calvary Church,* 104 Md. 635.

127 *Gump v. Sibley,* 79 Md. 165; *Zion Church v. Hilken,* 84 Md. 170, *Illustration XLII; *Regents v. Calvary Church,* 104 Md. 635; *Dickerson v. Kirk,* 105 Md. 638; *Mills v. Zion Chapel,* 119 Md. 510.

128 *Trustees, etc., v. Jackson Square Church,* 84 Md. 173.

therefore, included in Class A. The legislature[129] has prescribed as a form of oath: " 'In the presence of Almighty God, I do solemnly promise or declare,' etc.," and has expressly made it unlawful to add to any oath the words " 'so help me God' " or any imprecatory words whatever.

ARTICLE XL.

"That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege."

This is substantially the limitation upon the state similar to that placed upon the United States by the provision of the first Amendment requiring that "Congress shall make no law * * * abridging the freedom of speech or of the press." It is therefore included in Class C.

Our court has said "the liberty of the press guaranteed by the Constitution is a right belonging to everyone, whether proprietor of a newspaper or not, to publish whatever he pleases without the license, interference or control of the government, being responsible alone for the abuse of the privilege. It is a right, which from the introduction of the printing press down to the year 1694 did not in England belong to the subject. On the contrary no one was allowed to publish any printed matter without the license and supervision of the government, and it was against such interference on the part of the government and in favor of the right of the citizen, that this provision found its way into our 'Bill of Rights.' "[130]

In the case, however, where these words are used by the court, it was held that if a newspaper charges a state senator with base and sordid motives in determining his official conduct, such charges are libelous, and the proprietor of the newspaper must either prove their truth or answer in damages for the party injured. "The fact that one is proprietor of a newspaper entitles him to no privilege in this respect, not possessed by the community in general. The law recognizes no duty imposed on him arising from his relations to the public to defame and libel the

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129 Code, Article 1, Section 9.
130 *Negley v. Farrow,* 60 Md. 158, 176.

character of any one, and if he does it is no answer to say, he did so in good faith and without malice, honestly believing it to be true * * * If the publication be in itself libelous, the law in all such cases implies malice. In other words, it says you have no right to libel another whatever may have been the motive or intention.''

ARTICLE XLI.

"That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be sufferred."

This would seem to be the statement of a concrete rule peculiar to Maryland, and is, therefore, included in Class D.

In 1869 an act of the legislature incorporating the Broadway and Locust Point Ferry Company, after conferring general ferry rights, authorized and empowered the company to hold and use a wharf which was a part of a public highway for the use of said ferry. This was attacked as a monopoly forbidden by this article, but the court held[131] that it was ''not a monoply in any sense, but a privilege conferred on the company to be exercised for the public benefit,'' and this, even though there was conferred upon the company ''the exclusive use of the end of the wharf for the purposes contemplated in the act.''

In 1898 our court held that a statute prohibiting the sale of oleomargarine by any person, is not void as creating a monopoly, the court holding that such a law was ''a *grant* to none, but a *prohibition* to *all,* and if this statute is to be struck down it cannot be done in the name of monoply.''[132]

In 1900[133] a law providing that no persons, with certain exceptions, shall practice medicine in this state without obtaining a license from the Board of Medical Examiners, was attacked as in contravention to this article, and intending to establish a monoply, because there were only two examining boards, each appointed by private corporation; one by the Medical and Chirurgical Faculty and the other by the Maryland State Homeopathic Society. The court did not, however, sustain these contentions.

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131 *B. & L. P. Ferry Co. v. Hankey,* 31 Md. 346.
132 *Wright v. State,* 88 Md. 436, 443.
133 *Cholle v. State,* 90 Md. 729.

Indeed, in no case, so far as I know, has any law been stricken down as obnoxious to this article, but there can be no doubt that if the legislature should pass such a statute as was passed by the legislature of Louisiana, and considered in the "Slaughter House Cases,"[134] it would be void under this provision.

ARTICLE XLII.

"That no title of nobility or hereditary honors ought to be granted in this State."

This article really adds nothing to the provision in Section 10 of Article 1 of the Federal Constitution, viz: "No state shall * * grant any title of nobility." We have, therefore included it in Class B.

ARTICLE XLIII.

"That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general amelioration of the condition of the people."

This is another statement of general principles, and is, therefore, included in Class A.

In 1898[135] in a case brought to contest the right of a private educational institution, receiving aid from a municipality, to exclude colored pupils, the court refers to this article in support of its conclusion that such an institution could lawfully receive aid from the city, and at the same time exclude colored boys; and says that: "the 43rd Article of the Declaration of Rights seems to have been intended to impress upon it (i. e. the legislature) the necessity of exercising for the public good, the vast powers which it possesses," apparently indicating that it was the duty of the legislature to make discriminations in aid to educational institutions, wherever it thought that the general interests of society would be promoted by such discriminations.

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134 16 Wallace 36.
135 *Clark v. Maryland Institute,* 87 Md. 643.

ARTICLE XLIV.

"That the provisions of the Constitution of the United States, and of this State, apply as well in time of war as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good government and tends to anarchy and despotism."

This article is a declaration of abstract principles, and we have included it in Class A.

ARTICLE XLV.

"This enumeration of Rights shall not be construed to impair or deny others retained by the People."

This article contains almost the same words as the 9th Amendment to the Federal constitution, viz: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage those retained by the People."

We have, therefore, included it in Class C.

Chancellor Bland[136] has said "Ours is a government assumed under the authority of the people; it originated from the people, is founded in compact only, and instituted solely for the good of the whole, and all persons invested with the legislative or executive power of government are the trustees of the public and as such accountable for their conduct. These are our fundamental axioms and first principles; consequently, the General Assembly, or all, or any portion of our government cannot exercise sovereign authority, in any case, over any subject whatever; since it is clear that, when regarded in this point of view, our whole government must be considered as strictly limited, as well by its general nature, as by the special provisions of the Constitution itself. Here, therefore, the sovereignty belongs altogether and exclusively to the people of the State." These words ring well, but such an article as we are considering means more when placed in the constitution of a government which possesses no powers except those granted, than

136 *Campbell's Case,* 2 Bland, 209, 231.

it does when placed in the constitution of a government where the rule is that the legislature has all power except as limited by that Constitution.

As far as the State of Maryland is concerned, it may be questioned whether the effect of this article is much more than an abstract declaration of general principles.

ILLUSTRATIONS,

DECLARATION OF RIGHTS.

ILLUSTRATION I.

In 1847 the case of *Larrabee v. Talbott,* 5 Gill 426, was decided upon the authority of the case of *Cook v. Moffat,* 5 Howard 295, and held that a creditor outside of Maryland, who did not make himself a party to insolvent proceedings instituted in this state, might secure a judgment upon his claim, lay an attachment in the hands of the insolvent trustee and thereby secure a preference to himself.

In 1884 in the case of *Pinckney v. Lanahan,* 62 Md. 447, the Maryland Court of Appeals considered that in the case of *Crapo v. Kelly,* 16 Wallace 610, the United States Supreme Court had decided the question in opposition to the view sanctioned by the Maryland Court in *Larrabee v. Talbott.* The Maryland Court of Appeals, therefore, overruled its former decision and held that a foreign judgment creditor could not attach funds so in the hands of an insolvent trustee.

The original decision and the reversal were both based entirely upon the authority of decisions of the United States Supreme Court.

ILLUSTRATION II.

The English courts held in *Doe v. Manning,* 9 East 57, a case decided since the Revolution, that under the statute of 27 Elizabeth, Chapter 4, a voluntary deed was void as against a subsequent purchaser for value, whether he purchased with or without notice. Our court while conceding that if the decision had been made before the Revolution they would be bound by it, held, in opposition to the English rule, that such voluntary deed was not void as to the purchaser with notice.

Baltimore v. Williams, 6 Md. 235.

ILLUSTRATION III.

John Knee sued the Baltimore City Passenger Railway Company and recovered a judgment for $800.00. The defendant appealed and the judgment was reversed with costs, for error in the admission of testimony, and a new trial was awarded. After the case was remanded, the lower court passed an order directing Knee to pay the costs, amounting to $139.75, and staying all further proceedings until all costs should be paid.

Knee contended that this requirement interfered with his right of trial by jury secured by the Constitution, and was void, but the court held that it was simply a reasonable regulation as to the mode in which, and the condition upon which, such trial might be had, and the order of the judge was sustained.

Knee v. Passenger Railway Co., 87 Md. 623.

ILLUSTRATION IV.

The legislature of Maryland passed an act regulating moving picture machines, and provided that non-compliance with the act should be a misdemeanor, and upon conviction thereof before a justice of the peace, the traverser should be fined not less than ten nor more than fifty dollars for each day of non-compliance.

There was no provision for trial by jury, or appeal to a higher court. The claim was made that the absence of a provision for a jury trial made the act unconstitutional. The court held that the right of jury trial secured by the Constitution was the historical right as known to the English law, and did not prevent summary jurisdiction over petty offenses being given to magistrates in accordance with the established English practice.

State v. Loden, 117 Md. 373.

ILLUSTRATION V.

Horn was assessed for grading and paving North Avenue. He brought a bill for injunction against the city, seeking to restrain the collection of this assessment.

The assessment was held illegal and the injunction granted.

Thereafter the legislature passed an act authorizing and empowering the city to collect this assessment and others of like character.

HELD: That this act was, in effect, a reversal of the court's judgment; that it was a plain assumption of judicial power by the legislature and void.

Baltimore v. Horn, 26 Md. 194.

ILLUSTRATION VI.

The Act of 1868, Ch. 249, provided that the circuit courts of this state might confirm sales of infants' property, even though in the proceedings leading to the original sales the infants had not been summoned.

HELD: Such act was the exercise of judicial power by the legislature; it would enable the court, by new proceedings, to give validity to a decree which when pronounced was beyond its jurisdiction; and it is therefore void.

Roche v. Waters, 72 Md. 264.

ILLUSTRATION VII.

A series of facts made it equitable that Talbot County should pay one-half the cost of a bridge erected by Queen Anne's County. The legislature, therefore, passed the Act of 1906, Ch. 450, directing Talbot County to pay one-half of a certain sum stated to have been the cost of the bridge, and also directing Talbot County to pay annually a certain sum for the purpose of maintaining the bridge.

HELD: That inasmuch as the statute fixed the amount to be paid, and did not leave the ascertainment of the actual cost of the bridge, either to arbitration or judicial inquiry, and also fixed the amount to be paid for the maintenance of the bridge, without regard to what the actual cost of maintenance might be, the statute was void as being a palpable assumption by the legislature of judicial power.

Queen Anne's Co. v. Talbot Co., 108 Md. 188.

ILLUSTRATION VIII.

A statute provided that in certain counties, including Prince George's, no account for fees for services rendered by certain designated officers (including the sheriff) should be allowed by the county commissioners, until said account had been submitted to and approved by the judges of the circuit court of the said county, or a majority of them.

HELD: That the statute impliedly imposed the duty of approving the accounts in question upon the judges before payment thereof by the county commissioners. That such duty is not a judicial one, and its performance would make the judges mere auditors to the county commissioners. The requirement is, therefore, void under article 8th of the Declaration of Rights.

Robey v. Prince George's Co.. 92 Md. 150.

ILLUSTRATION IX.

The Acts of 1901, Ch. 15, provided that the control and supervision of the County Jail of Anne Arundel County, and of the prisoners therein, should be taken from the sheriff of the county and committed to a Board of Visitors, who should appoint a warden, etc. The act provided that the judges of the circuit court should appoint three of these visitors, who together with the state's attorney for the county should appoint a physician, and these five persons should constitute the board.

HELD: The appointment of the visitors by the judges is a non-judicial function, and the provision of the act requiring such appointment is void, under article 8th of the Declaration of Rights.

Beasley v. Ridout, 94 Md. 641.

ILLUSTRATION X.

The Acts of 1896, Ch. 195 provided that whenever half of the registered qualified voters of Wicomico County or any election district thereof, should petition the circuit court to submit the question of granting, or of not granting, licenses for the sale of

liquors, at the next general election to be held in the county, the court should order the sheriff of the county to give notice of the election, etc.

HELD: That the duties sought to be imposed upon the judges by this statute, of counting the names upon the petition, ascertaining whether these names are those of voters at the last election for governor, of ordering an election to be held, etc., are not judicial duties, and consequently the act was void because in conflict with article 8th of the Declaration of Rights.

Board of Supervisors v. Todd, 97 Md. 247.

ILLUSTRATION XI.

The Acts of 1902, Ch. 455, provided that the court house of Prince George's County should be "under the care, custody and control of the crier of the circuit court for said county, who shall be at said court house daily to see that it is properly cared for."

Under Article 4, Section 9 of the Constitution, the crier being an officer of the court must be appointed by the judges.

HELD: That the care of the court house is not a judicial duty and to make an appointee of the court perform any part of this duty is indirectly to require the court to appoint some one to perform this duty. This would be a violation of article 8 of the Declaration of Rights, and the Act of 1902 is consequently void.

Prince George's County v. Mitchell, 97 Md. 330.

ILLUSTRATION XII.

The Act of 1872, Chap. 274, imposed a tax of two cents per ton upon coal mined in this state and transported by rail or vessel to any place in this state or elsewhere, for sale.

HELD: That this was a special tax laid exclusively upon one species of personal property and was void.

State v. *C. & P. R. R. Co.,* 40 Md. 22.

ILLUSTRATION XIII.

The Act of 1888 provided that the county commissioners of Prince George's County should repay to the commissioners of the town of Laurel the amount of the tax levied upon the real property situated in that town, to be used by the commissioners of Laurel for such improvements as said commissioners of Laurel might think proper.

HELD: Unconstitutional as practically exempting the owners of real estate in Laurel from contribution *pro tanto* to the necessary expenses of the county government.

Prince George's Co., v. Laurel, 70 Md. 443.

ILLUSTRATION XIV.

The Act of 1892 authorized the Board of Commissioners of Hyattsville to "make such deductions or exception from and addition to the assessment made by the assessors as they may deem just," etc.

Acting under this authority, the Board of Commissioners struck from the assessment roll all personal property and all improvements on land, leaving the value of the land as unimproved the only subject of assessment.

HELD: That if the act gave this power to the board, the act was unconstitutional; that, under the 15th Article of the Declaration of Rights, buildings, improvements and personal property are as liable to assessment for taxation as land, and cannot be exempted by a legislative act.

Wells v. *Hyattsville,* 77 Md. 125.

ILLUSTRATION XV.

An act incorporating the village of Chevy Chase contained a provision withholding from the village authorities, the power to tax or assess the property in the village east of a certain line, and gave the county commissioners power to levy a tax up to a fixed rate upon property in such exempted district, provided they were requested so to do by a certain number of resident taxpayers of the district.

HELD: That this provision was unconstitutional as unequal. The property so exempted, except as it might assent to be taxed, could not properly be considered a taxing district inasmuch as such a taxing district implies a district which is legally subjected to some taxes, the payment of which it cannot escape either by its own volition or in any other way.

Curtis v. Mactier, 115 Md. 386.

ILLUSTRATION XVI.

The Act of 1892 taxed whiskey in a bonded warehouse, and required the warehouseman to pay the whole tax, no matter to whom the whiskey might in fact belong, giving to the warehouseman a lien against the real owner for the tax so paid.

This act was attacked *inter alia,* upon the grounds that it was (a) a tax on the property itself and not on the person owning it; (b) that it was making one person pay another's debt.

HELD: That the tax was levied upon the owner, and the warehouseman was merely the agent of the State to collect it, and that the 15th article of the Declaration of Rights "imperatively requires" that all owners of property, whether resident or non-resident, be required to pay their proper tax upon all property within the State.

Carstairs v. Cochran, 95 Md. 488.

ILLUSTRATION XVII.

The Act of 1904 exempted certain wharf property of Starr Church from municipal taxation.

HELD: That this act was void because if a revenue-producing property of Starr Church were exempt, while the similar property of all other churches was taxable, the result would be inequality instead of equality in taxation, and would be contrary to the provisions of Article 15 of the Declaration of Rights.

Baltimore City v. Starr Church. 106 Md. 281.

ILLUSTRATION XVIII.

The Act of 1896 provided that mortgagees and their assignees should pay a tax of eight per cent. upon the gross amount of interest covenanted to be paid each year to the said mortgagee etc., by the mortgagor, one-fourth to go to the State, and three-fourths to the county or city of Baltimore, in which the property mortgaged was located.

HELD: The act was valid as an assessment and levy made directly by the legislature.

Faust v. Building Association, 84 Md. 186.

ILLUSTRATION XIX.

The Annexation Act of 1888, by which parts of Baltimore County were incorporated into Baltimore City, provided that, until the year 1900, the rate of taxation for city purposes, on all taxable property within the annexed district, should not exceed the existing rate in Baltimore County for the year 1888; that until 1900 the assessment should not be increased, and that as much money should be spent in the annexed district, up to 1900, as was taken from it by taxation. The consequence of the act was, of course, that although property on both the north and south sides of the old boundary (e. g. North avenue) were included within the limits of Baltimore City, the tax rate on the property to the north of that line was fixed not to exceed a certain maximum, while the property to the south of that line might be, and in fact was, taxed two or three times such maximum rate.

HELD: That the law was valid. The annexed territory formed a taxing district and if equality of taxations was secured in that taxing district, the requirements of the 15th Article of the Declaration of Rights were fulfilled.

Daly v. Morgan, 69 Md. 460.

ILLUSTRATION XX.

The Act of 1912 declared that all landed property in Baltimore City, abutting upon any public highway which "has

been or shall hereafter be paved with improved paving'' without assessment of any part of the cost of such paving upon it, was ''specially benefited by such improved paving to an extent greater than the entire amount of the special tax, hereby levied thereon.'' It then levied a special assessment of a certain amount per front foot for ten years, upon all such property, the proceeds of such tax to go into a general paving fund and not to be used to pay for the improvement particularly benefiting that lot.

HELD: That the tax was not in contravention of the Declaration of Rights.

Leser v. Wagner, 120 Md. 671.

ILLUSTRATION XXI.

By the Act of 1872 a tax of one-half of one per centum was imposed upon the gross receipts of the Philadelphia, Wilmington & Baltimore Railway Company in lieu of all other taxes.

HELD: That it was a good tax. That it was not a direct tax upon property within the meaning of the Bill of Rights, but that it was a tax upon the franchise of the company, measured by the extent of its business.

State v. P. W. & B. R. R., 45 Md. 361.

ILLUSTRATION XXII.

The Baltimore & Eastern Shore Railroad was built and insolvent when the legislature passed the Act of 1894, the effect of which, as construed by the court of appeals, was to provide that Talbot County should raise $25,000.00 to be appropriated to the payment and satisfaction of all proper and legal claims and demands held by *bona fide* residents of Baltimore county on April 20th, 1891 against the Railroad Company.

HELD: That this was an attempt to levy a tax for private purposes and void.

Baltimore & Eastern Shore R. Co., v. Spring, 80 Md. 510.

ILLUSTRATION XXIII.

The Act of 1892 required every distiller and every warehouseman having the custody of distilled spirits, to make a report of the spirits on hand on January 1st of each year to the state tax commissioner. The tax commissioner was directed, upon receiving such reports, to fix the valuation of the spirits for taxation and send the same to the various county commissioners and the Appeal Tax Court of Baltimore City, who were directed to levy the state, county and city taxes for such assessment. If the spirits were not owned by the distiller or warehouseman in whose possession they were, he was nevertheless required to pay the taxes, but had a lien on the spirits for such payment. The act made no provision for giving notice to the warehouseman or owner as to the valuation of the property, or for a hearing, and no appeal was given from the valuation fixed by the state tax commissioner.

HELD: The act was unconstitutional because the failure to provide a hearing of some kind as to the valuation of the property for taxation operated to deprive the owner of his property without due process of law.

Monticello Co. v. *Baltimore City,* 90 Md. 416.

By the Act of 1900 provision was made for a notice of assessment, the law otherwise remaining substantially the same.

HELD: The law was valid and the tax could be enforced.

Carstairs v. Cochran, 95 Md. 488.

ILLUSTRATION XXIV.

Nelson brought an action against Baugher upon a single bill for $350.00. Baugher pleaded usury under the Act of 1704. This act was in force when the loan was made, and rendered usurious contracts void. Before suit was brought, however, the Act of 1845 was passed which allowed a lender to recover the money loaned and legal interest, even though the interest contracted for was usurious and usury was pleaded. It was earnestly contended that at the time the last act was passed Baugher owed Nelson nothing, and that the Act of 1845 compelling him to

pay the amount borrowed and legal interest was a divesting of vested rights, and a retrospective law forbidden by this article.

HELD: That the Act of 1845 was a remedial act, and not forbidden by the Declaration of Rights. It would be wrong for a borrower to refuse to pay any of his debt because of his contract to pay usurious interest, and no one can have a vested right to do wrong.

Baugher v. Nelson, 9 Gill 299.

ILLUSTRATION XXV.

Mrs. Elliott sought a divorce *a vinculo* from her husband on the ground of adultery. She filed her bill February 1872. The acts of adultery were proved to have taken place in July, 1871, and to have continued to the time of taking the evidence, or to March, 1872.

After this or on April 1, 1872, the legislature amended the divorce law so as to allow the court in its discretion, when passing its decree, to forbid the guilty party to marry. This law, by its terms, went into effect June 1, 1872. On June 21st, 1872 a decree was passed forbidding re-mariage of the guilty husband.

HELD: That the act of 1872 was retrospective; that it applied to this case; that, although retrospective, it was not *ex post facto* and was constitutional.

The prohibition of re-marriage is not a criminal penalty, but simply withholds from him the relief of being freed from his own contract, a relief he was never entitled to claim.

Elliott v. Elliott, 38 Md. 357.

ILLUSTRATION XXVI.

Beard was convicted of keeping a disorderly house, a common law offense. Between the time of his conviction and sentence, the Act of 1890 was passed. It simply affected the punishment, fixing this punishment at a fine of not less than $50.00 nor more than $300.00, and by imprisonment not less than ten days nor more than six months, or both.

When Beard was finally sentenced, he was sentenced upon the

theory that as to him the statute did not apply, and under the common law he was given thirteen months in jail and $1,200 fine.

HELD: That if this statute should be considered as retrospective, it was as to Beard, void as an *ex post facto law,* because the minimum penalty for the offense is greater than the minimum penalty at common law, and this, although the maximum penalty under the statute is less than that actually imposed upon Beard as a common law sentence.

Beard v. State, 74 Md. 130.

ILLUSTRATION XXVII.

A Mr. McColgan sued the Baltimore Belt R. R. Co. and obtained judgment against it. McColgan sought to levy upon certain land of the company used for its corporate purposes. This levy was enjoined by the lower court because thereby the operations of a semi-public corporation would be crippled.

McColgan upon appeal urged that the 19th Article of the Declaration of Rights would prevent his being in this way practically deprived of any remedy for the enforcement of his judgment.

HELD: That the position of the lower court was correct and that the Declaration of Rights gave McColgan no right to issue execution in that case.

McColgan v. Balto. Belt R. Co., 85 Md. 519.

ILLUSTRATION XXVIII.

Gibson sued the Warden of the Penitentiary in ejectment to recover certain lands claimed by him. The lands were actually being used as part of the site for the State Penitentiary and the warden was in possession in no other capacity than as a state official.

It was contended that the suit was in reality a suit against the State and could not be maintained.

HELD: That articles 19 and 23 of our Declaration of Rights, section 40 of article 3 of our Constitution and the 14th

Amendment of the Federal Constitution required the court to uphold the right of the plaintiff to sue.

Weyler v. Gibson, 110 Md. 636.

ILLUSTRATION XXIX.

Louis Kiefer was presented by the grand jury of Baltimore City. The only charge contained in the presentment was "violation of the liquor law."

HELD: The presentment was not good. It was in contravention of article 21 of the Bill of Rights.

State v. Kiefer, 90 Md. 165.

ILLUSTRATION XXX.

Guy was tried for the violation of the local option law of Harford County. On a list of twenty names, from which the traverser was to strike four, the state four and the balance were to serve as jury, there were two who stated on their *voir dire* that they were members of the "Law and Order League of Harford County," one of them having paid a contribution to the funds of the League, and the other having promised a contribution which he expected to pay. They both stated that they supposed the principal object of the League was the enforcement of the local option law, but further stated that they had not formed nor expressed any opinion as to the guilt of the traverser, or as to the local option law of Harford County, which would prevent them from giving a free and impartial trial or from rendering a verdict according to the law and the evidence.

HELD: They were both proper persons to serve as jurors.

Guy v. State, 96 Md. 692.

ILLUSTRATION XXXI.

In 1812 an act was passed incorporating the Regents of the University of Maryland with certain rights, powers and priv-

ileges. In 1825 an act was passed professing to discontinue and abolish the corporation of the "The Regents" and to appoint a "Board of Trustees" composed of different persons to which "Board of Trustees" were transferred all the franchises and property of the corporation of "The Regents" proposed by the act to be abolished.

HELD: That the Act of 1825 was void under the article of the Declaration of Rights now known as number 23.

It was also void under the Federal Constitution, "Impairment of Contract" clause.

It was also void under the article of the Declaration of Rights now known as number 8, separating the powers of government.

It was also void independently of both National and State Constitutions "as opposed to the fundamental principles of right and justice inherent in the nature and spirit of the social compact."

University of Md. v. *Williams,* 9 G. & J. 365.

ILLUSTRATION XXXII.

The act of 1841 provided for a tax of one per cent. upon all monies deposited in the Baltimore County Court, or coming into the hands of trustees or other officers of the court for distribution under its order or authority, and the fund created by this tax was designed in part to provide for the judges' salaries.

HELD: Such tax was not prohibited by Article 33(then 30) of the Declaration of Rights.

Bradford v. *Jones,* 1 Md. 351.

ILLUSTRATION XXXIII.

Judefind was arrested under a law forbidding any one to work on Sunday. Judefind was husking corn and was found guilty. He was a Seventh Day Adventist and having kept Saturday as the Sabbath, he claimed that to criminally punish him for working on Sunday, was molesting him in his religious

practice, contrary to the provisions of Article 36 of the Declaration of Rights.

HELD: Sunday laws are valid as civil regulations and are to be enforced against all the citizens of the state, no matter what day of the week they may think is the proper day for religious observances.

Judefind v. State, 78 Md. 510.

ILLUSTRATION XXXIV.

Brice was elected treasurer of Anne Arundel County, an office created by statute. The same statute which created the office directed the treasurer to take an oath, that he would justly and impartially value all property which he should be authorized to value, etc. Brice did not take this oath, but did take the oath prescribed by the Constitution.

HELD: That the legislature was without authority to exact the additional oath and the failure of Brice to take it could not defeat his right to the office.

Davidson v. Brice, 91 Md. 681.

ILLUSTRATION XXXV.

Susie Duke Callow devised her estate to her executor to be sold, and from the proceeds to pay certain bequests, one of which bequests was $4,500.00 to "The Missionary Society of the M. E. Church," incorporated by the legislature of the State of New York.

HELD: The legacy was a good one, even though the money should be derived in whole or in part, from a sale of land.

Church Extension M. E. Ch. v. Smith, 56 Md. 362.

ILLUSTRATION XXXVI.

A bequest was made "to my highly esteemed friend and Pastor, the Rev. Leonard N. Gardner, as a token of my respect and gratitude, the sum of $5,000.00."

HELD: A good bequest, and not requiring the sanction of the legislature.

Church Extension M. E. Ch. v. Smith, 56 Md. 362.

ILLUSTRATION XXXVII.

"The Church Home for the Relief of the Poor and Destitute" was incorporated for the purpose of providing and sustaining a "home for poor and distressed persons belonging to the Protestant Episcopal Church and others, and through the Ladies' Church Home Society or other approved agencies, to minister to their temporal and spiritual needs." Its management was to be in the hands of the seven persons named in the charter, "together with such clergy of the Protestant Episcopal Church resident in the City of Baltimore and laymen of the same, as contributing to its funds and having been elected thereunto, shall sign this Constitution." A rector, warden, chaplain, physicians and any other officers whom the trustees might deem necessary, were to be elected, and no person was to be chosen to any of said offices unless he was a communicant of the Protestant Episcopal Church, and if chosen rector or chaplain, he was to be likewise a minister of said Church. In every way feasible, it was provided that the corporation should be controlled by the members of the Protestant Episcopal Church.

HELD: The corporation was not within the meaning of article 38 of the Declaration of Rights, and it might receive devises and bequests without the consent of the legislature; being a charitable and not a religious corporation.

Baltzell v. Church Home, 110 Md. 244.

ILLUSTRATION XXXVIII.

Ursula Wilcoxen bequeathed $500.00 to the Vestry of Prince George's Parish in Montgomery County. When she died the legislature was not in session and did not meet for more than a year after her death. The Vestry made a demand upon the executor for the money, but the executor refused to pay it on the ground that there was no assent given by the legislature, and within a year, the legislature not having then met, the executor

passed his final account, treating as invalid the bequest to the Vestry. When the legislature met, the Vestry secured an act, granting its assent to the bequest.

HELD: The bequest was a good one, was sanctioned within the proper time, and the executor must pay the money over to the Vestry.

England v. Prince George's Parish, 53 Md. 466.

ILLUSTRATION XXXIX.

A lot of ground, containing less than five acres, was conveyed by Shipley and another, to the trustees of the Calvary Church, a religious body corporate, chartered as such, "to have and to hold * * unto and to the use of the trustees of the Calvary M. E. Church South in the City of Baltimore, its successors and assigns * *. It is hereby understood and provided that in case said property should be diverted by any means whatsoever from the uses and purposes of the M. E. Church South by said trustees, their successors or assigns, then it shall be deemed forfeited and diverted, and shall immediately vest in said Charles Shipley or his personal representatives, and be held by him or them free, clear and discharged from all incumbrances whatsoever, except the leasehold interest now thereout issuing."

HELD: That the deed was void and therefore all the limitations and clauses of reverter in the deed were void; consequently the religious corporation having immediately upon the delivery of the deed, entered into the possession of the property, acquired good title to the same by adversary possession at the end of twenty years.

Regents v. Calvary Ch., 104 Md 635.

ILLUSTRATION XL.

The heirs of Stigar brought an action against Mrs. Kelso, to recover a parcel of land which had been in 1773 deeded to a Religious Society, called "Quakers," for a burying place, and also to erect a meeting house thereon for public worship by the

same society. After the Quakers held the property for about one hundred years, there being no probability of the land ever again being used as a place for interment for the dead, the legislature passed the Act of 1874 authorizing the Quakers to sell and convey in fee simple, a part of the property. In pursuance of this act, the Quakers sold the property mentioned to Mrs. Kelso, who purchased in good faith and for full consideration.

HELD: The deed of 1773 conveyed a base fee with a reverter in the grantor and his heirs. They obtained no title, however, nor did limitations begin to run against them until a diversion of the property from the uses specified in the deed, which was accomplished by the sale to Mrs. Kelso. The title in the heirs of the original grantor then became absolute and the Act of 1874 was utterly ineffective as against them. The heirs of Stigar brought their suit within twenty years after the property ceased to be used according to the purposes set forth in the deed, and these heirs had a right to recover as against Mrs. Kelso.

Kelso v. Stigar, 75 Md. 376.

ILLUSTRATION XLI.

In 1814 the religious corporation now known as the Catholic Cathedral was authorized to purchase a lot of ground not exceeding six acres and "to hold the same as and for a burial-ground for the members of said church and for no other use or purpose whatever."

The consequence of this act was a deed to six acres, the habendum in the deed stating that the lot was to be held "to the only proper use and behoof of the said trustees, their successors and assigns forever, and for and upon none other trust or use whatever."

In 1841 the corporation, for a full consideration, purchased six and one-half acres of land without any authority of the legislature, and took a deed for it in fee.

In 1845 the legislature reciting that the trustees of said church had "asked permission to extend their said burial-ground by purchase from the owners of the adjacent lands,"

authorized them to "add to and enlarge their burying-ground to an extent not exceeding in the whole twenty-five acres of land."

HELD: 1st: The Act of 1814 authorized the holding of the six acres first purchased in fee, so far as the grantors were concerned. It simply imposed a legislative restriction upon the use, and when the legislature removed this restriction, with the consent of the trustees, the trustees could convey a good and merchantable title to the land.

2nd: The Act of 1845 by acknowledging the holding of the burial-ground as then established, consisting of twelve and one-half acres, by the church, gave consent to the holding of the second six and one half acres within the meaning of the Declaration of Rights.

Catholic Cathedral v. Manning, 72 Md. 116.

ILLUSTRATION XLII.

In 1793 one Yeiser, for substantial consideration, conveyed to trustees of the Lutheran Congregation in Baltimore County, certain land in fee, and the trustees and their associates entered and held possession for more than a hundred years. The deed was not sanctioned by act of the legislature and was void.

HELD: The entry of the grantors under claim of title, constituted adverse possession and the statute of limitations commenced running against the grantor, and those claiming under him at once; so that twenty years after the date of the deed, the trustees had good title.

In 1896 the successors of the grantors were entitled to specifically force a contract of sale

Zion Ch. v. Hilken, 84 Md. 170.

CONSTITUTION.

General Analysis.

The proper office of a State Constitution is to be the "Fundamental Law" of the state; i. e. to simply provide the foundations on which shall rest all the necessary machinery of government and also to place such limitations as may be desired upon the legislative power.

This office is fairly fulfilled by our Maryland Constitution, but as is the case in perhaps the majority of our sister states, there are in our Constitution many matters of detail which had better have been left to the legislature, some of which, like the provisions as to the "Wreckmaster of Worcester County," seem absurdly out of place in a constitution.

We may, however, congratulate ourselves that in this respect our Constitution retains a really constitutional character far more truly than some constitutions recently adopted.

The Order of Articles is somewhat different from that of the Constitution of the United States.

In the Maryland Constitution the order is:

1st *Article I.* The Elective Franchise.
2nd *Article II.* The Executive Department.
3rd *Article III.* The Legislative Department.
4th *Article IV.* The Judiciary Department.
5th *Articles V, VI* and *VII.* Other Officers.
- *Article V.* Attorney General and State's Attorneys.
- *Article VI.* Treasury Department Officers.
- *Article VII.* Sundry Other Officers.

6th *Articles VIII, IX* and *X.* Special Objects of Legislation.
- *Article VIII.* Education.
- *Article IX.* Militia and Naval Affairs.
- *Article X.* Labor and Agriculture.

7th *Article XI.* City of Baltimore.

8th Article XII. Public Works.
9th Article XIII. New Counties.
10th Article XIV. Amendments.
11th Article XV. Miscellaneous.

It may be difficult to see the logic of this arrangement in regard to certain of the articles, but it is worth while for the student to remember the subject matter of at least the first four articles.

ELECTIVE FRANCHISE.

Article I. Section 1.

"All elections shall be by ballot; and every white male citizen of the United States, of the age of twenty-one years, or upwards, who has been a resident of the State for one year, and of the Legislative District of Baltimore City, or of the county in which he may offer to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district in which he resides, at all elections hereafter to be held in this State; and in case any county or city shall be so divided as to form portions of different electoral districts, for the election of Representatives in Congress, Senators, Delegates or other Officers, then to entitle a person to vote for such officer, he must have been a resident of that part of the county, or city, which shall form a part of the electoral district, in which he offers to vote, for six months next preceding the election; but a person, who shall have acquired a residence in such county or city, entitling him to vote at any such election, shall be entitled to vote in the election district from which he removed, until he shall have acquired a residence in the part of the county or city to which he has removed."

Elections within the Article: It might seem, from the first two words of this article, that every election of whatever sort to be valid must be held according to its provisions. But our Court of Appeals has confined the meaning of these words to "All Elections" "which the Constitution itself requires to be held or which the Legislature under the mandate of the Constitution makes provision for."[1]* Consequently municipal elections except in the City of Baltimore are not included.

The argument adopted is that the Constitution, article III,

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1 *Hanna v. Young,* 84 Md. 179. *Illustration XLIII.

Section 48, gives to the legislature unrestricted power to create municipal corporations, and thereby invests it with full authority to prescribe who shall designate the officials of such corporations, and that the provisions in regard to what we may call "Constitutional Elections" no more apply to these elections in municipalities chartered by the legislature, than they would apply to the elections of church congregations or social clubs, or any other body which might be chartered by the legislature.[1*]

Form of Election: There is only one limitation upon the power of the legislature to prescribe the form and manner of elections, and that is the provision that "All elections shall be *by ballot.*" This would seem to imply that the voter's choice should be expressed in writing and not orally, and probably that the voter should have the protection of secrecy.

Who may vote: In the Constitution as adopted in 1867 the right to vote was given to every "*white* male citizen of the United States," etc., and this has never been changed by direct act of the people of Maryland.[2]

The word "white," however, like the same word in article VII of the Declaration of Rights is assumed to have been stricken out *ipso facto* by the adoption of the 15th Amendment to the Federal Constitution.[3]

In the Codes of 1888 and Bagby's Code of 1912, the article is printed without the word "*white,*" which word a "note" states to have been "expunged," or "omitted" under the 15th Amendment, and in several cases our court has quoted the article as if the word "white" had never appeared therein.[4]

The reqirements for qualification of a voter are found in this section together with section 5th.

The exceptions are found in sections 2 and 3.

For the purposes of stating the rule as to the qualifications of electors at all elections provided for in the Constitution these sections may then be treated together.

Perhaps as true a way as any of stating the rule is that

There is but one necessary qualification of a voter, i. e. registration.

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1 *Hanna v. Young,* 84 Md. 179. *Illustration XLIII.

2 See also comment on Article VII of the Declaration of Rights.

3 See *Neal v. Delaware,* 103 U. S. 370.

4 *Hanna v. Young,* 84 Md. 179, 183; *Shaeffer v. Gilbert,* 73 Md. 69; *McLane v. Hobbs,* 74 Md. 170; *Southerland v. Norris,* 74 Md. 326; *Kemp v. Owens,* 76 Md. 235; *Pope v. Williams,* 98 Md. 66.

No one can vote who is not registered and every one registered can vote.

To entitle a person to *registration,* however, the following requirements are necessary:

1st: Male sex;

2nd: Citizenship in the United States;

3rd: Age of at least twenty-one years;

4th: Residence in the state for at least one year;

5th: Residence in a certain legislative district or county for more than six months.

As to the provisions regarding sex, citizenship in the United States, and age, the provisions are plain and have never come before the courts for interpretation, although certain language used by our court[5] declaring in broad terms the power of the legislature to prescribe what evidence as to age should be sufficient, may possibly hereafter be so acted upon by our assembly as to give rise to litigated questions.

Length of Residence Required.

It will be seen that the only residence required in the Constitution as a qualification for a voter is:

1st: Residence in the state, and

2nd: Residence in a county or legislative district of Baltimore City.

Within the limits of a county or city legislative district a person can move from one ward to another, or from one election district to another, and although he may have only resided in the particular ward or election district where he wishes to be registered for one day prior to his registration, he will be entitled to be registered therein provided his residence in the county or legislative district has been sufficiently long.[6]

Indeed the ward or election precinct to which he has moved is the only place in which, under such circumstances, he is entitled to register, and his name can be stricken from the registration books of the ward or election district from which he removed.[7]*

The last provision in this first section which secures to a person, who has once acquired a residence in a particular county

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5 *Southerland v. Norris,* 74 Md. 326, 331.

6 *Kemp v. Owens,* 76 Md. 235; *Murphy v. Eney,* 77 Md. 80.

7 *Kemp v. Owens,* 76 Md. 235 *Illustration XLIV.

or city, his right to vote there until he acquires a voting residence in some other county or legislative district, seems too plain to require comment.

It is not quite apparent from the words of this section what the law is as to the right to vote for congressman, in case a voter removes from one ward to another in the same legislative district, but in different congressional districts. This point is discussed by Judge Bryan in the case already cited,[8] but the majority of the court refused to pass upon the matter as not being before them in that case.

The practice is, in such a case, to allow the voter to vote in the precinct wherein he has acquired a residence, until he acquires, in the precinct to which he has removed, a residence sufficient to enable him to vote for all those officials for whom any other voter in the same precinct may cast a ballot.

Residence in a Legislative District "At Large."

The intention of the framers of the Constitution to consider no residence except in the State and the legislative district, in reference to a voter's qualifications, has led our courts to practically hold that a person may have a residence in a legislative district without residing at any particular spot within that district. "One who confines his wanderings to a particular country or locality, but declines to fix himself upon some particular spot, can properly be said to be a resident of that country or locality. Home, domicile or residence may, therefore, include a spot or a wide area. Each of these words may be applied either to a house, a precinct, a ward, a county or a state."[9]*

Residence—Definition.

It is a difficult thing to define residence in such a way as to render it clear whether or not it exists on any particular state of facts.

"It has often been held to be equivalent to the word 'home' in the sense of a house, to which one, whenever absent, intends to return. It undoubtedly carries with it an element of perman-

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8 *Kemp v. Owens,* 76 Md. 235, 240.

9 *Langhammer v. Munter* 80 Md. 518, 526. *Illustration XLV.

ence, differing, however, widely in special cases. 'The word "home" suggests relations differing in breadth and strength, though not in kind, when applied on the one hand, to a farmer who has resided since his birth, and expects to reside until his death, on the same spot, and on the other hand to the clergyman whose home may change in two years, or to the railroad laborer whose home may change in two months.' * * * In other words there must be to constitute residence, an 'actual home in the sense of having *no other home* whether he intends to reside there permanently, or for a definite length of time.'[10] Residence, therefore, is a question "depending upon fact and intention."[11]

Other statements of our court, which may throw light on the question may be cited.

Thus in 1853 in regard to the requirement of a new residence, our court said:[12] "The party's purpose to remain need not be fixed and unalterable. If it becomes a place of *fixed present domicile,* it will be sufficient to fix a residence, and although there may be a *floating intention to return to his former place of abode at some future period,* still this circumstance will not defeat the newly acquired residence, or the rights and obligations which attach to it."

In 1890, however, our court makes a distinction of "domicile in a legal and technical sense" and "residence required by the Constitution as a qualification for the exercise of political rights."

Speaking of the residence as required by the Constitution, the court says: "It does not mean, as we have said, one's permanent place of abode where he intends to live all his days or for an indefinite or unlimited time, nor does it mean one's residence for a temporary purpose, with the intention of returning to his former residence when that purpose shall have been accomplished, but means, as we understand it, one's actual home in the sense of having no other home, whether he intends to reside there permanently or for a definite or indefinite length of time. As in domicile, one's original residence is the residence of his father at the time of his birth, but when he reaches the age of twenty-one years, being *sui juris,* he may abandon his original residence and acquire a new residence. And to acquire

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10 *Shaeffer v. Gilbert,* 73 Md. 71.
11 *Langhammer v. Munter,* 80 Md. 518, 526.
12 *Ringgold v. Barley,* 5 Md. 186.

such residence, that is, residence by choice, one must remove from one county to another with the *bona fide* intention of abandoning his former place of residence, and of making the state or the county to which he removed his actual home for a definite or indefinite period of time, and if with such intention he continues to reside in the state or in the county to which he has removed for the length of time prescribed by the Constitution, he is entitled to be registered as a voter.''[13]*

''The object in thus prescribing residence as a qualification for the exercise of the right of suffrage, was not merely for the purpose of identifying the voter and as a protection against fraud, but also that he should become in fact a member of the community, and as such have a common interest in all matters pertaining to its government.''[14]*

In 1898 our court citing previous cases, says: ''Residence as contemplated by the framers of our Constitution for political or voting purposes means *a place of fixed present domicile.*''[15]*

Perhaps with sufficient accuracy for all practical purposes, it may be said that when a child is born, his residence is at the location of his father's home, and this residence continues until he has made a home for himself. As soon as he has made a home for himself, such home becomes his residence and continues such until he makes some other place his home. Whether or not any particular voter has a ''home'' at any particular place is a question of fact to be determined like other such questions.

Residence—Evidence of.

Our Court of Appeals has said that the ''qualifications fixed by the organic law can neither be enlarged nor curtailed by the General Assembly; but there is no provision of the Constitution, as there is no principle of constitutional law that denies to the legislature the power to enact rules of evidence, by which the facts establishing the right to vote may be proved. The Constitution itself merely designates the qualifications, and leaves

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13 *Shaeffer v Gilbert,* 73 Md. 71. *Illustration XLVI. See also *McLane v. Hobbs,* 74 Md. 166; *Turner v. Crosby,* 85 Md. 178.

14 *Shaeffer v. Gilbert,* 73 Md. 66, 70. *Illustration XLVI.

15 *Howard v. Skinner,* 87 Md. 556, 559. *Illustration XLVII.

the legislature free to declare by what evidence these qualifications must be shown to exist.''[16]

Under this construction of the law, our legislature has passed acts which have gone pretty far in laying down stringent rules which must be complied with by persons leaving the State, so that they shall not be held to have lost their legal residence, and by persons coming into the state, in order that they may acquire legal residence.

Thus the Act of 1890 provided that all persons whose names are on the registration lists at the date of the passage of the act, but who had previously removed from the State and had taken up a domicile beyond the limits of the State, should be presumed to have thereby intended to abandon their legal residence in the State, unless within thirty days after the passage of the act, they make and acknowledge before the clerk of the circuit court for the county from which they shall have so removed, an affidavit, that when they so removed they did not intend to change their legal residence within the State, but that they intended to return to the State and take up their actual domicile therein on or before six months next preceding the next congressional election.

This act was held valid, even as against a voter who was employed by the Federal Government, and had in consequence of such employment removed from Charles County to Washington.[17]

It is conceded in the court's opinion that the old law was that a ''mere removal by a voter from the State, if that removal was in pursuance of a fixed intention to return, did not deprive him of his right to vote in Maryland,'' and that ''this is the law today.''

Before the Act of 1890, a removal from the State furnished some evidence of an intention to acquire a new residence elsewhere.

The effect of the Act of 1890 is simply that the probative force of such a removal is strengthened, as evidence of an intention to abandon the State.

In this case the affidavit was not made.

In the case of *Lancaster v. Herbert*[18] decided in 1891, the

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16 *Southerland v. Norris,* 74 Md. 326, 328.

17 *Southerland v. Norris,* 74 Md. 326.

18 74 Md. 334, 341. See also *Thomas v. Warner,* 83 Md. 14.

affidavit was made, but the affiant did not in fact return. The court held that he had lost his residence, that "he must make the affidavit and he must actually return to Maryland."

This would seem to require a certain limitation to be placed upon the statement that "a mere removal by the voter from the State, if that removal was in pursuance of a fixed intention to return, did not deprive him of his right to vote in Maryland." Such fixed intention must under the statute be proved by his actual return, according to the terms of his affidavit, or it will not be sufficient to enable him to keep his residence.

The Act of 1902 which is now found in Bagby's Code of 1912 as article XXXIII, section 29, provided that all persons coming into this state from any other state or territory of the United States, must register their intention to be citizens and residents of this state with the clerk of the court; that the entry then made by the clerk of the court, or a copy thereof, should be the only competent evidence of such intent, and that no one coming into the State should be entitled to registration until one year after he had made such declaration.

This statute has been upheld on the ground that "the idea of residence is compounded of fact and intention; to effect a change of it there must be an actual removal to another habitation and there must be an intention of remaining there;" and that it was within the power of the legislature to prescribe that the only evidence of such intention should be the prescribed declaration made before the clerk of the court.[19]

Article I—Sections II and III.

Sec. II. "No person above the age of twenty-one years, convicted of larceny or other infamous crime, unless pardoned by the Governor, shall ever thereafter, be entitled to vote at any election in this State; and no person under guardianship, as a lunatic, or as a person *non compos mentis* shall be entitled to vote."

Sec. III. "If any person shall give, or offer to give, directly or indirectly, any bribe, present or reward, or any promise, or any security, for the payment or the delivery of money, or any other thing, to induce any voter to refrain from casting his vote, or to prevent him in any way from voting, or to procure a vote for any candidate or person proposed, or voted for, as Elector of President and

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[19] *Pope v. Williams,* 98 Md. 59, 67; affirmed in *Pope v. Williams,* 193 U. S. 621; see also *Thomas v. Warner,* 83 Md. 20.

Vice-President of the United States, or Representative in Congress, or for any office of profit or trust, created by the Constitution or Laws of this State, or by the Ordinances, or Authority of the Mayor and City Council of Baltimore, the person giving, or offering to give, and the person receiving the same, and any person who gives, or causes to be given, an illegal vote, knowing it to be such, at any election to be hereafter held in this State, shall, on conviction in a Court of Law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter."

These two sections enumerate the exceptions which will deprive a person, qualified to register under the first section, from such registration. They are:

1st: A person, above the age of twenty-one years, convicted of larceny or other infamous crimes and not pardoned by the Governor. All felonies are "infamous crimes"[20] and so are certain other misdemeanors, like perjury, not classed as felonies, and the rule laid down is: "that the Constitution in providing for exclusion from suffrage of persons whose character is too bad to be permitted to vote, could only have intended by the language used, such crimes as were 'infamous' at common law, and are described as such in common law authorities."[21]

Whether a crime is or is not punishable by confinement in the penitentiary is not a test of whether it is infamous. The test is, is it a felony, or a misdemeanor classified as infamous by common law authorities.

2nd: A person under guardianship as a lunatic or a person *non compos mentis.*

3rd: Any person giving, offering to give, or receiving, directly or indirectly, any bribe for a vote or for refraining from voting, and convicted thereof.

4th: Any person giving or causing to be given an illegal vote, knowing it to be such, and convicted thereof.

Article I—Section IV.

"It shall be the duty of the General Assembly to pass Laws to punish, with fine and imprisonment, any person who shall remove into any election district or precinct of any ward of the City of Baltimore, not for the purpose of acquiring a *bona fide*

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20 *Black v. State,* 2 Md. 376.

21 *State v. Bixler,* 62 Md. 354, 360; *State v. Floto,* 81 Md. 600. See also *Garitee v. Bond,* 102 Md. 379.

residence therein, but for the purpose of voting at an approaching election, or who shall vote in any election district or ward in which he does not reside (except in the case provided for in this Article), or shall at the same election, vote in more than one election district, or precinct, or shall vote, or offer to vote, in any name not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside."

Article I—Section V.

"The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of election of the right of every person thus registered to vote at any election thereafter held in this State; but no person shall vote at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; and until the General Assembly shall hereafter pass an Act for the Registration of the names of voters, the law in force on the first day of June, in the year eighteen hundred and sixty-seven, in reference thereto, shall be continued in force, except so far as it may be inconsistent with the provisions of this Constitution; and the registry of voters, made in pursuance thereof, may be corrected, as provided in said law; but the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof."

We have already alluded to this section in connection with section I.

The legislature has provided for registration in compliance with this section,[22] and in consonance with the provisions thereof, anyone, whose name appears on the registration books, thereby furnishes to the judges of election conclusive evidence of his right to vote. This section, however, does not apply to the elections of municipal corporations other than the City of Baltimore. These elections may be held in conformity with the provisions of their charters.[23]

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22 See *Mincher v. State,* 66 Md. 227, 232, *Cox v. Bryan,* 81 Md. 287, 291.

23 *Smith v. Stephan,* 66 Md. 381, 383.

Article I—Section VI.

"Every person elected or appointed to any office of profit or trust, under this Constitution, or under the laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath or affirmation: I ....., do swear (or affirm, as the case may be), that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and Laws of this State (and, if a Governor, Senator, Member of the House of Delegates or Judge), that I will not, directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as....."

We have already alluded to this section in connection with article XXXVII of the Declaration of Rights.

In article VI, section I, there is a constitutional provision that "The Comptroller and Treasurer * * shall take such oath and enter into such Bonds * * as are now or may hereafter be prescribed by law."

With the exception of these officials, no other oath can be exacted by the legislature from any officer. As matter of fact, however, the legislature has at times prescribed an oath, notably in the case of the Police Commissioners of Baltimore City,[24] and our court has held that "Whilst this oath cannot be prescribed under section VI, article I, of the State Constitution as a qualification for holding the office of Police Commissioner, because no oath other than the one set forth in the Constitution itself can be imposed by the legislature for such a purpose—*Davidson's Case, 91 Maryland 681*—still the terms of the oath may well be treated as defining some of the duties of the office. Though a refusal to take this statutory oath would not deprive the Police Commissioner of the office if he qualified by subscribing to the oath prescribed by sec. 6, art. I, of the Constitution, the things which the statutory oath undertakes to require him to swear that he will do or will refrain from doing may be regarded as part of his duty when he has qualified by taking the constitutional oath."[25]

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24 Act of 1900, Chapter 15.

25 *Keyser v. Upshur,* 92 Md. 726, 728.

It has been decided that members of certain boards, such as school commissioners or members of a racing commission of a county are not within the meaning of this section, such officials being merely "members of public corporations exercising not personally as civil officers, the duties imposed upon them, but discharging those duties solely through, and in the name of the corporate entity of which, by their appointment, they became members."[26]

Where, however, there is no question as to the office coming within the provisions of this section, compliance therewith has been strictly insisted upon by the court. Until this oath has been taken a public officer cannot enter upon the duties of his office, nor be entitled to his salary.[27]*

Article I—Section VII.

"Every person hereafter elected or appointed to office in this State, who shall refuse or neglect to take the oath or affirmation of office provided for in the sixth section of this Article, shall be considered as having refused to accept the said office; and a new election or appointment shall be made, as in case of refusal to accept, or resignation of an office; and any person violating said oath shall, on conviction thereof, in a Court of Law, in addition to the penalties now or hereafter to be imposed by Law, be thereafter incapable of holding any office of profit or trust in this State."

This section is, of course, very closely connected with the one preceding, and like it, it is strictly construed in regard to the officers embraced within its terms.

Where either by constitutional or statutory provisions a time is limited within which the oath should be taken, the election or appointment is absolutely avoided, and cannot be revived.[28]

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26 *School Comrs. v. Goldsborough,* 90 Md. 193, 201; *Clark v. Harford Agri. & Breed. Asso.,* 118 Md. 608. *Illustration XLVIII.

27 *Thomas v. Owens,* 4 Md. 189; Jump v. Spence, 28 Md. 1. *Illustration XLIX, *Archer v. State,* 74 Md. 410; *Archer v. State,* 74 Md. 443.

28 *Archer v. State,* 74 Md. 443, *Illustration L; *Little v. Schull,* 118 Md. 454, *Illustration LI.

ILLUSTRATIONS.

CONSTITUTION, ARTICLE I.

ILLUSTRATION XLIII.

The Act of 1896 provided that at the election of town commissioners of Bel Air, a municipality chartered by the legislature, only male residents, above twenty-one years of age, and assessed with $100.00 worth of real or personal property on the tax books of the town, should be entitled to vote.

HELD: The Act was valid.

Hanna v. Young, 84 Md. 179.

ILLUSTRATION XLIV.

Owens in 1890 was a legal resident of the first precinct of the twenty-second ward of Baltimore City, and was registered as a qualified voter in that precinct. Late in September, 1891, he removed to the ninth precinct of the seventh ward, which is in the same legislative district.

At the October sitting, 1891, his name was stricken from the list of qualified voters of the district from which he had removed.

HELD: The action was properly taken. "By moving from one ward to another in the same legislative district he did not lose his right to vote in that legislative district, but he was no longer authorized to vote in the ward from which he had removed."

Kemp v. Owens, 76 Md. 235.

ILLUSTRATION XLV.

Munter and others were "sea-faring men" who were born in Baltimore and had lived nowhere else as a permanent residence.

They were registered from a house, the owner of which testified that they had never lived there, but had merely slept in his kitchen for a couple of nights and had asked him if he had any objection to their registering therefrom; to which the owner had responded that he had no objection if it were permitted by law.

HELD: Their names should not be stricken from the books. It did not appear that they did not live in the legislative district where they were registered, so far as they had a home anywhere, and there is no Constitutional requirement that a voter must have his home in any particular spot within the legislative district.

Langhammer v. Munter, 80 Md. 518.

ILLUSTRATION XLVI.

Gilbert was born in Harford County and lived there with his mother until he was twenty-one years of age. He then removed to Baltimore City and entered Morgan College as a student, where he lived for seven years engaged in the prosecution of his studies, except during vacation when he was employed as a waiter at different summer resorts, returning when the season was over, to the college. While thus pursuing his studies, he supported himself entirely by his own efforts, visiting his mother, who continued to live in Harford County, once a year for two or three days at a time.

Upon his arrival at the age of twenty-one, he registered as a voter in Harford County, but never voted there. Several years after his removal to Baltimore, he got a transfer of his registration from Harford County and was registered as a voter in Baltimore City, and actually voted as such.

Under a law requiring a new registration, Gilbert applied to register in Baltimore City, but was objected to on the ground that he had not acquired sufficient residence.

HELD: His residence in Baltimore City was sufficient, and he was entitled to be registered as a voter therein.

Shaeffer v. Gilbert, 73 Md. 66.

ILLUSTRATION XLVII.

Howard was a clerk of the Weems Steamboat Company; had been for more than three years when he applied for registration as a resident of Baltimore City, registering from pier two, Light street wharf, Baltimore, the home port and pier of his steamer.

Howard was unmarried and had a room in the steamer, where he slept. He had never voted in Baltimore or elsewhere. He had come to Baltimore from St. Marys County where he would return in the event of his losing employment. He had no room or other place to live except on the boat. He had lived with his aunt on Preston street, Baltimore, about one or two weeks before he was employed with the steamboat company.

HELD: Howard had not acquired a residence in Baltimore City; neither had he lost his residence in St. Mary's County.

Howard v. Skinner, 87 Md. 556. . .

ILLUSTRATION XLVIII.

The Act of 1912 provided for the regulation, control and licensing of horse-racing within Harford County, for creating a Harford County Racing Commission and prescribing its powers and duties; but there was no provision requiring the members of the commission to take an oath of office, no civil commission was issued to them, and it was provided that the commission must act by a majority vote, the individual members thereof exercising no powers except by and through a majority of the body itself.

The members of the commission did not in fact take an oath of office, and it was contended, therefore, that all acts purporting to be done by it were void.

HELD: That it was not contemplated that the members of the commission should be independent officers or persons otherwise than members of a quasi corporation, and it was not intended that they should act as individuals. They were not, therefore, persons elected or appointed to any office of profit or trust under the Constitution or under the laws made pursuant thereto. No oath, therefore, was required of them.

Clark v. Harford Agri. & Breed. Asso., 118 Md. 608.

ILLUSTRATION XLIX.

In 1865, Spence and Franklin were candidates for judge, Spence being the then incumbent. Franklin was returned as elected, was commissioned by the governor, and on November 29th, 1865, took his oath of office and commenced performance of his duties.

Spence contested Franklin's election before the House of Delegates, was successful and was declared elected. Spence thereupon (February 14th, 1866) was commissioned by the governor, took his oath of office and entered upon the discharge of his duties.

Spence then claimed his salary during the time that Franklin discharged the duties of the office, claiming that it having been decided that Franklin never was elected, and he being ready, willing and anxious to qualify from the date of his election, he was *de jure* judge, and ought to receive salary from the time of his election; and that even if his claim could not be sustained on that ground, it could be sustained, because if Franklin had never been elected, he, Spence, had continued in office.

HELD: That the language of article 1, section 4, is clear, and prevents any one, even under circumstances such as above recited, from being considered *in office* until he qualified after receiving a commission, and taking the oath prescribed.

Jump v. Spence, 28 Md. 1.

ILLUSTRATION L.

Archer was elected state treasurer in January, 1886, and duly qualified. In January, 1888, he was elected his own successor. Article VI, section 5, of the Constitution declares that: "The treasurer shall qualify within one month after his appointment by the legislature." Archer, however, failed and neglected to take the oath of office under his second appointment until November 18th, 1889. On that day he took the oath of office before the governor and the latter approved the bond which was then presented.

HELD: By Archer's failure to take the oath within a month from his appointment, he was in the same position as if he had

refused to accept his office. His attempt to take the oath more than a year afterwards was a void act and could not revive the appointment. His second election was, therefore, void, and the sureties upon the bond given for his faithful performance of the duties of the office to which he had been appointed in 1888 were not liable.

Archer v. State, 74 Md. 443.

ILLUSTRATION LI.

Under the Ordinance of 1912, Schull was appointed a constable for the first ward of Baltimore City for two years from said date. On the thirteenth day of May, 1912, he offered to take his official oath. Section 1 of article XX of the Code, in force at the time, declared that: "Every constable appointed shall within thirty days after his appointment make the declaration of religious belief, and take and subscribe the oath prescribed by the Constitution."

HELD (*Inter Alia*): That Schull had forfeited his right to the office by not taking the oath within thirty days.

Little v. Schull, 118 Md. 454.

EXECUTIVE DEPARTMENT.

Article II. Section 1

"The executive power of the State shall be vested in a Governor, whose term of office shall commence on the Second Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified; but the Governor chosen at the first election under this Constitution shall not enter upon the discharge of the duties of the office until the expiration of the term for which the present incumbent was elected; unless the said office shall become vacant by death, resignation, removal from the State, or other disqualification of the said incumbent."

In the case of *Miles v. Bradford,* 22 Maryland 170, 185, our Court of Appeals has stated that "The chief magistrate or Governor of the State bears the same relation to the State that the President does to the United States, and in the discharge of his political duties, is entitled to the same immunities, privileges and exemptions."

Wherever a discretionary power is lodged in the governor as executive, he is as free from the control of the judiciary in his exercise of that power, as is the President of the United States.[1*]

There are, however, certain differences between the provisions of the Maryland Constitution and law, in regard to the governor, and the Federal Constitution and law, in regard to the President.

Perhaps the most important differences occur in regard to his power to appoint and to remove from office, which will be referred to when we consider these provisions.

This, however, seems to be the proper place to note, that while the President of the United States has never been required by judicial writ, mandamus or injunction, to perform or refrain from performing any act, the governor of Maryland has been subjected to the writ of mandamus, and the power of the court to issue this writ, compelling him to perform any ministerial duty, is now beyond question.

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1 *Miles v. Bradford,* 22 Md. 170, *Illustration LII.

In *Magruder v. Swann, Governor,*[2] a mandamus was granted requiring Governor Swann to issue a commission to Judge Magruder, who was shown by the uncontested returns, to have been elected judge, and in *Warfield v. Vandiver,*[3] the governor was required by mandamus to publish a proposed Constitutional Amendment.

The provision that the governor's term shall commence on the second Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified, is so plain as to require no comment.

The last clause of the section (although a similar clause is found in the Constitution of 1864), recalls the struggles in Maryland in the reconstruction period, and the alleged compromise by which Governor Swann was induced to forbear opposition to the Constitution of 1867, in consideration of being allowed to serve out his full term as governor.

In one case it was argued that during the time which intervened between the election of Governor Bowie, under the Constitution of 1867, and the expiration of the term of Governor Swann, Governor Swann was filling a part of the term assigned by the Constitution to Governor Bowie, so that appointments made then by Governor Swann to continue "during the term of the Governor" would continue throughout the term of Governor Bowie. But the Court of Appeals overruled this contention, on the ground that the terms of office of Governor Swann and Governor Bowie were entirely distinct, and until Governor Swann's term expired he was Governor in every sense, and continued to hold, exercise and discharge the duties of his office.[4]

Article II. Section 2.

"An election for Governor, under this Constitution, shall be held on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-seven, and on the same day and month in every fourth year thereafter, at the places of voting for delegates to the General Assembly; and every person qualified to vote for Delegates shall be qualified and entitled to vote for Governor; the election to be held in the same manner as the election of Dele-

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2 25 Md. 173.

3 101 Md. 78.

4 *Silver v. Magruder,* 32 Md. 387. See also *Smith v. Thursby,* 28 Md. 244, 258.

gates, and the returns thereof under seal to be addressed to the Speaker of the House of Delegates, and enclosed and transmitted to the Secretary of State, and delivered to said Speaker, at the commencement of the session of the General Assembly next ensuing said election."

It will be noticed that by reason of the date of elections fixed in the Constitution, the gubernatorial elections in Maryland never can occur in the year when elections for the President of the United States or members of congress are held. It will also be noticed that no statute can deprive any person, qualified to vote for delegates to the General Assembly, of his right to vote for governor.

Article II. Section 3.

"The Speaker of the House of Delegates shall then open the said returns in the presence of both Houses; and the person having the highest number of votes, and being constitutionally eligible, shall be the Governor, and shall qualify, in the manner herein prescribed, on the second Wednesday of January next ensuing his election, or as soon thereafter as may be practicable."

Article II. Section 4.

"If two or more persons shall have the highest and an equal number of votes for Governor, one of them shall be chosen Governor by the Senate and House of Delegates, and all questions in relation to the eligibility of Governor, and to the returns of said election, and to the number and legality of votes therein given, shall be determined by the House of Delegates, and if the person or persons, having the highest number of votes, be ineligible, the Governor shall be chosen by the Senate and the House of Delegates. Every election of Governor by the General Assembly shall be determined by a joint majority of the Senate and House of Delegates, and the vote shall be taken *viva voce*. But if two or more persons shall have the highest and an equal number of votes, then a second vote shall be taken, which shall be confined to the persons having an equal number; and if the vote should again be equal, then the election of Governor shall be determined by lot between those who shall have the highest and an equal number on the first vote."

It will be observed that the provisions for determining who has been elected governor at any particular election, found in these sections, are very full and particular. The returns are to be

opened by the speaker of the House of Delegates, and all questions as to the returns or as to the eligibility of the governor are to be determined by the House of Delegates. In case the person thus found by the House of Delegates to have received the greatest number of votes, should be ineligible, the provision requiring an election by a joint majority of the Senate and House of Delegates, and in case of a tie, the provision requiring the making of a choice by lot, would seem sufficient to prevent a deadlock under any circumstances.

Article II. Section 5.

"A person to be eligible to the office of Governor must have attained the age of thirty years, and must have been for ten years a citizen of the State of Maryland, and for five years next preceding his election a resident of the State, and, at the time of his election, a qualified voter therein."

It will be noticed that the age required in the case of the governor of Maryland is the same as the age required for a Senator of the United States, but while a senator need only have been a citizen of the United States for nine years, the governor of Maryland must have been a citizen of Maryland for ten years, and there is a requirement of residence in the state of five years, which is not found in the Federal Constitution as a qualification for either senator or representative, although there is a requirement of residence of fourteen years in this country, in order to make a candidate for President eligible under the Federal Constitution. No requirement as to being a "qualified voter" is found in the Federal Constitution in reference to eligibility for any office.

Article II. Section 6.

"In the case of death or resignation of the Governor, or his removal from the State, or other disqualification, the General Assembly, if in session, or if not, at their next session, shall elect some other qualified person to be Governor for the residue of the term for which the said Governor had been elected."

Article II. Section 7.

"In case of any vacancy in the office of Governor, during the recess of the Legislature, the President of the Senate shall discharge the duties of said office, until a Governor is elected, as herein provided for; and in case of the death or resignation of the said President, or of his removal from the State, or of his refusal to serve, then the duties of said office shall, in like manner, and for the same interval, devolve upon the Speaker of the House of Delegates. And the Legislature may provide by Law, for the impeachment of the Governor; and, in case of his conviction, or his inability, may declare what person shall perform the Executive duties; and for any vacancy in said office not herein provided for, provision may be made by law; and if such vacancy should occur without such provision being made, the Legislature shall be convened by the Secretary of State for the purpose of filling said vacancy."

There is no such office as lieutenant-governor in Maryland. When the governor's office becomes vacant, full authority for filling it is given to the legislature, if in session, and if vacancy should occur during a recess of the legislature, the president of the senate temporarily fills the office of governor, with provisions made for any other contingency which might happen. During Mr. Cleveland's administration, Robert M. McLane, being then governor, was appointed minister to France during the recess of the legislature, and Henry Lloyd being president of the senate became governor according to the provisions of these sections, and was afterwards elected by the legislature.

The legislature has never passed any law, either providing for the impeachment of the governor, or making further provisions in case of a vacancy in that office, nor has there as yet been any occasion for such legislation.

Article II. Section 8.

"The Governor shall be the Commander-in-Chief of the land and naval forces of the state; and may call out the Militia to repeal invasions, suppress insurrections, and enforce the execution of the Laws; but shall not take the command in person, without the consent of the Legislature."

Article II. Section 9.

"He shall take care that the Laws are faithfully executed."

It is a little difficult to see what additional force to the provision in the eighth section that the governor "shall enforce the execution of the Laws" is given by the ninth section that the "Governor shall take care that the laws are faithfully executed," and it would appear that one of these clauses is simply a repetition of the other.

The first clause of the eighth section places the governor, in regard to the military forces of Maryland, in the same position as that in which the President of the United States is placed in regard to the Federal forces, by the first clause of section 2 of Article II of the U. S. Constitution.

The first part of the second clause of the 8th section gives to the governor, a power to call out the militia similar to that which under article I, section 8, clause 15 of the U. S. Constitution, is lodged in the congress, while the second part of this clause, together with its duplication in section 9 already alluded to, vests in the governor the same power to see that the laws of the State are faithfully executed, as is given to the President in reference to the laws of the United States under article II, section 3, clause IV of the Federal Constitution.

In the case of Scholle v. State,[1] which involved the validity of a statute forbidding anyone to practice medicine (with certain exceptions) who had not been licensed by a Board of Medical Examiners appointed by "The Medical and Chirurgical Faculty of Maryland," the point was made that this was committing the execution of the law to a private corporation not an officer or agent of the government, and thereby the due execution of the law was "farmed out" to a person not responsible to the State, that the executive was, therefore, powerless to enforce this law, and that this rendered the law unconstitutional under the sections we are now considering.

The Court of Appeals, however, overruled the contention.

The last clause of the 8th section, forbidding the governor, without the consent of the legislature, from taking command of

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1 90 Md. 729, 733.

the military forces in person, has no corresponding provision in the Federal Constitution.

Article II. Section 10.

"He shall nominate, and by and with the advice and consent of the Senate, appoint all civil and military officers of the State, whose appointment or election is not otherwise herein provided for; unless a different mode of appointment be prescribed by the Law creating the office."

The effect of this section is to confer upon the legislature full power to designate by whom any officer shall be appointed, unless the mode of his appointment is specified in the Constitution.

But if the Constitution or the legislature creates an office, but does not designate by whom the officer shall be appointed, the governor, by virtue of this section, makes the appointment by and with the advice of the senate, the same as if he had been specially authorized to do so.[1]

The power of appointment to office has been held, under this clause, not to be essentially executive in the sense that it is inherent in, and necessarily belongs to, that department;[2] and accordingly it has been held by our Court of Appeals that the legislature may in the act creating an office name the officers;[3*] that it may provide that any person who pays a certain license fee may discharge certain official, or at least *quasi* official, duties;[4*] and that the performance of such duties may be entrusted by the legislature to persons appointed by private corporations.[5*]

Of course, this sweeping legislative discretion would include the power to vest the appointment in the governor alone, acting without the senate.[6]

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1 *Davis v. State,* 7 Md. 151, 161.

2 *Balto. v. State,* 15 Md. 376, 455.

3 *Balto. v. State,* 15 Md. 376, *Illustration LIII; *O'Brian v. Co. Commrs.,* 51 Md. 15.

4 *Davis v. State,* 7 Md. 151, *Illustration LIV.

5 *Scholle v. State,* 90 Md. 729, *Illustration LV.

6 *Ash v. McVey,* 85 Md. 119.

Article II. Section 11.

"In case of any vacancy during the recess of the Senate, in any office which the Governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force until the end of the next session of the Legislature, or until some other person is appointed to the same office, whichever shall first occur; and the nomination of the person thus appointed during the recess, or of some other person in his place, shall be made to the Senate within thirty days after the next meeting of the Legislature."

It is evident that the convention which framed the present Constitution was unwilling to confer the power of appointment to office upon the governor alone, except in cases of absolute necessity;[7] and our courts, showing apparently the same feeling, have construed the power, given him in this section, to make recess appointments, with some strictness. Accordingly, although our Court of Appeals has stated that "there is no technical or peculiar meaning to the word 'vacancy,' as applied to an office," but that it must be understood in its ordinary signification of "unoccupied."[8] it has been held that "a vacancy must actually exist before the power of appointment can be exercised," and "the governor cannot make a vacancy in the office by appointing a successor to the incumbent."[9]

Until there is no person who is *de jure* performing the duties of the office, the governor has no jurisdiction to appoint to it.

Thus, where an adjutant-general, appointed under the old Constitution, was to continue in office until his successor was appointed by the governor and confirmed by the senate, and the senate refused to act, the Court of Appeals held that, until the proper action was taken by both the governor and the senate, there was no vacancy, and the governor could not himself make a new appointment during a recess of the senate.[10]

So, in the ordinary case of an official appointed for a specified term, *"and until his successor qualifies according to law,"* there is no vacancy arising in the office merely by the expiration of

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7 *Smoot v. Somerville,* 59 Md. 84.

8 *Levin v. Hewes,* 118 Md. 624, 644.

9 *Smoot v. Somerville,* 59 Md. 84, 94; (*Alvey*) quoted in *Cull v. Wheltle,* 114 Md. 58, 91.

10 *Watkins v. Watkins,* 2 Md. 341. See also *Taylor v. Hebden,* 24 Md. 202.

the term, nor by the nomination thereafter of his successor, by the governor.

Until his successor is both nominated by the governor and confirmed by the senate, the original appointee will hold the office *de jure*.[11]*

So, should an officer be legally suspended, the governor would have no power to fill the place by appointment, because no "vacancy" would be created by mere "suspension,"[12] and although the general intent of this, and cognate provisions in the Constitution, is manifestly to prevent any *hiatus* in offices, the court will not hold a vacancy to exist merely because of the argument *ab inconvenienti*.[13]*

When a vacancy does exist, the person appointed by the governor to fill it can, in no event, hold his commission and perform his duties for any longer time than until the end of the session of the legislature which meets next after his appointment.[14]

When this legislature adjourns, if there has been no other appointment, a vacancy automatically results, and this vacancy the governor has power to fill.[15]*

The nomination, which this section provides shall be made to the senate, "within thirty days after the next meeting of the legislature," is a nomination for the time during which the appointment is made by the governor; and should the same person as was appointed during recess, be so nominated, and such nomination be confirmed by the senate, the appointee thereby acquires no right to hold the office beyond the time for which he was originally appointed and commissioned by the governor.[16]

Therefore, whether such recess appointment is approved or disapproved by the senate, the party appointed will continue to hold his office for the same term. Should, however, the nomination within thirty days be of some other person, and he be confirmed by the senate, his commission may well run until the expiration of the term and until a successor be appointed and qualify.[17]

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11 *Smoot v. Somerville,* 59 Md. 84. *Illustration LVI.

12 *Cull v. Wheltle,* 114 Md. 58, 92.

13 *Munroe v. Wells,* 83 Md. 505, *Illustration LVII.

14 *Smoot v. Somerville,* 59 Md. 84, 89.

15 *Kroh v. Smoot,* 62 Md. 172, *Illustration LVIII; *Sappington v. Slade,* 91 Md. 640.

16 *Kroh v. Smoot,* 62 Md. 172.

17 *Kroh v. Smoot,* 62 Md. 172.

The distinction here seems to be a fine one, but it probably rests upon the fact that, in the one case, the Commission would be issued by the governor alone, for a time expressly defined in the Constitution, and in the other case, the commission would be issued by the governor after the consent of the senate had been obtained.

In *Ash v. McVey,* 85 Md. 119, decided in 1897, language was used which seemed to indicate that, when an office was created by statute and not by the Constitution, the governor might be authorized, by statute, to fill such vacancy in the office as might occur, for the unexpired term, even although such term might extend beyond "the end of the next session of the legislature." But in 1900, the court, speaking through Chief Judge McSherry, one of the judges participating in the decision of *Ash v. McVey,* flatly lays down the rule that, even though an office may be one created by the legislature, no legislative enactment can extend the term of an appointment to fill a vacancy in a civil office occurring during recess of the senate, beyond the session of the legislature following the appointment—no matter what words may be used in the statute.[18*]

Inasmuch as the life of a legislature is limited to ninety days from the first Wednesday in January, it will always happen, under the construction of this section above outlined, that the term of recess appointees will expire in the early part of April, while the term of their successors—except in the case of inspectors of tobacco—appointed by and with the consent of the senate, will not commence until the first Monday in May.[19] To cover this period, *ad interim* appointments may be made by the governor.[20]

The "office which the governor has power to fill" is an office to which he may originally appoint, and this section, therefore, does not cover the case of a vacancy in an office which is filled in the first instance by an election by the people, but in which, if a vacancy occur, the governor is empowered to appoint some one for the remainder of the official term.[21]

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18 *Sappington v. Slade,* 91 Md. 641, *Illustration LIX.
19 *Constitution,* Article II, Section 13.
20 *Kroh v. Smoot,* 62 Md. 172, 177.
21 *Cantwell v. Owens,* 14 Md. 215.

Article II. Section 12.

"No person, after being rejected by the Senate, shall be again nominated for the same office at the same session, unless at the request of the Senate; or be appointed to the same office during the recess of the Legislature."

There have been no questions arising under this section which have been decided by our Court of Appeals.

The meaning is perhaps too plain to furnish any difficulty. Should the governor attempt to nominate or appoint a person once rejected by the senate, contrary to the provisions of this section, the action would doubtless be held to be void, and of no effect, and the previous incumbent would simply continue in office.

Article II. Section 13.

"All civil officers appointed by the Governor and Senate shall be nominated to the Senate within fifty days from the commencement of each regular session of the Legislature; and their term of office, except in cases otherwise provided for in this Constitution, shall commence on the first Monday of May next ensuing their appointment, and continue for two years (unless removed from office), and until their successors, respectively, qualify according to Law; but the term of office of the Inspectors of Tobacco shall commence on the first Monday of March next ensuing their appointment."

Our Court of Appeals[22] has said that the "main and leading purposes of this section * * were two; the first was to limit a time within which the governor should make his nominations to the senate; and the second was to declare and make uniform the term of office for the officers to be nominated. * * It was manifestly the purpose of the framers of the Constitution that the term of office should commence and terminate with reference to the end of each regular biennial session of the legislature," and the particular day for the commencement of the term was but incidental to the primary purpose.

Therefore, although the courts are not justified in disregarding express limitations of the Constitution in order merely to avoid consequences which might seem anomalous,[23] the court

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22 *Dyer v. Bayne,* 54 Md. 87, 98.
23 *Kroh v. Smoot,* 62 Md. 172, 177.

held that, as to this section, it had a right to look to the general intent and adopt such construction as would maintain in force the main and leading purposes above mentioned, even though the letter of the provision might seem to favor another construction.[24]

Accordingly, where an inspector of tobacco was nominated within fifty days from the commencement of the session of the legislature in 1880, but was not confirmed by the senate until April 5th, 1880, nor commissioned until April 12th, 1880, it was held that the provision that the term of office of inspectors of tobacco should commence on "the first Monday of March, next ensuing their appointment," could not require his term to commence on the first Monday of March, 1881, because such a construction would conflict with the general intent of the section as above stated.[24]

As an independent reason for the same conclusion, it was also held that when an appointee of the governor is confirmed by the senate, the confirmation relates back to the date of the nomination.[25]

The term of the inspector in the above case was, therefore, held to commence as of the first Monday in March, 1880.

It has also been stated that "it is manifest," from the language employed in this section, taken in connection with sections 11 and 14 of this article, "that the power of appointment to civil offices was intended to be and was confided not to the governor alone, but to the *Governor and Senate,* and that the governor has no power to appoint to office without the advice and consent of the senate, except to fill vacancies in offices which may occur during the recess of the senate, or as provided by section 14 within ten days before its final adjournment."[26]

As we have already seen in considering the 11th section, the term of officials, appointed under the section now under consideration, continues *de jure* until their successors "qualify according to law." But the section itself contemplates "cases otherwise provided for in this Constitution," and such cases include those where an official term is fixed at a certain number of years, with no continuation provision. The term of officials holding under such tenure, expires when the stated time has

24 *Dyer v. Bayne,* 54 Md. 87, 100.
25 *Dyer v. Bayne,* 54 Md. 87, 102.
26 *Smoot v. Somerville,* 59 Md. 84, 88.

elapsed, and if no successors have been duly appointed and qualified, a "vacancy" exists, although the incumbent will remain in office *de facto* until the appointment and qualification of his successor.[27]*

The main object of the provision requiring nominations to be sent to the senate within fifty days after the commencement of each regular session of the legislature, is to afford to the senate full opportunity to ascertain and pass upon the fitness and qualifications of the several appointees nominated by the governor for its confirmation, which could not be done if the appointments were delayed until the last days of the session.

Where, then, the appointment to be made is under laws passed by the sitting legislature, the reason would not apply, and it would be absurd to hold that in such a case the intention of the framers of the Constitution was that the office could not be filled for two years. Consequently, nominations to fill such offices may properly be made more than fifty days after the commencement of the legislature.[28]

The civil officers mentioned in this section and the other sections of this article, have been defined as "governmental agents —they are natural persons—in whom a part of the state sovereignty is vested or imposed, to be exercised by *the individuals* so intrusted with it for the public good," and does not apply to members of *boards* called into corporate existence to conduct certain governmental functions, where the corporation, and not the individual members thereof, is vested with power to act.[29]*

In *Taylor v. Hebden,* 24 Md. 202, it is plainly intimated that the provision requiring nominations to be sent within fifty days from the commencement of each *regular* session of the legislature, should be strictly confined to the biennial sessions provided for in the Constitution, and would not be applicable to any session specially called by the governor.

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27 *Claude v. Wayson,* 118 Md. 477, *Illustration LXI.

28 *Merrill v. Garrett Co.,* 70 Md. 269; *Calvert Co. v. Hellen,* 72 Md. 603; *Levin v. Hewes,* 118 Md. 624, 644.

29 *School Commissioners v. Goldsborough,* 90 Md. 193, 207. *Illustration LXII; *Sappington v. Slade,* 91 Md. 640; *Ash v. McVey,* 85 Md. 119.

Article II. Section 14.

"If a vacancy shall occur during the session of the Senate, in any office which the Governor and Senate have the power to fill, the Governor shall nominate to the Senate, before its final adjournment, a proper person to fill said vacancy, unless such vacancy occurs within ten days before said final adjournment."

Under this section, a vacancy, occurring within ten days before the final adjournment of the senate, is treated as if it had occurred during the recess of the senate.[30]

There has been no case decided which involved the construction of the Constitution in the event of a vacancy happening while the legislature was in session and before ten days from its adjournment, and in regard to which the Governor took no action until after the adjournment of the Senate.

It is possible that the governor might be compelled by mandamus to make some nomination. Should, however, the legislature adjourn without any action by the governor, it would seem that, inasmuch as there would exist a vacancy *de facto,* the governor could fill it under Section 11 of this article.

Article II. Section 15.

"The Governor may suspend or arrest any military officer of the State for disobedience of orders or other military offence; and may remove him in pursuance of the sentence of a Court Martial; and may remove for incompetency or misconduct all civil officers who received appointment from the Executive for a term of years."

The provisions of this section differentiate, in perhaps the most important particular, the executive power conferred upon the governor of Maryland from the like power conferred upon the President of the United States.

In regard to federal officials, the power to remove is based upon the theory that it is included in the power to appoint,[31] and the President has, therefore, the right to remove executive appointees without trial.

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30 *Smoot v. Somervile,* 59 Md. 84, 88.
31 *Cull v. Whettle,* 114 Md 58, 87.

In regard to Maryland appointments, the power of the governor to remove is limited by the section we are now considering. In connection with this section, it may be well to first distinguish between the different kinds of officials:

1st: There are members of boards, such as school boards, possibly appointed by the governor, but who, as we have seen, in connection with section 13, act only as members of the corporate board, and who are not civil officers at all within the meaning of this article, and, therefore, cannot be removed under the provisions of this section.

2nd: Judicial officers, as to whom the governor has no power of removal whatever.[32]

3rd: Military officers. These may be arrested or suspended by the governor, "for disobedience of orders or any other military offence," but can be removed *only* "in pursuance of a sentence of the court-martial." If so removed during a recess of the senate, the governor may fill the vacancy so caused as provided in section 11.[33]

4th: "Civil officers who received appointment from the executive for a term of years." These officers include not only those who have received their appointments from the governor acting alone, but also those whom the governor has appointed, acting with the advice and consent of the senate,[34] and cannot be *suspended* at all,[35*] but may be removed by the governor "for incompetency or misconduct." The governor, however, cannot remove such officers except after "providing for notice to the party complained of and opportunity for defense, the examination of witnesses, and a full hearing of the case."[36] The governor's proceedings in such case are regulated by article 41 of the present code.[36]

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32 *Cantwell v. Owens,* 14 Md. 215, 227.

33 *McBlair v. Bond,* 41 Md. 137, 156.

34 *Harman v. Harwood,* 58 Md. 1.

35 *Cull v. Wheltle,* 114 Md. 58, *Illustration. LXIII.

36 *Harman v. Harwood,* 58 Md. 1; *Miles v. Stevenson,* 80 Md. 358; *Townsend v. Kurtz,* 83 Md. 331; *Cull v. Wheltle,* 114 Md. 58.

Article II. Section 16.

"The Governor shall convene the Legislature, or the Senate alone, on extraordinary occasions; and whenever from the presence of an enemy, or from any other cause, the Seat of Government shall become an unsafe place for the meeting of the Legislature, he may direct their sessions to be held at some other convenient place."

The power herein given to the governor to convene the legislature may be compared to the power given the President to convene the congress by the 2nd clause of section 3 of article II of the Federal Constitution.

The differences to be noted are slight and consist in the facts that, while the President is in terms given the rather useless power to convene the House of Representatives by itself, there is no such power given to the governor in regard to the House of Delegates, and there is given to the governor no such power to adjourn the legislature, as is conferred upon the President.

The latter clause of this section must be read in connection with article XI of the Declaration of Rights, and secures the meeting of the legislature at Annapolis, unless for some cause the state capitol shall become "an unsafe place."

Article II. Section 17.

"To guard against hasty or partial legislation and encroachments of the Legislative Department upon the co-ordinate Executive and Judicial Departments, every Bill which shall have passed the House of Delegates, and the Senate shall, before it becomes a law, be presented to the Governor of the State; if he approve he shall sign it, but if not, he shall return it with his objections to the House in which it originated, which House shall enter the objections at large on its Journal, and proceed to reconsider the Bill; if, after such reconsideration, three-fifths of the members elected to that House shall pass the Bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if it pass by three-fifths of the members elected to that House it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the Governor within six days (Sundays excepted), after it shall have been presented to him, the same shall be a law in like manner as if he signed it, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a law."

("The Governor shall have power to disapprove of any item or items of any Bills making appropriations 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 or limitations prescribed for the passage of other Bills over the Executive veto.")

Our Court of Appeals has alluded to this "veto clause in our State Constitution" as being similar to that in the Federal Constitution,[37] but there are differences, some slight and some well worthy of notice.

In the Federal Constitution the veto clause is contained in the legislative article.

In the Maryland Constitution, it is found in the executive article.

In the Federal Constitution, no reason is given for the existence of this power.

In the Maryland Constitution, it is stated to be "to guard against hasty or partial legislation and encroachments of the Legislative Department upon the co-ordinate Executive and Judicial Departments."

In congress, two-thirds of each house must concur in order to override the veto.

In our legislature, the fraction necesary for that purpose, is three-fifths.

In the Federal Constitution, it is provided that a bill shall become a law unless returned by the President within ten days (Sundays excepted) from the time of its presentation to him, unless congress by adjournment, prevent its return.

In the Maryland Constitution, the time so allowed is six days.

Under the Federal Constitution, the veto power must be exercised, if at all, upon the bill as a whole.

Under the Maryland Constitution, as now amended, the governor may veto any particular item or items of an appropriation bill, and it is doubtful whether he cannot cut down the amount of any such item, approving it in part and vetoing it in part.[38*]

There is also a difference in practice between the State and

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37 *Lankford v. Somerset County* 73 Md 105, 114.

38 *Nowell v. Harrington,* 122 Md 487, *Illustration LXIV.

Federal governments as to the signing of bills after the adjournment of the Legislature and Congress, respectively.

"The general practice of requiring bills to be presented to and signed by the President before the adjournment of Congress, has been established and adhered to from the first Congress under the Constitution, to the present,"[39] and it is doubtful whether a bill signed by the President after the adjournment of Congress would become a valid law. In Maryland the same practice prevailed from the adoption of the present Constitution, in which this veto clause appears for the first time, down to 1880.

But in 1880, bills were presented to and signed by the governor after the legislature had adjourned,[40] and this practice has become more and more general.

In 1890, the Australian Ballot Act was presented to the governor four days after the adjournment of the legislature, and was signed by him four days after its presentation, and the validity of the act was questioned on this ground, among others. Two judges (Robinson and Irving) upheld the contention, and thought that the Constitution required all bills to be signed by the governor during the session of the legislature, to become law. Six judges (Alvey, Miller, Bryan, Fowler, McSherry and Briscoe) concurred in the judgment of the court overruling the point, and expressly held that the governor can legally affix his signature after the adjournment of the legislature.[41]

As to whether the bill must be presented to the governor within some limited time after the adjournment of the legislature, and as to whether the governor must affix his signature within some limit of time after presentation, is not altogether clear.

The majority of the court in the case of *Lankford v. Somerset County,* above cited, assume that the bill will be presented "as soon as practicable after the adjournment,"[42] and express the opinion that the bill must be signed by the governor *within six days* from the time it is actually presented to him for his approval.

Judge Bryan, however, in his concurring opinion, thought

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39 *Lankford v. Somerset Co.,* 73 Md. 105, 115.

40 Robinson, J., dissenting in *Lankford v. Somerset County,* 73 Md. 105, 127, 127.

41 *Lankford v. Somerset County,* 73 Md. 105, 111, 121.

42 73 Md. 111.

that the governor had until the first day of June, when, according to section 31 of article 3 of the constitution, laws become effective, in which to affix his signature, and the judge cites several laws passed in the session of 1882 which were signed on May 31st of that year. It was not necessary to decide this point in the Lankford case, but the dictum of the court is certainly to the effect, that the governor ought to affix his signature within six days from the time of the presentation of the bill to him. With the exceptions above noted, the language of our Constitution is copied verbatim from the Federal Constitution.

This section speaks of a bill being "presented" to the governor, but says nothing of the mode and manner of presenting or authenticating bills before presentation. Unless the requirements of article 3, section 30 are met, there can be no valid presentation.[43]

It will be noted that the language of this section is that "every *bill* shall, before it becomes a law, be presented to the governor;" plainly intimating that if the governor signs the bill, it will become a *law*. This language has been held to exclude from the category of those measures which the governor has power to sign or veto, any measures which, when signed by him or passed over his veto, would not become laws. An amendment to the Constitution is one of the measures so excluded, inasmuch as it does not become law on being passed by the legislature, and signed by the governor. It has been held not to be within the scope of this section, and to be a measure to which the signature of the governor is not required, and would be inappropriate.[44]

The effect of this section generally, is as stated by our court, to provide three ways on which a bill, after having been passed by the senate and house of delegates, may become a law, "First, by being signed by the governor; secondly, by being passed over his veto; and thirdly, by his failure to return the bill within six days after receiving it, unless the adjournment of the General Assembly prevents its return."[45]

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43 *Hamilton v. State*, 61 Md. 14, 28.

44 *Warfield v. Vandiver*, 101 Md. 78.

45 *Warfield v. Vandiver*, 101 Md. 78, 113; *Nowell v. Harrington*, 122 Md. 487, 489.

Article II. Section 18.

"It shall be the duty of the Governor, semi-annually (and oftener, if he deems it expedient), to examine under oath the Treasurer and Comptroller of the State on all matters pertaining to their respective offices, and inspect and review their bank and other account books."

Article II. Section 19.

"He shall, from time to time, inform the Legislature of the condition of the State, and recommend to their consideration such measures as he may judge necessary and expedient."

This is practically the same duty in regard to the state as is laid upon the President in regard to the nation by the first clause of section 3 of article 2 of the Federal Constitution.

Article II. Section 20.

"He shall have power to grant reprieves and pardons, except in cases of impeachment, and in cases in which he is prohibited by other Articles of this Constitution; and to remit fines and forfeitures for offences against the State; but shall not remit the principal or interest of any debt due the State, except in cases of fines and forfeitures; and before granting a *nolle prosequi,* or pardon, he shall give notice, in one or more newspapers, of the application made for it, and of the day on or after which his decision will be given; and in every case in which he exercises this power, he shall report to either Branch of the Legislature, whenever required the petitions recommendations and reasons which influenced his decision."

By comparing the provisions of this section, with the third clause of the 2nd section of the 2nd article of the Federal Constitution, it will be noted that the pardoning power of the governor seems to be subject to more restrictions than are applicable to the pardoning power of the President.

On close examination, however, it will be seen that there is practically no restriction upon his pardoning any offence against the state, except in the case of an impeachment. The remitting of a debt due the state is not within the ordinary meaning of the pardoning power, and the provision for notice of application for pardon, and the day on or after which he

will decide the case, and the further requirement of a report to the legislature, if required, simply insure publicity, and do not at all affect his power to act according to his discretion.

Article II. Section 21.

"The Governor shall reside at the seat of government, and receive for his services an annual salary of four thousand five hundred dollars."

The salary of $4,500.00 is evidently inadequate for the Governor of Maryland to live upon. There are, therefore, at each session of the legislature, other appropriations made that have the effect, more or less directly, of increasing the governor's salary. Thus in 1912 there was an appropriation of $4,000.00 for repairs on the public buildings and grounds in the City of Annapolis, $2,000.00 for postage of the executive department, land office, comptroller's office and treasurer's office, $8,000.00 for fuel and lights for the public buildings and grounds, $5,000.00 for repairs, furniture and incidental expenses at the executive mansion, besides salary for clerk, messenger, stenographer, and $15,000.00 contingent fund, $2,000.00 for extra clerical assistance and expenses during sessions of the legislature, etc., and perhaps some other appropriations. Nevertheless, the amount of salary named in the Constitution is so small as to be unworthy of a state like Maryland.

Article II. Section 22.

"A Secretary of State shall be appointed by the Governor by and with the advice and consent of the Senate, who shall continue in office, unless sooner removed by the Governor, till the end of the official term of the Governor from whom he received his appointment, and receive an annual salary of two thousand dollars, and shall reside at the seat of government; and the office of Private Secretary shall thenceforth cease."

In the case of *Townsend v. Kurtz,*[46] the court says, *obiter,* that in spite of the language which would seem to give to the governor the discretionary power of removal, the appointment

[46] 83 Md. 331, 347.

of the secretary of state "must be sanctioned by the senate, that he is such an officer as is included in section 15 of article 2, and therefore, can only be removed for one of the causes named therein," (viz: incompetency or misconduct after trial) "unless possibly with the consent of the senate without cause, although we do not deem it necessary to pass upon that question."

Article II. Section 23.

"The Secretary of State shall carefully keep and preserve a record of all official acts and proceedings, which may at all times be inspected by a committee of either branch of the Legislature; and he shall perform such other duties as may be prescribed by law, or as may properly belong to his office, together with all clerical duty belonging to the Executive Department."

The duties laid upon the secretary of state by this section, seem to be very important, and rather disproportionate to the amount of salary allowed.

In *Lankford v. Somerset County,*[47] the original bill passed by the legislature had an endorsement upon it by the secretary of the senate, as having been presented to the governor on the 31st day of March, being the last day of the legislative session. The record, however, kept by the secretary of state, as provided by the section we are now considering, showed that the bill was actually presented to the governor on the 4th day of April, instead of the date endorsed on the bill. It was contended that the reported entries by the secretary of state were not admissable to impeach or control the endorsements on the bill itself made by the secretary of the senate, but this contention was overruled by the court, and the record kept by the secretary of state was held to be competent evidence, and in that case was accepted as showing the real facts in opposition to the endorsements on the bill.

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[47] 73 Md. 105.

ILLUSTRATIONS.

CONSTITUTION, ARTICLE II.

ILLUSTRATION LII.

The "Convention Law" of 1864 required the Constitution adopted by the Convention to be submitted to popular vote; that the governor should receive the returns and if upon counting and casting up these returns it should appear that a majority of the votes were in favor of adopting the Constitution, the governor should issue his proclamation so declaring.

A suit was brought for mandamus against the governor requiring him to count certain votes tendered and rejected, and to exclude other votes cast and counted, according to certain principles set forth in the petition, and it was argued that counting a vote could be nothing except a ministerial duty no matter by whom performed.

HELD: That this was a case where the discretion of the governor was involved, and that the executive discretion could not be controlled by a judicial writ.

Miles v. Bradford, 22 Md. 170.

ILLUSTRATION LIII.

The Act of 1860 transferred the whole police force of the City of Baltimore from the city government to certain police commissioners named in the act.

HELD: Such appointment by the legislature was constitutional.

Baltimore v. State, 15 Md. 376.

ILLUSTRATION LIV.

By the Act of 1854, it was provided that any free white citizen of the state, on application to the clerk of the Court of

Common Pleas of the City of Baltimore, and paying $100.00, should receive a license to act as "Inspector of ground black oak bark."

HELD: That this mode of appointment was constitutional, although the question whether such inspectors were technically *officers,* in point of law, was expressly reserved.

Davis v. State, 7 Md. 151, 161.

ILLUSTRATION LV.

By the Act of 1892, provision was made for two boards of medical examiners, one to be appointed by the Medical and Chirurgical Faculty of the State of Maryland, the other by the Maryland State Homeopathic Medical Society, both societies being private corporations.

Each of these boards was empowered to grant licenses to practice medicine in the state, and no one was allowed so to practice unless he first obtained such license.

HELD: The act was valid.

Scholle v. State, 90 Md. 729.

ILLUSTRATION LVI.

Somerville was appointed tobacco inspector in 1880, to hold his office for two years from the first Monday in March, 1880, and until his successor qualified, according to law. In February, 1882, during a session of the senate, the governor nominated a successor to Somerville, but the senate rejected this nomination.

On April 3rd, 1882, the day on which the legislature adjourned *sine die,* the governor nominated Smoot as Somerville's successor, but the senate adjourned without either confirming or rejecting him. After the adjournment of the legislature and while Somerville was still discharging the duties of his office, the governor appointed Smoot to said office and issued to him a commission.

HELD: No vacancy existed in the office. The appointment

of Smoot was invalid and Somerville was still *de jure* inspector of tobacco.

Smoot v. Somerville, 59 Md. 84.

ILLUSTRATION LVII.

At the November election of 1895, Wells and Tuck were candidates for the office of the clerk of the Circuit Court for Anne Arundel County. Wells was returned elected, but his election was set aside by the house of delegates, and a new election was ordered by the said house of delegates to be held April 21st, 1896.

But the legislature of 1896 repealed the old election law by an act which took effect on April 2nd, 1896. By this act, the old supervisors of election were legislated out of office, and there was a provision that the supervisors named by the governor and confirmed by the senate during the legislative session, should hold office as if appointed under the Act of 1896. Had the supervisors been appointed under the Act of 1896, then by virtue of section 13 of article 2 of the Constitution, they would have entered upon the duties of their office on the first Monday of May, 1896.

The old supervisors of election having been legislated out of office, and the new supervisors of election not entering upon their duties until May 1st, 1896, under the Constitution, the governor conceived that a vacancy existed in the office, and appointed Munroe and others, supervisors, to fill this vacancy.

HELD: There was no vacancy which existed. The previous law, being repealed, became absolutely inoperative, and no officials could be appointed under it. The Act of 1896 providing merely for supervisors who should take their office on the first day of May, 1896, there was no vacancy before that date under its provisions.

Therefore, there was no vacancy, under either of those acts, which the governor had power to fill, and there being no supervisors of election or other provision made for an election, the election ordered by the house of delegates could not be held.

Munroe v. Wells, 83 Md. 505.

ILLUSTRATION LVIII.

In 1882, Somerville, who was held in the case cited above as Illustration LVI to be the *de jure* Inspector of Tobacco, resigned his office during the recess of the senate, and the governor appointed Smoot to fill the vacancy so caused.

Smoot, thereupon, was commissioned and qualified. Within thirty days after the meeting of the next legislature in 1884, the governor sent Smoot's nomination to the senate, and it was confirmed by that body. Later in the session, the governor nominated Kroh for the same office for the full term of two years from the first Monday of March, 1884, but the senate adjourned without action. After the adjournment of the legislature, the governor appointed and commissioned Kroh.

HELD: That a vacancy existed, and that Kroh's appointment was valid.

Kroh v. Smoot, 62 Md. 172.

ILLUSTRATION LIX.

In 1898 the governor appointed three supervisors of election for Baltimore County for a term of two years, and until their successors should qualify.

The Act of 1896 provided that in case of vacancy in the office, the governor should appoint "some eligible person to fill such vacancy during the remainder of the term of office of the person originally appointed."

In 1898, during a recess of the senate, a vacancy occurred by resignation, and the governor appointed Sappington for the residue of the term of the supervisor so resigning.

When the legislature met in 1900, the governor did not send in the name of Sappington for confirmation, but nominated Slade, Hill and Wise, all of whom were confirmed. Wise, being ill, was unable to qualify within the prescribed time, and the governor holding that thereby a vacancy had occurred, reappointed him, and under this reappointment Wise qualified.

Sappington refused to recognize the title of Wise to the office, claiming that the office being of legislative creation, the legislature could provide, and had provided, for the filling of vacan-

cies therein by appointment by the governor for the residue of the term; that he having been appointed would hold until his successor, having been duly appointed by the governor by and with the advice and consent of the senate, had qualified, and inasmuch as no such qualification had taken place, there was no vacancy in the office, which could be filled by Wise's reappointment.

HELD. No matter what the Act of 1896 provided, the term of a recess appointee under article 2, section 11, could not continue beyond the end of the next session of the legislature, and that this would be true even though no one had been nominated to, and confirmed by, the senate in his place and stead.

Sappington v. Slade, 91 Md. 640.

ILLUSTRATION LX.

The Act of 1892 provided that the governor by and with the advice and consent of the senate, should appoint a board of county school commissioners for Cecil County, who should (after the first appointments) hold office for the term of six years or until their successors should qualify.

It also provided that in case of vacancy, the governor should have power to fill it "for the unexpired term."

Biddle was appointed such commissioner for a term ending August 1st, 1896, and his appointment was confirmed by the senate. In 1892, Biddle resigned and Ash was appointed by the governor, his commission stating the term of his appointment to be "for the balance of the term of four years for which George Biddle was appointed, or until you shall be duly discharged therefrom."

This appointment was confirmed by the senate of the legislature of 1894. While the legislature of 1896 was in session, the governor nominated a successor to Ash, for the term beginning August 1st, 1896, but the senate adjourned without confirming this nomination. After the adjournment of the legislature and during the recess of the senate, the governor appointed McVey to succeed Ash for the term of six years from August 1st, 1896.

HELD: The appointment of Ash by the governor was valid

for the whole of the unexpired term of Biddle; that Biddle's term did not expire until his successor qualified; that without the concurrent action of the governor and senate, Biddle's successor could not be appointed; that consequently Ash was *de jure* school commissioner when the governor attempted to appoint McVey; that, therefore, no vacancy then existed; and consequently the appointment of McVey was invalid and Ash was entitled to remain in the office.

Ash v. McVey, 85 Md. 119.

ILLUSTRATION LXI.

Article IV, Section 42 of the Constitution, prescribes that justices of the peace shall be appointed for two years, and *not* for "two years or until their successors qualify according to law." Wayson was duly appointed justice of the peace for two years from the first Monday in May, 1910. In February, 1912, the governor appointed Claude as his successor, but the senate adjourned without acting upon his nomination, and after such adjournment, the governor appointed Claude to the office upon the theory that a vacancy had occurred.

HELD: That justices of the peace were officers to whose terms, section 13 of article II of the Constitution did not apply, but whose terms were "otherwise provided for in this Constitution."

Therefore, Wayson's term expired at the end of two years from the first Monday of May, 1910, and although, until his successor was appointed and qualified, Wayson could still act as *de facto* justice of the peace, a vacancy in his office existed, and as soon as Claude was appointed by the governor and qualified, he might rightfully assume the office.

Claude v. Wayson, 118 Md. 477.

ILLUSTRATION LXII.

By the Act of 1892, the management of the public schools of Worcester County, was vested in a board of school commissioners, which was made a body corporate. This board was to be composed of a number of persons who were called in the act,

"Members of the Board," and the powers given, were in terms, not given to the commissioners, but to the board—"the body politic and corporate." The governor, by virtue of his power under article 2, section 15 of the Constitution, removed one of the three school commissioners of Worcester County, after due notice and opportunity to be heard.

HELD: That such a school commissioner and member of the board "is not a civil officer within the meaning of that term, as it is used in sections 13 and 15" of article 2 of the Constitution, and consequently the power attempted to be exercised by the governor was unauthorized.

School Commissioners v. Goldsborough, 90 Md. 193.

ILLUSTRATION LXIII.

The Acts of 1900 authorized the governor to appoint three police commissioners for Baltimore City for a term of two years, and until their respective successors are appointed and qualify, and provided that any of said commissioners shall be subject to removal by the governor, for official misconduct or incompetency, in the manner provided by law in the case of other civil officers.

On the 24th day of September, 1910, complaint and charges of incompetency and official misconduct were made against Messrs. Wheltle, Clotworthy and Tome, the then incumbents of the office, and the governor named October 12th, 1910, as the time for a hearing. On October 8th, the governor notified each of the three Commissioners that in view of the charges against him, he was suspended from his office from that date, until a decision of the said charges, and they were required to turn over to successors appointed by the governor, the "effects and appurtenances" of their offices.

HELD: The governor had no power to suspend the commissioners, nor to appoint their successors until they had been removed.

Cull v. Wheltle, 114 Md. 58.

ILLUSTRATION LXIV.

A Bill passed the legislature of 1912 appropriating $175.00 to James H. Nowell, but was not presented to the governor until after the legislature had adjourned.

The governor approved the bill, but made a formal note as follows: "This Act is approved for the sum of $125.00 and disproved for the payment of the sum of $50.00." Payment was made of $125.00, and an action of mandamus was brought against the comptroller to require him to pay the balance, the petition stating the facts. This petition was demurred to.

HELD: That the governor did not approve the bill as a whole; and, as no bill can become a law after the adjournment of the legislature without the approval of the governor, the plaintiff had no ground to stand upon, and the demurrer should be sustained.

Whether or not the governor has the right to approve a part, and disapprove another part of the same item, was expressly left undecided by the court.

Nowell v. Harrington, 122 Md. 487.

LEGISLATIVE DEPARTMENT.

Article III, Section 1.

"The Legislature shall consist of two distinct branches—a Senate and a House of Delegates—and shall be styled the General Assembly of Maryland."

"The Constitution wisely distributes the powers of government among several and distinct departments, and the limits of these cannot be extended, or an encroachment of one upon the other permitted, without a violation of the social compact and a derangement of the social order. The General Assembly, composed of the Senate and the House of Delegates, is, in this State, the only law-making power."[1]

"This being so, it is a well-settled principle of constitutional law that the power thus delegated cannot be re-delegated,"[2] by the General Assembly to any other person or number of persons. "*Delegatus non potest delegari.*"[3]

Notwithstanding this principle, however, the power of the legislature is unquestioned "to charter Municipal corporations, and to confer upon such corporations the power to pass such laws and ordinances in regard to matters pertaining to local legislation." And it seems to be quite well settled in this country, at least, that not only may the municipal authorities themselves pass such laws and ordinances, but the legislature may refer laws in regard to local affairs to the voters of the municipality for their acceptance or rejection.[4]

Upon the same principle, counties, although not possessing the general powers of municipal corporations under special charters, are regarded as *quasi corporations,* and it seems to be well settled that questions of local concern, whether for instance a county seat once located shall be removed elsewhere,[5] or

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1 *Hammond v. Haines,* 25 Md. 541, 562.
2 *Bradshaw v. Lankford,* 73 Md. 428, 430.
3 *Fell v. State,* 42 Md. 71, 84.
4 Cooley on Constitutional Limitations, 144 and cases referred to in notes.
5 *Hamilton v. Carroll,* 82 Md. 326, 337.

whether the county shall subscribe to a particular improvement, these and other like questions of local legislation, may be referred to the voters of the county for decision.

"Upon the same principle, too, it has been held in this state that laws passed under the police powers of the state, regulating or forbidding the sale of intoxicating drinks, commonly known as 'Local Option Laws,' may be submitted to the voters of an election district of a county, and the operation of such laws made to depend upon the result of the popular vote in said districts."[6]

It is a little difficult to determine just what the principle is which allows the voters of any particular territory named by the legislature—whether municipality or election district, incorporated or unincorporated,—to determine whether a law shall or shall not be in force in that district, while at the same time maintaining that legislative power cannot be delegated.

In the earlier cases[7] the fact that such provisions were a delegation of legislative power was denied.

The argument was that it had never been denied that the legislature may provide that an act shall not take effect until a future day, or until the happening of some particular event, or in some contingency thereafter to arise, or upon the performance of some specified condition; that such future contingent event might involve the assent to the provisions of the law by other parties[8] and that there was no reason why a particular state of public feeling as evidenced by an election might not be such an event. Accordingly, when the people of a certain district vote to adopt a local option law, they do not themselves enact the law, but merely avail themselves of the provisions of a law already enacted by the legislature in analogy to the action of certain individuals who accept the terms of a general incorporation law, and become incorporated without special act.

But this argument seems none too convincing, and in *Bradshaw v. Lankford*,[9]* such laws as we have spoken of, which become effective only after popular approval at the ballot box, are alluded to as "exceptions to the general maxim which wisely forbids the delegation of legislative power." The ground of their valid-

6 *Bradshaw v. Lankford*, 73 Md. 428, 431.

7 See *Burgess v. Pue*, 2 Gill 11; *Hammond v. Haines*, 25 Md. 541, and especially *Fell v. State*, 42 Md. 71.

8 *Baltimore v. Clunet*, 23 Md. 449, 469.

9 73 Md. 428, 432, *Illustration LXV.

ity is placed more upon authority than reason, and the determination of the court not to extend these exceptions beyond what is required by precedent, was plainly stated and acted upon.

The present state of the law seems to be, that local legislation depending for its validity upon the favorable vote of the people affected, will be sustained, in the future, in such cases as cannot be distinguished from cases wherein such legislation has been sustained in the past, but that it will be considered as anomalous in law, and its sphere will not be extended until and unless an "Initiative and Referendum" or "Home Rule" amendment to our Constitution is adopted.

Two amendments along these lines were, however, proposed by the legislature of 1914 and are alluded to in their proper places.[10]

Article III. Section 2.

"The City of Baltimore shall be divided into four legislative districts, as near as may be, of equal population and of contiguous territory, and each of said legislative districts of Baltimore City, as they may from time to time be laid out, in accordance with the provisions hereof, and each county in the State shall be entitled, to one Senator, who shall be elected by the qualified voters of the said legislative districts of Baltimore City, and of the counties of the State, respectively, and shall serve for four years from the date of his election, subject to the classification of Senators hereafter provided for."

The above is the language of the section now in force, amended as proposed by the Act of 1900, Chapter 469. By the Constitution as adopted in 1867 Baltimore City had only three senators.

Article III. Section 3.

"Until the taking and publishing of the next National Census, or until the enumeration of the population of this State, under the authority thereof, the several counties and the City of Baltimore shall have a representation in the House of Delegates, as follows: Allegany, five Delegates; Anne Arundel County, three Delegates; Baltimore County, six Delegates; each of the three Legislative Districts of the City of Baltimore, six Delegates; Calvert County, two Delegates; Caroline County, two Delegates; Carroll County, four Delegates; Cecil County, four Delegates; Charles County, two

10 Acts of 1914, Chaps. 416 and 673.

Delegates; Dorchester County, three Delegates; Frederick County, six Delegates; Harford County, four Delegates; Howard County, two Delegates; Kent County, two Delegates; Montgomery County, three Delegates; Prince George's County, three Delegates; Queen Anne's County, two Delegates; St. Mary's County, two Delegates; Somerset County, three Delegates; Talbot County, two Delegates; Washington County, five Delegates, and Worcester County, three Delegates."

It is apparent that this was a mere *ad interim* provision, and became obsolete after the taking and publishing of the national census of 1870.

Article III. Section 4.

"As soon as may be, after the taking and publishing of the National Census of 1900, or after the enumeration of the population of this State, under the authority thereof, there shall be an apportionment of representation in the House of Delegates, to be made on the following basis, to wit: Each of the several counties of the State, having a population of eighteen thousand souls, or less, shall be entitled to two delegates; and every county having a population of over eighteen thousand and less than twenty-eight thousand souls, shall be entitled to three delegates; and every county having a population of twenty-eight thousand and less than forty thousand souls, shall be entitled to four delegates; and every county having a population of forty thousand and less than fifty-five thousand souls, shall be entitled to five delegates; and every county having a population of fifty-five thousand souls and upwards, shall be entitled to six delegates and no more; and each of the Legislative Districts of the City of Baltimore shall be entitled to the number of delegates to which the largest county shall or may be entitled under the aforegoing apportionment, and the General Assembly shall have the power to provide by law, from time to time, for altering and changing the boundaries of the existing legislative districts of the City of Baltimore, so as to make them as near as may be of equal population; but said district shall always consist of contiguous territory."

This section was amended to its present form as above given by the ratification of the amendment proposed by the Act of 1900, chap. 432, so as to provide for the new legislative district then erected in Baltimore City. The number of delegates, and their apportionment among Baltimore City and the several counties of the state, is at present as follows: "Allegany, six delegates; Anne Arundel County, four delegates; Baltimore County, six delegates; for each of the four legislative districts

of the City of Baltimore, six delegates; Calvert County, two delegates; Caroline County, three delegates; Carroll County, four delegates; Cecil County, three delegates; Charles County, two delegates; Dorchester County, four delegates; Frederick County, five delegates; Garrett County, three delegates; Harford County, three delegates; Howard County, two delegates; Kent County, two delegates; Montgomery County, four delegates; Prince George's County, four delegates; Queen Anne's County, two delegates; St. Mary's County, two delegates; Somerset County, three delegates; Talbot County, three delegates; Washington County, five delegates; Wicomico County, three delegates, and Worcester County, three delegates."

Article III. Section 5.

"Immediately after the taking and publishing of the next National Census, or after any State enumeration of population, as aforesaid, it shall be the duty of the Governor, then being, to arrange the representation in said House of Delegates in accordance with the apportionment herein provided for; and to declare, by Proclamation, the number of Delegates to which each County and the City of Baltimore may be entitled under such apportionment; and after every National Census taken thereafter, or after any State enumeration of population thereafter made, it shall be the duty of the Governor, for the time being, to make similar adjustment of representation, and to declare the same by Proclamation, as aforesaid."

The number of delegates from the counties as above given, was determined by the Federal census taken in 1910. There was much complaint of inaccuracy in the Federal census of 1900, in reference to Maryland, and charges of "padding the returns" in order to secure increased representation, were freely made.

A special session of the legislature was called mainly on this account, and a state census was then authorized.

Article III. Section 6.

"The members of the House of Delegates shall be elected by the qualified voters of the Counties, and the Legislative Districts of Baltimore City, respectively, to serve for two years from the day of their election."

As we have seen, in considering section 1 of article 1, voters possessing the qualifications prescribed by that article, are entitled to vote "at all elections" provided by the Constitution.

There is, therefore a very definite meaning to the phrase "qualified voters."

A difference will be noted here as between this provision and the similar one in the U. S. Constitution.

A house of representatives may sit at Washington, and as a matter of fact, does so sit every two years, and pass laws, after the election of a new house, which may possibly have been elected as a rebuke to the very men who continue for three months to make laws for the constituents who have repudiated them.

In Maryland under the provisions of this section, no house of delegates can pass laws after their successors are elected.

Article III. Section 7.

"The first election for Senators and Delegates shall take place on Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-seven; and the election for Delegates, and as nearly as practicable, for one-half of the Senators shall be held on the same day in every second year thereafter."

As previously noted, either by accident or design the date of our general state elections in Maryland, never coincides with the date of congressional or presidential elections.

Article III. Section 8.

"Immediately after the Senate shall have convened, after the first election, under this Constitution, the Senators shall be divided by lot into two classes, as nearly equal in number as may be. Senators of the first class shall go out of office at the expiration of two years, and Senators shall be elected on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-nine, for the term of four years, to supply their places; so that, after the first election, one-half of the Senators may be chosen every second year. In case the number of Senators be hereafter increased, such classification of the additional Senators shall be made as to preserve, as nearly as may be, an equal number in each class."

This section fixes the term of senator at four years, and provides for an election of one-half of the senators, as nearly as practicable, every second year. After a senator has been elected, the courts apparently must treat him, if living, as senator during

the time for which he was elected. It is for the senate or the governor to act under the provisions of sections 19 and 13, if by any act the senator has vacated or forfeited his seat.[11]*

Article III. Section 9.

"No person shall be eligible as a Senator or Delegate who, at the time of his election, is not a citizen of the State of Maryland, and who has not resided therein for at least three years next preceding the day of his election, and the last year thereof, in the County or in the Legislative District of Baltimore City, which he may be chosen to represent, if such County or Legislative District of said City shall have been so long established; and if not, then in the County or City, from which, in whole or in part, the same may have been formed; nor shall any person be eligible as a Senator unless he shall have attained the age of twenty-five years, nor as a Delegate unless he shall have attained the age of twenty-one years, at the time of his election."

The qualifications of senators and delegates are the same, except as to age.

Citizenship in the state at the time of election, a residence in the state during the three years preceding the election, and the last year thereof in the county or legislative district which he may be chosen to represent, are required of every member of the legislature. A senator must be twenty-five, and a delegate twenty-one years of age.

Noting the differences between the Federal and the State Constitutions, greater age is required by the Federal Constitution; twenty-five instead of twenty-one for membership in the lower house, thirty instead of twenty-five for the senate.

The provisions as to residence are stricter in the state Constitution, no residence in the district which he represents being required of a member of the lower house of Congress, and the only requirement as to residence in the case of both senators and representatives, being that they must be "inhabitants of the state" "in" or "for" "which they shall be chosen."

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11 *Covington v. Buffett*, 90 Md. 569, *Illustration LXVI.

Article III. Section 10.

"No member of Congress, or person holding any civil or military office under the United States shall be eligible as a Senator or Delegate; and if any person shall, after his election as Senator or Delegate, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat."

Article III. Section 11.

"No Minister or Preacher of the Gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except Justices of the Peace, shall be eligible as Senator or Delegate."

Article III. Section 12.

"No Collector, Receiver or holder of public money shall be eligible as Senator or Delegate, or to any office of profit or trust under this State, until he shall have accounted for and paid into the Treasury all sums on the books thereof charged to and due by him."

The provisions of these sections are plain. The purpose of excluding members of Congress and other United States officials and of persons holding other state offices, and of persons intrusted with public moneys until they have accounted for the same, is evident. The exclusion of Ministers or Preachers of the Gospel is to be noticed as a part of our public policy which is not generally adopted throughout the other States of the Union.

Article III. Section 13.

"In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a delegate or Senator, or in case of a tie between two or more such qualified persons, a warrant of election shall be issued by the Speaker of the House of Delegates, or President of the Senate, as the case may be, for the election of another person in his place, of which election not less than ten days' notice shall be given, exclusive of the day of the publication of the notice and of the day of election; and if during the recess of the Legislature,

and more than ten days before its termination, such death shall occur, or such resignation, refusal to act or disqualification be communicated in writing to the Governor by the person so resigning, refusing or disqualified, it shall be the duty of the Governor to issue a warrant of election to supply the vacancy thus created, in the same manner the said Speaker or President might have done during the session of the General Assembly; provided, however, that unless a meeting of the General Assembly may intervene, the election thus ordered to fill such vacancy shall be held on the day of the ensuing election for Delegates and Senators."

The provisions of this section justify an election only when a vacancy exists, and such vacancy can exist only in case of death or when the house has itself so declared, or when the person resigning, because refusing to serve or disqualified, shall communicate the fact in writing, to the governor. When the houses are in session, and a vacancy is declared, a warrant of election is to be issued by the presiding officer of the house wherein the vacancy occurs. Where a member of the legislature dies or communicates to the governor his resignation, refusal to act or disqualification, during a recess of the legislature, and more than ten days before the termination of such recess, and a meeting of the general assembly intervenes between that time and the day of the regular election for the legislature, the governor must issue a warrant for a special election to supply the vacancy. In other words, the governor will only issue such warrant for special election when death occurs, or a statement that the office is vacant is voluntarily made to him by the late member, and when this happens during the recess of the legislature, more than ten days before the termination of such recess, and when the general assembly would meet before the day of the next general election. When every real purpose can be fulfilled by having the special election on the day of the general election this provision required it to be so ordered.

Article III. Section 14.

"The General Assembly shall meet on the first Wednesday of January, eighteen hundred and sixty-eight and on the same day in every second year thereafter, and at no other time, unless convened by Proclamation of the Governor."

It would seem as if a special session of the legislature could be called for any reason whatever which seems sufficient to the governor.

Article III. Section 15.

"The General Assembly may continue its session so long as in its judgment the public interest may require, for a period not longer than ninety days; and each member thereof shall receive a compensation of five dollars per diem for every day he shall attend the session, but not for such days as he may be absent, unless absent on account of sickness or by leave of the House of which he is a member; and he shall also receive such mileage as may be allowed by law, not exceeding twenty cents per mile; and the presiding officer of each House shall receive an additional compensation of three dollars per day. When the General Assembly shall be convened by Proclamation of the Governor, the session shall not continue longer than thirty days, and in such case the compensation shall be the same as herein prescribed."

These provisions limiting the term of the general assembly to ninety days, fixing the pay of the members at $5.00 per diem and mileage, and an extra compensation of $3.00 per day to the presiding officer of each house, providing for a "docking" of the members pay for unexcused absence, except on account of sickness, and making these provisions applicable to special sessions as well as to regular sessions of the legislature, are perhaps so plain as to require no comment, except to say that they certainly show the spirit of economy in the minds of the Constitution makers.

Article III. Section 16.

"No book, or other printed matter, not appertaining to the business of the session, shall be purchased or subscribed for, for the use of the members of the General Assembly, or be distributed among them, at the public expense."

This provision also shows, and perhaps more reasonably, the same spirit of economy.

Article III. Section 17.

"No Senator or Delegate, after qualifying as such, notwithstanding he may thereafter resign, shall during the whole period of time for which he was elected be eligible to any office which shall have been created, or the salary or profits of which shall have been increased, during such time."

The provisions of this section, are analogous, and to a certain

extent, an exact copy of the first part of the second clause of section 6 of article 1 of the Federal Constitution.

The difference is, that the contingency of the resignation of senator or delegate, is expressly provided for in the Maryland Constitution, and is left to implication in the Federal Constitution, and that the Maryland provision applies to any office, either civil or military, while in the Federal Constitution, the restriction is confined to civil offices.

Article III. Section 18.

"No Senator or Delegate shall be liable in any civil action or criminal prosecution whatever for words spoken in debate."

This provision may be compared with, and is analogous to, the 2nd clause of section 6 of article 1 of the Federal Constitution.

Article III. Section 19.

"Each House shall be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State; shall appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly or disrespectful behavior, and with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence."

Similar provisions are found in the Federal Constitution.[12] The provisions peculiar to Maryland, are that the senate elects its own president, that the two-thirds vote by which a member can be expelled, must be of the whole number of members elected, and that no member shall be expelled a second time for the same offence.

In the provision last cited, it is, of course, intimated that even though a member may be expelled, it is possible for him to be re-elected.

The full authority over the elections and qualifications of the members of the legislature, is very strictly reserved to their respective houses, and the courts will not interfere in whatever

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12 Article 1, Section 5.

the legislature may decide in regard to such elections and qualifications.[13*]

The "rules" adopted under the provision of this section are entirely within the control of the house adopting them, and can be enforced, rescinded, suspended or amended as each house may deem proper. Their observance is a matter entirely subject to legislative control and discretion, and not subject to be reviewed by the court; that is to say: In determining the validity of an act, the question whether or not the rules of procedure which have been adopted by the legislature—as distinguished from the rules expressly laid down in the Constitution—have been observed in its passage, is immaterial.[14]

Article III. Section 20.

"A majority of the whole number of members elected to each House shall constitute a quorum for the transaction of 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."

These provisions are practically the same as are contained in the first clause of section 5 of article 1 of the Federal Constitution.

Article III. Section 21.

"The doors of each House and of the Committee of the Whole shall be open, except when the business is such as ought to be kept secret."

This provision is not found expressed in the Constitution of the United States. Its terms seem to be clear, and simply require a vote to be taken before either house enters upon its secret session.

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13 *Covington v. Buffett,* 90 Md. 569, *Illustration LXVI.

14 *Warehouse Co. v. Lumber Co.,* 118 Md. 135.

Article III. Section 22.

"Each House shall keep a Journal of its proceedings, and cause the same to be published. The yeas and nays of members on any question shall, at the call of any five of them in the House of Delegates, or one in the Senate, be entered on the Journal."

These provisions are analogous to those contained in the 3rd clause of section 5 of article 1 of the Federal Constitution. In the Federal Constitution, however, there is a limitation, excepting from publication such parts of the journal of each house, as may in the judgment of its members, require secrecy. The provision in Maryland would apparently require all of the proceedings of each house, to be published.

The number of members on whose demand the yeas and nays shall be called, is less proportionately, in our legislature, than in the Federal Congress, being one out of twenty-five senators, and five out of one hundred and two delegates.

The Federal courts have decided that the office of the Congressional Journal is chiefly to prevent secrecy, and that after a bill has been duly "attested," signed and published, as a statute properly enacted, it becomes a law, and cannot be defeated by any proof, from the journals or elsewhere, that the bill, as actually voted on and passed by the Congress, was not the same either in whole or as to any of its provisions with the statute as published.[15] But in Maryland this is not so; and although our courts say that the journals might not be "evidence *per se* upon which the validity of the statute, having the required authentication, could be successfully questioned as to the manner of its enactment," they have squarely held that the journal, in connection with other competent evidence upon the subject, could be examined as a means of information, to aid in arriving at a correct conclusion, as to what was the action of the legislature on any particular bill before it; and if they should find from such inspection of the journal and other evidence, that the bill as passed by the legislature, was not the same as to any of its provisions, as that signed and approved by the governor, they will hold void and strike out the provisions

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[15] *Field v. Clark*, 143 U. S. 649.

which did not receive the legislative assent, or if they cannot be separated from the remainder, will declare the whole bill void.[16*]

Of course, the danger inherent in this rule is admitted by our court, and a statute having the proper form and authentication, cannot be impeached or questioned upon mere parol evidence, or by the legislative journals alone,[17] and evidence to impeach its validity must be of the clearest and most satisfactory character.[18] Nothing in the Constitution requires amendments or proposed amendments to bills to be entered upon the journals.[18]

Article III. Section 23.

"Each House may punish by imprisonment, during the session of the General Assembly, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings, or any of its officers in the execution of their duties; provided, such imprisonment shall not at any time exceed ten days."

This provision for punishing any person not a member of the legislature for disrespectful or disorderly behavior in its presence, or for obstructing its proceedings or officers, and the limitation of the time during which the imprisonment may continue has no counterpart in the Federal Constitution. It is plain, and the reason for it seems apparent.

Article III. Section 24.

"The House of Delegates may inquire, on the oath of witnesses, into all complaints, grievances and offences, as the Grand Inquest of the State, and may commit any person for any crime to the public jail, there to remain until discharged by due course of law. They may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, and appoint auditors to state and adjust the same. They may call for all public or official papers and records, and send for persons whom they may judge necessary, in the course of their inquiries, concerning affairs relating to the public interest, and may direct all office bonds which shall be made payable to the State to be sued for any

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16 *Berry v. Baltimore and Drum Point R. R. Co.,* 41 Md. 446, *Illustration LXVII; of *Annapolis v. Harwood,* 32 Md. 471; *Warehouse Company v. Lumber Co.,* 118 Md. 135.

17 *Jessup v. M. & C. C. of Baltimore,* 121 Md. 562.

18 *Ridgely v. Baltimore City,* 119 Md. 567E, 584.

breach thereof; and with the view to the more certain prevention or correction of the abuses in the expenditures of the money of the State, the General Assembly shall create, at every session thereof, a Joint Standing Committee of the Senate and House of Delegates, who shall have power to send for persons and examine them on oath and call for public or official papers and records; and whose duty it shall be to examine and report upon all contracts made for printing, stationery and purchases for the public offices and of the library, and all expenditures therein, and upon all matters of alleged abuse in expenditures, to which their attention may be called by resolution of either House of the General Assembly."

It will be seen that the house of delegates is empowered by this provision to act as a grand jury for the state at large, and has full power to investigate not only financial matters, but all "affairs relating to the public interest," and the appointment of a joint standing committee of the senate and the house of delegates, to examine into the conduct of the different state offices, is made a part of their constitutional duty.[19]

It would appear, however, that this legislative committee, like other such committees would have no power to act as such during the recess of the legislature, unless authorized specially to do so.[20]

Article III. Section 25.

"Neither House shall, without the consent of the other, adjourn for more than three days at any one time, nor adjourn to any other place than that in which the House shall be sitting, without the concurrent vote of two-thirds of the members present."

This is very similar to the last clause of section 5 of article 1 of the Federal Constitution, being practically identical except that the concurrent vote in the Maryland Constitution must be that of two-thirds of the members present, while a majority is sufficient under the Federal Constitution.

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19 See *Cochran v. State,* 119 Md. 539, 557.

20 *Marshall v. Harwood,* 7 Md. 466, 482.

Article III. Section 26.

"The House of Delegates shall have the sole power of impeachment in all cases; but a majority of all the members elected must concur in the impeachment. 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 the law and the evidence; but no person shall be convicted without the concurrence of two-thirds of all the Senators elected."

These provisions as to impeachment are somewhat similar to those found in the Federal Constitution.[21]

Under the Maryland Constitution, a majority of all the *delegates elected,* must concur in the impeachment, and two-thirds of all the *senators elected,* must concur to convict, and the oath or affirmation of the senators trying an impeachment, must be "to do justice according to the law and the evidence;" provisions which are not found in the Federal Constitution.

Article III. Section 27.

"Any bill may originate in either House of the General Assembly, and be altered, amended or rejected by the other; but no bill shall originate in either House during the last ten days of the session, unless two-thirds of the members elected thereto shall so determine by yeas and nays; nor shall any bill become a law until it be read on three different days of the session in each House, unless two-thirds of the members elected to the House where such bill is pending shall so determine by yeas and nays; and no bill shall be read a third time until it shall have been actually engrossed or printed for a third reading."

It will be noticed that in Maryland there is no distinction as to the house in which a revenue bill may originate. The provision preventing a bill from originating in either house during the last days of the session, unless specially authorized by a yea and nay vote of two-thirds of the members elected, is a very important one. But of even more importance is the provision requiring three readings on three different days of the session in each house, unless otherwise determined by two-thirds of the members elected to such house, on a yea and nay vote.

Whether or not a bill which has been duly signed by the gov-

21 Article 1. Section 2, last Clause; also Article 1, Section 3, Clause 6.

ernor, and printed among the statute laws, would be declared by the court, void, if by the journals and other evidence, it were clearly shown that it had not been read on three different days of the session in each house, has never been squarely decided.

Judge Alvey, however, has said:[22] "Suppose for instance, it could be plainly shown by competent evidence for the purpose, that a particular bill, alleged to have been passed by the legislature, had never been put to final vote, or that it had been declared passed without previous readings, and in total disregard of the expressed mandatory requirements of the Constitution, as to the manner in which a bill can be enacted into a law, could it be successfully maintained that such alleged act should be enforced as law, notwithstanding the omission or nonobservance of the essential conditions and prerequisites upon which a law can be enacted under the Constitution? We suppose not."

This dictum would seem to allow any act to be attacked as void, because not passed according to mandatory constitutional requirements as to form and procedure even though properly authenticated, signed and published.

Up to 1912 every bill had to be engrossed before its third reading, although such engrossing was required to be made only in the House where the bill originated. By an amendment proposed by the legislature of 1912, (chap 497), such bills were authorized to be either engrossed *or printed* according to the wording above given.

After a bill has been properly engrossed or printed, and passed by both houses, it is enrolled, and presented to the governor.

In the case of *Warehouse Company v. Lumber Company,* 118 Maryland 135, the facts were that, after a bill had been engrossed and duly passed, it was sent to the governor for his signature, and afterwards recalled by the concurrent action of the two houses. The enrolled bill was then considered by the senate and acted upon, and the Court of Appeals held that it made no difference in this case whether it was the enrolled or engrossed bill which was before the senate, it appearing that the one was identical with the other.

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22 *Berry v. Baltimore & Drum Pt. R. R. Co.,* 41 Md. 446, 462.

Article III. Section 28.

"No bill shall become a law unless it be passed in each House by a majority of the whole number of members elected, and on its final passage the yeas and nays be recorded; nor shall any resolution requiring the action of both Houses be passed except in the same manner."

This provision gives rise to the phrase which we so often hear in regard to the passage of a bill by our legislature, viz: "A Constitutional majority." The recording of the yeas and nays, showing that a majority of the members elected have actually voted in favor of every law, is an indispensable requirement;[23] and, although the proceedings in taking such yea and nay votes are apt to become formal and almost farcical, the provision is a very important one, and ought to be more particularly enforced.

Article III. Section 29.

"The style of all laws of this State shall be, 'Be it enacted by the General Assembly of Maryland,' and all laws shall be passed by original bill; and every law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title; and no law, or section of law, shall be revived or amended by reference to its title or section only; nor shall any law be construed by reason of its title to grant powers or confer rights which are not expressly contained in the body of the Act; and it shall be the duty of the General Assembly, in amending any article or section of the Code of Laws of this State, to enact the same as the said article or section would read when amended. And whenever the General Assembly shall enact any Public General Law, not amendatory of any section or article in the said Code, it shall be the duty of the General Assembly to enact the same, in articles and sections, in the same manner as the Code is arranged, and to provide for the publication of all additions and alterations which may be made to the said Code."

Style of Laws.

The words are very clear that the style of all laws in this state, shall be "Be it enacted by the General Assembly of Maryland," but in 1868,[24] the style of the law coming before the

23 *Temmick v. Owings,* 70 Md. 246, 251.
24 *McPherson v. Leonard,* 29 Md. 377.

court for construction in the case of *McPherson v. Leonard,* was "Be it enacted," leaving out the other words of the formula. It was then held by a divided court, that this requirement as to style was directory and not mandatory, and the law was upheld.

In 1891[25] the court, speaking through Judge Miller, one of the dissenting judges in *McPherson v. Leonard,* said, *obiter;* "We cannot regard *McPherson v. Leonard* as a controlling authority. Two of the five judges by whom that case was decided, dissented, and it has not been followed in any subsequent decision." It was, therefore, felt for a time that the case had been overruled, and that the style as above provided, was an essential matter. But in 1909,[26] where the act in question began "Be it enacted by the People of the State of Maryland represented in the General Assembly," *McPherson v. Leonard* was reviewed and approved, the clause which we are considering was again stated to be merely directory, and the act was held valid.

In 1910, where the statute in question commenced simply with the words "Be it enacted," *McPherson v. Leonard* was reaffirmed, and it is now settled that this style of the laws, provided by the Constitution, is merely directory.[27]

All Laws Shall Be Passed By Original Bill.

This provision is plain, and has not been construed by the Court of Appeals. Its purpose would seem to be clear to prevent any law from being enacted by resolution or otherwise, and to insure its enactment in such a way as to clearly indicate an intention to change the existing law, and it would seem to add little in effect to the provision next preceding it, requiring the style of all laws to be as therein set forth.

It would probably be held, however, under this clause, that even although the provision as to the style of the laws, is merely directory, it is mandatory that some language be used which plainly indictes that it is the legislative will that what is enacted shall be a statute.

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25 *Archer v. State,* 74 Md. 443, 449.

26 *Postal Telegraph Co. v. State,* 110 Md. 608, 611.

27 *Prince George's Co. v. B. & O. R. R.,* 113 Md. 179; see also *Levin v. Hewes,* 118 Md. 624, 635.

(*a*) *One Subject and* (*b*) *That Expressed in the Title.*

The object of the requirement in the Constitution (adopted in 1851) that a law must embrace a single subject only, is thus stated in the early leading case of *Davis v. State;*[28] "A practice had crept into our system of legislation, of engrafting, upon subjects of great public benefit and importance, for local or selfish purposes, foreign and often pernicious matters, and rather than endanger the main subject, or for the purpose of securing new strength for it, members were often induced to sanction and actually vote for such provisions, which if they were offered as independent subjects, would never have received their support. In this way the people of our State, have been frequently inflicted with evil and injurious legislation. Besides, foreign matter has often been stealthily incorporated into a law, during the haste and confusion always incident upon the close of the sessions of all legislative bodies, and it has not infrequently happened, that in this way the satute books have shown the existence of enactments, that few of the members of the legislature knew anything of before. To remedy such and similar evils, was this provision inserted into the constitution, and we think wisely inserted."[29]

The object of the provision that the subject of the law must be described in its title has thus been stated: "The object of this clause was to prevent the embodying into the same act, distinct and separate matters of legislation, having no connection whatever with each other, and matters not referred to in the title of the act."[30] "If several sections of the law refer to and are germane to the same subject-matter, which is described in its title, it is considered as embracing but a single subject and as satisfying the requirements of the Constitution in this respect. While the title must give the subject of the Act, it need not give an abstract of its contents, nor need it mention the means and methods by which the general purpose is to be accomplished.[30½] Statutes which have been held void as contrary to this provision, were as a rule, misleading, and calculated to lead the legislature and others to believe that one kind of legisla-

[28] 7 Md. 151, 160.

[29] Approved in *Parkingson v. State,* 14 Md. 184; see also *McGrath v. State,* 46 Md. 631.

[30] *Gans v. Carter,* 77 Md. 1; *Drennen v. Banks,* 80 Md. 310; *State v. Gurry,* 121 Md. 534, 540.

[30½] *Baltimore v. Reitz,* 50 Md. 574, 579.

tion was proposed, while another was attempted to be enacted, which was not germane with the subject mentioned in the title.[31]

Judge Burke, quoting from Cooley's "Constitutional Limitations," has stated in regard to both the above requirements that "It may be assumed as settled, that the purpose of this provision is 'first to prevent *hodge podge* or 'log-rolling' legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles give no intimation, and which might, therefore, be overlooked and carelessly and unintentionally adopted; and third, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of subjects of legislation that are being considered in order that they may have opportunity of being heard thereon by petition or otherwise, if they so desire.' "[32]

Judge McSherry has thus summarized the law: "The primary object of the provision undoubtedly is to exclude all foreign, irrelevant or discordant matter from the statute, and to confine the statute to the single subject disclosed in the title;"[33] and Judge Burke in one of the latest cases,[34] has thus covered the whole subject: "Section 29, article 3 of the Constitution is mandatory, but the general disposition of the court has been to give the section a liberal construction so as not to interfere with or impede legislative action. The purposes of this provision of the Constitution, are: 'to prevent the Legislature from the enactment of laws surreptitiously; to prevent 'log-rolling' legislation; to give the people general notice of the character of the proposed legislation, so they may not be misled; to give all interested an opportunity to appear before committees of the legislature and to be heard upon the advisability of the proposed legislation; to advise members of the character of the proposed legislation, and to give each an opportunity to intelligently watch the course of the proposed bill; to guard against fraud in legislation, and against false and deceptive titles. These purposes have been so plainly announced in numerous opinions by this court that a statement of the rule and the citation of cases would seem to be sufficient."[35]

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31 *Mealey v. Hagerstown,* 92 Md. 741.

32 *Fout v. Frederick County,* 105 Md. 545, 563.

33 *Phinney v. Shepherd, etc., Hospital,* 88 Md. 633, 636; *Bond v. M. & C. C. of Balto.,* 116 Md. 683, 688.

34 *Painter v. Mattfeldt,* 119 Md. 466, 473.

35 *Painter v. Mattfeldt,* 119 Md. 473; see also *Fout v. Frederick Co.,* 105 Md. 545.

It has always been held that a law void in part under these provisions, may be good in part. The court in the first case above quoted[36] states: "We are not prepared to say, that a whole law, otherwise constitutional, would be rendered void by the introduction of a single foreign or irrelevant subject into it, where such subject was not indicated in the title. In such a case the irrelevant matter would be rejected as void, while the principle subject of the law would be supported, if properly described in the title. But if an act of assembly, be composed of a number of discordant and dissimilar subjects, so that no one could be clearly recognized as the controlling or principal one, the whole law would be void."

The cases where laws have been attacked in the Court of Appeals because of an alleged non-compliance with the provision which we are now considering, number (down to 122 Md., inclusive) at least seventy-three. It has always been held that non-compliance with this provision would render the law void, and our Court of Appeals has "many times" declared this provision to be "of the utmost importance."[37]

Yet as before stated, the court has always given to these provisions "a liberal construction to effectuate and not to destroy the legislative will,"[38] and only a very small proportion of the laws so attacked have been held invalid.

In Judge McSherry's words:[39] "When the cases in which it has been held that legislation was invalid because in conflict with section 29 of article 3 of the Constitution, are examined, it will be found, either that something wholly repugnant to the title, or something altogether foreign to the subject described in the title, had been attempted to be incorporated in the body of the act in flagrant disregard of the principle announced in *Davis v. State.*"

At the risk of spending a disproportionate time upon this provision, a brief abstract of the laws attacked in these cases, and the decision of the court, is here given:

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36 *Davis v. State,* 7 Md. 151, 160.

37 *United Railways v. Baltimore,* 121 Md. 561.

38 *Hardesty v. Taft,* 23 Md. 512, 525.

39 *Baltimore City v. Flack,* 104 Md. 107.

A—LAWS SUSTAINED.

(1) Title of act: "An Act relating to a trial of facts in the several Circuit Courts for this state."

It was argued that the title was not broad enough to embrace trial of facts in the Superior court of Baltimore City.

HELD: The title was sufficient.

This case arose under the constitution of 1851.

Wright v. Hamner, 5 Md., 370.

(2) Title of act: "An Act to regulate inspections in the City of Baltimore."

The body of the law contained provisions relating to many incidental matters, but these the court held were matters inseparably connected with inspections, and so the law embraced but a single subject. This case arose under the constitution of 1851.

Davis v. State, 7 Md. 151.

(3) Title of act: "An Act to raise additional revenue to pay the debts of the State, by increasing the rates of licenses to ordinary keepers and traders."

A provision in this law required venders of lager beer manufactured by themselves, to take out licenses.

HELD: Embraced in the subject described by the title.

Keller v. State, 11 Md. 525.

(4) Title of act: "An Act to prohibit the sale of intoxicating liquors in the City of Annapolis or within five miles thereof, to minors and people of color."

HELD: That a provision in the act, forbidding the "giving" as well as selling, was valid, the real subject of the act being the prevention of minors and people of color from *obtaining* intoxicating liquors.

Parkinson v. State, 14 Md. 184.
See also *Franklin v. State*, 12 Md. 236.

(5) Title of act: "An Act to amend and alter the Charter of the City of Annapolis."

A provision in this act, purported to confirm all ordinances and acts of the city theretofore passed, in reference to closing streets. The city of Annapolis had closed South street, and sold its bed, and had been indicted for encroaching upon, stopping up and obstructing this street. It was contended that the act of the legislature was void, so far as it attempted to validate previous acts of the city in the closing of streets, because this was not embraced within its title.

HELD: That it was fairly so embraced.

Annapolis v. State, 30 Md. 112.

(6) Title of act: "An Act to provide for the general valuation and assessment of property in this State."

HELD: Sufficient to cover a clause repealing exemption from taxation, contained in the charter of a railroad company.

Washington Co. v. Franklin R. R., 34 Md. 159.

(7) Title of act: "An Act prohibiting the sale of spirituous or fermented liquors in the several Counties of the State on the day of elections."

HELD: A provision against the gift of liquors, as well as sale, was within the title of the act.

Cearfoss v. State, 42 Md. 403.

See also *Mitchell v. State*, 115 Md. 360.

(8) Title of act: "An Act to repeal Chapter 193 of the Act of 1872, and re-enact the same with amendments so that oysters sold in the shell at Baltimore, Crisfield, and at all packing establishments, shall be measured in an iron measure."

HELD: That a provision that the measure should be an "even or struck measure" was embraced in the subject described in the title.

McGrath v. State, 46 Md. 631, 636.

(9) Title of act: "An Act to repeal Article twenty-six of the Code of Public General Laws and to enact a substitute therefor, and to repeal Section twenty-two of Article sixteen: Sections ninety-nine to one hundred and three of the same Article, and Sections thirty-three to forty-three of Article eighty-eight of the Code of Public General Laws."

The act so entitled was a general incorporation law.

The provisions of code art. 16, secs. 99-103, which the title of the act purports to repeal, related to chancery proceedings, have no reference to corporations, and the reference was evidently a mistake for "Article 75, Secs. 99-103."

HELD: That this part of the title being repugnant to, and inconsistent with the act, would be rejected as surplusage, but the act would be upheld.

Strauss v. Heiss, 48 Md. 292.

(10) Title of act: "An Act to repeal Sections 87 and 90 of Article 10 of the Code of Public Local Laws, title 'Dorchester County,' subtitle 'County Commissioners,' enacted by the Act passed at January session 1870, Ch. 449, and all other Sections or parts of Sections of the Code of Public General Laws and Public Local Laws, and all other Acts and Sections or parts of Acts or Sections of the Acts of the General As-

sembly of Maryland inconsistent with the provisions of this Act, and to enact the following in lieu thereof."

This act contained twenty-one sections, embracing a variety of subjects, but all relating to the general subject of the county commissioners of Dorchester County. By some of these provisions, certain duties were imposed on the comptroller that did not apply in any other county, and power and discretion to sue on certain bonds was given to the county treasurer, which by general law was vested in the comptroller.

HELD: There was but one subject embraced in the act, and that was indicated by its title.

County Commissioners v. Meekins, 50 Md. 28.

(11) Title of act: "An Act to amend Article 95 of the Code of the Public General Laws, by adding an additional Section thereto."

The law provided that after settlement, usury could not be recovered. Article 95 is entitled "Usury," and related only to that subject.

HELD: The title is sufficient.

Second German American Building Asso. v. Newman, 50 Md. 62.

(12) Title of act: "An Act to repeal the act passed 1874, Ch. 276, relating to Kent Narrows and all preceding acts relating thereto, and to re-enact as follows."

The act provided for a bridge over Kent Narrows, and for its maintenance, the two counties of Talbot and Queen Anne's to erect the bridge and keep it in repair at their joint expense.

HELD: The title of the act was sufficient.

Judge Alvey dissented, stating that in his opinion the title was insufficient, and the act void.

Talbot County v. Queen Anne's County, 50 Md. 245.

(13) Title of act: "An Act to repeal the act passed at the January session of the General Assembly of Maryland, 1876, Ch. 20, entitled 'An Act to empower the Mayor and City Council of Baltimore to purchase, lease or condemn, lands for public parks or squares within the limits of said City,' and to revive and amend Article 4, Section 837 of the Public Local Laws City of Baltimore, and to make valid proceedings had for the condemnation of ground for a certain square."

The objection that more than one subject was embraced by this act was overruled, and

HELD: That the title of the act was sufficient, and the act was valid.

Baltimore v. Reitz, 50 Md. 574.

(14) Title of act: "An Act to add an additional Article to the Code of Public Local Laws, to be entitled 'Garrett County.'"

The act was assailed on the ground that it contained twenty-six separate and distinct subjects, seventeen of which were theretofore regulated by separate and distinct acts of assembly.

HELD: The act was constitutional.

The subject of the law was an entire system of local law for Garrett County, and that subject was well described in its title.

State v. Fox, 51 Md. 412.

(15) Title of act: "An Act to incorporate the town of Laurel in Prince George's County."

A provision was contained in the act that the labor or money levied under the road law by the county within the limits of Laurel, should be turned over to the commissioners of Laurel.

HELD: That this provision, however unusual, was germane to the subject described in the title, and the title was sufficient.

Prince Georges County v. Laurel, 51 Md. 457.

See also *Commissioners v. Bladensburg*, 51 Md. 465.

(16) Title of act: "An Act to repeal Ch. 220 of the Acts of 1876, entitled 'An Act to establish a free bridge over the Patapsco River at or near the present site of Light street bridge,' and to enact the following in lieu thereof."

A provision of the act authorized the purchase of the then existing Light street bridge, if an agreement as to price could be made with its owners, and if not, the erection of a new free bridge was authorized, all at the joint expense of Baltimore City and Anne Arundel County.

HELD: That the title of the act was sufficient.

Baltimore v. Stoll, 52 Md. 435.

(17) Title of act: "An Act to repeal sub-section 113 of section 3 of Chapter 483 of the Acts of 1874, entitled 'An act to repeal Article 81 of the Code of Public General Laws of the State of Maryland, entitled 'Revenue and Taxes,' and to re-enact the same with amendments,' and re-enact the said sub-section so as to read as follows:"

Prior to this act there was a collateral inheritance tax imposed upon estates of decedents, excepting however, estates passing to father, mother, wife, children or lineal descendants.

The act, the title of which is above given, added to the estates exempted, those passing to husbands.

The point was made that the title was insufficient, but was not pressed in argument, and

HELD: That there was no constitutional objection on this ground to the act.

Montague v. State, 54 Md., 481.

(18) Title of act: "An Act making appropriations for the support of the State government for the fiscal year ending on the 30th of September, 1882.' "

By this act, the sum of "$5.00 and no more" was appropriated to the Maryland Agricultural College.

By the charter of the college, granted in 1856, an annual endowment of $6,000 was appropriated from the treasury of the State of Maryland, but with the right reserved to the legislature at any future session, to withdraw any part or all of said endowment.

HELD: That the act appropriating the sum of "$5.00 and no more" was a withdrawal of the entire endowment, save the sum of $5.00, and that such provision was not void because not described in the title.

Maryland Agricultural College v. Keating, 58 Md. 580.

(19) Title of act: "An Act to inflict corporal punishment upon persons found guilty of wife-beating."

The act provided the punishment of whipping for those husbands who "brutally" beat their wives, leaving still wife-beating not charged as brutal, as a common law offense.

HELD: The act only embraced one subject which was clearly enunciated in the title.

Foote v. State, 59 Md. 264.

(20) Title of act: "An Act to enable the qualified voters of Harford County to determine by ballot whether intoxicating liquors or alcoholic bitters shall be served therein."

Slymer was convicted for selling whiskey contrary to one of the provisions contained in the said law to be effective if adopted by the voters.

HELD: The clause was valid as being sufficiently indicated by the title.

Slymer v. State, 62 Md. 237.

(21) Title of act: "An Act to add a new section to Article 30 of the Code of Public General Laws, title 'Crimes and Punishments,' sub-title 'Rivers,' to come in after Section 171."

The subject of the act was the prevention of dredging, taking and carrying away of sand and gravel from the bed of the Potomac River, and prescribing the punishment for the violation of the provision in the act.

HELD: The title was sufficient, although it was intimated that if it were a new question and the court were not bound by precedent, the decision might have been otherwise.

State v. Norris, 70 Md. 91.

(22) Title of act: "An Act to provide for the wages and salaries due employees of insolvent employers."

Certain provisions of the act gave preferences to employees of (*inter alia*) "corporations applying for the benefit of or proceeded against under the insolvent law." It was argued that these provisions subjected corporations to the insolvent laws, which had not before been applicable to them.

HELD: That it was not so intended by the legislature, and the law was valid; although if it had been so intended, the provision would have been void as embracing more than one subject.

Ellicott Machine Co. v. Speed, 72 Md. 22.

(23) Title of act: "An Act to authorize the Mayor and City Council of Baltimore to open streets and alleys through the property known as the 'Cathedral Cemetery in Baltimore City,' and to confer certain powers on the Trustees of said Cemetery."

One section of this act authorized the corporation to sell or convey such portions of the ground as were found suitable to the sepulture, etc., free from the claims of all persons whatsoever.

HELD: That this provision was fairly included in the title.

Cathedral v. Manning, 72 Md. 116.

(24) Title of act: "An Act to create a Treasurer for Calvert County, and to provide for the collection of taxes therein."

Contained in this act were certain provisions authorizing the governor to appoint a treasurer, authorizing the treasurer to appoint a deputy, and making this deputy-treasurer, the clerk of the board of commissioners of Calvert County.

HELD: All these provisions were embraced in the subject described by the title.

Calvert County v. Hellen, 72 Md. 603.

(25) Title of act: "An Act to repeal with amendments, Section 54 of Article 33 of the Code of Public Laws, title 'Elections', and to add new sections thereto."

The principal subject of the act being "Elections," all the provisions of the Australian Ballot Law are germane to the subject, which is sufficiently described by the title of the law.

Lankford v. Somerset County, 73 Md. 105.

(26) Title of act: "An Act to change the name of the Fidelity Loan & Trust Company of Baltimore City, to the Fidelity & Deposit Company of Maryland, and to amend and define the power of said Company."

One Section of this act gave the right to the corporation to become

sole surety in all cases where two or more sureties are required for the faithful performance of any trust or office.

HELD: This provision was sufficiently described in the title.

Gans v. Carter, 77 Md. 1.

(27) Title of act: "An Act to establish the Maryland House of Correction."

HELD: A provision allowing the courts to sentence to imprisonment in the House of Correction in certain cases, is covered by the title of the act.

Bond v. State, 78 Md. 523.

(28) Title of act: "An Act to repeal Sections 119, 122 and 123 of Article 8 of the Code of Public Local Laws, title 'Cecil County,' sub-title 'County Treasurer,' and to re-enact the same with amendments, providing for the election of a Treasurer of said County in the year 1895, and his appointment in the meantime."

The provisions of the act itself provided for an election of the county treasurer, the appointment of a treasurer *ad interim*, and also provided that the treasurer should have power to appoint a deputy, that he should have his office in the room with the county commissioners, and should be their secretary, and should have possession of all their books and papers, and it then abolished the office of the clerk to the county commissioners, which latter office had existed under a section to the local code.

HELD: All these provisions were embraced within the title.

Drennen v. Banks, 80 Md. 310.

(29) Title of act: "An Act to provide for the treatment and cure of habitual drunkards."

The act contained provisions that with the drunkard's written consent, and on application to the Chancery Court by any relative or friend, and on proof that he was a habitual drunkard and that neither he nor the petitioner could pay for the treatment of such drunkard, he might be sent to an institution for treatment, and that the cost of such treatment, not exceeding $100.00, should be paid by the city or county where such drunkard might reside.

HELD: That the provisions of the act were sufficiently described in its title.

Baltimore v. Keely Institute, 81 Md. 106.

(30) Title of act: "An Act to repeal Article 72 of the Code, title 'Oysters,' and to re-enact the same with amendments."

All the previous legislation in regard to oysters was repealed by that act, and a substitute article enacted.

HELD: That the title of the act was sufficient.

State v. Applegarth, 81 Md. 293.

(31) Title of act: "An Act to add an additional Section to Article 93 of the Code of Public General Laws, to come in after Section 326, and to be known as Section 326A."

The act provided that no Will should be subject to *caveat* after the expiration of three years from its probate.

HELD: The title of the act was sufficient.

Garrison v. Hill, 81 Md. 551.

(32) Title of act: "An Act to provide for the removal of the County seat of Charles County from Port Tobacco to La Plata or Chapel Point, if the legal and qualified voters of said County shall so determine, and to provide for the erection of a court-house and jail at such place as should be so determined on, and the procuring of a site or sites for the same, and to authorize the County Commissioners of said county to borrow money and issue bonds for the payment therefor."

Although by this title, the question whether the county seat should be removed from Port Tobacco to either of the other places mentioned, would seem to have been a question for the voters to decide, the enacting clauses of the act simply required the question whether the county seat should be at La Plata or at Chapel Point, to be so submitted.

HELD: The title was sufficient.

Hamilton v. Carroll, 82 Md. 326.

(33) Title of act: "An Act to change the name of the Trustees of the Sheppard Asylum, incorporated by the General Assembly of Maryland, by the Act of 1853, Ch. 274, as amended by the Act of 1886, Ch. 9."

The act provided after the preamble, for a change of name, and further that the corporation, by its new name, should hold all the rights and powers which were possessed by it under its former name, and hold in like manner all property and estate which it shall acquire by will or otherwise under said change of title hereby made.

HELD: None of the clauses in the act added anything that would not have resulted by law in the mere change of the corporate name, and the title was sufficient.

Phinney v. Sheppard, etc., Hospital, 88 Md. 633.

(34) Title of act: "An Act to repeal and re-enact Sections 13, 14 and 15 of Article 99 of the Code of Public General Laws, title 'Wild

Fowl, birds and game,' and to add new sections for the better protection and preservation of birds and game animals."

Among the provisions of the act was a provision making unlawful the having in possession, exposing for sale, etc., certain game birds and rabbits, even though caught or shot in another state.

HELD: That this provision was sufficiently described in the title.

Stevens v. State, 89 Md. 669.

(35) Title of act: "An Act to provide for the establishment of an electric light plant in Hagerstown, Maryland."

Provisions of the act authorized the city of Hagerstown to establish an electric light plant, and prohibited the future lighting of the streets by contract.

HELD: That the title was sufficient.

Mealey v. Hagerstown, 92 Md. 741.

(36) Title of act: "An Act to repeal certain sections of the local Law of Baltimore County, sub-title 'Justices of the Peace and Constables,' and to re-enact the same with amendments in addition."

The act provided that no justice of the peace, except station house justices, should receive from the county more than $10.00 for his services in any one month in criminal cases, changing the law, which prior to the passage of said act, had allowed justices of the peace in criminal cases, to be paid according to a fee table established by law.

HELD: The title of the act was sufficient.

Herbert v. Baltimore County, 97 Md. 639.

(37) Title of act: "An Act to enable the registered qualified voters of Cecil County to determine by ballot whether spirituous or fermented liquors shall be sold in said County."

The act provided for a submission of the question of prohibition to the people every four years, provided for a method of enforcing prohibition should "No License" carry, and for a Board of Liquor License Commissioners and various regulations in case "License" should carry.

HELD: These provisions are properly described in the title.

Price v. Liquor License Comms. 98 Md. 346.

(38) Title of act: "An Act to limit and control the expenditure of money upon public highways by the County Commissioners of Talbot County."

Provisions in the body of the act repealed the law, whereby Talbot County was required to pay one-half of the cost of a bridge over "Kent Narrows."

HELD: That the title was sufficient.

Queen Anne's County v. Talbot Co., 99 Md. 13.

(39) The legislature of 1902 passed two acts. The first was entitled "An Act to repeal Section 127 of Article 21 of the Code of Public General Laws of Maryland, title 'Talbot County,' subtitle 'Liquors and intoxicating drinks, as amended by Chapter 156, Acts of 1896, and to re-enact the same with amendments, and to add two additional Sections to said Article 21, to follow Section 127 and to be designated as Sections 127A and 127B, relating to the sale of spirituous or fermented liquors or lager beer, or other intoxicating liquors in the Fourth, or Chapel district of Talbot County.' "

The second act had practically the same title except that the section repealed was rightly stated as being Section 127 of Article 21 of the Code of Public *Local* Laws, and the act amending said section which was repealed and re-enacted by the law in question was rightly described as being Chapter 156 of the Acts of *1898*.

Both acts prohibited the selling and giving away of spirituous or intoxicating liquors in the Chapel district of Talbot County.

Parker was indicted for the commission of the offense prohibited. It was claimed that the title of the first act was defective.

The court of appeals conceding this

HELD: That there was no objection to the title of the second act.

Parker v. State, 99 Md., 199.

(40) Title of act: "An Act to amend the Charter of the Western Telegraph Co., a corporation heretofore formed in the City of Baltimore."

The body of the act authorized the company to make and sell Electric Light in Baltimore City, although there was a general statute providing that in order to furnish electric light in Baltimore City, a special grant of the legislature and the assent of the city should be obtained.

HELD: That the law was sufficiently described in its title.

Brown v. Md. Telephone Co., 101 Md. 574.

(41) Title of act: "An Act to authorize the Mayor and City Council of Baltimore to issue its certificates of stock to an amount not exceeding $2,000,000 for the purpose of providing the money to pay costs and expenses of condemning, opening, grading, paving and curbing the streets, avenues, lanes and alleys of the Annex portion of Baltimore City, and to authorize the appointment of a Commission, to be known as the 'Annex Improvement Commission,' and to define the duties of said Commission."

A section in the body of the act provided that in lieu of the commission appointed by the act, the Mayor and City Council might by ordi-

nance, empower the commissioners for opening streets, to perform the duties imposed on said commission.

HELD: This provision was germane to the subject-matter of the law, was embodied in its title, and was valid.

Baltimore City v. Flack, 104 Md. 107.

(42) Title of act: "An Act to prohibit the sale of spirituous or fermented liquors or lager beer at any place within five miles of Henry Station on the W. M. R. R."

The body of the act prohibited the clerk of the circuit court from issuing any license for the sale of such liquors within the named district.

HELD: That the substance of the act was exactly indicated by its title, and the objection was frivolous.

Clark v. Tower, 104 Md. 175.

(43) Title of act: "An Act for the improvement of the Public Highways of the State, and to provide the means therefor, and to require the Commission created by an Act of the General Assembly of 1896, Chap. 51 to perform certain additional duties."

Among other provisions in the body of the act was one requiring county commissioners to repair a public road on petition of owners of two-thirds of the land bounding thereon, the payment by such owners of ten per cent of the cost, and the approval of the state geological commission.

HELD: (Reversing McSHERRY in the lower Court) That this provision was germane to the subject, and that the title was sufficient.

Fout v. Frederick County, 105 Md. 545.

(44) Title of act: "An Act to change the name of the Potomac & Severn Electric Railway Company and to grant certain additional powers and privileges to said corporation, and to confirm certain franchises and privileges granted to said corporation by the Mayor, City Counsellor and Aldermen of the City of Annapolis."

A section of the act ratified in advance all rights and franchises which might *thereafter* be granted to the railway company by any county municipality, or the proper officers thereof.

HELD: The title was sufficient.

Jeffers v. Annapolis, 107 Md. 268.

(45) Title of act: "An Act to repeal Sec. 183, Art. 81, Code of Public General Laws of Maryland, title 'Revenue and Taxes,' subtitle, 'Tax on Mortgages,' and to re-enact the same with amendments."

The body of the act provided that holders of mortgages on property

in certain designated counties of the state, should pay a tax of eight per cent on the amount of interest payable on such mortgages annually.

HELD: That the title was sufficient to satisfy the constitutional requirement.

Miller v. Wicomico Co., 107 Md. 438.

(46) Title of act: "An Act to amend Article 23 of the Code of Public General Laws, title 'Corporations,' sub-title, 'Insurance Department,' by adding further new additional sections after Sec. 143 D, to be known as Sections 143E, 143F, etc."

The body of the act provided that money payable to a certificate holder by a fraternal society should not be subject to attachment for the debts of such holder.

HELD: The title was sufficient.

Himmel v. Eichengreen, 107 Md. 610.

(47) Title of act: "An Act to repeal Section 205 of Article 93 of the Code of Public General Laws (as said section stands in the Code of 1904), title 'Testamentary Law,' sub-title, 'Inventory and List of Debts,' so far as said section applies to the City of Baltimore; and to add a new section to Article 4 of the Code of Public Local Laws, title 'City of Baltimore,' sub-title, 'Register of Wills,' to follow Section 354, and to be designated as Section 354A."

The body of the act provided for a repeal of the general law of the state as to the appointment of appraisers of the estates of decedents, so far as Baltimore City was concerned, and substituted new provisions on this subject, applicable only to Baltimore City.

HELD: The title was sufficient.

Barron v. Smith, 108 Md. 317.

(48) Title of act: "An Act to repeal Sections 191 to 203V both inclusive and Sections 203W, and 203X of Article 2 Code Public Local Laws, title 'Anne Arundel County,' sub-title 'Roads,' and all other Acts or parts of Acts or provisions of the Code of Public Local Law and the Code of Public General Laws, in so far as said Acts or parts of Acts or provisions of said Codes may be inconsistent with the provisions of this Act, and to re-enact with Amendments certain sections to be known as Sections 191, 192, 193, 194, 195, 196, 197 and 198 of Article 2 of the Code Public Local Laws, title 'Anne Arundel County,' sub-title, 'Roads.'"

In the body of the act the county commissioners of Anne Arundel County were authorized to compel any railway company, having tracks on the roads of that county to change the rails and the location of the tracks, and to pave and keep in repair the road covered by the tracks,

and for two feet on each side thereof with the same kind of paving material as might be used on the remaining portion of the road.

HELD: That the title was sufficient.

Anne Arundel County v. United Rys. Co., 109 Md. 377.

(49) Title of act: "An Act to add an additional section to Article 16 of the Code of Public General Laws of Maryland, title 'Chancery,' sub-title 'Trustees,' to come in after Sec. 215 and to be known as Sec. 215A."

The act provided that when ground rents had become redeemable, and the title thereto was held by a trustee without power of sale, by a life tenant with remainder over, or by a holder of a defeasible title, a court of equity could, after certain proceedings, order the money to be paid to the trustee or life tenant or holder of the defeasible title, and a deed made by him which should vest in the grantee, the rights of all parties.

Art. 16, sec. 215 related to specific performance, art. 16, sec. 216 was under the head of "Trustee."

HELD: The title was sufficient.

Kingan Packing Asso. v. Lloyd, 110 Md. 619.

(50) Title of act: "An Act to repeal and re-enact Section 4 of Article 100 of the Code of Public General Laws as enacted by Ch. 317. Acts of 1894, title 'Work-Hours of in Factories,' regulating the employment of children."

In the body of the act, the employment of any person under fourteen years of age, with certain exceptions, was absolutely prohibited.

HELD: The title was sufficient.

Mt. Vernon Co. v. Frankfort Co., 111 Md. 561.

(51) Title of act: "An Act to repeal and re-enact with amendments, Section 67 of Article 77 of the Code of Public General Laws of Maryland of 1904, title 'Public Education,' and to add six new sections thereto, to come in after Section 122 of said Article, and to be numbered respectively Section 122A, 122B, 122C, 122D, 122E and 122½E, designed to provide a commercial course in certain approved high schools."

Section 122½E provided for the increase of salaries for public school teachers according to certain prescribed periods of service, and had nothing to do with the commercial course in high schools.

HELD: The title of the Act was sufficient.

Worcester Co. v. School Comm'rs., 113 Md. 305.

(52) Title of act: "An Act to authorize the Mayor and City Council of Baltimore to publish notices in German newspapers."

The body of the act provided that whenever the Mayor and City Council, *or any official or agency thereof*, shall be required by statute or ordinance to publish a notice in more than one newspaper, the municipal official shall have the discretion to publish *one of such notices* in a newspaper printed in the German language. It was contended that the title of the act would be misleading except as to notices to be published by the Mayor and City Council, and would also be misleading if it were construed to authorize one of the notices then required by law to be published in the German language, and not as authorizing an additional notice to those already required by law.

HELD: The title was sufficient.

Whiteley v. Baltimore City, 113 Md. 541.

(53) Title of act: "An Act to authorize the Mayor and City Council of Baltimore to open, construct and establish a public highway in the City of Baltimore, over, along and near Jones Falls in the City of Baltimore, and to acquire by purchase or otherwise, the property in and adjacent to said highway, and to dispose of property so acquired not in the bed of said highway, and to protect, establish and construct such other highways, public improvements or reservations as may from time to time be authorized and approved by ordinance of the Mayor and City Council of Baltimore, and to authorize the Mayor and City Council of Baltimore to issue its stock to an amount not exceeding one million dollars, in order to provide the money for carrying into effect the improvements and plans above mentioned, and authorizing and to authorize the submission of an Ordinance to that end to the legal voters of the City of Baltimore and to authorize the delegation by the Mayor and City Council of Baltimore to the 'Commissioners on City Plan' of any of the powers conferred on said Mayor and City Council of Baltimore by Chapter 166 of the Acts of Assembly of 1908."

HELD: The act embodied but one subject properly described in its title.

Bond v. Baltimore, 116 Md. 683.

(54) Title of act: "An Act to add a new Article to the Code of Public Local Laws to be known as 'Moving Picture Machine Operators,' subtitle, 'Baltimore City,' and to be numbered."

The act contained a preamble setting forth the necessity for having skilled operators for moving picture machines, and for having a board of examiners to pass upon their competency. It then provided for the creation of such a board and their compensation, and gave such board

the power to license applicants and to suspend and revoke licenses after hearing.

It further provided for a penalty for violation of the act.

HELD: That the act embodied but one subject, which was described in its title.

State v. Loden, 117 Md. 373.

(55) Title of act: "An Act to repeal Section 629 of Article 4 of the Code of Public Local Laws of Maryland, title 'City of Baltimore,' sub-title 'Justices of the Peace and Constables,' to repeal and to re-enact with amendments Section 206, sub-title 'Constables,' and 623, 624, 625, 626, 627, 628 and 648, sub-title 'Justices of the Peace and Constables' of said Article 4 and to add three additional sections to Article 4, to follow immediately after Section 625 as amended, and to be known respectively as Sections 625A, 625B and 625C."

The act was designed to bring about radical changes in the trials of petty civil cases before justices of the peace, and provided a tribunal for that purpose, under the name of a "People's Court."

HELD: The title was sufficient.

Levin v. Hewes, 118 Md. 624.

(56) Title of act: "An Act to add a new Article to the Code of Public General Laws of 1904 of the State of Maryland, to be known as Article 33A, 'Eminent Domain, regulating the procedure for the acquisition of property for public use by condemnation,' and providing that the proceedings therefor shall be before a Jury in Court instead of before a Sheriff's Jury."

The act contained eight sections, substituting a new system for condemnation proceedings, but all its provisions related solely to the procedure to be adopted and followed in all cases where the condemnation of private property for public use was sought except as to highways.

HELD: That title was sufficient.

Ridgely v. Baltimore City, 119 Md. 567.

(57) Title of act: "An Act to repeal Sections 136, 138 and 140H of Article 56 of the Code of 1904 of the Public General Laws of Maryland, title 'Licenses,' sub-title 'Motor Vehicles,' as amended by Acts of 1910, Ch. 207, and to re-enact the same with amendments, and add three new sections thereto, to be known as 138A, 140 and 141."

One of the provisions of the act provided for a special and annual license for professional chauffeurs, and it was argued that by thus creating a new class of operators, it dealt with a subject not sufficiently described in its title.

HELD: The title was sufficient.

Ruggles v. State, 120 Md. 553.

B—LAWS DECLARED VOID.

(1) Title of act: "An Act to repeal an act passed at the January session 1872, Ch. 363, entitled 'An Act to allow the Trustees of the Maryland Institution for the Instruction of the Blind to locate the bed of North street, if extended into Baltimore County, from North avenue to Denmead street.' "

The first section of the act repealed the law mentioned in the title.

The second section of the act enacted a new law in its stead.

HELD: That the second section was void, as being affirmative legislation attempted under a title which disclosed absolutely nothing except the repeal of a former act.

Stiefel v. Maryland Institution for Blind, 61 Md. 144.

(2) Title of act: "An Act to provide for the assessment of the unclaimed military lots and tracts of land in Alleghany County and Garrett County, and for the collection of State and County taxes thereon, by selling the delinquent lands, and turning the net proceeds into the State Treasury."

The second section of this act provided that the agent of these counties should have free access to the records of the land office, and that the bill previously incurred by him in favor of the commissioner of the land office, should be remitted.

HELD: This provision was void as "in no sense germane to the subject-matter disclosed or described in the title."

Scharf v. Tasker, 73 Md. 378.

(3) Title of act: "An Act to provide for an election to be held in the town of Cambridge, Dorchester County, to regulate the liquor traffic therein, and repealing Sections 207, to 213, inclusive of Article 10 of the Code of Public Local Laws, title 'Dorchester County,' sub-title 'Liquors and Intoxicating Drinks,' so far as the same may relate to or affect said town of Cambridge, and repealing and re-enacting with amendments Section 218 of said Article."

Prior to the passage of this law, out of the fourteen election districts of Dorchester County, the sale of intoxicating liquors was prohibited in twelve, but a proviso excepted from this prohibition, druggists selling liquor upon the written *bona fide* prescriptions of practicing physicians.

A section in this law provided that if the voters in Cambridge voted for no license, it should be unlawful for druggists to sell in said town, or in the seventh election district, any intoxicating liquors, and that all laws inconsistent with this provision were thereby repealed.

Whitman was a druggist indicted for an infraction of the law.

HELD: That inasmuch as the title of the law referred to *regulation*

of the liquor traffic and not to the prohibition thereof, as the title of the law related to the town of Cambridge only, and the body of the law assumed to effect the whole seventh election district, and as the body of the law changed the previous provisions, allowing the sale by druggists on prescriptions, the title of the law was insufficient, and Whitman could not be convicted thereunder.

Whitman v. State, 80 Md. 410.

(4) Title of act: "An Act to add a new Section to Article 81 of the Code of Public General Laws, title 'Revenue and Taxes,' sub-title 'Payment of Taxes by Corporations,' providing for the payment by every newly incorporated Company of a bonus on its capital stock, for the use of the State, to come in after Section 88, and to be designated as Section 88A."

A section of the act provided that corporations *theretofore* incorporated, should pay a bonus tax if they should increase their capital stock, upon the stock increase.

HELD: That so far as this provision was concerned, the title of the act was misleading, and the act to this extent was void.

State v. Schultz Co., 83 Md. 58.

(5) Title of act: "An Act to repeal Chapter 377 of the Acts of the General Assembly of Maryland passed at the January session 1894, which was an Act to repeal Section 17 of Article 56 of the Code of Public General Laws, title 'Licenses,' sub-title 'Brokers,' and to add additional sections to Article 23 of the Public General Laws of Maryland, title 'Corporations,' sub-title 'Insurance Department,' said sections to follow Section 143, and to be known as 143A, 143B, 143C and 143D."

The court found that "it appears from the title of this Act that its sole object was to repeal the Act of 1894, Ch. 377, but upon examination of the body of the Act, we find therein new and affirmative legislation."

HELD: That the title of the act was insufficient as to this new and affirmative legislation, and that all the provisions of the act being inseparably connected, the whole act was void.

State v. Benzinger, 83 Md. 481.

(6) Title of act: "An Act to add an additional section to the Code of Public Local Laws, etc., to provide for licenses for stevedores."

There was in the body of the law a provision that in addition to the taking out of a license, any person before he should transact the business of a stevedore, should file with the Clerk of the Court of Common Pleas, a bond to the state in the penalty of $1,000.00, etc., etc.

HELD: That so far as the act required a bond to be filed, it was void because of insufficiency of title, but the provisions contained in the

act as to licenses were separate and distinct from those relating to bond, and the provisions as to licenses were valid.

Steenken v. State, 88 Md. 708.

(7) Title of act: "An Act to prohibit Railroad and Mining corporations, their officers and agents, from selling or bartering, goods, wares, or merchandise in Alleghany County, to their employees."

In the body of the act provisions were contained making it unlawful for any president, vice-president, manager, superintendent, director or other officer of such corporation, to own or have any interest whatever in any store or merchandise business in Alleghany County, and also prohibiting railroad and mining corporations from selling or bartering any goods, wares or merchandise without reference to whether sales were made to employees of such corporations or not.

HELD: That the act was void because the title was misleading by apparently limiting the enactment to a much narrower scope than the body of the act is made to compass and by cloaking in the act foreign discordant and irrelevant matter.

Luman v. Hitchens Bros., 90 Md. 14.

(8) Title of act: "An Act to repeal Sections 122 and 128 of Article 23 of the Code of Public General Laws, title 'Corporations,' sub-title 'Insurance,' and to re-enact the same with amendments, and to add an additional section to said Article, to be known as Section 122A, and to repeal Section 143EI of said Article."

The body of the act repealed the above mentioned sections 122 and 128, enacted a new section as 122A, and then there followed "Section 122B" to the effect that no order or decree interfering with the business of a domestic insurance company, or appointing a receiver thereof, should be made except under proceedings instituted by the state insurance commission; then followed a repeal of section 143EI.

HELD: The title of the act was insufficient so far as "Section 122B" was concerned, being misleading and serving to divert attention from what is contained in the section declared void.

Kafka v. Wilkinson, 99 Md. 238.

(9) Title of act: "An Act to add an additional Section to Article 81 of the Code of Public General Laws, title 'Revenue and Taxes,' subtitle 'Payment of taxes by Corporations,' to follow Section 81A, and to be designated as Section 81B."

The body of the act provided that section 86 of article 81 of the code, which imposed a franchise tax on savings banks, should not apply to or affect any savings bank which had a capital stock of $20,000 or over,

subject to taxation under the laws of the state, and which received time deposits at a fixed rate, and not weekly or monthly deposits. At the time of the passage of the act, there was no section 81A of article 81 of the code in existence, and section 81 of that article related to a failure of the collector of taxes to account for the same.

HELD: That the title of the act was misleading, and the act invalid.

State v. German Savings Bank, 103 Md. 196.

(10) Title of act: "An Act to amend Ch. 469 of the Acts of 1849, incorporating the Cumberland & Pennsylvania Railroad Company, and to amend the Charter of the said Company so as to prohibit it from allowing its tracks to connect with, or to be used by the B. & O. R. R. Co., except upon certain conditions."

In the first section of the act these conditions were described.

The second section of the act provided that if the C. & P. Railroad Company should do the prohibited acts, the state's attorney should file a petition for the forfeiture of its charter; and the third section directed the court, upon ascertaining that the acts had been committed by the company, to decree a forfeiture of its charter.

Under the general law of the state, the authority of the governor is required for the institution of a suit to forfeit a charter, and the court is empowered to decree a forfeiture if it be of the opinion that the public interests require it.

HELD: That the second and third sections are not properly described in the title, and were void.

State v. Cumberland & Pa. R. R. Co., 105 Md. 478.

(11) Title of act: "An Act to repeal and re-enact with amendments, Section 2 of Ch. 426 of the laws of 1904, entitled 'An Act to authorize and empower the Board of Public Works of Maryland to collect the insurance upon State Tobacco Warehouses numbers 1 and 2, and place the same to the credit of the Tobacco Warehouse Fund, and to either rebuild a modern warehouse on the present site of tobacco warehouse Numbers 1 and 2 and the property owned by the State adjacent thereto, or to sell said property or to lease the same for such sum as they may think right, and build a tobacco warehouse in some locality of Baltimore City, selected by said Board of Public Works."

The body of the act created a governmental agency distinct from the board of public works, called the "State Tobacco Warehouse Building Commission," and authorized that Commission to rebuild, enlarge and equip warehouses Nos. 3, 4 and 5, and to purchase a site on the water front in Baltimore, in the designated location, for the erection of a tobacco warehouse of a certain capacity, and in case a suitable site could

not be obtained in that locality, the commission was authorized to build on the sites of houses A and B, a warehouse No. 3.

HELD: That the title of the act was misleading, and did not indicate in any degree the nature of the proposed legislation. The act was, therefore, void.

Christmas v. Warfield, 105 Md. 530.

(12) Title of act: "An Act to incorporate the Pocomoke Bridge Company."

A section of this act required the county commissioners of Somerset County to pay annually $600.00 to the Bridge Company, and required the county commissioners of Worcester County to pay annually to it the sum of $700.00.

HELD: That without reference to other objections, this section is void for the reason that its provisions were not indicated by the title of the act.

Somerset Co. v. Pocomoke Bridge Company, 109 Md 1.

(13) Title of act: "An Act to add two new sections to Article 2 of the Code of Public Local Laws, title 'Anne Arundel County,' sub-title 'Roads,' so as to require all owners of vehicles using public streets and roads in Anne Arundel County, to have a license therefor."

The act added two new sections, and required a license on all such vehicles *except* ox-carts, horse carts, farm wagons and milk wagons.

HELD: That the title was clearly misleading, there being in it not the faintest suggestion to lead any one to suspect that the exemptions contained therein, were or might be introduced in the law, and further held that inasmuch as this exemption feature was one of the essential parts of the law, and was no doubt inserted to secure its passage, the whole law should be declared void.

Nutwell v. Anne Arundel Co, 110 Md. 667.

(14) Title of act: "An Act to incorporate the village of Chevy Chase."

Among numerous provisions, there was one which withheld from the village the power to tax or assess the property east of a designated line, but required the county commissioners, under certain conditions, annually to make a special levy, not to exceed a fixed rate, on the property of the designated district.

HELD: That these provisions were not germane to the object and purposes of an ordinary municipal charter, but were alien and repugnant to the principles which have heretofore governed the administration

of municipalities in this state. They were, therefore, not properly described in the title of the act, and were void.

Curtis v. Mactier, 115 Md. 386.

(15) Title of act: "An Act to provide for a Commission composed of James Rittenhouse, George W. Yellott and Asa B. Gardiner, Jr., to be known as 'The Good Roads Commission of Baltimore County,' with full powers to construct and improve a system of improved public roads, highways and bridges in Baltimore County, Maryland, and providing also the ways and means for the construction and improvement thereof by a Bond issue of $1,500,000, to be a lien upon the assessable property in said County, and repealing Chapter 744 of the Acts of the General Assembly of Maryland, passed at the Session of 1910."

The body of the act contained provisions which subjected the county to "a great and indefinite liability" in excess of $1,500,000.

HELD: The title was "glaringly false, deceptive and misleading," and the provisions so improperly inserted were so intimately and inseparably connected with its main purpose that the whole act must be declared void.

Painter v. Mattfeldt, 119 Md. 466.

(16) Title of act: "An Act to create a paving commission for the City of Baltimore, and to define its duties and powers, to authorize the Mayor and City Council to issue stock to an amount not exceeding $5,000,000 for the purpose of defraying the cost of the work of said Commission, to provide for the submission of an Ordinance to that end to the legal voters of the City of Baltimore, and to empower the Mayor and City Council of Baltimore to assess the cost of any work of said Commission in particular upon the property bordering upon any public lane, alley, avenue, street or highway in the City of Baltimore, upon which such work shall be done by said Commission, and to collect and make use of such assessments for the purpose of this Act."

One section of this act provided that the Mayor and City Council of Baltimore were authorized to impose upon the Street Railway Companies, the obligation to pay for the repaving which was done under the act, so far as the same shall be done between the rails of their tracks, and for a space of two feet on either side thereof.

The United Railways succeeded to certain charter rights by which it was compelled to keep the streets covered by its tracks and two feet on each side thereof, in thorough repair at its own expense.

HELD: That the obligation of the company to keep the street in repair did not include the obligation to repave, and that this provision of the act in question would be a change and amendment of the company's charter, and although this charter could be amended by the legislature, there was nothing in the title of the act to give "the slightest intimation

of such intention," and this provision would, therefore, be void as not being sufficiently described in the title of the act.

United Railways v. Baltimore, 121 Md. 552.

It is evident that in every one of these cases—whether the law was sustained or declared invalid—the same test was applied, viz: Is the title sufficient to put the reader thereof upon notice of the contents of the act.

No Law to be Revised or Amended by Reference to Its Title Only.

The Constitution of 1851 provided that no law should be revised, amended or *repealed* by reference to its title or section only.

It will be noted that our present Constitution has omitted the words "*or repealed*" so that there is now no reason why the legislature should not repeal a law by reference alone to its title,[40] and indeed, a law may be repealed by a subsequent law which simply in terms "repeals all laws whether Local or Public and all parts and sections of all laws which are inconsistent with its provisions."[40]

Furthermore, a general law can be repealed so far as affects a certain political and territorial division of the state, by reference only to its title or section.[41*]

The object of this provision is to guard against the insertion of additional provisions in the body of a section, the expunging of phrases, clauses or sentences therefrom, the alteration or substitution of words by mere reference to the place in the old law where the change should be introduced; all of which would require an examination of the former act and a comparison with it of the new act in order to understand the change, entailing confusion and uncertainty, particularly after repeated amendments in such manner, when it would be difficult to determine the state of the law.[42]

It is evident that a repeal of a law whether total or partial is not within the mischief intended to be reached by this provision.

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40 *County Comms. v. Meekins*, 50 Md. 28, 44.
41 *Barron v. Smith*, 108 Md. 317, *Illustration LXVIII.
42 *Barron v. Smith*, 108 Md. 317, 326.

The provision that "no law shall be construed by reason of its title to grant powers or confer rights which are not expressly contained in the body of the act," is plain and has not come before the Court of Appeals for construction.

Probably it is, strictly speaking, unnecessary; for the title of the law is not a part of it, and the general rule that all legislative grants must be strictly construed would require the same construction of an act as is required by this clause of the Constitution.

Setting Out Any Article or Section of the Code When Amended As the same is Intended to Read Thereafter.

The duty imposed upon the legislature by this clause is plain, and no instance of disregarding it has come before the Court of Appeals, except so far as it may refer to re-enacting the "number" of sections of the code after amendment.

Our Court of Appeals has commented on the fact that the clause in this section as to a law embracing one subject only and certain other clauses contain the word "*Shall,*" which indicates that these provisions are *mandatory,* while in this and the following clauses the words are "It shall be the duty of the General Assembly," etc., this last phrase indicating that the provisions so worded are directory merely, and that non-compliance with them will not invalidate the act.[43]

Enacting New Legislation As Articles and Sections of the Code.

This provision is one of those, the compliance with which is simply made "the duty of the Legislature," and is, therefore, merely directory.

So it was held under a similar provision in the Constitution of 1864,[44] as well as under the present Constitution.[45]

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43 *County Comms. v. Meekins,* 50 Md. 28, 45.
44 *Anderson v. Baker,* 23 Md. 531, 570, 585.
45 *County Commrs. v. Meekins,* 50 Md. 28.

Article III. Section 30.

..**"Every bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented to the Governor, who, if he approves it, shall sign the same in the presence of the presiding officers and chief clerks of the Senate and House of Delegates. Every law shall be recorded in the office of the Court of Appeals, and in due time be printed, published and certified under the Great Seal, to the several courts, in the same manner as has been heretofore usual in this State."**

These provisions as to the mode of authentication of a bill, and the manner in which it shall be signed by the governor, are quite plain.

As we have already seen, a bill signed and certified properly in every respect, can be proven, if sufficient evidence to that effect be adduced, never to have been constitutionally passed, and may consequently be declared void.[46]

It would also seem that the provisions now being considered, are mandatory and that unless the authentication and signature of the governor are as prescribed, the bill would not become law.

It has been squarely decided that the bill must be sealed with the great seal of the state before any duty of the governor to consider it begins.[47]

Although the governor may actually write his name upon the bill as approving it, in the presence of the proper officials, still he may prove by his own oral testimony that he signed it by inadvertence under a misapprehension of what it was, and without ever having gone through the mental operation of approving it, and that he immediately after, and before the bill left the executive chamber in which bills were being signed, erased his name from the bill—and upon such evidence, if believed, the bill will be declared not to have received the governor's assent or to have become a law.[48]

Should the governor intend to approve a bill, and actually sign it, but then change his mind and erase his signature, a question would be presented which the court expressly refused to answer in advance.[48]

So, too if the bill were signed under a misapprehension which was not discerned at once, after a certain lapse of time, it might

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46 *Legg v. Annapolis,* 42 Md. 203.
47 *Hamilton v. State,* 61 Md. 14.
48 *Allegany County v. Warfield,* 100 Md. 516.

be out of the governor's power to erase his signature or correct his mistake in any way, but our courts have not laid down what would be the limit of time in this regard.[48]

It would appear that the practice is to have a copy made of the "engrossed" bill, which passes the two houses, and present this copy—the "enrolled bill"—to the governor for his signature.[49]

The provisions as to printing and publishing the laws, and certifying them to the courts, were no doubt intended to insure to the people a knowledge of the laws under which they are living. It was contended in one case that this section should be construed so as to prevent any law from going into operation until these provisions were complied with.

The court, however, overruled the point, holding that the time when laws should go into operation was completely and exclusively covered by the next section (article III, section 31).[50]

By article 80 of the code, sections 7 and 8, provision is made for a codification of the statute law every ten years by the "State Reporter and Codifier," but in practice private codes are legalized.[51]

The "certification to the Courts under the Great Seal" seems in practice to amount to the sending *gratis* of the printed volume of the laws of each session to the judges and clerks of each court in the State.

Article III. Section 31.

"No law passed by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein."

Both by the provisions of the previous section as to publication, etc., and by this section, the intention of the Constitution-makers is shown to allow the people of the state a fair opportunity to become acquainted with new legislation before it becomes effective.

But this purpose is entirely frustrated by the last clause of the section, which allows the legislature to make the law effect-

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48 *Allegany County v. Warfield,* 100 Md. 516.
49 *Dunn v. Brager,* 116 Md. 242; *Ridgely v. Baltimore City,* 119 Md. 567.
50 *Parkinson v. State,* 14 Md. 184.
51 Act of 1912, Ch. 21, legalizing "Bagby's Code."

tive at any time it may so declare. It is true that if there is nothing specified in the act as to the date of its going into effect, it is until the first day of June following its passage altogether inoperative.[52] But the legislature may, and generally does, make it "effective from the date of its passage," and if the time of its taking effect is expressly declared in the act, it will operate at the time so declared. This is so whether the law may then have been published or not, for it has been held that authority is most explicitly given to the legislature to declare when a law shall take effect, which authority is not restricted or qualified by requiring any previous publication.[53]

A period of three or four months usually elapses between the adjournment of the legislature and the official publication of the laws, and during this period it is sometimes not easy to find out just what changes in the law have been made, without actually securing from the clerk of the Court of Appeals a private copy.

Article III. Section 32.

"No money shall be drawn from the Treasury of the State by any order or resolution, nor except in accordance with an appropriation by law; and every such law shall distinctly specify the sum appropriated and the object to which it shall be applied; provided that nothing herein contained shall prevent the General Assembly from placing a contingent fund at the disposal of the Executive, who shall report to the General Assembly at each session the amount expended, and the purposes to which it was applied. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws after each regular session of the General Assembly."

The object of this section is clear, and is, as stated by our court " to prevent wasteful, and fraudulent, or indefinite appropriations of the people's money, and that the legislature and the people should be notified of the specific sum appropriated and of the specific purpose of the appropriation."[54]

It seems considerably more drastic and complete in its provisions than the corresponding section in the Federal Constitution.[55]

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52 *Risewick v. Davis,* 19 Md. 82, 96.

53 *Parkinson v. State,* 14 Md. 184, 200.

54 *McPherson v. Leonard,* 29 Md. 377, 389; see also *Nowell v. Harrington,* 122 Md. 492.

55 U. S. Constitution, Art. 1, Sec. 9, Clause 7.

It has, however, been held that the "appropriation *by law,*" without which no money can be drawn from the treasury, need not necessarily be an appropriation *by statute.* Where the Constitution creates an office, and provides for the payment of a certain annual salary, the appropriation of that salary is made by the Constitution, *proprio vigore.*

The main purpose of the constitutional provision we are considering being "to prevent the expenditure of the people's treasure without *their consent,*" when the people have provided for such official salaries in their organic law, which is paramount to all other law, they "have not only given their consent" in the most solemn manner possible, but "have imperatively issued their commands" upon the subject, which commands the legislature cannot nullify.[56*]

The requirement that the sum appropriated shall be distinctly specified, is gratified when an appropriation is made for a given object "not to exceed" a certain amount,[57*] and in one case a law seems to have been sustained which simply provided for payments according to the rule therein laid down, although neither a sum certain, nor a maximum amount was appropriated.[58*]

Article III. Section 33.

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, viz: For extending the time for the collection of taxes, granting divorces, changing the name of any person, providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees, giving effect to informal or invalid deeds or wills, refunding money paid into the State Treasury, or releasing persons from their debts or obligations to the State, unless recommended by the Governor or officers of the Treasury Department. And the General Assembly shall pass no special law for any case for which provision has been made by an existing general law. The General Assembly, at its first session after the adoption of this Constitution, shall pass general laws providing for the cases enumerated in this section which are not already adequately provided for, and for all other cases where a General Law can be made applicable."

Prior to the Constitution of 1851, the granting of divorces by private act was held to be a proper exercise of legislative power,

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56 *Thomas v. Owens,* 4 Md. 189, *Illustration LXIX.
57 *McPherson v. Leonard,* 29 Md. 377, *Illustration LXX.
58 *Leonard v. Wiseman,* 31 Md. 201, *Illustration LXXI.

even although the act might have been passed without any notice to or knowledge by one of the parties affected.[59]

So also, the statute books and the reports disclose that frequently private acts were passed for the relief of particular named parties, or providing for individual cases, as for instance, validating a deed defectively executed,[60] or validating a sale by trustee of the real estate of certain infants,[61] or for the relief of certain named individuals, for example, sureties upon official bonds, releasing them either absolutely or conditionally from their debts and obligations to the state.[62]

By the first clause of this section it is provided that there shall be neither a local nor special law (1) for extending the time for the collection of taxes; (2) for granting divorces; (3) for changing the name of any person; (4) providing for the sale of real estate belonging to persons under disability, by their fiduciaries; (5) validating informal or invalid deeds or wills.

As to all these matters, the Constitution requires that the same law must apply to every person and on every foot of the soil of Maryland.

The same clause also provides that no person can be relieved from his obligations to the state unless upon recommendation by the governor or officers of the treasury department.

Our court has expressly held, what would seem to be evident, that this whole section applies only to the future passage of the special laws prohibited.[63]

It has also held that the last provision above referred to, does not prevent the legislature from passing a general law changing its policy in regard to taxation, although the effect of such law might be to relieve certain individuals from payment of taxes accrued under the legislation thereby repealed.[64*]

No Special Law for Cases Covered by General Law.

The second clause of this section, providing that no special law shall be passed for any case for which provision has been

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59 *Crane v. Meginniss,* 1 G. & J. 463; *Wright v. Wright,* 2 Md. 429.
60 *Dulaney v. Tilghman,* 6 G. & J. 461.
61 *Dorsey v. Gilbert,* 11 G. & J. 87; *Davis v. Helbig,* 27 Md. 452.
62 *Montague v. State,* 54 Md. 481.
63 *Brown v. State,* 23 Md. 503.
64 *Montague v. State,* 54, Md. 481, *Illustration LXXII.

made by any general law, is a very important one, and laws have been frequently attacked as in violation thereof.

In regard to this clause, as in regard to the construction of section 29 of this article, the courts have shown a liberal disposition and a strong desire to uphold the law questioned.

Thus the provisions of the Old Code, relating to, and ranged under the Title of "Negro Apprentices," being "part and parcel of a general law found in the volume of the code embracing the public general laws of this state" were held not to properly come under the heading of a "Special Law," although relating only to a special class of citizens distinguished from other classes at their birth.[65]

It will be noticed that a distinction between *"Special Laws"* and *"Local Laws"* is contained in the words of this section. Under the first clause either "Special" or "local" laws are prohibited in certain cases, but only "Special" laws are forbidden where "General" laws exist covering the same subject matter.

This distinction has uniformly been recognized by the Court, and wherever a statute attacked as a "Special" law has been found to be a "Local" law, it has been upheld.

In the language of Judge Alvey: "The special laws contemplated by the Constitution, are those that provide for individual cases. Local laws, on the other hand, are applicable to all persons, and are distinguished from Public General Laws, only in this that they are confined in their operation to certain prescribed or defined territorial limits, and the violation of them must, in the nature of things, be local. It is not, therefore, by any means, necessary, in order to give a Statute the attributes of a public law, that it should be equally applicable to all parts of the State. All that is required to make it a public law of general obligation, is, that it shall apply to all persons within the territorial limits prescribed in the Act. That is the character of the Act before us, and of that portion of the Statute law of our State, comprised in the codified division under the title of 'Public Local Laws.' It could never have been the purpose of the Constitution to prohibit this species of legislation, except in the specially enumerated cases. On the contrary, we suppose it to be not only competent for, but the duty of the

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[65] *Brown v. State,* 23 Md. 503.

legislature to provide by law for the local and peculiar exigencies of every portion of the state; and we know that the only practicable mode of doing this in many instances, is by local acts. And with that view, the rule of interpretation as to the codified laws, is, that where the public general law of the State, and the public local law of any county or city are in conflict, the public local law is to prevail. The object of the provision of the Constitution relied on, was to prevent the abuses that occured in the great multiplicity of legislation for particular and individual cases, and not to prevent legislation to meet the wants of communities less extensive in their territorial limits than the state.''

The act in question in the case from which we have just quoted, was a Local Road Law for Baltimore County.[66]

The same rule has been applied to an act providing for the appointment of county commissioners and a treasurer for Dorchester County, and prescribing their duties[67] to the charter of the Town of Laurel where a special disposition was made as to the proceeds of the road tax,[68] and to a law fixing the compensation of justices of the peace in Baltimore County at a different rate from that prevailing in other parts of the State.[69]

So also, it has been held that the following laws were not invalid under this section, viz: a law making certain provisions as to the measurement of ''Oysters sold in the shell at Baltimore, Crisfield and all packing establishments;''[70] a law authorizing and requiring the Mayor and City Council of Baltimore to take charge and maintain as a public highway, a certain bridge over Gwynns Falls, there being in the public local laws relating to Baltimore City, no provision made for the acquisition of the bridge in question, nor ascertainment of the amount to be paid the owners as provided by the act in question;[71] an act providing for the completion of a street, a large amount of work whereon had been done under a law afterward repealed, the general road law of the county contemplating only original proceedings and not such curative proceedings

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66 *State v. Co. Comms. Balto. Co.,* 29 Md. 516.

67 *County Comms. v. Meekins,* 50 Md. 28.

68 *Prince George's Co. v. Laurel,* 51 Md. 457.

69 *Herbert v. Baltimore County,* 97 Md. 639, where Judge Alvey's language in 29 Md. 520 is quoted and approved.

70 *McGrath v. State,* 46 Md. 631.

71 *Pumphrey v. Baltimore,* 47 Md. 145.

as provided by the act in question;[72] an act authorizing a street railway to be constructed and operated on certain streets in Baltimore City, there being no general law conferring the same rights, and imposing the same restrictions as the act in question, although it was contended that full provision for the use of the streets of Baltimore City by Railroad Companies had been made by a general law then in force;[73] a general law regulating elections from whose provisions about one-fourth of the state was excepted;[74] an act incorporating a Company and allowing it to become sole surety in all cases where two or more sureties are required for the faithful performance of any trust or office, it being held that the laws requiring two or more sureties referred to individuals, and that there was no general law relating to corporate sureties;[75] an act requiring Annapolis to erect a school building and issue bonds for its cost without submitting the question to the voters, the general law providing that the school commissioners of each county should have power to build school houses, and the city charter of Annapolis providing for an affirmative popular vote before bonds can be issued;[76] an act providing for the removal of a county seat if the voters of the county so decide, there being no general law concerning the location of county seats;[77] and an act providing for a tax on mortgages in certain counties of the state, and not in other counties.[78]

On the other hand, there have been at least three acts declared void, and a strong intimation given that another act would be considered void as being in contravention of this section.

In *Rock Hill College v. Jones*[79] it was strongly intimated that where a section of the code provided generally for disposition of the estate of the decedents, dying without relatives, a law making a different provision as to one estate, would be within this prohibition.

In the *Mayor and City Council of Baltimore v. County Commissioners of Allegany County,*[80] an act provided that shares of

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72 *O'Brian v. Co. Comms.* 51 Md. 15.
73 *Hodges v. Baltimore Union P. Ry. Co.,* 58 Md. 603.
74 *Lankford v. Somerset County,* 73 Md. 105.
75 *Gans v. Carter,* 77 Md 1.
76 *Revell v. Annapolis,* 81 Md. 1.
77 *Hamilton v. Carroll,* 82 Md. 326.
78 *Miller v. Wicomico Co.,* 107 Md. 438.
79 47 Md. 1.
80 99 Md. 1, 12.

stock in corporations of Allegany County should be assessed and taxed in said county to the corporation. This was held to be unconstitutional because a special law, relating to the taxation of shares of stock in corporations in said County, while there was a general law providing "for the taxation of shares of stock in the hands of the owners and to the owners at their places of residence."

In *Baltimore City v. Starr Church*,[81] an act exempting from taxation certain property belonging to Starr Church, was held void because it was special legislation relating to the exemption of the property of said Church, while there was a general law providing for the exemption from taxation of certain property belonging to religious corporations.

In *Prince George's County v. B. & O. R. R.*,[82] an act directing that the B. & O. R. R. should erect and maintain safety gates with flag-men at two designated crossings of its tracks in a certain county was held void, because there were general provisions contained in the code, prescribing the conditions under which railroad companies throughout the state may be required by the county commissioners to protect highways crossing the railroad tracks at grade, by flag-men, etc.

The last clause of this section, which requires general laws to be passed by the legislature for the cases wherein special and local legislation is forbidden by the section, has been pretty thoroughly complied with by the legislature, as an examination of the code will disclose.

Article III. Section 34.

"No debt shall be hereafter contracted by the General Assembly unless such debt shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same; and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and interest thereon shall be fully discharged. The credit of the State shall not in any manner be given, or loaned to, or in aid of any individual association or corporation; nor shall the General Assembly have the power in any mode to involve the State in the construction of Works of

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81 106 Md. 281.
82 113 Md. 179.

Internal Improvement, nor in granting any aid thereto, which shall involve the faith or credit of the State; nor make any appropriation therefor, except in aid of the construction of Works of Internal Improvement in the counties of St. Mary's, Charles and Calvert, which have had no direct advantage from such works as have been heretofore aided by the State; and provided that such aid, advances or appropriations shall not exceed in the aggregate the sum of five hundred thousand dollars. And they shall not use or appropriate the proceeds of the Internal Improvement Companies, or of the State tax, now levied, or which may hereafter be levied, to pay off the public debt (or) to any other purpose until the interest and debt are fully paid or the sinking fund shall be equal to the amount of the outstanding debt; but the General Assembly may, without laying a tax, borrow an amount never to exceed fifty thousand dollars to meet temporary deficiencies in the Treasury, and may contract debts to any amount that may be necessary for the defence of the State."

The provision of this section, securing the payment of every debt contracted by the state within fifteen years from the time it was so contracted, is so plain as to require no comment.

The provision preventing the State from making any appropriations for the construction of works of internal improvement, can only be understood by reference to the history of Maryland for some years preceding the adoption of the Constitution of 1851, in which this provision appears for the first time.

In 1826 the Chesapeake & Ohio Canal was incorporated, and in 1827 the B. & O. R. R. Co. obtained its charter. To the stock of both the canal and the railroad, the State of Maryland subscribed. From that time on to 1840, subscriptions were made to the extent of some millions of dollars to canals, railroads and similar internal improvements, most of which turned out to be worthless investments, and from none of which came the returns which were expected.

In 1843 an act was passed to sell the state's interest in the Internal Improvement Companies, and to pay the debts of the state, but for want of a purchaser there was no sale made. The state defaulted on its interest, and stood face to face with bankruptcy and repudiation. Finally, after a great struggle, the obligations of the state were met by increased taxation and its credit re-established.

All this was fresh in the minds of the framers of the Constitution of 1851 and the provision we are now considering was adopted by them to prevent the repetition of the bitter experi-

ence which we have just described. None of this indebtedness which pressed so heavily upon the state and led to the adoption of this section, was incurred for public roads; and when in 1904 an act was passed appropriating a large sum of money for the public roads of the state, it was held that looking to the history of this section, and the mischief against which it was aimed, the internal improvements, forbidden by this section to be undertaken by the State, did not include public roads, but these, like court-houses, markets and other structures which might under certain conditions be included within the meaning of the words "Internal Improvements," were not within the meaning of those words as used in this section, and therefore, an appropriation by the State for the construction of public roads is not unconstitutional.[83]

The provision preventing the appropriation of the proceeds of the state tax levied to pay off the public debt, to any other purpose, has been once before the Court of Appeals.

In 1860 it was argued that an act of the legislature releasing sureties upon the official bond of the collector of the state tax for Allegany County, was in reality an appropriation of the proceeds of the State tax to some other purpose than the paying off of the public debt, contrary to the provisions of this section, the argument being that if the legislature could not *divert* the state taxes to any other purpose than that expressed in the Constitution, it could not *give them away* to either the collector or his sureties. The court, however, held that the act of the legislature questioned, was a mere release of claim and not an appropriation, and that it was not in contravention of this clause of the Constitution.[84]

The provisions authorizing a loan to the extent of $50,000 to meet temporary deficiencies in the treasury, no matter from what cause arising, and to contract debts to any amount necessary, for the defence of the state, seem very plain and have never been before our Court of Appeals.

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83 *Bonsal v. Yellott,* 100 Md. 481.

84 *State v. Hendrickson,* 15 Md. 205.

Article III. Section 35.

"No extra compensation shall be granted or allowed by the General Assembly to any Public Officer, Agent, Servant or Contractor, after the service shall have been rendered, or the contract entered into; nor shall the salary or compensation of any public officer be increased or diminished during his term of office."

This is another section whose provisions are clear and which has given rise to no litigation which has been carried to the Appellate Court.

The provision which prevents the salary of any public officer from being changed during his term of office, is a very broad and sweeping one, the only similar provision in the Federal Constitution relating to judges, and simply securing to them that their salary shall not be reduced.[85]

Our court has, however, held that this section does not protect an official such as a justice of the peace who is paid by fees, from being required to turn over practically all his fees to the State, provided no change is made in the fee table.[86]

Article III. Section 36.

"No Lottery grant shall ever hereafter be authorized by the General Assembly."

This provision has never been construed by the Appellate Court. As early as 1835, our legislature expressed an anxious desire that the lottery system then in existence, should expire at as early a day as practicable, and in 1841 they were called by our court a "great moral evil."[87]

Lottery grants have now been constitutionally forbidden for more than sixty years, and the legislation against all forms of gambling is growing more and more stringent.

Article III. Section 37.

"The General Assembly shall pass no Law providing for payment by this State for Slaves emancipated from servitude in this State; but they shall adopt such measures as they may deem expedient to obtain from the United States compensation for such Slaves, and to receive and distribute the same equitably to the persons entitled."

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85 U. S. Constitution, Article III, Section I.
86 *Levin v. Hewes,* 118 Md. 624, 642.
87 *Lucas v. McBlair,* 12 G. & J., 1.

Like the last clause of the 24th Article of the Declaration of Rights,[88] this section became an anachronism when the second clause of the 14th Amendment to the U. S. Constitution was adopted.[88]

Article III. Section 38.

"No person shall be imprisoned for debt."

This declaration is unconditional and absolute, and secures every debtor against the taking of his body in satisfaction of indebtedness, or the seizure or holding in restraint of his body as a means of coercing or inducing him to make payment, and this right will be protected by the Maryland Courts as against Maryland creditors, even though they may be proceeded against in foreign jurisdictions.[89]*

But the word "debt" in this section is given a common-sense interpretation and the same meaning in which it was understood by the people who adopted the Constitution. It has accordingly, been defined as "an obligation arising otherwise than from the sentence of a court for breach of the public peace or commission of a crime," the evident intention being to "relieve those who could not pay their debts, and not to shield from punishment persons who had violated the public law."[90]

Accordingly a fine imposed by a justice of the peace for a violation of an act of the legislature forbidding the insuring of lottery policies, was held not to be a debt, and the non-payment of such fine properly subjected the offender to imprisonment,[91] and this would be the case even though the statute might direct the proceeding before the justice to be in form "as for the recovery of small debts."[92] The same rule was applied as to a statute providing imprisonment in jail for limited periods, upon default in the payment of a fine for operating a motor vehicle without a license.[93]

So an attachment for contempt of court for failure to pay alimony or comply with certain other orders of court, in divorce

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88 See Supra page 48.
89 *Miller v. Gittings*, 85 Md. 601, 618, *Illustration LXXIII.
90 *State v. Mace*, 5 Md. 337, 351.
91 *State v. Mace*, 5 Md. 337, 351.
92 *State v. Glenn*, 54 Md. 572, 604.
93 *Ruggels v. State*, 120 Md. 553, 564.

proceedings, is held not to be a proceeding for the collection of a debt, but the punishment for failure to perform a duty.[94]

And a statute that provided for the punishment of defaulting tax collectors by confinement in the penitentiary, although it was provided that the collector should be discharged at any time either before or after conviction upon payment of the amount due, was held not to provide for the imprisonment of the tax collector for a debt, but for punishing him for failure to discharge his duty.[95]

Article III. Section 39.

"The General Assembly shall grant no charter for Banking purposes, nor renew any Banking Corporation now in existence, except upon the condition that the Stockholders shall be liable to the amount of their respective share or shares of stock in such Banking Institution, for all its debts and liabilities upon note, bill or otherwise; the books, papers and accounts of all Banks shall be open to inspection under such regulations as may be prescribed by Law."

This section means that, in addition to whatever amount of money a stockholder may have paid for stock in a banking institution he is liable to the creditors of the corporation at least to an amount equal to the par value of the stock so held by him. A greater liability may be imposed upon the stockholders by the legislature, but no part of this constitutional liability can be avoided. If the legislature should grant a charter to a banking corporation, providing, for example, that when the par value of any share shall have been paid there shall be no further liability to the creditors on the part of the shareholder, such provision would simply be void, and the liability imposed by this clause of the Constitution could nevertheless be enforced.[96]

It is intimated by our court that this provision would make the buying of its own stock by a corporation illegal.[97]

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[94] *McCurley v. McCurley,* 60 Md. 185, 189.

[95] *State v. Nicholson,* 67 Md. 1.

[96] *Mister v. Thomas,* 122 Md. 445, 457.

[97] *Md. Trust Co. v. Mechanics' Bank,* 102 Md. 608, 620.

Article III. Section 40.

"The General Assembly shall enact no Law authorizing private property to be taken for public use, without just compensation as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation."

Article III. Section 40A.

"The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation, but where such property is situated in Baltimore City and is desired by this State or by the Mayor and City Council of Baltimore, the General Assembly may provide for the appointment of appraisers by a Court of Record to value such property, and that, upon payment of the amount of such valuation, to the party entitled to compensation, or into Court and securing the payment of any further sum that may be awarded by a jury, such property may be taken."

An effective guarantee that private property shall not be taken for public use without due compensation, while at the same time providing that necessary public works may not be impeded or prevented by the obstinate refusal of owners of property to dispose of their rights, is one of the most important requirements to a free and effective government. It is to secure this end that the foregoing sections have become a part of our Constitution. Section 40 first appeared in the Constitution of 1851, while Section 40A was proposed by the legislature of 1912, and adopted by popular election in November, 1913. However, before either of these provisions were distinctly set forth in our Constitution, the right now secured by them was to a large extent protected by the common law.

In the language of Chancellor Bland;[98] "The Government of this republic by virtue of that eminent domain, which for public purposes is entrusted to all governments, may take the property of any individual and cause it to be applied to the use of the public, on making him a reasonable compensation. But it cannot arbitrarily take property from one citizen and bestow it upon another; because such an act, although not specially

98 *Hepburn's Case,* 3 Bland 98 (1830).

prohibited by the Constitution, would be contrary to the fundamental principles of the government itself."

In another case[99] the same Chancellor says: "There are certain constitutional limitations, beyond which the power of the legislative or judicial department cannot be in any manner extended. Neither the legislature nor the court can take property from one citizen and give it to another."

And again:[100] "*According to the common law* the inquisition under a writ of *ad quod dannum* is, in all cases, required to be taken before the property can be entered upon, unless it should be specially dispensed with by statute, or the grant itself."

So Chancellor Johnson said:[101] "Nothing can be clearer, than that private property cannot be taken for public use, without making just compensation to the owner. The right of eminent domain gives to legislative authority the control of private property, for public uses, but this power is subject to the condition, that a reasonable and just compensation shall be made to the owner, and any attempt to exert the power, without complying with the condition, would not only be at war with the great principles of natural justice, which lie at the foundation of the social compact, but would be in direct conflict with the Constitution of the United States."

In another case[102] the same Chancellor finds that outside of the general principles which lie at the foundation of all government, the provisions of our Bill of Rights, providing for a separation of the different departments of government, and providing that no person shall be deprived of his property but by the laws of the land, would secure compensation to the owner of property taken by the government for public use.

And in 1873 our Court of Appeals said of this provision in our Constitution that "it is but declaratory of the previously existing universal law, which forbids the arbitrary and compulsory appropriation of one man's property to the mere private use of another, even though compensation be tendered.[103]

In other cases the other aspect of the rule is stated, viz: that

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99 *Waring v. Waring,* 2 Bland 676 (1830).

100 *Compton v. Susquehanna R. R.,* 3 Bland 390.

101 *Hamilton v. A. & E. R. R.,* 1 Md. Ch. 109.

102 *Harness v. C. & O. Co.,* 1 Md. Ch. 248. See also *Hoye v. Swan,* 5 Md. 237, 244.

103 *New Central Coal Co. v. Georges Creek Co.,* 37 Md. 537, 559; Alvey, J., quoted with approval in *Pitznogle v. W. M. R. R.,* 119 Md. 673, 677.

it is a portion of the inherent sovereignty of the State to appropriate to public use the property of individuals when public necessity or utility requires it, upon securing to the party a just compensation for any injury he may sustain.[104]

It has been noticed by our court that "there is no prohibition in express terms against the taking of private property for private use, found either in our Constitution or the Declaration of Rights." But the court adds that it is too clear to be questioned that the section which we are now considering contains such an implied prohibition.[105]

It was long ago settled that this power of the state to take private property for public use could be conferred by the legislature upon either individuals or corporations for the benefit of the public,[106] and a corporation may condemn for public purposes, authorized by its charter even though its chartered objects may also include private purposes,[107] and as a matter of fact it is now generally exercised by railroad and other "Public Service" corporations. But it has been stated that a grant of this power of eminent domain must be construed strictly and in general does not admit of repetition.[108]

The power of eminent domain resembles to some extent, but is not the same as the taxing power.

"Taxation exacts money or services from individuals, as and for their *respective shares* of contribution to any public burden. Private property taken for public use by right of *Eminent Domain* is taken *not* as the owners *share* of contribution to a public burden *but as so much beyond his share.* Special compensation is, therefore, to be made in the latter case, because the government is a debtor for the property so taken, but not in the former because the payment of taxes is a duty and creates no obligation to repay, otherwise than in the proper application of the tax."[109]

The opening of a street is a good illustration of the power of eminent domain, while the special tax for paving a street already

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104 *Alexander v. Baltimore,* 5 Gill 383; *Moale v. Baltimore,* 5 Gill 320.

105 *Pitznogle v. W. M. R. R.,* 119 Md. 673, 677; *Armsperger v. Crawford,* 101 Md. 247, 251.

106 *Tidewater Canal Co. v. Archer,* 9 G. & J. 479.

107 *Webster v. Pole Line Co.,* 112 Md. 416.

108 *Benning's Case,* 2 Bland 99; *B. & H. De G. T. Co. v. U. R. R. Co.,* 35 Md. 224.

109 *Moale v. Baltimore,* 5 Md. 314, 320, quoting from *People v. Brooklyn,* 4 Comstock 423, 425.

opened, assessed against the abutting property, is an exercise of the taxing power.[110]

So when the lines of a city are extended to include farm land, and thereby the taxes on the land so added to the city are raised, this is plainly within the power of the legislature, and an exercise of its power to tax and not of the power of eminent domain.[111]

Although this clause of the Constitution forbids the taking of property for public use without just compensation, it does not define either what is property or what is a taking, or what is a public use.[112]

The word "*Property*" in this section has been given a very broad interpretation and includes things corporeal and also things incorporeal, such as a right of way,[113] or an owner's easement in the water of a stream,[114*] or a franchise,[115] or a mortgagee's interest in property.[116]

It would seem as if whatever could be deeded or assigned was by this provision secured to its owner so far as the state is concerned, unless fair compensation is paid.

The word "*Taking*" has been limited to an actual physical taking and does not include acts which cause consequential damage.

So when the Municipal government, in the careful exercise of its right and power to grade, change or improve a street, causes unavoidable injury to the abutting owners, not only is there no "taking" of property within the meaning of this section, but there is no remedy at all for the property holder damaged.[117] If a private corporation, exercising its charter powers, causes consequential damages to owners of adjacent property, the rule is somewhat different, and damages may be allowed, but the corporation cannot be enjoined from completing its authorized work, for there is in such case no "taking" of property,[118*] and the

110 *Baltimore v. Greenmount Cemetery*, 7 Md. 517.

111 *Groff v. Frederick City*, 44 Md. 67.

112 *Garrett v. Lake Roland R. R. Co.*, 79 Md. 277, 281.

113 *De Lauder v. Baltimore County*, 94 Md. 1, 6.

114 *Helfrich v. Catonsville Water Co.*, 74 Md. 269, *Illustration LXXIV; *Canal Co. v. R. R. Co.*, 4 H. & J., 1, 144.

115 *Turnpike Road v. R. R. Co.*, 81 Md. 247; *P. R. R. v. B. & O. R. R.*, 60 Md. 265.

116 *Hagerstown v. Groh*, 101 Md. 560.

117 *Green v. C. & S. R. R. Co.*, 78 Md. 294, 306; *Cumberland v. Willison*, 50 Md. 138; *B. & P. R. R. v. Reaney*, 42 Md. 117, 132.

118 *O'Brien v. Balto. Belt R. R.*, 74 Md. 363; *Garrett v. Lake Roland R. R. Co.*, 79 Md. 277, *Illustration LXXV; *Poole v. Falls Road R. R. Co.*, 88 Md. 533.

principle above stated of the non-liability of a municipal corporation for the consequences of a change of street grade has been lately limited so that, if an abutting owner is actually deprived of light, air and reasonable ingress and egress to and from his property there is held to be an actual taking for which damages must be paid.[119]

However, if as a consequence of work done, water, dirt or other material actually overflows or is cast upon land, there is a physical invasion and a "taking."[120]

What is a *"public use"* has frequently come before our courts.

It has been consistently held that the determination of the question whether or not any particular use was "public" is for the courts and not for the legislature; although the determination to what extent, on what occassions and under what circumstances the power to take for such use should be exercised is for the legislature alone.[121] "The legislature cannot make a particular use either public or private merely by so declaring it. If it could do so the Constitutional restraint would be utterly nugatory."[122]

There have been two different views of the meaning of the words "public use" in this connection which have been taken by the courts. One view is that "there must be a use or right of use *by* the public or some limited portion of the public; the other, that they are equivalent to *public utility or advantage.*"[123]

The Maryland courts have not hesitated to adopt the former view, and recognize as the true test whether or not a use is public, the answer to this question, viz: Is a public trust imposed upon the property, i. e., has the public a legal right to the use which cannot be gainsaid, or denied, or withdrawn at the pleasure of the owner."

"The establishment of mills and manufactories, the building of churches and hotels and other similar enterprises are more or less matters of public concern and promote in a general sense the public welfare.

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119 *Walters v. B. & O. R. R.,* 120 Md. 644.

120 *Baltimore v. Merryman,* 86 Md. 584, 591; *Cumberland v. Willison,* 50 Md. 138.

121 *Van Witzen v. Gutman,* 79 Md. 405.

122 *New Central Coal Co. v. Georges Creek Co.,* 37 Md. 537, 560; *Van Witzen v. Gutman,* 79 Md. 405; *Arnsperger v. Crawford,* 101 Md. 247, 252.

123 *Arnsperger v. Crawford,* 101 Md. 247, 253.

But they lie without the domain of public uses for which private ownership may be displaced by compulsory proceedings."[124]

In the case from which we have quoted, a private road by which an owner of lands could obtain access to "places of public worship, mills, market towns, public ferries and court houses" was held not to be a public use.[124] In the other case cited in the same note, the supplying of electric power or energy to the public generally on equal terms was held to be a public use.

The closing of a public alley in such a manner as to enable one abutting owner to erect a building thereon and without benefit to the other abutting owners, is not a public use.[125]

But a railroad company may acquire by condemnation land for the purpose of building thereon a station for its passengers, and does not forfeit such land by permitting it to be used as a tavern and liquor store.[126] It may divert a stream, if necessary for the proper construction of its road;[127] and it may condemn land for a new private road to replace a private road which it wishes to close in order to widen its right of way and provide additional tracks.[128]

In other words, when the principal work is a public use within the definition, all proper accessories also became public. On this principle when a highway is condemned, power may properly be given to condemn adjacent land on both sides, incident to and for the purposes of the highway and its connections.[129]

A use is not necessarily "private" within the definition because coupled with private objects of gain and emolument, or even because primarily for the benefit of one person or corporation, and on this theory the legislature may authorize the condemnation of private property by a mining company for the construction of a railroad to be used for the transportation of coal from its mines.[130]

The public use must, of course, in general be for the use of the Maryland public, but this rule has been relaxed so far, at least, as the U. S. Government and the District of Columbia are concerned.

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124 *Arnsperger v. Crawford,* 101 Md. 247, 253. See also *Webster v. Susquehanna P. L. Co.,* 112 Md. 416.
125 *Van Witsen v. Gutman,* 79 Md. 405.
126 *Hamilton v. R. R. Co.,* 1 Md. 553.
127 *B. & P. R. R. v. Magruder,* 34 Md. 79.
128 *Pitznogle v. W. M. R. R.,* 119 Md. 673.
129 *Bond v. Baltimore,* 116 Md. 683, 689.
130 *New Central Coal Co. v. George's Creek Co.,* 37 Md. 537.

The construction of an aqueduct, in connection with and affording to the people of the City of Washington a water supply, has been held by our courts to be within the power of the Federal government, and a "public use" for which property can be condemned in Maryland,[131] the court expressly saying that the words "public use" do not mean merely a use by the government of Maryland or of the State of Maryland and its inhabitants as such, but embrace within their scope, a use of the government of the United States.[131]

Of course, streets and roads are such "public uses"[132] and are indeed the most usual use for which private property is condemned by the government itself, although state and municipal buildings and parks are also typical, and the scope of public use is perhaps continually broadening with the broadening of governmental functions.

As the property must be taken for a public use, so the estate given to the party condemning is confined to the use specified in the act or law under which condemnation is made. Thus, although the City of Baltimore acquired, by condemnation of the bed of a stream, the right to the use of the water in perpetuity, the owner retained the right to use the water at his mill in the manner in which it has been customary to use it, so far as that use did not interfere with the use of the same stream by the city authorities for supplying the city with pure water.[133]

So where a railroad company has acquired, by condemnation, a right of way, although it has the right for its own use and benefit in the operation of its road, to put up a telegraph or telephone line, if a new telephone company should undertake to put up a line to be used for general commercial business, this would constitute a new taking, and the owner of the property would be entitled to compensation under the section we are now considering.[134]

Abutting owners on a street or alley still retain valuable interests in the bed of such street or alley, and when these interests are taken for any other public use, compensation must

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131 *Reddall v. Bryan,* 14 Md. 444.

132 *State v. Graves,* 19 Md. 351.

133 *Kane v. Baltimore,* 15 Md. 240.

134 *Amer. Tel. & Tel. Co. v. Pearce,* 71 Md. 535.

be made, and they cannot be taken for private use except by consent, on any terms whatsoever.[135]

But a mere change of the use of the easement by the proprietor thereof will not be considerd a new use, and so it has been held that a turnpike can be made upon the bed of a public road,[136] or a horse-car street railway can be laid upon a street.[137]

In regard to the latter case our court says: "The right thus to use the streets of a city for a horse railway, is not based, it is true, either upon the ground of public convenience or public necessity, because the legislature has no power to take the property of the citizen for a public use without just compensation. It rests, however, on the ground that such a use is neither inconsistent with, nor does it in any manner supersede, the ordinary uses for which the street was dedicated as a highway—that the easement thereby acquired was the right to use the streets of a city, not only according to the then existing modes of travel and transportation, but all such other modes as may arise in the ordinary course of improvement; and that a horse railway is but one of the legitimate contingencies within the objects and purposes for which the street was dedicated to the public, and which, we must therefore presume, was within the contemplation of the parties, at the time damages were assessed to abutting owners."[138]

When electrical railways came into use and superseded the old horse railways, the same rule was applied to them;[139] and even the granting to an electric inter-urban railway of a franchise to use the streets of the city has been held to impose no additional servitude.[140]

What is just compensation, is, of course, ordinarily a question for the jury, but the rule by which damages are to be estimated is a question of law. The jury is to apply the rule, but the rule itself is to be established by the courts.[141]

In 1839 the proper measure of damages was stated to be what in the judgment of the jury the property would actually, at the

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135 *Van Witsen v. Gutman,* 79 Md. 405; *C. & P. Tel. Co. v. Mackenzie,* 74 Md. 36.

136 *Douglass v. Turnpike Co.,* 22 Md. 219.

137 *Hodges v. Balto. Union P. R. Co.,* 58 Md. 603; *Hiss v. B. & H. R. R. Co.,* 52 Md. 242.

138 58 Md. 619.

139 *Poole v. Falls Road Railway Co.,* 88 Md. 533.

140 *Jeffers v. Annapolis,* 107 Md. 268.

141 *Tidewater Canal Co. v. Archer,* 9 G. & J. 479.

time it was condemned, sell for, and not what it might bring or perhaps ought to produce at some future period,[141] and this is practically the rule today.[142] But "just compensation," when part of a lot is taken, includes not only damages to the land condemned, but also a due allowance for the damages done to the remainder of the lot; and any act allowing condemnation of a part of a piece of property, without providing for just compensation for the damages done to the part not taken, would be unconstitutional.[143]*

When a part of a lot subject to a ground rent is taken, the ground rent owner must be compensated (the rent being *pro tanto* extinguished) even though the remainder of the lot is sufficient security for the rent.[144]

The jury by which the award must be made, need not necessarily be a common law jury, but may be a "special jury" summoned on warrant directed to the sheriff of the county by a justice of the peace;[145] but the owner of property taken under the power of eminent domain, is entitled to notice and an opportunity to be heard.[145]

It is not necessary that the law should provide that damages should be assessed, in the first instance, by the jury. It is sufficient if an appeal to a jury be given to the dissatisfied property owner.[146]

Provided the legislature has established a constitutional tribunal, all allegations of irregularities in its proceedings, inadequacy of the damages assessed and all similar questions, must be decided by that tribunal, and do not give a court of equity power to intervene.[147]

Although damages may have been duly assessed by a legal tribunal, no judgment can be entered up against the condemning party,[148] for, until the damages have actually been paid the whole matter is *in fieri,* no title passes, and the party condemning can renounce the inquisition, change the plan, select more eligible property or wholly abandon the enterprise.[149]* For this

142 *Shipley v. B. & P. R. R. Co.,* 34 Md. 336, and other cases.

143 *Ridgely v. Baltimore City,* 119 Md. 567, 581, *Illustration LXXVI; *Baltimore v. Megary,* 122 Md. 20, 24; *Baltimore v. Garrett,* 120 Md. 608.

144 *Baltimore v. Latrobe,* 101 Md. 621.

145 *Baltimore Belt R. R. v. Baltzell,* 75 Md. 94.

146 *Steuart v. Baltimore,* 7 Md. 500; *State v. Graves,* 19 Md. 351.

147 *New Central Co. v. George's Creek Co.,* 37 Md. 537, 565.

148 *Merrick v. Baltimore,* 43 Md. 219; *Norris v. Baltimore,* 44 Md. 596.

149 *Graff v. Baltimore,* 70 Md. 544; *State v. Graves,* 19 Md. 351; *Merrick v. Baltimore,* 43 Md. 219, *Illustration LXXVII; *Norris v. Baltimore,* 44 Md. 596.

reason, interest upon the amount of the award will not be allowed from the date of the inquisition until payment, although in certain cases damages may be recovered for unreasonable delay in exercising the election either to abandon the proposed work or to proceed with it.[150]

The requirement that the compensation to be made must be *first* paid or tendered is a very important one and differentiates this provision from the similar provision in the Federal Constitution.[151] Our courts have always firmly upheld this requirement and have not hesitated to issue an injunction against the carrying out of any work requiring the appropriation of private property unless compensation had been either paid or tendered, and this without reference to the question whether the damage complained of was irreparable or not.[152] But such preliminary measures as a survey, etc., are not held to be included within the meaning of "taking," and may be proceeded with before compensation is made or tendered.[153]

Even although the legislature should plainly declare by general law or special charter that property might be entered upon and used as soon as viewed by a jury, or after their verdict, or after bond given, or at any other period of time prior to actual payment or tender of the "just compensation," such provision would under section 40 be absolutely void.[154]

While this is doubtless a necessary protection to the owner of property in cases where land is condemned by private corporations, there is not the same necessity for it where the City of Baltimore seeks to obtain the land for streets; and the relaxation of the rule, by section 40A, whereby the city is allowed to enter upon property after its value as found by appraisers has been paid or tendered, and bond given for any excess which may be found by a jury, would seem to be a valuable provision against possible unnecessary delay, while maintaining all reasonable safeguards.

The concluding words of this section require the compensation to be paid to the party entitled, and to such party the damages

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150 *Graff v. Baltimore,* 10 Md. 544; *Norris v. Baltimore,* 44 Md. 596.

151 U. S. Constitution, 5th Amendment, last clause.

152 *Western Md. R. R. v. Owings,* 15 Md. 199; *American Tel. and Tel. Co. v. Pearce,* 71 Md. 535, 539.

153 *Steuart v. Baltimore,* 7 Md. 500, 516.

154 *W. M. R. R. v. Owings,* 15 Md. 199; *State v. Consol. Coal Co.,* 46 Md. 1, 6; *Am. Tel. & Tel. Co. v. Pearce,* 71 Md. 535, 547. See also *State v. Consolidation Coal Co.,* 46 Md. 1.

suffered by him must be paid, even although by mistake the amount of these damages has been already paid to another party not entitled.[155]*

Notwithstanding the vast importance of the provisions of the section we are considering, the protection given by them against state authorities would be simply illusory and entirely unsubstantial were the doctrine of the non-suability of a state pressed to the extreme, or even to an extent which would seem naturally implied in the words wherein the doctrine is usually stated. The protection is made effective as against the state, when property is illegally taken in the state's interest, by refusing to acknowledge those persons who do the illegal acts as legally or really agents of the state, and by this means putting them into the status of individual tort feasors.[156]

Article III. Section 41.

"Any citizen of this State who shall, after the adoption of this Constitution, either in or out of this State, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in any manner those offending, shall ever thereafter be incapable of holding any office of profit or trust under this State, unless relieved from the disability by an Act of the Legislature."

The purpose of this section to prevent the practice of duelling, is obvious, and requires no further comment.

Article III. Section 42.

"The General Assembly shall pass laws necessary for the preservation of the purity of elections."

Numerous laws have been passed by the legislature, in an effort to "preserve the purity of elections," but these laws would have the same efficacy even if this section were not in the constitution. Its language indicates the imposition of a *duty* upon the legislature to pass such laws.

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155 *Gluck v. Baltimore,* 81 Md. 315. *Illustration LXXVIII.
156 *Weyler v. Gibson,* 110 Md. 636.

Article III. Section 43.

"The property of the wife shall be protected from the debts of her husband."

This section in its present form, appeared for the first time in the constitution of 1867. The constitutions of 1851 and 1864 contained a direction to the legislature to pass laws necessary to secure this protection, and these requirements were in a measure fulfilled. But by the Constitution of 1867 this matter is not committed to the action of the legislature, but is incorporated as an absolute protection into the fundamental law of the land. The words of the section are general and comprehensive and give protection to all of the property of the wife.

Construing this section, it has been held that judgment creditors of the husband could not attach a judgment obtained by husband and wife for personal injuries to the wife;[157] that a judgment against the husband is no lien upon property held by him and his wife as tenants by the entireties;[158] that a purchaser of property so held by husband and wife, at a foreclosure sale under a mortgage of the property by the husband to secure his debts, acquired no title as against the wife;[159] and that the legislature had no power to pass an act which would enable creditors of the husband to hamper the wife in the control or disposition of her property in which, prior to the act, she had an absolute estate.[160*]

Article III. Section 44.

"Laws shall be passed by the General Assembly to protect from execution a reasonable amount of the property of the debtor, not exceeding in value the sum of five hundred dollars."

Laws passed by the legislature under this section, exempting certain property from execution or taxation, create no vested rights and may be repealed at the will of the legislature, unless such laws are in the nature of a contract; but vested rights may be acquired under the operation of a particular exemption stat-

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157 *Clark v. Wooton,* 63 Md. 113.
158 *Jordan v. Reynolds,* 105 Md. 288.
159 *McCubbin v. Stanford,* 85 Md. 378.
160 *Harris v. Whitely,* 98 Md. 430, *Illustration LXXIX.

ute which a repealing act cannot affect.[161]* And it has been held that this section does not apply to a statute exempting "money or other benefits" payable under a certificate issued by a fraternal association from attachment at the hands of creditors of the beneficiary.[162]

Article III. Section 45.

"The General Assembly shall provide a simple and uniform system of charges in the offices of Clerks of Courts and Registers of Wills, in the Counties of this State and the City of Baltimore, and for the collection thereof; provided, the amount of compensation to any of the said officers in the various Counties shall not exceed the sum of three thousand dollars a year, and in the City of Baltimore thirty-five hundred dollars a year, over and above office expenses, and compensation to assistants; and provided further that such compensation of Clerks, Registers, assistants and office expenses shall always be paid out of the fees or receipts of the offices, respectively."

The "compensation" mentioned in this section means not only salary, but any additional funds which may come into the hands of the clerk or register as such official, such as commission on collateral inheritance taxes and executor's commissions;[163] interest on license fees deposited in bank, [164]* etc.

Article III. Section 46.

"The General Assembly shall have power to receive from the United States any grant or donation of land, money, or securities for any purpose designated by the United States, and shall administer or distribute the same according to the conditions of the said grant."

Article III. Section 47.

"The General Assembly shall make provisions for all cases of contested elections of any of the officers, not herein provided for."

Under this section, the general assembly has power in making provision for all cases of contested elections of the designated

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161 *Bramble v. State,* 41 Md. 435, *Illustration LXXX.
162 *Himmel v. Eichengreen,* 107 Md. 610.
163 *Banks v. State,* 60 Md. 305.
164 *Vansant v. State,* 96 Md. 110, *Illustration LXXXI.

class, to provide before what tribunal the cases shall be heard and determined as well as the mode and manner of its procedure;[165] and the jurisdiction of the tribunal directed by the legislature to determine such cases is the only one, its decision is final, and there is no other tribunal which can review it.[166]

Article III. Section 48.

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and except in cases where no general laws exist, providing for the creation of corporations of the same general character as the corporation proposed to be created, and any act of incorporation passed in violation of this section shall be void; all charters granted or adopted in pursuance of this section, and all charters heretofore granted and created subject to repeal or modification, may be altered from time to time, or be repealed; provided, nothing herein contained shall be construed to extend to banks or the incorporation thereof; the General Assembly shall not alter or amend the charter of any corporation existing at the time of the adoption of this Article, or pass any other general or special law for the benefit of such corporation except upon the condition that such corporation shall surrender all claim to exemption from taxation or from the repeal or modification of its charter, and that such corporation shall thereafter hold its charter subject to the provisions of this Constitution; and any corporation chartered by this State which shall accept, use, enjoy or in anywise avail itself of any rights, privileges, or advantages that may hereafter be granted or conferred by any general or special Act, shall be conclusively presumed to have thereby surrendered any exemption from taxation to which it may be entitled under its charter, and shall be thereafter subject to taxation as if no such exemption has been granted by its charter."

The section as above quoted amends the section as it originally appeared in the Constitution of 1867. The original section contained the same prohibition against the creation of corporations by special act, and provided that the governor should appoint "three persons learned in the law" who should prepare drafts of general laws providing for the creation of corporations and to revise and amend, "so far as may be necessary or expedient" the general laws in existence June 1, 1867, all of which

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165 *Anderson v. Levely,* 58 Md. 192.

166 *State v. Jarrett,* 17 Md. 309; *Hamilton v. Carroll,* 82 Md. 326.

were to be submitted to the general assembly at its first meeting for its action thereon.

The salient feature of the amended section is the provision in the latter part of the section, whereby any amendment of an existing charter is to void any tax exemption to which the corporation might be entitled under its charter.

The amendment was made by the Act of 1890, chapter 195, ratified November 3, 1891.

The right of the legislature to alter or repeal corporate charters first appeared in our organic law in the Constitution of 1851.

"Upon the adoption of that Constitution, every charter thereafter granted, even though it contained no reservation of the right to repeal or alter it, was subject to the paramount provision of the organic law, which was binding on the legislature and the corporation alike. The right of the state to repeal or alter an act of incorporation was the express condition upon which the grant was made in every instance, after the adoption of the Constitution of 1851, and an acceptance of the grant was an unequivocal, as it was an irrevocable, acceptance of that condition. This right could have been no more effective had it been written in the charter in the very words of the Constitution itself; and its exercise by the legislature can not, when it invades no vested right of property, be successfully resisted in the courts as an infringement of a contract, because the Constitutional provision is a term or stipulation embodied in the contract to which the state and the incorporators are equally parties."[167*]

But the nature and the character of the charter can not be fundamentally changed.[168]

It is not essential to the validity of an amendment to the charter of a corporation formed under the general law, that the amendment be made by a general law operating alike on all corporations. It may be by special act, applied only to the particular corporation.[170]

It has also been held that an amendment of an irrepealable charter is not absolutely void,—it is only conditionally so, because the amendatory act is void only when it attempts to vary

167 *Washington Hospital v. Mealey,* 121 Md. 274; *Jackson v. Walsh,* 75 Md. 304, *Illustration LXXXII. See also *Phinney v. Sheppard, etc, Hospital,* 88 Md. 633.

168 *Webster v. Cambridge Seminary,* 78 Md. 193.

170 *Hodges v. Baltimore Union Pass. Ry.,* 58 Md. 603.

the charter contract without the consent of the other party thereto, and hence if accepted by the corporation, it becomes perfectly valid and binding—the act and the acceptance constituting a new contract. It is only void provided it be not accepted or acquiesced in.[171]*

Where by its charter, a railway company was required to lay its tracks in a designated way, a subsequent general act authorizing county commissioners to compel any railroad company having tracks in the roads of the county, to change the rails and the location of the tracks, etc., was held not necessarily incompatible with the continued exercise in one particular street railway company of existing chartered rights, and not to repeal such charter rights, and that while it would be within the power of the legislature to so amend the charter of the company as to require it to make such a change in its tracks, the change "could be enforced only upon fair principles of indemnity in respect to expenditures made by the Company in good faith" in reliance upon the terms of its charter, before the passage of the amendatory act.[172]

The portion of this section relating to the incorporation of municipalities, "only authorizes the creation of corporations for *municipal purposes* and leaves to the legislature the enactment of such details as it may deem proper in the management of the concerns of the corporation, or which may be regarded as beneficial in the government of the same."[173]

It has also been held that corporations may be created by special act where the powers granted are more extensive than are conferred under the general incorporation law, even though the company be of a class the incorporation of which is provided for in the general law.[174]

Questions involving the repeal of tax exemptions granted in the charters of corporations have been a fruitful source of litigation under this section.

In order to effect a repeal of such a tax exemption, it is not necessary that the charter be in terms repealed, but that object may be effected by a general tax law providing "that all prop-

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171 *Phinney v. Sheppard, etc., Hospital,* 88 Md. 633; *Jackson v. Walsh,* 75 Md. 304, *Illustration LXXXII.

172 *Anne Arundel Co. v. U. Rys. Co.,* 109 Md. 377.

173 *Hanna v. Young,* 84 Md. 179, 182.

174 *Reed v. Baltimore Trust & Guar. Co.,* 72 Md. 531. See also *Mealey v. Hagerstown,* 92 Md. 741, 745.

erty * * in the State shall be chargeable with taxes,'' where there is also added a clause repealing ''all laws exempting property from valuation.''[175]

It has been held that an irrepealable exemption from taxation granted to a corporation in its charter, ceases to be of that character when the corporation, by act of assembly, passed after the constitutional provision that all charters granted shall be subject to repeal was in effect, consolidates with other corporations and receives a new grant of power.[176]*

When an act is passed reciting in its preamble, among other things that it is passed to effect an equitable settlement of certain tax exemption questions then in controversy between the state and a railroad company, and proceeds to subject the company to a designated tax on gross receipts, with the provision that it shall not be subject to any other tax under the laws of the State, a subsequent act raising the tax upon the gross receipts of all railroad companies within the state, and repealing all acts in conflict therewith, will operate as a repeal by implication of the first mentioned act. The act providing for the ''equitable settlement'' in the manner mentioned, does not constitute a contract between the State and the railroad company beyond the power of a subsequent legislature to repeal, because this section of the constitution operates to prevent any session of the legislature from making an irrepealable grant of exemption from taxation.[177]

Article III. Section 49.

"The General Assembly shall have power to regulate by law, not inconsistent with this Constitution, all matters which relate to the Judges of Election, time, place and manner of holding elections in this State, and of making returns thereof."

This section of the constitution, conferring upon the legislature power to pass laws to regulate elections in the state, does not require that such laws should be uniform throughout the state. ''They must be free and equal to all persons entitled to vote; but there is nothing in the constitution to require the modal proceedings to be the same in every part and section of the State.''[178]

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175 *Washington Co. v. Franklin R. R. Co.*, 34 Md. 159.
176 *State v. N. C. R. R. Co.*, 44 Md. 131, *Illustration LXXXIII.
177 *State v. N. C. R. Co.*, 90 Md. 447.

The power to pass laws to regulate the subject matter of holding and conducting elections, is by this section confided to the legislature, and it has been held that a statute passed in pursuance of this power was not unconstitutional because it excepted nine counties of the state from its operation.[178]

Article III. Section 50.

"It shall be the duty of the General Assembly at its first session, held after the adoption of this Constitution, to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary, or both, in the discretion of the Court, of any person who shall bribe or attempt to bribe any Executive, or Judicial officer of the State of Maryland, or any member, or officer of the General Assembly of the State of Maryland, or of any Municipal Corporation in the State of Maryland, or any Executive officer of such corporation, in order to influence him in the performance of any of his official duties; and also, to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary, or both, in the discretion of the Court, of any of said officers, or members, who shall demand or receive any bribe, fee, reward or testimonial for the performance of his official duties, or for neglecting or failing to perform the same; and also, to provide by Law for compelling any person so bribing, or attempting to bribe, or so demanding or receiving a bribe, fee, reward or testimonial, to testify against any person or persons who may have committed any of said offences; provided, that any person so compelled to testify shall be exempted from trial and punishment for the offence of which he may have been guilty; and any person convicted of such offense shall, as part of the punishment thereof, be forever disfranchised and disqualified from holding any office of trust or profit in this State."

The statutory provision enacted to carry out this section of the constitution, and couched in much the same language, is embodied in article 27, section 26 of the Code of 1904. The punishment therein provided for the offence of bribing or attempting to bribe the designated official, or of demanding or receiving a bribe is a fine of not less than $100 nor more than $5000. or imprisonment in the penitentiary for not less than two nor more than twelve years, or both fine and imprisonment, in the discretion of the court, in addition to total disfranchisement and

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178 *Lankford v. Somerset County,* 73 Md. 105, 117.

disqualification from holding any office of trust or profit in this state.

The injunction laid upon the general assembly to provide by law for the punishment of this offence, "at its first session held after the adoption of this Constitution" indicates the seriousness of the offence in the minds of the framers of the constitution.

Article III. Section 51.

"The personal property of residents of this State shall be subject to taxation in the county or city where the resident bona fide resides for the greater part of the year for which the tax may or shall be levied, and not elsewhere, except goods and chattels permanently located, which shall be taxed in the city or county where they are so located [but the General Assembly may by law provide for the taxation of mortgages upon property in this State and the debts secured thereby in the county or city where such property is situated]."

By the adoption of the amendment proposed by the act of 1890, chapter 426, the words enclosed in brackets were added to the section as it previously read, and thereby the right to tax mortgages and mortgage debts in the jurisdiction where the land mortgaged is situated, was definitely settled.[179]

Under the general rules of law, the legislature has absolute power of taxation over all the property within the state except as restrained by the Federal and state constitutions;[180] and the 15th article of the Declaration of Rights which we have already considered, and the section of the constitution proper which we are now considering, are the only provisions of the Maryland Constitution directly upon the subject of taxes.

This section has to do with, and is a limitation upon the power of the legislature as to the *situs* of personal property for the purposes of taxation.[181]

There is no reference to real property in this section. The *situs* of realty being fixed, it is evidently assumed that it will be taxed in the county where situate.

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179 *Faust v. Building Asso.*, 84 Md. 186, 191; *Allen v. National State Bank*, 92 Md. 509, 512.

180 *Baltimore v. Safe Deposit Co.*, 97 Md. 659, 662; *Miller v. Wicomico County*, 107 Md. 438, 442.

181 *Baltimore v. Safe Deposit Co.*, 97 Md. 659, 662; *Baldwin v. Washington County*, 85 Md. 145, 157; *Allen v. National State Bank*, 92 Md. 519.

There is no reference to personal property belonging to non-residents and the power of the legislature to fix the *situs* of this remains unaffected.[182]*

The section divides the personal property of residents of this state into three classes:

1st: Goods and chattels permanently located.

2nd: Mortgages.

3rd: All remaining personal property.

1st: "Goods and chattels permanently located" are distinguished from "what may be called 'floating' goods," and goods "*in transitu,* or temporarily located."[183]

Leaseholds or other interests in land, coming under the head of personalty, are evidently "permanently located."[184] It has, furthermore, been decided that a stock of goods, kept in a store, the individual items of which are continually changing by means of sale but are being continually replenished, is "permanently located" in the store, as the words are used in this section,[185] and a similar ruling was made as to the average number each week of cattle kept at a certain place by dealers for purposes of sale, even though the custom of their trade was for these dealers to buy the cattle on one particular day in the week and sell them next day.[186]

But a ship engaged in foreign trade,[187] or the rolling stock of a railroad company,[188] are not such "permanently located" chattels.

So shares of stock in corporations are not permanently located, even though the corporate property may be composed exclusively of real estate.[189]

As to these goods and chattels so "permanently located," the constitutional rule is clear that they must be taxed where they are so located.

2nd: "Mortgages."

Mortgages need not be taxed at all.

If, however, they are taxed, they (apparently) may be as-

182 *Allen v. National State Bank,* 92 Md. 509, 513. *Illustration LXXXIV; *Baldwin v. Washington County,* 85 Md. 145.

183 *Hopkins v. Baker,* 78 Md. 363; *Myers v. Baltimore County,* 83 Md. 385.

184 *cf. Baltimore v. Safe Dep. & Trust Co.,* 97 Md. 665.

185 *Hopkins v. Barber,* 78 Md. 363.

186 *Myers v. Baltimore County,* 83 Md. 385.

187 *Hooper v. Baltimore,* 12 Md. 464.

188 *R. R. v. Appeal Tax Court,* 50 Md. 397.

189 *Baltimore City v. Allegany Co.,* 99 Md. 1.

sessed under general rules of law to the mortgagee, as being really an indebtedness due him, but under this constitutional provision the legislature has a clear right, if it deem best, to tax mortgages and the debts secured thereby to the mortgagee in the jurisdiction where the property is situated.

3rd: "All other personal property."

The right of the legislature to determine the *situs* of personal property for the purposes of taxation, is limited as to personal property included in this class, and belonging to residents of this state, and the *situs* of such personal property, for purposes of taxation, is fixed as being the residence of the owner, and it is beyond the power of the legislature to change this rule.[190]*

Whether the trustee or the *cestui que trust* is the owner of personal property within the meaning of this section, has been a matter which has come before our Court of Appeals, and the Court has decided that, in the absence of any action by the legislature, the trustee will be held to be such owner.[191] Both the trustee and the *cestui que trust* "are in a certain sense" the owners of such trust property, and it is in the discretion of the legislature, notwithstanding this constitutional provision, to assess and tax either of these owners as it may deem best,[192] and the Act of 1902, chapter 486, whereby it is provided that such property should be assessed to the *cestuis que trustent,* and the taxes paid by them, is valid as to such personal property as is required to be assessed to the owner. When, however, property is in the hands of an officer of the court for a specific or temporary purpose, as for instance, a guardian, such officer was, prior to the Act of 1902, above mentioned, considered the owner within this section, and the jurisdiction of the court appointing him was considered as his residence, no matter where, as matter of fact, might have been the personal residence of such official.[193]*

Whether the Act of 1902, before mentioned, now article 81, section 215 of Bagby's Code, has changed the law, in regard to such property as is held by the court officials for temporary or specific purposes, has not yet been decided by our court. In regard to such officials, whose duties are necessarily of short

190 *Baltimore City v. Allegany Co.,* 99 Md. 1, *Illustration LXXXV.

191 *Latrobe v. Baltimore,* 19 Md. 13.

192 *Baltimore City v. Safe Deposit & Trust Co.,* 97 Md. 659.

193 *Bonaparte v. State,* 63 Md. 475, *Illustration LXXXVI; *Kinehart v. Powers,* 90 Md. 1; *Baldwin v. Washington County,* 85 Md. 145, *Illustration LXXXVII.

duration, such as executors, trustees for sale, etc., the statute is probably not applicable and the law as previously declared is still in effect, but as to guardians and other officials, whose duties may require several years for their performance, it is very questionable whether the purpose of their holding would now be regarded as temporary and whether therefore they will not come within the provisions of the statute if the ward or beneficiary be a resident of Maryland.

Corporations.

A corporation does not have "volition" as to its residence in such sense as to enable it to move its residence to some county other than that where it is chartered and, therefore, the contention that its personal property should be taxed in any county or city where it chooses to establish its home office was held not to be maintainable.[194]

Article III. Section 52.

"The General Assembly shall appropriate no money out of the Treasury for payment of any private claim against the State exceeding three hundred dollars, unless said claim shall have been first presented to the Comptroller of the Treasury, together with the proofs upon which the same is founded, and reported by him."

In the case of *McPherson v. Leonard,* 29 Md. 277, already referred to, the court held against the dissenting opinion of Judge Stewart, that an act of assembly authorizing the comptroller to pass upon and audit certain claims, the nature and character of which are therein specified, and to draw his warrant upon the treasurer in favor of each claimant for the amount found by the Comptroller to be justly due the said claimant, said warrants to be paid out of any money thereafter in the treasury not otherwise appropriated, provided the whole amount of said warrants should not exceed $300,000.00 was a valid law and in fact the only form in which an appropriation could have been made to meet the requirements of this section.

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194 *B. C. & A. Ry. Co. v. Wicomico County,* 93 Md. 113, 132.

Article III. Section 53.

"No person shall be incompetent, as a witness, on account of race or color, unless hereafter so declared by Act of the General Assembly."

As already stated, our Constitution was adopted before the ratification of the Fourteenth Amendment to the Constitution of the United States. Under the provisions of the first section of this amendment, it would seem that no person could be declared incompetent as a witness on account of race or color, and in the event of an attempt to so declare by the general assembly of Maryland such act would be altogether void.

Article III. Section 54.

"No County of this State shall contract any debt, or obligation, in the construction of any Railroad, Canal, or other work of Internal Improvement, nor give, or loan its credit to or in aid of any association, or corporation, unless authorized by an Act of the General Assembly, which shall be published for two months before the next election for members of the House of Delegates in the newspapers published in such County, and shall also be approved by a majority of all the members elected to each House of the General Assembly, at its next session after said election."

As to this section, our Court of Appeals (Alvey, C. J.) has said: "The language of this section of the Constitution is very broad and comprehensive; and with the common knowledge possessed by the whole people of the State, we cannot fail to understand what is intended to be accomplished by this constitutional restriction. It was intended as a constitutional limitation of power, not only of local authority, but of legislative power itself."[195]

It has been accordingly held that the provisions of this section are mandatory and not merely directory, and to hold otherwise would be to "virtually nullify and destroy a valuable safeguard intended as a means of bringing to the notice and consideration of the people to be affected contemplated burdens upon them and their property."[195] Therefore, even though the legislature might authorize a county to contract such debt or to loan its

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195 *B. & D. P. R. R. Co. v. Pumphrey,* 74 Md. 86, 111.

credit for the purposes embraced within this section, and although such act of authority might be confirmed by an act of the succeeding legislature, still if there were no publication,[196] or if the publication were not made at least two *calendar* months before the election specified in the section[197]* the debt or loan of credit would be void.

While the mandatory character of these provisions has thus been insisted upon, this section has been strictly construed as to the meaning of the phrase, "Work of Internal Improvement."

In the case of *Bonsal v. Yellott,* 100 Md. 481, 503, the court, *arguendo,* refer to the fact that the issue of bonds to build bridges or new roads has been frequently authorized by the legislature without any attempt to comply with the provisions of this section, that these provisions have never been understood to apply to roads or bridges and it "would be contrary to all precedents to so construe" them.

Article III. Section 55.

"The General Assembly shall pass no law suspending the privilege of the Writ of *Habeas Corpus.*"

In 1880 the Maryland legislature undertook to limit and restrain the power and jurisdiction of the circuit judges in cases of *Habeas Corpus* to the limits of the judicial circuit for which they were elected. But under the section of the Constitution we are now considering together with the section[198] providing that "all judges shall by virtue of their offices be conservators of the peace throughout the State," this act was declared nugatory and void.[199]

The plain indication from the case referred to and the later case of *Sevinskey v. Wagus*[200] would seem to be that the privilege referred to in this section was the right as it existed when the Constitution was adopted, and that this right cannot be restricted by any legislative action.

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196 *B. & E. S. R. R. Co. v. Spring,* 80 Md. 510.
197 *Baltimore, &c., R. R. v. Pumphrey,* 74 Md. 86, 106, *Illustration LXXXVIII.
198 Article 4, Section 6.
199 *State v. Glenn,* 54 Md. 572, 595.
200 76 Md. 335.

Article III. Section 56.

"The General Assembly shall have power to pass all such Laws as may be necessary and proper for carrying into execution the powers vested by this Constitution, in any Department or office of the Government, and the duties imposed upon them thereby."

Under this provision the seemingly extraordinary position has been taken that even though a power may be plainly vested by the Constitution in a certain official, the power is not necessarily self-executing and in some cases at least it cannot be exercised until the legislature has passed affirmative legislation providing the "means and instrumentalities" of such exercise.[201]

Article III. Section 57.

"The legal rate of interest shall be six per cent. *per annum,* unless otherwise provided by the General Assembly."

This section seems rather out of place in a Constitution considered from the standpoint of political science. It has nothing to do with the frame of government and the distribution of powers among the several departments and is a very slight limitation upon the powers of the legislature.

There was more reason for the corresponding provision in the Constitutions of 1851 and 1864[202] which really did limit the power of the legislature and read that "The rate of interest in this State shall not exceed six per cent. *per annum* and no higher rate shall be taken or demanded, and the legislature shall provide by law all necessary forfeitures and penalties against usury." The existence of the section in its present shape seems to serve mainly as a tribute to the conservatism of the Convention of 1867, which required the insertion of some provision on the subject of usury, because a provision on this subject was contained in the earlier Constitution.

Even the provision of the old Constitution above cited was deprived of most of its "teeth" by a decision of our court, which held that a usurious contract was not thereby rendered wholly

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201 *Groome v. Gwinn,* 43 Md. 572; *Munroe v. Wells,* 83 Md. 505; *Cull v. Whettle,* 114 Md. 58, 85.

202 Article III, Section 49 (1851); Article III, Section 50 (1864).

void, but the lender was only subject to such forfeiture or penalty as the legislature might choose to impose, and inasmuch as the legislature had taken no action at all upon the subject since the adoption of the Constitution, and the statute previously in force provided for the forfeiture of the excess merely, and this *only* if specially pleaded, and inasmuch as there had been no special plea of usury in this case, the lender was entitled to recover the whole of the face of the debt notwithstanding the usury, and notwithstanding the words in this section of the Constitution which we have above quoted.[203]

The provision in our present Constitution does, however, until the legislature acts in the matter fix what shall be the rate of interest and until a statute[204] in express terms forbade it, as to transactions closed and settled, a borrower might recover from the lender any usurious interest paid by him,[205] and this right of recovery, if existing before the statute was passed, could not be taken away by such legislation, even if it were intended to be retroactive.[206]

Some justification for the presence of this provision in the Constitution was found when our court—Judges Alvey and Stewart dissenting—found that this section only allowed the legislature to fix the rate of interest for all persons and all corporations equally and prevented it from allowing one person or class of persons from charging a higher rate than was allowed in favor of another.[207]*

Article III. Section 58.

"The Legislature, at its first session after the ratification of this Constitution, shall provide by Law for State and municipal taxation upon the revenues accruing from business done in the State by all foreign corporations."

The general incorporation law of 1868, chapter 471, contained provisions passed in pursuance of the mandate contained in this section.

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203 *Bandel v. Isaac,* 13 Md. 202. See also *Baltimore v. State,* 15 Md. 376, 468.
204 1876, Chap. 358, Bagby's Code, Art. 49, Sec. 6.
205 *Scott v. Leary,* 34 Md. 389.
206 *Williar v. Loan Asso.,* 45 Md. 546.
207 *Citizens Sec. & Loan Co. v. Uhler,* 48 Md. 455, *Illustration LXXXIX.

Article III. Section 59.

"The office of 'State Pension Commissioner' is hereby abolished; and the Legislature shall pass no law creating such office, or establishing any general pension system within this State."

This section is indicative of the "conservative" and pro-southern feeling which existed in the Constitutional Convention of 1867. The Court of Appeals has never passed upon the scope of the provisions of this section in any case brought before it. It has been stated, however, that the judges of the Court of Appeals at the time of the passage of the Act of 1904, chapter 236 (Bagby's Code, Article 26, Section 46), which provided for a pension of $2,400.00 per annum to be given every judge who shall have served on the bench fifteen consecutive years and have reached the age of seventy, or shall arrive at the age of 70 while on the bench and after ten years of service, were informally consulted, and gave their opinion that such act was not within the prohibition of this section.

At each session of the legislature there are various acts granting pensions; for instance, at the session of 1914, there was passed an act creating a pension system for aged teachers (chapter 736). There were also passed acts pensioning various individuals, ex-policemen and others (e. g., chapter 151, chapter 493 and chapter 486), and their constitutionality has not so far been questioned.

Whether such acts as secure to the judges and aged teachers a retirement pension are in conflict with the provisions of this section prohibiting a general pension system, and whether pensions to individuals, which amount to an increase of salary for performing certain official duties,—particularly when, as in the case of the police force, there is a general provision in the law providing pensions upon the fulfillment of certain conditions,—are not in conflict with the provisons of section 33, prohibiting any special law in any case for which provision has been made by an existing general law, are, however, questions which cannot be said to be entirely free from doubt.

Article III. Section 60.

Proposed by the Act of 1914, Chapter 453.

"The General Assembly of Maryland shall have the power to provide by suitable general enactment (a) for the suspension of sentence by the Court in criminal cases; (b) for any form of the indeterminate sentence in criminal cases, and (c) for the release upon parole in whatever manner the General Assembly may prescribe, of convicts imprisoned under sentence of crimes."

This proposed section will be passed upon by the voters in the general election of 1915.

The intent thereby to free from any constitutional objection such legislation as is thereby alluded to is clear. The vote upon it will also test the feeling in this state in regard to penal legislation of advanced and modern character, such as is now being adopted by many of the progressive states of our union.

ILLUSTRATIONS.

CONSTITUTION, ARTICLE III.

ILLUSTRATION LXV.

By the Act of 1890 the question whether or not the taking of oysters by scoop or dredge within the waters of Somerset County should be prohibited was submitted to the voters of certain election districts of said county.

HELD: That the oyster beds within the waters of Somerset County, not belonging to the voters of these election districts but to the people of the whole state, the law could in no sense be considered a local law affecting only the people of the several districts to whom it was submitted for decision. It was not, therefore, within the exception to the rule that legislative power cannot be delegated by the legislature and was void.

Bradshaw v. Lankford, 73 Md. 428.

ILLUSTRATION LXVI.

Henry C. Dodson was elected as Senator from Talbot County in November, 1897, for a term of four years. Some time prior to the election of November, 1899, Senator Dodson accepted a Federal office and removed from the county. A few weeks before the election of November, 1899, J. Harry Covington filed a petition for a *writ of mandamus* to compel the board of supervisors of election for Talbot County to print his name as the democratic nominee for state senator on the official ballot for that election. He alleged that he had all the requisite qualifications for the office and that his nomination was duly and legally certified, and that Senator Dodson, elected in November, 1897, had accepted a federal office and had removed from the county, as aforesaid, thereby creating a vacancy in the office.

The answer to this petition set up that there was no power in the board of supervisors of election, nor in the convention of any political party, nor in any judicial tribunal, to declare a vacancy in the office prior to the expiration of the term; that no other person or body than the Senate of Maryland could

pass upon the question as to whether Senator Dodson had become disqualified; that section 13 of article 3 of the Constitution provided for the holding of a new election in the event of disqualification of delegates or senators, and that this election must be called by warrant issued either by the speaker of the house of delegates, president of the senate or the governor, and no such warrant was issued in this case. Upon demurrer to this answer.

HELD: That the allegations of the answer presented a good defense; that a court could not order an election unless a vacancy existed, and that no court has jurisdiction to pass upon the existence *vel non* of such a vacancy. The mandamus was, therefore, refused.

Covington v. Buffett, 90 Md. 569.

ILLUSTRATION LXVII.

The Baltimore and Drum Point R. R. Company was incorporated by the Act of 1868. In 1874 the legislature amended the charter of the company and among other things provided "that if the said road shall not be finished in five years from the first of January, *1870,* then the said act, and this and all other amendments thereto, shall be null and void." As matter of fact, it appeared from the engrossed bill, as it was finally acted upon by the two houses of the legislature, with the endorsements thereon by the proper officers, and also by the journal of both houses, that when the bill passed the two houses the limitation of time for finishing the road was "five years from the first of January, *1875.*"

HELD: That this provision in the act as signed by the governor had never been before the legislature or approved by it, and consequently this provision was void and should be stricken out, although it being an independent provision the rest of the act was allowed to stand.

Berry v. Baltimore & Drum Point R. R. Co., 41 Md. 466.

ILLUSTRATION LXVIII.

Chapter 118 of the Acts of 1908 by its first session, purported to repeal section 205 of article 93 of the Code of Public General Laws, title "Testamentary Law," sub-title "Inventory and List

of Debts,'' so far as the same applied to the City of Baltimore.

By its second section new provisions as to the appraisement of decedents' estates were enacted into law as substitutes for those repealed.

It was argued that this was really an attempt to amend the general law, which could not be done by merely referring to its title.

HELD: The act was not an amendment, but a ''partial repeal'' and the reference was sufficient.

Barron v. Smith, 108 Md. 317.

ILLUSTRATION LXIX.

Thomas was elected comptroller of the state on November 5th, 1851, and fully qualified on the 10th day of December, 1851. The Constitution then in force provided that the comptroller should receive an annual salary of $2,500.00.

The legislature made no appropriation for his salary from December 10th, 1851, to January 1st, 1852.

HELD: That the appropriation was made by the Constitution.

Thomas v. Owens, 4 Md. 189.

ILLUSTRATION LXX.

The Act of 1867, Ch. 337, authorized the comptroller to pass upon and audit certain claims, and to draw his warrant upon the treasurer in favor of each claimant for the amount found by the comptroller to be justly due said claimant, said warrants to be paid out of any money thereafter in the treasury not otherwise appropriated, ''provided the whole amount of said warrants should not exceed $300,000.''

HELD: This was a sufficient appropriation of a specific sum.

McPherson v. Leonard, 29 Md. 377.

ILLUSTRATION LXXI.

The Act of 1864, chaps. 15 and 373, gave a bounty of $300.00 to certain persons who enlisted in the U. S. Army before April 1st, 1864, on certain conditions.

The Act of 1865, ch. 33, gave a similar bounty to those who were drafted, furnished a substitute or volunteered after December 19th, 1864.

The Act of 1867 extended the provisions of the Act of 1864, chaps. 15 and 373, to embrace, subject to certain provisos, all volunteers and drafted men who entered the service between April 1st, 1864, and December 19th, 1864.

In his dissenting opinion, Judge Stewart argued that this act is unconstitutional upon the ground *inter alia* that "no sum is distinctly specified in the act," but the majority of the court not noticing this objection in their opinion,

HELD: That the act was valid.

Leonard v. Wiseman, 31 Md. 201.

ILLUSTRATION LXXII.

The Act of 1874 imposed a "Collateral Inheritance Tax" upon property of decedents passing to various collateral relations and strangers. By its provisions property passing to a *husband* was made subject to the tax.

While this law was in effect, Mrs. Montague died and a large amount of her property passed to her husband, the collateral inheritance tax upon which amounted to $1,718.84, for which the state brought suit and a *pro forma* judgment was entered against Mr. Montague. Pending an appeal in the case, the Act of 1880, ch. 444, was passed, exempting from the payment of the tax estates passing to husbands of decedents and providing "that this act shall take effect immediately after its passage, and shall apply to all cases of collateral inheritance tax heretofore claimed of, but not actually paid by the husband of any decedent."

HELD: This was not such an "obligation to the state" on the part of Mr. Montague as to be within the Constitution, article III, section 33, and Mr. Montague was relieved by the Act of 1880 from any liability to pay the tax.

Montague v. State, 54 Md. 481.

ILLUSTRATION LXXIII.

Miller prosecuted a suit against Gittings in the courts of New York State. Both Miller and Gittings were citizens of Mary-

land. The subject of the suit was an indebtedness alleged to have arisen out of stock transactions. In New York the defendant in such an action as was brought against Gittings was liable to imprisonment.

HELD: That Miller would be restrained from prosecuting his action in the New York Court, inasmuch as it appeared that the foreign forum was selected for the purpose *inter alia* of depriving Gittings of his constitutional right in Maryland to be free from arrest in debt.

Miller v. Gittings, 85 Md. 601, 618.

ILLUSTRATION LXXIV.

Helfrich was the owner of a farm through which flowed a pure, clear and natural stream of fresh water. The Catonsville Water Company acquired a tract of land upon which it erected a dam and reservoir for the purpose of supplying a large number of people with water for drinking and other necessary purposes.

It afterwards filed a bill against Helfrich, claiming that he permitted a large number of his cows to enter the stream which flowed through his land, and which was one of the sources of supply for the reservoir of the water company.

HELD: That the right of Helfrich to use his lot for the purpose of pasturing his cows in an ordinary and reasonable way was property protected by this article of the Constitution, and that the water company could not deprive him of this right without condemnation proceedings and paying Helfrich fair compensation.

Helfrich v. Catonsville Water Company, 74 Md. 269.

ILLUSTRATION LXXV.

The Lake Roland Elevated Railway erected under ordinance of the Mayor and City Council confirmed by an act of legislature, in the centre of North street an abutment of solid masonry and an elevated iron structure, which reduced the width of the street opposite Garrett's lots abutting thereon to less than ten feet, and as was alleged, practically destroyed the access to his property from the street upon which it had fronted.

HELD: That there was no physical invasion of Garrett's property, and, therefore, no such "taking" as is forbidden by section 40 of article III of the Constitution. Consequently, Garrett could not enjoin the work until payment or tender of compensation were made, although he had his remedy "in another forum" than equity.

Garrett v. Lake Roland R. R. Co., 79 Md. 277.

ILLUSTRATION LXXVI.

The Acts of 1912, chapter 117, provided a new method for the condemnation of property under the right of eminent domain. Among other things, the act provided that the appraisers therein appointed should "assess the value of the property or the estate or interest therein sought to be condemned," and it was argued that, under the provisions of the act, the damages were restricted to the particular property described in the petition, and that where a part only of the owner's property is taken, and the appropriation of that part injures the remaining part, no compensation for the resulting injury can be awarded under the act.

HELD: This was not a proper construction of the act, the court saying that if such were the true construction, an award made upon such a principle of valuation would not constitute "just compensation" within the meaning of the Constitution.

Ridgely v. Balto. City, 119 Md. 567.

ILLUSTRATION LXXVII.

Acting under the authority of certain statutes and ordinances, the Mayor and City Council of Baltimore, condemned certain land belonging to the estate of Daniel Warfield, in order to make improvements on Jones Falls.

The damages allowed by the commissioners, were $6,666.67.

On appeal to the City Court these damages were increased to $40,000, and a judgement upon the inquisition was entered against the city. About four months after the entry of this judgment, the ordinances under which condemnation was had, were repealed, and the property condemned was no longer desired by the city.

HELD: That the entry of the judgement was improper, and that the city had the right, at its discretion, either to make or decline the purchase at the price fixed.

Merrick v. Baltimore, 43 Md. 219.

ILLUSTRATION LXXVIII.

Gluck was a tenant of premises on Gay street under a lease which had upwards of ten years to run. Under proper condemnation proceedings, a part of these premises was taken for the widening of the street, the front wall was torn down and the removal of the elevator in the building was made necessary. The landlord was under no obligation to make repairs and Gluck was bound to pay the rent. Damages for all injuries to the building had been awarded to the landlord in the condemnation proceedings.

HELD: That Gluck was entitled to "just compensation" for the injury done to his leasehold interest, even though the full value of the property taken had been paid to the landlord.

Gluck v. Baltimore, 81 Md. 315.

ILLUSTRATION LXXIX.

By the Act of 1898, chapter 457, it was provided that "Every husband shall acquire by virtue of his marriage an estate for his life in one-third of the lands held or owned by his wife at any time during the marriage."

Mr. and Mrs. Whiteley were married, and she had acquired property and he had become indebted and had suffered several judgments to go against him, long prior to the passage of this act. The creditors claimed that by this act he had acquired a statutory estate by curtesy and this they sought to subject to their debts.

HELD: That prior to the act Mrs. Whiteley had an absolute estate in her own property (under the protection of article 3, section 43 of the Constitution), and the legislature had no power to pass any act which would enable the husband's creditors to hamper her in the control or disposition of her property.

Harris v. Whiteley, 98 Md. 430.

ILLUSTRATION LXXX.

Suit was brought against Bramble as sheriff to recover the exemption of $100.00, which it was alleged ought to have been paid over to Twilley out of the proceeds of an execution sale on a judgment against him.

At the time of the sale, the exemption law in force provided that a part of the land taken in execution should be set aside for the judgment debtor as his exemption, or if this could not be done advantageously to all parties, "then the whole shall be sold and the defendant whose property is so sold, shall have $100 of the proceeds in money."

After the sale, but before the suit was brought, the law as to exemptions was changed and made to apply to residents only. It was pleaded that Twilley was a non-resident.

HELD: That Twilley's right to exemption became fixed at the time of sale and could not be taken away by a law subsequently passed.

Bramble v. State, use of Twilley, 41 Md. 435.

ILLUSTRATION LXXXI.

Vansant deposited money collected by him, as clerk of the Court of Common Pleas on account of the state, in bank and received interest thereon. This action was a suit by the state on his bond to recover this interest. The right of the state to recover interest received by Vansant on money, so collected and deposited in bank by him until the time arrived for him to pay it over was contested, appellants claiming that Vansant became the debtor of the state for the amounts so received, but was the absolute owner of the funds while he held them, and hence entitled to any interest the funds earned while so held.

HELD: That Vansant was liable to the state for the interest so received by him.

Vansant v. State, 96 Md. 110.

ILLUSTRATION LXXXII.

The Act of 1856 incorporated the "Maryland Agricultural College."

In 1866 the State made an appropriation to it of $45,000 to pay its debts, provide furniture for it, etc., provided the College

conveyed to the State one-half interest in all its property. The same act changed the number of trustees, making this number 11, 4 of them officials to represent the State and the other 7 to be elected by the private stockholders. This act was accepted, the money paid and deeds executed whereby the State became one-half owner. In 1880 the General Assembly changed the number of trustees to 12, 5 to be elected by the private stockholders, and 7 to be State or U. S. officials. This act, while not formally accepted by the private stockholders, was acted upon by them till 1888.

The Act of 1888 made another change increasing the whole number of trustees to 18, of whom 5 were to be elected by the private stockholders and the remaining 13 were officials or appointees of the governor. Under this act the private stockholders elected 5 trustees in 1888, 1889 and 1890, but, at the annual meeting in 1891, they assumed to elect 7 trustees and brought this mandamus to compel the acknowledgment of their *status,* on the theory that the Act of 1866 created a contract, the obligation of which the later acts tended to impair.

HELD: 1. The charter being granted subsequent to the Constitution of 1851, was by art. 3 sec. 47 of that Constitution subject to amendment.

2. The Act of 1866 was a contract so far as the state becoming a joint owner on payment of $45,000 was concerned, but not as regarded the number of trustees. The latter simply concerned the government of the College and was within the power of the legislature to change.

3. Even if the later acts would have been unconstitutional without consent, there was consent here and a contract can always be changed by consent.

Jackson v. Walsh, 75 Md. 304.

ILLUSTRATION LXXXIII.

By the Act of 1827, the Baltimore & Susquehanna R. R. was chartered, and it was therein provided that its stock should be exempt from taxation.

By the Act of 1854, authority was given this company to consolidate with three Pennsylvania Railroad Companies, under the name of the Northern Central Railway Company, and it was

provided *inter alia* that the new company should "possess all the corporate powers and privileges" of the old, in so far as applicable, etc.

In pursuance of this act and similar acts passed by the Pennsylvania legislature in regard to the companies of that state, articles of union and consolidation were executed by the several companies, by which all their rights, property, immunities, privileges, etc., became vested in the body corporate formed by the consolidation.

The Act of 1866 repealed all laws exempting property from taxation.

The Act of 1870 repealed all provisions contained in the charters of railroad companies, exempting them from taxation.

The Act of 1872 imposed a tax of one-half of one per cent. on the gross receipts of railroad companies.

HELD: 1. That the new corporation derived its existence from the Act of 1854, and assuming that the exemption of the stock of the old company exempted all its property, and assuming also that this exemption passed to the new company, still it was under the charter of the new company, the Act of 1854, that all rights passed to the new company, and this charter was subject to repeal under article 3, section 47 of the Constitution of 1851.

2. That the Acts of 1866,1870 and 1872, above mentioned, did operate as a repeal.

State v. N. C. R. R., 44 Md. 131.

ILLUSTRATION LXXXIV.

The National State Bank, a non-resident corporation, held a mortgage on land located in Harford County, State of Maryland, and was assessed for taxes upon this mortgage. The bank defended upon the ground that its interest in the mortgage was in the nature of a chose in action, and therefore, could only be assessed to it in the place of its domicile. The court, however, said that, conceding the interest of the bank to be in the nature of a chose in action, the rule *mobilia sequuntur personam* is not of universal application, and may be qualified by the legislature in cases of taxation; and, that the general rule that the *situs* for

taxation of a chose in action is the residence of the owner, is a mere fiction of law, and yields (1) whenever it is necessary for the purpose of justice that the actual *situs* of the thing should be examined, or (2) whenever the legislative intent is manifested that this legal fiction should not operate; it, therefore

HELD: That the bank was properly assessable in Harford County upon its interest in the mortgage.

Allen v. National State Bank, 92 Md. 509.

ILLUSTRATION LXXXV.

The Act of 1900, chapter 479, provided, as construed by the court, that corporations of Allegany County, should pay to Allegany County all the local taxes on their stock, no matter where the owners of such stock resided, one of the arguments in favor of the equity of the provisions of the act being that the wealth of Allegany County is made up largely of coal mines operated by corporations, whose operations decrease the source of the county's wealth, and are protected by the county police power.

HELD: That the act was unconstitutional because in conflict with the provision requiring such personal property as shares of stock, to be assessed to the owner thereof residing in Maryland, at the county of his residence.

Baltimore City v. Allegany Co., 99 Md. 1.

ILLUSTRATION LXXXVI.

Mr. Bonaparte, a resident of Baltimore County, was appointed executor of the estate of Elizabeth Patterson, a resident of Baltimore City. Mr. Bonaparte contended that being a resident of Baltimore County he was taxable there and nowhere else, upon the stocks and bonds belonging to the estate, under the provisions of Section 51 of Article 3 of the Constitution, because the legal title to this intangible property was in him.

HELD: That the decedent being a resident of Baltimore City, and the settlement of the estate being made in Baltimore City,

the property was properly assessable in Baltimore City to Mr. Bonaparte as executor.

Bonaparte v. State, 63 Md. 465.

ILLUSTRATION LXXXVII.

William W. Baldwin, a resident of New York, was appointed guardian for Columbus C. Baldwin, also a resident of New York, by the Orphans' Court of Washington County.

The county sought to collect taxes upon the stocks and bonds of corporations organized and located outside of the State of Maryland, to the amount as shown by the guardian's account, notwithstanding the non-residence of both guardian and ward, and although the ward was of age when the returns were made and the taxes levied.

HELD: That the guardian was properly considered as the owner of the property in his hands as such guardian, and was properly taxable upon said property in the county appointing him, until in fact, his trust was accomplished and the estate closed.

Baldwin v. Washington County, 85 Md. 157.

ILLUSTRATION LXXXVIII.

The Act of 1872, chapter 485, authorized the county commissioners of Anne Arundel County to subscribe for a certain amount of the capital stock of the Baltimore & Drum Point R. R. Company, and to issue coupon bonds for the purpose of meeting said subscription. This act was published in the two county papers of Anne Arundel County before the next election for members of the House of Delegates, which election took place on November 4th, 1873. The first publication was made on September 6th, 1873, more than two lunar months, but less than two calendar months, before said election.

HELD: The publication was insufficient, and irrespective of all other reasons, the subscription on this account was void.

B. & D. P. R. R. v. Pumphrey, 74 Md. 86.

ILLUSTRATION LXXXIX.

The Act of 1872, chapter 178, provided that a certain class of corporations lending money, might charge their borrowers the same rates as were allowed to be charged by mutual building associations, the persons drawing money from which, are members thereof, and have an interest in the profits.

Uhler borrowed from the Citizens Land and Security Company $6,800.00, which he was to repay with interest, in weekly instalments, together with a weekly premium of twenty-five cents on each of seventeen shares of so called "stock," making his interest in reality nine and one-half per cent.

HELD: The legislature could pass no act allowing such corporations as the lender in this case to charge a greater interest than six per cent., while that was the legal rate for all other persons.

Citizens Security & Land Co. v. Uhler, 48 Md. 455.

JUDICIARY DEPARTMENT.

ARTICLE IV—PART I—GENERAL PROVISIONS.

Section 1.

"The Judicial power of this State shall be vested in a Court of Appeals, Circuit Courts, Orphans' Courts, such Courts for the City of Baltimore as are hereinafter provided for, and Justices of the Peace; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom. The process and official character of Justices of the Peace shall be authenticated as hath heretofore been practised in this State, or may hereafter be prescribed by Law."

When Maryland was a province, and down to the time when the Constitution of 1776 was adopted, the judiciary consisted of county courts, a provincial court, a court of appeals, a chancery court, and a court of admiralty.[1]

The Constitution of 1776 recognized the county courts (corresponding to justices of the peace), established a court of appeals, changed the name of the provincial court to general court and recognized the other courts.[2]

It did not contain a constitutional provision vesting all the judicial power in the courts then established or recognized.

The provision we are now considering appears first in the Constitution of 1851, and previous to that time it was held that the general assembly possessed competent authority to modify the county courts in such manner as it might think would conduce to the better administration of justice.[3]

Under the terms of this section, however, it is not competent for the legislature to invest any other official than the courts therein mentioned, with any part of the judicial power.

It must be remembered, that by no means every decision which involves a hearing and the taking of evidence, is an exercise of

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1 *Whittington v. Polk,* 1 H. & J. 236.
2 *Horsey v. State,* 3 H. & J. 2.
3 *Whittington v. Polk,* 1 H. & J. 236, 249.

the judicial power, and the legislature may provide such tribunals and give them the power to take evidence and make decisions, without acting in contravention to the Constitution.

Thus, the appeal tax court is an administrative body, and, although its decisions are of great importance, it is subject to the control of the legislature.

The public service commission is a legislative body,[4] and, therefore, may be created and controlled by legislative enactments.

It has also been held by our court that "persons disturbing the public peace, persons guilty of a nuisance or of obstructing the highways and like offences, may be summarily arrested and fined" under the police power, which is to be distinguished from the regular judiciary powers of the state.

It is, therefore, competent for the legislature to confer upon executive officers such police power.[5*]

Although, one clause of this section, after stating that the judicial power of this state shall be vested in *inter alia* justices of the peace, reads that, "All said Courts shall be Courts of record," the concluding sentence plainly indicates that the word "Courts" is to be strictly construed and does not apply to justices of the peace.

Article IV. Section 2.

"The Judges of all of the said Courts shall be citizens of the State of Maryland, and qualified voters under this Constitution, and shall have resided therein not less than five years, and not less than six months next preceding their election or appointment in the judicial circuit, as the case may be, for which they may be respectively elected or appointed. They shall be not less than thirty years of age at the time of their election or appointment, and shall be selected from those who have been admitted to practice Law in this State, and who are most distinguished for integrity, wisdom and sound legal knowledge."

A judge must be a citizen of the United States, (because he must be a qualified voter); he must be a citizen of Maryland; a qualified voter under the Constitution; must be at least thirty years of age; must have been admitted to practice law in this state, and must have resided not less than five years in the State,

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4 *Gregg v. Public Service Commission,* 121 Md. 1.

5 *Shafer v. Mumma,* 17 Md. 331. *Illustration XC; *Hagerstown v. Dechert,* 32 Md. 369.

during the last six months at least of which he must have resided in the judicial circuit for which he is elected.

The provision that he must be selected from those "most distinguished for integrity, wisdom and sound legal knowledge" is, of course, merely directory to the voters and cannot have any legal consequences.

Article IV. Section 3

"The Judges of the said several Courts shall be elected in the Counties by the qualified voters in their respective Judicial Circuits as hereinafter provided, at the general election to be held on the Tuesday after the first Monday in November next, and in the City of Baltimore, on the fourth Wednesday of October next. Each of the said Judges shall hold his office for the term of fifteen years from the time of his election, and until his successor is elected and qualified, or until he shall have attained the age of seventy years, whichever may first happen, and be re-eligible thereto until he shall have attained the age of seventy years, and not after; but in case of any Judge who shall attain the age of seventy years whilst in office, such Judge may be continued in office by the General Assembly for such further time as they may think fit, not to exceed the term for which he was elected, by a resolution to be passed at the session next preceding his attaining said age. In case of the inability of any of said Judges to discharge his duties with efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each House concurring, with the approval of the Governor, to retire said Judge from office.

Until very lately the legislature frequently exercised its power to extend the term of a judge, who had reached the age of seventy, but was not physically disabled, for a greater or less period of time; but recently there has been a tendency in the legislature to refrain from exercising this power except under extraordinary circumstances.

In 1908, by chapter 323 of the acts of that year, the legislature, with the concurrence of two-thirds of the members of each house, and with the approval of the governor, retired in one act, four judges, viz: Henry Page, Charles E. Phelps, James U. Dennis, and Henry Lloyd, who had "by reason of continued sickness become unable to discharge the duties of their said office with efficiency." These judges were retired on full pay until the end of

their term, and afterwards upon the pension as provided by the code.

Article IV. Section 4.

"Any Judge shall be removed from office by the Governor, on conviction in a Court of Law, of incompetency, of wilful neglect of duty, misbehaviour in office or any other crime, or on impeachment, according to this Constitution, or the Laws of the State; or on the address of the General Assembly, two-thirds of each House concurring in such address, and the accused having been notified of the charges against him, and having had opportunity of making his defence."

To the credit of the judiciary of Maryland, it may be stated that for at least a generation there has been no instance of any judge having been removed from office by reason of misconduct, or any proceedings taken to that end, either in a court of law or in the legislature. Indeed, the removal of Judge Henry Stump, in 1860, upon the address of both houses of the legislature seems to be the only occasion where this power has been exercised. It will be noticed that the terms of this section seem to be mandatory as regards the governor, and that should a judge be convicted of any offence mentioned in this section, either in court or on impeachment, or should an address of the general assembly be carried by the required majority, after the prescribed requisites have been complied with, the governor is required to remove the judge as a mere ministerial duty, which could be enforced by mandamus. It will also be noticed that the words "General Assembly" as used in this section, evidently mean the senate and the house of delegates and do not include the governor, thus making it apparent that when these words are used in other parts of the Constitution, the governor is not necessarily included as a part of the general assembly.[6]

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6 *Warfield v. Vandiver,* 101 Md. 78, 111.

Article IV. Section 5.

"After the election for Judges, as hereinbefore provided, there shall be held in this State, in every fifteenth year thereafter, on the Tuesday after the first Monday in November of such year, an election for Judges as herein provided; and in case of death, resignation, removal or disqualification by reason of age or otherwise of any Judge, the Governor shall appoint a person duly qualified to fill said office, who shall hold the same until the next General Election for members of the General Assembly, when a successor shall be elected, whose term of office shall be the same as hereinbefore provided, and upon the expiration of the term of fifteen years for which any Judge may be elected to fill a vacancy, an election for his successor shall take place at the next General Election for members of the General Assembly to occur upon or after the expiration of his said term; and the Governor shall appoint a person duly qualified to hold said office from the expiration of such term of fifteen years until the election and qualification of his successor."

This section was amended to read as above, in pursuance of the Act of 1880, chapter 417. Until that time, it read as follows: "After the election for Judges, to be held as above mentioned, upon the expiration of the term, or in case of the death, resignation, removal, or other disqualification of any Judge, the Governor shall appoint a person duly qualified to fill said office, who shall hold the same until the next general election for members of the General Assembly, when a successor shall be elected, whose tenure of office shall be the same, as hereinbefore provided; but if the vacancy shall occur in the City of Baltimore, the time of the election shall be the fourth Wednesday in October following."

The abolition of the October elections in Baltimore City evidently required a change in the original provision and led to a substitute more completely providing for judicial elections thereafter.

It will be noticed that the provision requiring the election for the successor of any judge, to be held at the next general election for members of the general assembly, to occur upon or after the expiration of the said term, will in most cases require a judicial term to expire one year before an election can be held. For this interval, the sitting judge is usually commissioned by the governor.

Article IV. Section 6.

"All Judges shall by virtue of their offices be Conservators of the Peace throughout the State; and no fees, or perquisites, commission or reward of any kind, shall be allowed to any Judge in this State, besides his annual salary, for the discharge of any Judicial duty."

As we have already seen,[7] there can be no restriction by the legislature upon the power of a judge, to act as a conservator of the peace throughout the whole state, whether within or without his judicial circuit.

In connection with article 33, of the Declaration of Rights, we have cited the case of *Bradford v. Jones,* 1 Md. 368, as holding that the terms "fees" or "perquisites" within that article, were restricted to all special compensation or perquisites for particular service, which would be more or less contingent upon those services, and did not include or forbid the receipt by the judges of a tax, for their benefit imposed upon deposits in court, or money coming into the hands of trustees, etc. The same construction would doubtless be given to the words "fees, perquisites, commission, and reward of any kind" contained in this section.

Article IV. Section 7.

"No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, by affinity or consanguinity within such degrees as now are or may hereafter be prescribed by Law, or where he shall have been of counsel in the case."

In the Constitution of 1851, there was a provision (article 4, section 22) which substantially included the above section, and then continued "and whenever any of the judges of the circuit courts or the courts of Baltimore City shall be thus disqualified, or whenever by reason of sickness or by any other cause, the said judges or any of them may be unable to sit in any cause, the parties may, by consent, appoint a proper person to try the said cause, or the judges or any of them shall do so when directed by law.

In regard to the section as contained in the Constitution of

7 See Article 3 Section 55.

1851, our court held that "its primary, indeed its sole object, was to secure the impartial administration of justice," and that, although it prohibited a judge so interested, absolutely and unconditionally, from trying the case, and although, if objected to, a judge "ought to abstain from a decision" of any such interlocutory matters, as, for instance, an application for a continuance, which might work prejudice to one of the parties, it did not prevent such judge "from authorizing mere matters of form, tending only to the preparation of the case for trial, such as the issue of commissions and the like."

The opinion, however, was based, to some extent at least, upon the propriety of reconciling the two phrases, "sit in any case" and "to try the said cause," the former of which expressions was said by the court to be "much more comprehensive in its interdiction than the other."[8*]

Inasmuch as the last part of the section in the Constitution of 1851, which contains the words to, "try the said case," has now been omitted, it is perhaps open to argument whether, if such a case were now brought before the court, the decision would be similar, and it might well be contended that any action in a case taken by a judge so disqualified would be within the definition of "sitting" in said case, and except only as to an order of removal as provided by the next section, would be void.

A case involving the title of the judge himself to his office, has been held to be a case in which he is "interested," within the meaning of this section, and he cannot sit therein.[9]

"The case" in which a judge must have been "of counsel" has been strictly limited to the case actually before the court, and the fact that a judge "was counsel in a case theretofore tried by two of the parties" to a given bill, which "involves some of the issues raised in the bill," does not bring the judge within the letter or spirit of the Constitutional inhibition.[10]

Any order made or action taken by a judge within the prohibition of this section, is simply "*coram non judice* and void," and may be so declared by the Court of Appeals if the fact appears in the record.[11]

But the fact that one of several judges who sign an order is

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8 *Buckingham v. Davis,* 9 Md. 324, 328, *Illustration XCI.
9 *Magruder v. Swann,* 25 Md. 173, 206.
10 *Blackburn v. Craufurd,* 22 Md. 447.
11 *Blackburn v. Craufurd,* 22 Md. 447.

disqualified, will not make the order void, if the other judges have authority to sign such order.[12]*

Article IV. Section 8.

"The parties to any cause may submit the same to the Court for determination without the aid of a Jury and in all suits or actions at law, issues from the Orphans' Court or from any Court sitting in Equity, and in all cases of presentments or indictments for offences which are or may be punishable by death pending in any of the Courts of Law of this State having jurisdiction thereof, upon suggestion in writing under oath of either of the parties to said proceedings, that such party cannot have a fair and impartial trial in the Court in which the same may be pending, the said Court shall order and direct the Record of Proceedings in such Suit or Action, Issue, Presentment or Indictment, to be transmitted to some other Court having jurisdiction in such case, for trial; but in all other cases of Presentment or Indictment pending in any of the Courts of Law in this State having jurisdiction thereof, in addition to the suggestion in writing of either of the parties to such Presentment or Indictment that such party cannot have a fair and impartial trial in the Court in which the same may be pending, it shall be necessary for the party making such suggestion to make it satisfactorily appear to the Court that such suggestion is true, or that there is reasonable ground for the same; and thereupon the said Court shall order and direct the Record of Proceedings in such Presentment or Indictment to be transmitted to some other Court having jurisdiction in such cases for trial; and such right of removal shall exist upon suggestion in cases when all the Judges of said Court may be disqualified, under the provisions of this Constitution to sit in any case; and said court to which the Record of Proceedings in such Suit or Action, Issue, Presentment or Indictment may be so transmitted, shall hear and determine the same in like manner as if such Suit or Action, Issue, Presentment or Indictment had been originally instituted therein; and the General Assembly shall make such modification of existing law as may be necessary to regulate and give force to this provision."

Trial Before Court Without A Jury.

In regard to non-jury trials, the amendment to section 39 of this article, adopted in accordance with the Act of 1892, chapter 313,makes special provisions applicable to the courts of Balti-

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12 *Curtis v. Piersol,* 117 Md. 170, *Illustration XCII.

more City, and this section as amended will be considered in its proper place.

The provisions of the section we are now considering, as to jury trials, apply in their entirety to all portions of the state outside of Baltimore City, and to Baltimore City in so far as they are not superseded by section 39.

The provision contained in this section has been liberally construed. Thus the word "parties" has been construed to include "any party capable of being sued and of appearing in person or by attorney," and, therefore, a lunatic who may be sued in a civil action and can be bound by the acts of his attorney in the conduct of the case, is capable, acting through his counsel, of submitting his case to the court without a jury.[13]

So the word "cause" has been given a meaning broad enough to include issues sent by the orphans' court to a court of law for trial.[14]

But the agreement must appear in the record, and where, on appeal, it does not appear by the record that there was any such consent or agreement, this will be a fatal objection to the judgment appealed from.[15]

When a case is thus submitted to the court for determination without the aid of a jury, the effect is simply to require the judge to act in two distinct capacities, viz: judge and jury.

It neither restricts the jurisdiction of the court, nor confers upon it a "special jurisdiction." Therefore, an appeal will lie as in other cases, but the judgment of the court upon the facts is as conclusive as would be a judgment of the jury upon matters of fact, and questions of law must be brought before the Court of Appeals by Bills of Exceptions, as in cases of jury trials.[16]

Moreover, the fact that the trial is before the court has no effect upon the various incidental rights of the parties in a trial by jury, and the plaintiff must be called, and has the right after being called to take a *non pros,* even although the court may have previously expressed an informal opinion adverse to the plaintiff's right of recovery.[17]

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13 *Cross v. Kent,* 32 Md. 581.
14 *Houston v. Wilcox,* 121 Md. 91, 100.
15 *Desche v. Gies,* 56 Md. 135.
16 *Tinges v. Moale,* 25 Md. 480; *Cross v. Kent,* 32 Md. 581.
17 *Hall v. Schuchardt,* 34 Md. 15.

Removal of Cases.

At common law, the power of the courts to remove a cause to an adjoining county for trial, when justice required it, existed as a part of their ordinary common law jurisdiction, but as early as 1805 it was deemed wise to put the privilege of removal upon the "more sure and certain foundation" of a constitutional provision, and such provision has been incorporated ever since that time in our Constitutions. The object of these provisions has been, "to secure a fair and impartial trial, and promote the ends of justice by getting rid of the influence of some local prejudice which might operate detrimentally upon the interests or rights of one or other of the parties to the suit."

"In this view the privilege is most undoubtedly a valuable one, and whenever it has come under consideration by the courts it has been construed liberally to secure this object."

Hence it has been held that under such provisions as are found in the last clause of this article, giving the legislature power to "regulate and give force" to the provision, it may enlarge but cannot restrict the exercise of the right.[18]

The provisions which have been from time to time contained in our Constitution have varied in some particlars.

Thus in the provision adopted in 1805, the removal, in civil cases, was to be to some court "within the district," and in criminal cases to " the Judge of any adjoining County Court," and the suggestion for removal was required to be made before or during the term at which issue was joined. In the Constitution of 1851, likewise, the removal was to be "to the Court of an adjoining County,"[19] and in civil cases was confined to an adjoining county within the judicial circuit, except as to the City of Baltimore, when the removal might be to an adjoining county; and there was the same proviso as to the time when the suggestion was to be made.

In the Constitution of 1864, the restriction as to the time of making the suggestion was dropped, and the limits of removal were enlarged "to some other court in the same or in adjoining

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18 *Cooke v. Cooke,* 41 Md. 362, 366; *Negro Jerry v. Townshend,* 2 Md. 274; *Wright v. Hamner,* 5 Md. 370; *Griffin v. Leslie,* 20 Md. 15, 18; *Price v. Nesbitt,* 29 Md. 263, 266; *State v. Dashiell,* 6 H. & J. 268; *Hoyer v. Colton,* 43 Md. 421; *Downs v. State,* 111 Md. 241, 245.

19 *Wright v. Hamner,* 5 Md. 370; *State v. Schillinger,* 6 Md. 449; *Raab v. State,* 7 Md. 483. See *Kimball v. Harman,* 34 Md. 401.

circuit.'' In that Constitution (1864) there was a restriction upon the granting of a removal, viz: that the party asking the removal, or his counsel, should ''make it satisfactorily appear to the court'' that he could not have in that court a fair and impartial trial of his case.'' In the Constitution of 1867, as originally adopted, the territorial limit of removal was extended to any circuit in the state. The discretion left in the courts by the Constitution of 1864 was taken away, and the duty to order the re- imperative, as under the Constitutional provisions of 1805 and 1851.[20]

As will be noted from the above statement, largely quoted from Judge Miller's opinion, the Constitution of 1867, as originally adopted, went very far in granting the right of removal.

Apparently the judges in their discretion might remove the case to the most distant court within the state which had jurisdiction in the cause,[21] and their duty to remove the case upon proper application, even though they may be convinced that there was no real ground for such removal, except a desire to delay and inconvenience the other party, was unquestionably imperative.

It soon became plain that this provision was too liberal and was abused.

In the opinion already quoted, Judge Miller expressed himself that the provision of the Constitution of 1864, that reason for the application should be made apparent to the court, was a wise one; and the amendment proposed by the Act of 1874 was adopted ''doubtless because of some abuse of the unqualified privilege.''[22]

By the amendment proposed by the Act of 1874, the right of the party removing the cause, to have it sent to a different circuit is taken away; criminal cases, except capital, can only be removed when it satisfactorily appears to the court that there is reasonable ground for the suggestion; and the provision that counsel of the party may make affidavit is omitted.

Construction.

Although the language of our court, already quoted, as to the importance of the right secured by this section, and the liberal

20 *Cooke v. Cooke,* 41 Md. 362, Judge Miller's opinion.
21 *Kimball v. Harman,* 34 Md. 401.
22 *Downs v. State,* 111 Md. 246.

construction to be given provisions of law securing it has never been formally withdrawn or qualified, it is evident that the abuse of this right, which is alluded to in the opinions of the court already cited, and which cannot fail to impress every lawyer or observer of the practice of our courts, has worked practically a change of attitude in the judicial mind.

Court To Which Cause May Be Removed.

Thus, the discretion of the court under the present provisions being unlimited as to the court to which the case should be sent, it has been held proper not only to send a case from one county to another of the same circuit, but from one of the courts in Baltimore City to another court in the same city,[23] and this, even though the case may be a non-jury case and the same judge who passes the order for removal sitting as of one court, may try the case sitting as of the court to which the case is sent.[24]

Removal By One Of Several Parties.

So where there are several persons, either plaintiffs or defendants, the cause may be removed on the suggestion of any one of these persons, but such removal exhausts the right and the case cannot be again removed upon the suggestion of any other person who occupies the same position on the record as the person who has already made the suggestion.[25]

One Removal Only.

A fortiori, the same party can only once exercise his right of removal, and neither the appellate court nor the trial court, can grant a second removal to the same party.[26]

The purpose of these provisions is said to be to avoid possible prejudice of juries, not of judges,[27] and, therefore, these pro-

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23 *Weiskittle v. State* (use of Samuel), 58 Md. 155; *De Murgiondo v. Frazier,* 63 Md. 94.

24 *Chappell Co. v. Sulphur Mines Co.,* 85 Md. 684.

25 *State* (use of Harvey) *v. B. & O. R. R.,* 69 Md., 339, 348; *State v. Gore,* 32 Md. 498.

26 *State* (use of Harvey) *v. B. & O. R. R.,* 69 Md. 339, 348.

27 *Cooke v. Cooke,* 41 Md. 362, 371, 372.

visions are not applicable to proceedings in equity,[27] nor to appeals from justices of the peace.[28]

Nor is there any right of removal from the court in its exercise of any form of appellate jurisdiction;[29] as for example, appeals from orders of county commissioners, under special statutory provisions; nor is there right of removal in such special statutory proceedings as are involved in the return of inquisitions in condemnation proceedings;[30] nor issues framed at the instance of creditors in insolvent proceedings;[31] nor proceedings to forfeit the charter of a corporation.[32]

On the other hand, a statute requiring the party making the suggestion, to pay to the clerk the cost of the record within sixty days after the passage of the order of removal, and to cause the record to be transmitted within the same period, was held to be void as an unconstitutional limitation upon a right which, however much, it "may have been or may hereafter be abused," is nevertheless securely protected by the Constitution, although a provision requiring the clerk to make up and transmit the record within a reasonable time, would be valid.[33]

Nature Of The Right.

It will thus be seen that the privilege of removal is considered as a constitutional right, and it, therefore, follows that an order, granting or refusing removal, finally adjudicates a constitutional right of the party applying for it, and may, therefore, be appealed from as soon as passed, and before any final judgment.[34] Such an appeal will lie from an order striking out a judgment, and remanding the case, solely on the ground that the court to which removal had been made and which had entered the judgment, had no jurisdiction in the cause, even though the appeal be taken at the same term at which the order was made.[35]

Although a constitutional privilege, it is a personal privilege, and may be waived by the parties, and if a waiver be actually agreed to upon a sufficient consideration, the right cannot be re-

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27 *Cooke v. Cooke,* 42 Md. 362, 371, 372.
28 *Geekie v. Harbourd,* 52 Md. 460.
29 *Hoshall v. Hoffacker,* 11 Md. 362.
30 *Chappell v. Edmondson Ave. Co.,* 83 Md. 512.
31 *Trayhern v. Hamill,* 53 Md. 90.
32 *Bel Air Social Club, v. State,* 74 Md. 297.
33 *Hoyer v. Colton,* 43 Md 421.
34 *McMillan v. State,* 68 Md. 307.
35 *Kimball v. Harman,* 34 Md. 401.

asserted "unless perhaps in the event of some new cause supervening,"[36] and the right may be modified by constitutional amendment after suit is brought, at any time until application for removal is actually made.[37]

When The Right May Be Exercised.

Up to the time of the actual commencement of a trial, the parties have the right to file their suggestion and secure the removal of the case, the provisions of the present Constitution differing in this respect (as has been already noted) from the provisions of the early Constitutions.[38] This "commencement of the trial" occurs when the jury is sworn.[38]

A right can be exercised as well before a second trial as before the original trial. It may, therefore, be exercised where issues from the Orphans' Court have been tried before a jury which has failed to agree,[39] or in a case at law where one jury has been sworn and discharged, and another jury has been sworn, and trial had which resulted in the failure of the jury to agree.[40] After trial has commenced, no removal can be obtained, even though the nar. may be amended and new pleas filed on which issues are joined, provided the jury be not re-sworn.[41]

Who Can Make The Suggestion And Affidavit.

As has been already noted, the provisions formerly contained expressly allowing the affidavit to be made "by counsel," has been omitted in the Constitution as it now stands. It would, therefore, seem that the oath supporting the suggestion must be taken by one of the parties. Where an infant is a party, the affidavit may be made by his next friend,[42] or the infant may take the oath himself if he has attained years of discretion.[43]

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36 *Caladonian Fire Ins. Co. v. Traub,* 86 Md. 86; *Seth v. Chamberlaine,* 41 Md. 186.

37 *Smith v. State,* 44 Md. 530.

38 *De Ford v. State,* 30 Md. 179; *Smith v. State,* 44 Md. 530. See *Griffin v. Leslie,* 20 Md. 15.

39 *Wright v. Hamner,* 5 Md 370.

40 *De Ford v. State,* 30 Md. 179.

41 *Sittig v. Birkistack* 36 Md. 158.

42 *De Ford v. State,* 30 Md. 179.

43 *Albert v. State,* 66 Md. 325. In this case the age of the infant was fifteen.

In criminal cases the state has the same privilege of removal as the traverser, and the state's attorney is the proper person to make the affidavit.[44]

Form of Affidavit.

Although question was made whether an affidavit that the parties "believe" they cannot have a fair and impartial trial, is sufficient to require removal, and the court said that it was "better" that the terms of the Constitution be used,[45] it is now settled that no more is required than an affidavit that the party "believes" that he could not have a fair and impartial trial.[46]

Jurisdiction Of The Court.

In criminal cases, not capital, where "reasonable ground" for the suggestion must be made to "satisfactorily appear to the court," the judgment of the court as to whether such ground exists is conclusive, unless it plainly appears that the discretion is abused.[47]

The court's action is properly reviewable on an appeal or a petition assigning errors, and not on a bill of exception.[48]

The court's jurisdiction is not ousted simply by the affidavit and suggestion, but the case remains before it, until the order for removal is passed, and at any time before this is done the party may withdraw his petition.[49]

The court, however, after the suggestion is properly made, has no discretion as to the passage of a removal order, and has no further jurisdiction over the case except so far as may be necessary to secure the proper transmission of the record and proceedings to the court to which the case is removed.[50] But for all purposes necessary for such transmission of the record, such as a determination of what constitutes the record, and whatever else is necessary to enforce the execution of the order of removal, the jurisdiction of the court continues, until the jurisdiction of the court to which the removal is ordered, attaches upon receipt

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44 *McMillan v. State,* 68 Md. 307.
45 *Desche v. Geis,* 56 Md. 135.
46 *Albert v. State,* 66 Md. 325, 333.
47 *Downs v. State,* 111 Md. 241.
48 *Smith v. State,* 44 Md. 530.
49 *Manly v. State,* 7 Md. 135.
50 *Griffin v. Leslie,* 20 Md. 15.

of the transcript,[51] and the court may rescind or modify its removal order so far as may be done consistently with the absolute right of removal secured by the constitution, at any time during the term.[51*]

Article IV. Section 9.

"The Judge or Judges of any Court may appoint such officers for their respective Courts as may be found necessary; and such officers of the Courts in the City of Baltimore shall be appointed by the Judges of the Supreme Bench of Baltimore City. It shall be the duty of the General Assembly to prescribe by law a fixed compensation for all such officers, and said Judge or Judges shall from time to time investigate the expenses, costs and charges of their respective Courts, with a view to a change or reduction thereof, and report the result of such investigation to the General Assembly for its action."

In order that the independence of the judiciary can be secured, it is necessary that the judges should be allowed to appoint all necessary court officers, and the right given by this section of the Constitution would doubtless be vested in the courts without any special provision to that effect.[52]

It will be noted that the separate courts in Baltimore City do not appoint their own officers, but these are appointed by the Supreme Bench. The duties imposed upon the judges in this section, are, of course, directory only.

Article IV. Section 10.

"The Clerks of the several Courts created or continued by this Constitution shall have charge and custody of the records and other papers; shall perform all the duties, and be allowed the fees which appertain to their several offices, as the same now are or may hereafter be regulated by law. And the office and business of said Clerks, in all their departments, shall be subject to the visitorial power of the Judges of their respective Courts, who shall exercise the same, from time to time, so as to insure the faithful performance of the duties of said offices; and it shall be the duty of the Judges of said Courts, respectively, to make from time to time such rules and regulations as may be necessary and proper for the government of said Clerks, and for the performance of the

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51 *Seth v. Chamberlaine.* 41 Md. 186; *A. & G. Ck. Coal Co. v. Md. Coal Co.,* 64 Md. 202, *Illustration XCIII.

52 *Prince George's Co. v. Mitchell,* 97 Md. 330, 339.

duties of their offices, which shall have the force of law until repealed or modified by the General Assembly."

The provisions of this section in regard to duties to be performed by the clerks of the court and the fees to be allowed them, are so plain as to require no comment.

The "visitorial" power of the judges is not a power to legislate and prescribe to the clerks what duties they shall perform, but is simply a power given for the purpose of securing the faithful performance of duties already prescribed by the legislature. So the power given to the judges "to make from time to time such rules and regulations as may be necessary and proper for the government of said clerks," is a power simply to prescribe the method according to which the clerks are to perform the duties committed to them by the legislature. There is no power given to the judges under which they can either prescribe new duties to the clerks or fix their rates of compensation on a different schedule from that provided by the legislature.[53*]

Article IV. Section 11.

"The election for Judges hereinbefore provided, and all elections for Clerks, Registers of Wills and other officers provided in this Constitution, except State's Attorneys, shall be certified, and the returns made by the Clerks of the Circuit Courts of the Counties, and the Clerk of the Superior Court of Baltimore City, respectively, to the Governor, who shall issue commissions to the different persons for the offices to which they shall have been, respectively, elected; and in all such elections the person having the greatest number of votes shall be declared elected."

Article IV. Section 12.

"If in any case of election for Judges, Clerks of the Courts of Law and Register of Wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the Governor to order a new election; and in case of any contested election the Governor shall send the returns to the House of Delegates, which shall judge of the election and qualifications of the candidates at such election, and if the judgment shall be against the one who has been returned elected, or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days."

By the eleventh section, the method is prescribed of certifying

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53 *Peter v. Prettyman,* 62 Md. 566, *Illustration XCIV.

the results of elections for all officers provided for in the Constitution, except state's attorney, and the issuing to them of their commissions. The returns are to be made by the clerks of the courts mentioned, to the governor, and the governor must issue his commission to the person having upon the face of the returns the greatest number of votes. This duty of the governor is ministerial merely, and may be enforced by mandamus.[54]

The twelfth section prescribes the governor's duty in the case of an election which has resulted in a tie or which may be contested. If an election should result in a tie, it is the governor's ministerial duty to order a new election. If an election is contested, the governor must send the returns to the house of delegates, but has no power to decide the question. He is not, however, in such cases relieved from his duty to issue his commission to the person, having upon the face of the returns, the greatest number of votes.[55*]

The duty of the governor, in case of a contested election, is fulfilled when, after commissioning the person certified as having received the greatest number of votes, he has sent the returns to the House of Delegates. It then becomes the duty of the House of Delegates to order a new election; and until the returns of said new election are duly certified to the governor and a commission issued by the governor, the person shown on the face of the returns of the first election to have received the greatest number of votes, and therefore commissioned by the governor, will continue to hold the office, even though the House of Delegates in deciding upon the contest, may adjudge that his election was invalid. Should it happen, for any reason, that the House of Delegates should decide against the title of the person holding the commission, but for some reason a new election could not be held, the incumbent will still be in rightful possession of the office, and there will be no vacancy which can be filled by the governor.[56]

A curious effect of the decisions of our court, in regard to these sections, appears to be, that if a candidate for office should be really elected, but another candidate who is not entitled, be wrongfully returned as having received the greatest number of

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54 *Magruder v. Swann,* 25 Md. 173; *Brooke v. Widdicombe,* 39 Md. 386, 401.

55 *Groome v. Gwinn,* 43 Md. 572; *Brooke v. Widdicombe,* 39 Md. 386, 401; *Ijams v. Duvall,* 85 Md. 252, *Illustration XCV; *Wells v. Munroe,* 86 Md. 443.

56 *Ijams v. Duvall,* 85 Md. 252; *Wells v. Munroe,* 86 Md. 443.

votes, and this should be so decided by the House of Delegates upon contest, the wrongful holder of the office would nevertheless be entitled to the salary of that office until his successor, chosen at the election held by the House of Delegates should be duly commissioned, and the person who should have been returned as elected at the first election and should have been in possession of the office, could not be entitled to any salary until he qualified under his commission issued as a result of the new election, and unless he was successful at this second election, would not be entitled to any salary at all.[57]

Article IV. Section 13.

"All Public Commissions and Grants shall run thus: 'The State of Maryland, &c.,' and shall be signed by the Governor, with the Seal of the State annexed; all writs and process shall run in the same style, and be tested, sealed and signed as heretofore, or as may hereafter be provided by law; and all indictments shall conclude, 'against the peace, government and dignity of the State.'"

The provisions contained in this section as to the form of public commissions and grants are plain, as also is the provision putting in the power of the legislature, the right to prescribe the form and effect of writs and process. The last clause providing the form of the conclusion of indictments, has been held to be mandatory, and a count in an indictment has been held invalid because it concluded "contrary to the act of assembly in such case made and provided" instead of "against the peace, government and dignity of the State."[58]

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[57] See *Jump v. Spence,* 28 Md. 1.

[58] *State v. Dycer,* 85 Md. 246.

ARTICLE IV.—PART II.—COURT OF APPEALS.

Section 14.

"The Court of Appeals shall be composed of the Chief Judge of the first seven of the several Judicial Circuits of the State and a Judge from the City of Baltimore specially elected thereto, one of whom shall be designated by the Governor, by and with the advice and consent of the Senate, as the Chief Judge; and in all cases until action by the Senate can be had, the Judge so designated by the Governor shall act as Chief Judge. The Judge of the Court of Appeals from the City of Baltimore shall be elected by the qualified voters of said city at the election of Judges to be held therein, as hereinbefore provided; and in addition to his duties as Judge of the Court of Appeals, shall perform such other duties as the General Assembly shall prescribe. The jurisdiction of said Court of Appeals shall be co-extensive with the limits of the State, and such as now is or may hereafter be prescribed by law. It shall hold its sessions in the City of Annapolis, on the first Monday in April, and the first Monday in October; (on the second Monday in January, the first Monday in April and the first Monday in October*[59]) of each and every year, or at such other times as the General Assembly may by law direct. Its sessions shall continue not less than ten months in the year, if the business before it shall so require; and it shall be competent for the Judges temporarily to transfer their sittings elsewhere upon sufficient cause."

It will appear from the above section that of the eight judges of the Court of Appeals, seven are the chief judges of the seven judicial circuits outside of Baltimore City, and, of course, regularly perform their duties as judges of the trial courts. The eighth judge has no duties except as judge of the Court of Appeals which are imposed upon him by the Constitution. The legislature can assign him to such other duties as it may prescribe, there being no limitation expressed in the words of the Constitution, although, of course, such implied limitations as that they must be of judicial character, are necessarily understood.

The effect of these sections is that, in Maryland, none of the

[59] Terms thus arranged by Act of 1886, Ch. 185.

judges of the Court of Appeals are elected by the voters of the whole state, the voters of each judicial circuit having the right to vote for one only of the judges on this bench, and no voter having the right to vote for any judge of the Court of Appeals except the one elected from his circuit.

It will also be noted that the chief judge of the Court of Appeals can never be elected as such. He is elected merely as one of the judges, and the governor by and with the advice and consent of the senate, designates one of the sitting judges as chief judge.

It has never been decided definitely for what term the chief judge is so designated, but in practice, when a judge has been so designated, he has remained chief judge so long as he continued on the bench.

Appellate Character.

In the Constitution of 1851 it is expressly declared that the Court of Appeals shall have "appellate jurisdiction" only.[60] But in this Constitution the letter of the provision stating that the jurisdiction of the Court shall be "such as now is or may hereafter be prescribed by law," would seem to indicate plenary power in the legislature to assign to the Court of Appeals such jurisdiction as it might choose to confer. Our courts, however, have held that it is beyond the power of the legislature to assign to the Court of Appeals any jurisdiction except appellate. The court's reasoning is that "The Court at the time of the adoption of the present Constitution, had, under former Constitutions, appellate jurisdiction only, and the terms by which the jurisdiction is defined in the present Constitution are substantially the same in meaning as those employed in the Constitutions of 1851 and 1864." The "Court is an appellate Court and is so styled in the Constitution, and no provision is made in that instrument for instituting or conducting any original proceedings therein."[61]

Any statute, therefore, purporting to confer original jurisdiction on the Court of Appeals is void. Thus, although the judges of this Court in their individual capacity are conservators of the peace,[62] and, therefore, have the right to issue writs of *habeas*

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60 Constitution of 1851, Article 4, Section 2.
61 *Sevinskey v. Wagus,* 76 Md. 335; *Hendrick v. State,* 115 Md. 552, 558
62 Article 4, Section 6.

corpus, power cannot be given to the Court as a court to issue this writ,[63] nor can the Court grant the writ of mandamus or of *certiorari,* in cases of any subject matter of original jurisdiction, although it may grant such or other appropriate writs in aid of its appellate jurisdiction.[64]

It has also been held that the legislature cannot compel the Court to give its opinion upon moot questions,[65*] and this insistence upon the character of the Court as an appellate Court which simply decides whether the lower court, in a case actually pending, has given a correct or incorrect decision, has been carried so far, that by its present rules, the Court of Appeals will only hear a case on appeal which has been actually tried before the court below, and will not entertain an appeal from a *pro forma* decree, as at one time was the practice.

This strictness of construction as to the appellate character of the Court of Appeals is in line with the early case of Lawrence vs. Hicks,[66] where it was decided under the Constitution of 1776, as amended by the Act of 1804, that an act authorizing any of the parties to the cause to have transmitted to the Court of Appeals a transcript of the chancery proceedings for the purpose of taking the opinion of the appellate court, was unconstitutional. But under the Constitution of 1851 the Court of Appeals entertained jurisdiction in a case instituted in compliance with a resolution of the Legislature of 1858, "that his Excellency, the Governor, be, and he is hereby authorized and required to cause such proceedings to be instituted as may be necessary to obtain the opinion of the Judges of the Court of Appeals of Maryland," as to whether a certain appropriation to St. John's College constituted an irrepealable contract protected by the contract clause of the Federal Constitution, and the judges of the Court of Appeals put their findings in the case, brought in pursuance of the resolution, not in the form of a judgment, but in the form of an opinion as to the questions propounded by the resolution of the legislature.[67]

Under the Constitution of 1864 the same practice appears to have been followed by the Court of Appeals without objection.[68]

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63 *Sevinskey v. Wagus,* 76 Md. 335.
64 *Hendricks v. State,* 115 Md. 552.
65 *State v. Shields,* 49 Md. 301, *Illustration XCVI.
66 8 G. & J. 386.
67 *St. John's College v. State,* 15 Md. 330.
68 *Taylor v. Hebden,* 24 Md. 202.

It would seem as if the compliance with such legislative resolution would be in flat violation of the principles announced in the case of *State v. Shields* above cited, and it is more than doubtful whether the Court of Appeals would again give an opinion in a case brought before it in the manner pursued in the cases last cited.[69]

The disposition of our Court of Appeals to maintain strictly the lines of its jurisdiction and to promptly resist any encroachment of the legislature thereon, has perhaps become more strongly marked of late years. In the early history of the state the legislature was accustomed to give power and direction to the Court of Appeals to hear appeals in special cases, and as early as 1844 the Court said that it was too late to question the right of the legislature to do so,[70] providing the judicial functions of the Court were left untrammeled, and in 1862 the right of the legislature to confer such power, even as to an interlocutory order was upheld.[71] It is, however, submitted that it is at least an open question whether if the legislature would again give such directions, the court would follow these cases.

Article IV. Section 15.

"Four of said Judges shall constitute a quorum; no cause shall be decided without the concurrence of at least three; but the Judge who heard the cause below shall not participate in the decision; in every case, an opinion, in writing, shall be filed within three months after the argument or submission of the cause; and the judgment of the court shall be final and conclusive; and all cases shall stand for hearing at the first term after the transmission of the record."

The provisions of this section in regard to the number of judges which shall constitute a quorum, the number necessary for the decision of the cause, and forbidding the judge who heard the case below from participation in the decision, are plain.

The provision requiring an opinion in writing to be filed within three months after the argument or submission of the cause, has been held to be directory only, although in considering this provision the Court of Appeals has said that "Courts should not

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69 See also *Muskrat v. United States,* 219 U. S. 346.
70 *Prout v. Berry,* 2 Gill 147.
71 *State v. Northern Central Ry. Co.,* 18 Md. 193.

allow trivial causes to interfere with a compliance with the Constitutional or statutory direction,'' and elaborately explained why in that particular case the opinion was delayed.[72]

It has also been held that this provision as to filing opinions, does not apply where the judges are equally divided, and the judgment of the court below is on that account affirmed, the court saying that ''The opinion in writing, required to be filed, is the opinion or mind of the court, considered as a unit, not as consisting of several conflicting minds, and when that unity does not exist in the minds of a majority of the court or quorum, there is no decision of the court * * * *. It is almost a solecism to say, an equal division, or disagreement on any point, is a decision.''[73]

Under the terms of the provision that the judgment of the Court shall be final and conclusive, it has been held that the Court of Appeals has no greater power to disturb its final judgments after the lapse of the term, than has a lower court.[74]

The provision requiring all cases to stand for hearing at the first term after the transmission of the record, makes unnecessary the laying of a ''rule argument,'' as was formerly required, the cases automatically taking their place on the docket.

Article IV. Section 16.

"Provision shall be made by law for publishing reports of all causes argued and determined in the Court of Appeals, which the Judges shall designate as proper for publication."

The provision which the framers of the Constitution authorized the legislature to make, has been made by it, and in article 80 of the Code the law is found in regard to the ''State Reporter and Codifier.'' Section 5 of this article provides that this official shall prepare for publication reports of all cases argued and determined by the Court of Appeals and designated to be reported within six months from the time of their determination.

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72 *McCall's Ferry Co. v. Price,* 108 Md. 96, 112.
73 *Johns v. Johns,* 20 Md. 58, 61; *Groverman v. Spencer,* 7 Md. 214.
74 *Dorsey v. Gary,* 37 Md. 64, 74.

Article IV. Section 17.

"There shall be a Clerk of the Court of Appeals, who shall be elected by the legal and qualified voters of the State, who shall hold his office for six years, and until his successor is duly qualified; he shall be subject to removal by the said Court for incompetency, neglect of duty, misdemeanor in office, or such other cause or causes as may be prescribed by law; and in case of a vacancy in the office of said Clerk, the Court of Appeals shall appoint a Clerk of said Court, who shall hold his office until the election and qualification of his successor, who shall be elected at the next general election for members of the General Assembly; and the person so elected shall hold his office for the term of six years from the time of election."

Article IV. Section 18.

"It shall be the duty of the Judges of the Court of Appeals, as soon after their election under this Constitution as practicable, to make and publish rules and regulations for the prosecution of appeals to said appellate court whereby they shall prescribe the periods within which appeals may be taken, what part or parts of the proceedings in the court below shall constitute the record on appeal and the manner in which such appeals shall be brought to hearing or determination, and regulate, generally, the practice of said Court of Appeals so as to prevent delays and promote brevity in all records and proceedings brought into said court, and to abolish and avoid all unnecessary costs and expenses in the prosecution of appeals therein; and the said Judges shall make such reductions in the fees and expenses in the said court as they may deem advisable. It shall also be the duty of said Judges of Court of Appeals, as soon after their election as practicable, to devise and promulgate by rules or orders, forms or modes of framing and filing bills, answers and other proceedings and pleadings in Equity, and also forms and modes of taking and obtaining evidence, to be used in Equity cases; and to revise and regulate, generally, the practice in the Courts of Equity in this State, so as to prevent delays, and to promote brevity and conciseness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses attending the same. And all rules and regulations hereby directed to be made shall, when made, have the force of Law until rescinded, changed or modified by the said Judges, or the General Assembly."

The duty imposed upon the judges by this section has been exercised by them, and rules regarding appeals and chancery rules have been adopted by them from time to time and are

printed in their appropriate places in the code, and such rules, adopted by virtue of this section, are acted on as law.[75]

The wording of that part of the section which authorizes the judges to determine "which part or parts of the proceedings in the Court below shall constitute the record on appeal" evidently contemplates that the transcript of the record, or some part of it, and not the original papers, should be sent to the Court of Appeals, but it has been held that the legislature has the power to direct that the original papers be sent up with the appeal.[76]

It has been squarely decided that a rule of the Court of Appeals as to the time within which the record must be transmitted after appeal taken, will modify a statute previously passed in regard to the same subject matter.[77]

It would, therefore, seem that the court was practically supreme in matters of practice before it and in equity, since whatever might be done by the legislature in these matters could at once be reversed by a rule of Court.

ARTICLE IV.—PART III. CIRCUIT COURTS.

Section 19.

"The State shall be divided into eight Judicial Circuits, in manner following, viz: The Counties of Worcester, Somerset, Dorchester and Wicomico shall constitute the First Circuit; the Counties of Caroline, Talbot, Queen Anne's, Kent and Cecil, the Second; the Counties of Baltimore and Harford, the Third; the Counties of Allegany, Washington and Garrett, the Fourth; the Counties of Carroll, Howard and Anne Arundel, the Fifth; the Counties of Montgomery and Frederick, the Sixth; the Counties of Prince George's, Charles, Calvert and St. Mary's, the Seventh, and Baltimore City, the Eighth."

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75 *Meloy v. Squires,* 42 Md. 378; *Gabelein v. Plaenker,* 36 Md. 61.
76 *State v. Glenn,* 54 Md. 572, 595.
77 *Meloy v. Squires,* 42 Md. 378.

Article IV. Section 20.

"A Court shall be held in each County of the State, to be styled the Circuit Court for the County in which it may be held. The said Circuit Courts shall have and exercise, in the respective Counties, all the power, authority and jurisdiction, original and appellate, which the present Circuit Courts of this State now have and exercise, or which may hereafter be prescribed by Law."

It will be noticed that the Constitution does not attempt either to define what the present jurisdiction of the county circuit courts is, or prescribe what it shall be.

For their jurisdiction until the legislature acts, it refers to the existing law without stating what this law is, and as to what their jurisdiction shall be, full power is given to the legislature, without any expressed limitation.

Article IV. Section 21.

"For each of the said circuits (excepting the eighth and the third) there shall be a chief judge and two associate judges, to be styled judges of the Circuit Court to be elected or appointed as herein provided, (and for the third circuit there shall be a chief judge and three associate judges to be styled judges of the Circuit Court, to be elected or appointed as herein provided). And no two of said associate judges for any of the said circuits except the third circuit shall, at the time of their election or appointment or during the term for which they may have been elected or appointed reside in the same county. If two or more persons shall be candidates for associate judge in the same county in any of the circuits except the third circuit, that one only in said county shall be declared elected who has the highest number of votes in the circuit. In case any two candidates for associate judge in any of the circuits except the third circuit, residing in the same county, shall have an equal number of votes greater than any other candidates for associate judge in the circuit, it shall be the duty of the Governor to order a new election for one associate judge; but the person residing in any other county of the circuit, and who has the highest number of votes shall be declared elected. The said judges shall hold not less than two terms of the Circuit Court in each of the counties composing their respective circuits, at such times as are now or may hereafter be prescribed to which jurors shall be summoned; and in those counties where only two such terms are held, two other and intermediate terms, to which jurors shall not be summoned; they may alter or fix the times for holding any or all

terms, until otherwise prescribed, and shall adopt rules to the end that all business not requiring the interposition of the jury shall be, as far as practicable, disposed of at said intermediate terms. One judge in each of the above circuits, including the third circuits, shall constitute a quorum for the transaction of any business; and the said judges or any of them may hold special terms of their Courts, whenever in their discretion, the business of the several counties renders such terms necessary. The additional associate judge for the third circuit herein provided for, shall be elected by the qualified voters of Baltimore and Harford counties, at the first election that shall be held in said counties subsequent to the adoption of this amendment, and the judge so elected shall be subject to the same constitutional provisions, hold his office for the same term of years, receive the same compensation, and have the same powers as are herein provided for the other associate judges in the third circuit."

The provisions of this section are very plain.

Both the "non-jury" term and the "jury" term mentioned are held to be "regular terms,"[78] and a court has power to provide by its rules for summoning witnesses to such non-jury terms.[79]

By virtue of the provision which makes one judge a quorum, he has as much authority in performing judicial duties as would be possessed were all three judges sitting.[80]

The provision giving to the third circuit an additional judge, was proposed by the Act of 1912, chapter 515, and ratified at the November election, 1913, the additional judge being chosen at the November election in 1914.

Article IV. Section 22.

"Where any term is held, or trial conducted by less than the whole number of said Circuit Judges, upon the decision or determination of any point or question by the Court, it shall be competent to the party against whom the ruling or decision is made, upon motion, to have the point or question reserved for the consideration of the three judges of the circuit, who shall constitute a Court in *banc* for such purpose; and the motion for such reservation shall be entered of record during the sitting at which such decision may be made; and the several Circuit Courts shall regulate by rules, the mode and manner of presenting such points or questions

78 *Downs v. State,* 78 Md. 128, 130.
79 *Gambrill v. Parker,* 31 Md. 1.
80 *Beasley v. Ridout,* 94 Md. 659.

to the Court in *banc*, and the decision of the said Court in *banc* shall be the effective decision in the premises, and conclusive, as against the party at whose motion said points or questions were reserved; but such decision in *banc* shall not preclude the right of appeal or writ of error to the adverse party in those cases, civil or criminal, in which appeal or writ of error to the Court of Appeals may be allowed by law. The right of having questions reserved shall not, however, apply to trials of appeals from judgments of Justices of the Peace, nor to criminal cases below the grade of felony, except when the punishment is confinement in the penitentiary; and this section shall be subject to such provisions as may hereafter be made by law."

Judge Bryan[81] said that this section "gave a new right of appeal," and provides a substitute for an appeal to the Court of Appeals. The change made by it is, therefore, not to be extended by construction beyond the terms of the Constitution. Accordingly, in the case from which we have quoted, the Court of Appeals held that the "sitting" during which the motion for an appeal to the court in *banc* must be made, means the day upon which the ruling is actually made, and if the motion should be made later than that day, the court in *banc* would have no jurisdiction to entertain the appeal.[81]

When, however, the appeal to the court in *banc* is properly taken, the decision of the court in *banc* is just as conclusive upon the parties taking such appeal as would be a decision of the Court of Appeals, and even though the question so decided by the court in *banc* should be a question of jurisdiction, and the Court of Appeals should be of opinion that this question was wrongfully decided, the Court of Appeals would have no right to reverse that decision upon the application of the party taking the case before the court in *banc*.[82]

This section, it will be noticed, is one of those, the place of which in the Constitution is questionable, inasmuch as its provisions are subject to legislative modifications.

Article IV. Section 23.

"The Judges of the respective Circuit Courts of this State, and of the Courts of Baltimore City, shall render their decisions to all cases argued before them, or submitted for their judgment, within two months after the same shall have been so argued or submitted."

The wording of this section would seem to be mandatory, but

81 *Costigan v. Bond*, 65 Md. 122.
82 *Shueey v. Stoner*, 47 Md. 167.

in practice it is sometimes found inconvenient or impracticable for the court to render its decision within the limit of two months, and there are frequent illustrations of a breach of this provision; so that for all intents and purposes it may be merely considered as directory, and would probably be so decided if the question were raised before the Court of Appeals.

Article IV. Section 24.

"The salary of each Chief Judge, and of the Judge of the Court of Appeals from the City of Baltimore, shall be three thousand five hundred dollars, and of each Associate Judge of the Circuit Court, shall be two thousand eight hundred dollars per annum, payable quarterly, and shall not be diminished during his continuance in office."

Although the salary of the judges was specified by this section, it has been the unquestioned practice to allow these salaries to be increased by act of the legislature. Thus by the Act of 1892 Ch. 388, the salary of the chief judges was increased to $4,500.00, and the associate judges to $3,600.00 per annum. By the Act of 1908, Ch. 180, the salary of the judge of the Court of Appeals of Baltimore City was made $5,800.00, and by the Act of 1914, Ch. 847, the salary of all the judges of the Court of Appeals was fixed at $6,800.00, and the salaries of the associate judges of the first seven circuits at $4,600.00 each.

Article IV. Section 25.

"There shall be a Clerk of the Circuit Court for each County, who shall be elected by a plurality of the qualified voters of said County, and shall hold his office for six years from the time of his election, and until his successor is elected and qualified, and be re-eligible, subject to be removed for wilful neglect of duty or other misdemeanor in office, on conviction in a Court of Law. In case of a vacancy in the office of Clerk of a Circuit Court, the Judges of said Court shall have power to fill such vacancy until the general election for Delegates to the General Assembly, to be held next thereafter, when a successor shall be elected for the term of six years."

This section illustrates the general intent of the Constitution that the clerks of all the courts in this state shall be elected by

the people. In accordance with this intent, as well as in compliance with the natural meaning of the words used, whenever a clerk is elected by the people, whether because of the existence of a vacancy, strictly speaking, or because the house of delegates has found the person returned as elected not entitled to the office, the person elected will hold for a term of six years from the time of his election, and not for the balance of an unexpired term.[83]

Article IV. Section 26.

"The said Clerks shall appoint, subject to the confirmation of the Judges of their respective Courts, as many deputies under them as the said Judges shall deem necessary to perform, together with themselves, the duties of the said office, who shall be removable by the said Judges for incompetency, or neglect of duty, and whose compensation shall be according to existing or future provisions of the General Assembly."

Under the terms of this section there is no discretion given to the clerk as to the employment, *vel non,* of deputies.

He must appoint such number as the court may require, neither more nor less.

Neither is his discretion absolute as to the personnel of his deputies.

He can appoint no one without the approval of the judge, nor can he retain any one if found by the judge to be incompetent or negligent.

Neither can he determine the amount of their pay, for this is left in the hands of the legislature to regulate and is now the duty of the comptroller of the state.

Deputy clerks, then, would seem to be Constitutional officers; not mere servants or agents of the clerk, but agents and officers of the court, and the failure by a clerk to pay his salary to a deputy in his office is a breach by the clerk of the duty imposed upon him by law, and comes within the condition of a bond to secure "the faithful performance of all the duties now required of him by law."[84]

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83 *Wells v. Munroe.* 86 Md. 443. See *Sansbury v. Middleton,* 11 Md. 296.
84 State use of *Smith v. Turner,* 101 Md. 584.

ARTICLE IV.—PART IV.
COURTS OF BALTIMORE CITY.

Section 27.

"There shall be in the Eighth Judicial Circuit six Courts, to be styled the Supreme Bench of Baltimore City, the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Circuit Court of Baltimore City and the Criminal Court of Baltimore."

Under the authority given by section 39 of this article, another court (Circuit Court No. 2) has been established and many courts have sat in more than one "Part;" as for example, "Criminal Court, Part One," and "Criminal Court, Part Two."

Article IV. Section 28.

"The Superior Court of Baltimore City, the Court of Common Pleas, and the Baltimore City Court shall each have concurrent jurisdiction in all civil common law cases, and concurrently all the jurisdiction which the Superior Court of Baltimore City and the Court of Common Pleas now have, except jurisdiction in Equity, and except in applications for the benefit of the Insolvent Laws of Maryland, and in cases of Appeal from judgments of Justices of the Peace in said city, whether civil or criminal, or arising under the ordinances of the Mayor and City Council of Baltimore, of all of which appeal cases the Baltimore City Court shall have exclusive jurisdiction; and the said Court of Common Pleas shall have exclusive jurisdiction in all applications for the benefit of the Insolvent Laws of Maryland, and the supervision and control of the Trustees thereof."

Article IV. Section 29.

"The Circuit Court of Baltimore shall have exclusive jurisdiction in Equity within the limits of said city, and all such jurisdiction as the present Circuit Court of Baltimore City has; provided, the said Court shall not have jurisdiction in applications for the writ of *habeas corpus* in cases of persons charged with criminal offences."

Article IV. Section 30.

"The Criminal Court of Baltimore shall have and exercise all the jurisdiction now held and exercised by the Criminal Court of Baltimore, except in such Appeal Cases as are herein assigned to the Baltimore City Court.

These three sections contain the Constitutional provisions relating to the jurisdiction of the courts of Baltimore City. It has already been noted as a curious fact, that we have in our present Constitution, no means of finding out what is the actual jurisdiction of any court.

The main test of the common law jurisdiction of the Superior court, Court of Common Pleas and the Baltimore City court, is, "the jurisdiction which the Superior Court of Baltimore City and the Court of Common Pleas now have." The test for the Circuit Court of Baltimore City is "all such jurisdiction as the present Circuit Court of Baltimore City has," and the test for the Criminal Court of Baltimore is "all the jurisdiction now held and exercised by the Criminal Court of Baltimore."

To find out, therefore, what are the limits of the jurisdiction originally conferred upon these courts by the Constitution of 1867, one must go back at least to the Constitution of 1864.[85]

As we will hereafter see, section 39 of this article, provides that the general assembly may re-apportion, change or enlarge the jurisdiction of the several city courts. If, therefore, a question arises as to the jurisdiction of our city courts under our present Constitution, the answer is to be found, not in the Constitution itself, but in the Constitution of 1864, previous Constitutions and statutes and in the acts of assembly passed since 1867.

In a general way, however, the jurisdiction of our city courts is marked out in broad lines, and remains as outlined in the above section. All civil common law cases, where the damages claimed or the debt recovered exceed $100.00, or where the title to land is involved, are within the concurrent jurisdiction of the Superior court, the City court and the Court of Common Pleas, and whether such case be brought in one or the other of said courts is entirely at the option of the plaintiff, subject, however, to three exceptions; first, cases arising under the insolvent law

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[85] *Rohr v. Anderson,* 51 Md. 205; *Reese v. Hawks,* 63 Md. 130; *Legum v. Blank,* 105 Md. 129.

are within the exclusive jurisdiction of the Court of Common Pleas; second, appeals from magistrates are within the exclusive jurisdiction of the City Court; third, questions arising under ordinances of the Mayor and City Council of Baltimore are also within the exclusive jurisdiction of the Baltimore City Court.

All equity jurisdiction is given to the Circuit Court and the Circuit Court No. 2 of Baltimore City.

All criminal jurisdiction is conferred exclusively upon the Criminal Court of Baltimore.

Article IV. Section 31.

"There shall be elected by the legal and qualified voters of said city, at the election hereinbefore provided for, one Chief Judge and four Associate Judges, who, together shall constitute the Supreme Bench of Baltimore City, and shall hold their offices for the term of fifteen years, subject to the qualifications of Judges and their removal from office, and shall exercise the jurisdiction, hereinafter specified, and shall each receive an annual salary of three thousand five hundred dollars, payable quarterly, which shall not be diminished during their term of office; but authority is hereby given to the Mayor and City Council of Baltimore to pay to each of the said Judges an annual addition of five hundred dollars to their respective salaries; provided, that the same being once granted shall not be diminished nor increased during the continuance of said Judges in office."

This section must also be taken in connection with section 39 of this article. In accordance with the powers rendered by the last mentioned section, the number of associate judges have been increased from four to nine.

The annual salary of $3,500, as provided in this section, was increased by the Act of 1892, chapter 388, to $4,500, and by the Act of 1914, chapter 847, to $5,500. The authority given the Mayor and City Council to pay each of the judges of the Supreme Bench an annual addition of $500.00 to their respective salaries has been exercised by the city to its full extent, and the present salary, therefore, of the judges of the Supreme Bench is $6,000.00.

Article IV. Section 32.

"It shall be the duty of the said Supreme Bench of Baltimore City, as soon as the Judges thereof shall be elected and duly qualified, and from time to time, to provide for the holding of each of the aforesaid Courts, by the assignment of one or more of their number to each of the said Courts, who may sit either separately or together in the trial of cases; and the said Supreme Bench of Baltimore City may, from time to time, change the said assignment, as circumstances may require, and the public interest may demand; and the Judge or Judges, so assigned to the said several Courts, shall, when holding the same, have all the powers and exercise all the jurisdiction which may belong to the Court so being held; and it shall also be the duty of the Supreme Bench of Baltimore City, in case of the sickness, absence or disability of any Judge or Judges assigned as aforesaid, to provide for the hearing of the cases, or transaction of the business assigned to said Judge or Judges, as aforesaid, before some one or more of the Judges of said Court."

Under this section any number of judges of the Supreme Bench may be assigned to any court. They may either sit together in one court room with one jury, or separately in different rooms each with a jury, and with all the power and jurisdiction they possess when they sit together. So whenever the Supreme Bench in its judgment deems it necessary, it has power to divide into parts the courts created by the Constitution, and to assign to such sub-divisions one or more judges.[86]

Under these provisions, and owing to the growth of the city and the increase of legal business, many courts sit in several parts, almost continuously; for example, the criminal court sits practically all through the legal year in two parts, designated respectively as "Part One" and "Part Two," and the same is true of the Superior court and the City court. Furthermore, the practice has grown up of assigning each judge to a particular court, and also to "assist in all the other courts." Consequently, a judge in Baltimore City regularly sitting in the Superior court may, during the same day, pass orders as of the Circuit court, try a magistrate's appeal as of the City Court No. 2, and sit in a murder case as of the Criminal court.

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86 *Jackson v. State,* 87 Md. 191.

Article IV. Section 33.

"The said Supreme Bench of Baltimore City shall have power, and it shall be its duty, to provide for the holding of as many general terms as the performance of its duties may require, such general terms to be held by not less than three Judges; to make all needful rules and regulations for the conduct of business in each of the said Courts, during the session thereof, and in vacation, or in chambers, before any of said Judges; and shall also have jurisdiction to hear and determine all motions for a new trial in cases tried in any of said Courts, where such motions arise, either on questions of fact, or for misdirection upon any matters of Law, and all motions in arrest of judgment, or upon any matters of Law determined by the said Judge, or Judges, while holding said several Courts; and the said Supreme Bench of Baltimore City shall make all needful rules and regulations for the hearing before it of all said matters; and the same right of appeal to the Court of Appeals shall be allowed from the determination of the said Court on such matters, as would have been the right of the parties if said matters had been decided by the Court in which said cases were tried.

(The Judge, before whom any case may hereafter be tried, in either the Baltimore City Court, the Superior Court of Baltimore City, or the Court of Common Pleas, shall have exclusive jurisdiction to hear and determine, and the said Judge shall hear and determine all motions for a new trial where such motions arise, either on questions of fact or for misdirection upon any matters of law, and all motions in arrest of judgment, or upon any matters of law, determined by the said Judge, and all such motions shall be heard and determined within thirty days after they are made.")

The part of the above section enclosed in brackets is here added in accordance with the Act of 1870, chapter 177, this act not being a Constitutional amendment, but passed in pursuance of the power given to the legislature to change the jurisdiction of the courts under section 39 of this article.

The idea of the framers of the Constitution as originally drawn, evidently was that the Supreme Bench should have a two-fold character; first, a ruling body having general power and jurisdiction to make rules for all the several courts in Baltimore City; second, an appellate body, where parties could have questions at law deliberately considered by at least three judges without the delay and expense of an appeal to the Court of

Appeals, and where they could have the benefit of such review in many important cases where an appeal would not lie.[87]

To some extent, at least, it still retains its dual character. Generally speaking, the rules for each court in Baltimore City are adopted by the Supreme Bench, although it has been held that it was not the intention of those who framed the Constitution that if the Supreme Bench neglected to adopt rules for the guidance of the several courts of Baltimore City, the judges of these courts would be powerless to act, try cases or administer justice, nor if such rules, after adoption, failed to meet all possible emergencies, was it the intention that the judges should have no power to supply the deficiency, and adopt from time to time such orders and take such measures not inconsistent with the rules in force, as in their judgment would secure the trial or final disposition of all cases brought and pending in their respective courts.[88]*

As matter of fact, rules of any considerable importance are now adopted by the Supreme Bench, while each judge adopts such particular regulations in his own court as may seem to him proper for the convenient dispatch of business, and not inconsistent with the rules adopted by the Supreme Bench.

The appellate jurisdiction of the Supreme Bench was early held not to include equity cases,[89] but as to other matters the jurisdiction was liberally construed, being held to embrace appeals from the action of a judge on application for *habeas corpus*;[90] but it soon became apparent that the intermediate appeal in civil law cases, instead of being a benefit, was a matter which caused unnecessary delay and expense, and, therefore, the Act of 1870 was adopted, which withdrew from the appellate jurisdiction of the Supreme Bench practically all civil cases. At the present time the Supreme Bench has appellate jurisdiction practically only in criminal cases, and perhaps some such other matters as *habeas corpus*. It holds its regular terms at the expiration of each term of the common-law courts, and holds such special terms as may be required, and therein passes upon motions for new trials in criminal cases, chooses a grand jury,

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87 *Roth v. House of Refuge,* 31 Md. 329.
88 *Gibbons v. Cherry,* 53 Md. 144, *Illustration XCVII.
89 *Dykes v. Banks,* 31 Md. 239.
90 *Roth v. House of Refuge,* 31 Md. 329.

admits new members of the bar, passes upon applications for disbarment and the like.

In criminal cases, therefore, the traverser has practically two appeals, one to the Supreme Bench, and if that fails, another to the Court of Appeals.

Article IV. Section 34.

"No appeal shall lie to the Supreme Bench of Baltimore City from the decision of the Judge or the Judges holding the Baltimore City Court in case of appeal from a Justice of the Peace; but the decision by said Judge or Judges shall be final; and all writs and other process issued out of either of said Courts, requiring attestation, shall be attested in the name of the Chief Judge of the said Supreme Bench of Baltimore City."

Article IV. Section 35.

"Three of the Judges of said Supreme Bench of Baltimore City shall constitute a quorum of said Court."

It is probable that the words of this section are so plain that three judges would still be held to be a quorum of the Supreme Bench, even though at the time of the adoption of this provision three was a majority of the court, and now amounts to less than one-third of the number of judges.

Article IV. Section 36.

"All causes depending, at the adoption of this Constitution, in the Superior Court of Baltimore City, the Court of Common Pleas, the Criminal Court of Baltimore, and the Circuit Court of Baltimore City, shall be proceeded in, and prosecuted to final judgment or decree, in the Courts, respectively, of the same name established by this Constitution, except cases belonging to that class, jurisdiction over which is by this Constitution transferred to the Baltimore City Court, all of which shall, together with all cases now pending in the City Court of Baltimore, be proceeded in and prosecuted to final judgment in said Baltimore City Court."

The provisions of this section are plain, and inasmuch as the Constitution of 1867 has been in force for almost fifty years, there is little chance of any question arising thereunder. It has

been held that where an equity case had been carried to a final decree in the Superior Court, where it was properly brought under the old Constitution, any order looking to further litigation could not be passed in the Superior Court, but such further litigation must be carried on in the Circuit Court where equity jurisdiction is placed under the present constitution.

Article IV. Section 37.

"There shall be a Clerk of each of the said Courts of Baltimore City, except the Supreme Bench, who shall be elected by the legal and qualified voters of said city, at the election to be held in said city on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-seven, and shall hold his office for six years from the time of his election, and until his successor is elected and qualified, and be re-eligible thereto, subject to be removed for wilful neglect of duty or other misdemeanor in office, on conviction in a Court of Law. The salary of each of the said Clerks shall be thirty-five hundred dollars a year, payable only out of the fees and receipts collected by the clerks of said city, and they shall be entitled to no other perquisites or compensation. In case of a vacancy in the office of Clerk of any of said Courts, the Judges of said Supreme Bench of Baltimore City shall have power to fill such vacancy until the general election of Delegates to the General Assembly to be held next thereafter, when a Clerk of said Court shall be elected to serve for six years thereafter; and the provisions of this Article in relation to the appointment of Deputies by the Clerks of the Circuit Courts in the counties shall apply to the Clerks of the Courts in Baltimore City."

It will be noted that the provisions of this section are similar to the provisions relating to clerks of the county circuit courts. In the case of *Dowling v. Smith,* 9 Md. 269, it was held that under the similar provision of the Constitution of 1851, a clerk could not be removed for neglect of duty or other misdemeanor in office, unless such neglect were wilful, nor unless the clerk had been convicted in a court of law.

The provision preventing a clerk from receiving any other perquisites or compensation outside of his salary, has been given rather a strict construction. It was the custom for many years, for a clerk to treat the receipts of his office as being a debt, for which he was responsible to the state without interest. The clerk deposited these receipts in bank and was allowed

interest thereon, which he kept for his own use, but when this custom came before the Court of Appeals the Court held that such interest was a part of the perquisites of his office, and should be turned over by him to the state, and the clerk's bond was liable therefor.[91]

Article IV. Section 38.

"The Clerk of the Court of Common Pleas shall have authority to issue within said city all marriage and other licenses required by law, subject to such provisions as are now or may be prescribed by law. The Clerk of the Superior Court of said City shall receive and record all deeds, conveyances and other papers, which are or may be required by law to be recorded in said city. He shall have custody of all papers connected with the proceedings on the Law or Equity side of Baltimore County Court and the dockets thereof, so far as the same have relation to the City of Baltimore, and also discharge the duties of Clerk to the Supreme Bench of Baltimore City unless otherwise provided by law."

By virtue of the provision in this section, the office of the clerk of the Court of Common Pleas has become the license office in Baltimore City, and one department of the clerk of the Superior Court's office is the record office of Baltimore City.

Article IV. Section 39.

"The General Assembly shall, as often as it may think the same proper and expedient, provide by Law for the election of an additional Judge of the Supreme Bench of Baltimore City, and whenever provision is so made by the General Assembly, there shall be elected by the voters of said City another Judge of the Supreme Bench of Baltimore City, who shall be subject to the same constitutional provisions, hold his office for the same term of years, receive the same compensation, and have the same powers as are, or shall be, provided by the Constitution or Laws of this State, for the Judges of said Supreme Bench of Baltimore City, and the General Assembly may provide by Laws, or the Supreme Bench by its rules for requiring causes in any of the Courts of Baltimore City to be tried before the Court without a jury, unless the litigants or some one of them shall within such reasonable time or times as may be prescribed, elect to have their causes tried before a jury. And the General Assembly may re-apportion, change or enlarge the jurisdiction of the several courts in said City."

This section as above given, is the amendment proposed by the Act of 1892, chapter 313.

91 *Vansant v. State,* 96 Md. 110.

Previous to the adoption of this amendment, the section read as follows:

"The General Assembly shall, whenever it may think the same proper and expedient, provide, by law, another court for the City of Baltimore, and prescribe its jurisdiction and powers; in which case there shall be elected by the voters of said city, qualified under this Constitution, another judge of the Supreme Bench of Baltimore City, who shall be subject to the same constitutional provisions, hold his office for the same term of years, receive the same compensation, and have the same powers, as are herein provided for the Judges of said Supreme Bench of Baltimore City; and all of the provisions of this Constitution relating to the assignment of Judges to the Courts, now existing in said City, and for the dispatch of business therein, shall apply to the Court, for whose creation provision is made by this section. And the General Assembly may reapportion, change or enlarge the jurisdiction of the several courts in Baltimore City. Until otherwise provided by law, the Clerk of the Superior Court of Baltimore City, of the Court of Common Pleas, of the Circuit Court of Baltimore City, of the Baltimore City Court, and of the Criminal Court of Baltimore, shall each give bond in such penalty as is now prescribed by law, to be given by the clerks of the courts bearing the same names, under the present Constitution."

As has already been outlined, the existence of the different courts in Baltimore City has no other effect than to cause the maintenance of distinct offices for the different clerks. The amendment, therefore, allowing the election of new judges, when from time to time it may become necessary, is an effective means of providing indefinitely for the needs of litigants in the city.

The provision giving power to the legislature and to the Supreme Bench to require causes to be tried before the court without a jury, unless the litigants or some one of them shall within a reasonable time, elect to have their causes tried before a jury, has been acted upon and now, unless there is a prayer for a jury trial filed as a distinct part of the pleadings, within the time prescribed by the rules, a case in Baltimore City will automatically go upon the non-jury docket. This has been stated by Chief Justice Boyd, to be "an admirable provision,

and might with great propriety, have been made applicable to the whole State, as in the Counties, it frequently happens that cases are tried before the Court whilst the jury is still in attendance, at the expense of the County, because the Court does not know when a jury will be required.''[92]

ARTICLE IV.—PART V.—ORPHANS' COURTS.

Section 40.

"The qualified voters of the City of Baltimore, and of the several counties, shall on the Tuesday next after the first Monday in November next, and on the same day in every fourth year thereafter, elect three men to be Judges of the Orphans' Courts of said city and counties, respectively, who shall be citizens of the State, and residents for the twelve months preceding, in the city or county, for which they may be elected. They shall have all the powers now vested in the Orphans' Court of the State, subject to such changes as the Legislature may prescribe. Each of said Judges shall be paid a *per diem* for the time they are actually in session, to be regulated by Law, and to be paid by the said city or counties, respectively. In case of a vacancy in the office of Judge of the Orphans' Court, the Governor shall appoint, subject to confirmation or rejection by the Senate, some suitable person to fill the same for the residue of the term."

It will be noticed that the only constitutional qualification for a judge of the Orphans' Court is that he must be a citizen of the State of Maryland and a resident for the twelve months preceding, in the city or county for which he is elected. It is evident that the framers of the Constitution had before them the advantage of saving expense to parties interested in a decedent's estate, and providing for such parties a court easy of access and untrammeled by formal proceedure, and did not place much value upon the benefit that such persons might derive from having estates settled under the supervision of competent lawyers.

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92 *Chappell Chem. Co. v. Sulphur Mines Co.*, 85 Md. 681

A judge of the orphans' court may, under our Constitution, never have looked inside of a law book before he takes his seat upon the bench, and it is to the credit of the voters, and not of the Constitution, that the judges chosen, often possess marked ability to discharge the duties of their office.

The jurisdiction of the Orphans' Court is entirely within the control of the legislature.

The fact that orphans' court judges are paid a *per diem,* and not an annual salary, is also evidently intended to promote economy rather than the dignity of the office.

Strict construction has been given to the word "vacancy," which the governor is authorized to fill, and it has been held that this vacancy does not exist where there has been an election, and upon contest the right determined against the person returned as elected, because in such case until a new election has been ordered and the result ascertained, the person commissioned by the governor rightfully holds the office, and no vacancy exists.

When a vacancy does exist and is filled by the governor, the appointee holds only for the balance of the term of his predecessor, it being the intent of the Constitution that the term of all the judges of the Orphans' Court shall expire at the same time, a different intention from that manifested in the provisions regarding the clerks of courts.[93]

Article IV. Section 41.

"There shall be a Register of Wills in each county of the State, and the City of Baltimore, to be elected by the legal and qualified voters of said counties, respectively, who shall hold his office for six years from the time of his election, and until his successor is elected and qualified; he shall be re-eligible, and subject at all times to removal for wilful neglect of duty, or misdemeanor in office in the same manner that the Clerks of the Courts are removable. In the event of any vacancy in the office of the Register of Wills, said vacancy shall be filled by the Judges of the Orphans' Court, in which such vacancy occurs, until the next general election for Delegates to the General Assembly, when a Register shall be elected to serve for six years thereafter."

93 *Ijams v. Duvall,* 85 Md. 252.

ARTICLE IV.—PART VI.—JUSTICES OF THE PEACE.

Section 42.

"The Governor, by and with the advice and consent of the Senate, shall appoint such number of Justices of the Peace, and the County Commissioners of the several counties, and the Mayor and City Council of Baltimore, respectively, shall appoint such number of Constables, for the several Election Districts of the counties and wards of the City of Baltimore, as are now or may hereafter be prescribed by Law; and Justices of the Peace and Constables so appointed shall be subject to removal by the Judge or Judges having criminal jurisdiction in the county or city, for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a Court of Law. The Justices of the Peace and Constables so appointed and commissioned shall be Conservators of the Peace; shall hold their office for two years, and shall have such jurisdiction, duties and compensation, subject to such right of appeal in all cases from the judgment of Justices of the Peace, as hath been heretofore exercised, or shall be hereafter prescribed by Law."

The office of justice of the peace in Maryland dates back to colonial times.

The county court of our early history was composed of such justices, who were not, however, considered as part of the judiciary.[94]

The duties and jurisdiction of this office have been changed from time to time, but, generally speaking, have always embraced the trial of petty cases, both civil and criminal, and preliminary proceedings in more important criminal cases.

For various reasons, the office in this state lost in dignity, but because of various acts of the legislature, presently to be alluded to, assigning a small number of such justices to particular and special functions, the office, at least so far as relates to those justices specially assigned, has largely regained its importance.

It will be noticed that there are no "qualifications" required for a justice of the peace. He may not be a lawyer. No particular length of residence is required. Even the qualifications

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94 *Whittington v. Polk,* 1 H. & J. 236.

that the official be a citizen, a male, and an adult, are only implied.

The power of the legislature over the office is granted in broad terms and has been liberally construed.

Justices of the peace must be appointed by the governor by and with the advice and consent of the senate; the term of their office is fixed at two years; they are conservators of the peace; there must be an appeal allowed in all cases from their judgments, and once in office they can be removed therefrom before the expiration of their term only by the judge of the criminal court after conviction of either incompetency, wilful neglect of duty, or misdemeanor in office.

With these exceptions, justices of the peace, are practically the creations of the legislature, and their powers and their duties completely subject to its control.

The legislature may prescribe their number, and although they are said to be appointed "for" election districts and wards, there is no requirement either that they shall live in such districts or wards, or even have their offices therein, nor is there any prohibition upon appointments being made "at large" for the city or county.[95]

The legislature may not only assign to the whole body of justices, such jurisdiction, duties and compensation as to it seems wise, but it may assign to different justices even in the same city or county, different duties and different pay.

Thus, acts of the legislature have been sustained or acquiesced in, providing that certain justices in Baltimore City should sit at the station houses and receive a salary of $125.00 per month while the other justices were dependent on fees for their compensation; providing that certain magistrates in Baltimore County should sit at the station houses and receive a sum not exceeding $40.00 per month, although other justices in the county were not entitled to receive more than ten dollars per month for any services which they might render in criminal cases;[96] providing in the City of Baltimore for an additional justice of the peace at large, to be known as the "Magistrate for Juvenile causes," giving him power to appoint a clerk, and *exclusive* jurisdiction in certain classes of cases, together with

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[95] *Levin v. Hewes,* 118 Md. 624.

[96] Act 1900, Chap. 147; *Herbert v. Baltimore Co.,* 97 Md. 369.

a salary of $2,500.00 per annum.[97] An act of the legislature was also sustained by the Court of Appeals which provided for the appointment of "a presiding justice of the peace for the People's Court and four associate justices" for the City of Baltimore who were to receive annual salaries of $2,500.00 and $2,100.00 respectively, and before whom at the option of either party, any civil case must be tried. The act also provided for the appointment of 101 justices of the peace, six to be appointed from each legislative district, one from each of the wards comprising the district, six at large, and the remaining 53 in the city at large, all justices, other than those named to act as of the People's Court, to receive a salary of $10.00 per year as full compensation for their services in civil causes, in lieu of the costs as heretofore provided.[98]

The act last mentioned, virtually established a People's Court, sitting in one place during the prescribed hours, and entirely revolutionized the whole system of procedure before justices of the peace theretofore in force in Baltimore City and still in force in the counties of the state. It was attacked as being an alteration of the Constitution by indirection, but the point was not sustained.[99]

It will be noticed that a justice of the peace holds his office for two years, and there are no words in this section which extend his official term until his successor has qualified. Therefore, it has been held that at the expiration of the time limit of his term there occurs a vacancy in his office which can be filled by the governor, although until so filled the justice holding over may discharge his duties as a *de facto* officer.[100]

Constables, like justices, are conservators of the peace, but this does not mean in either case, that they shall perform any police duty other than such as looks to the preservation of the peace, and it has been held not to interfere with the power of the legislature to provide and organize a regular police force for Baltimore City or any of the counties.[101]

It has also been held as to constables, that when once appointed, they cannot be removed except as provided by the terms of this section, i. e., by the judge of the criminal court,

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97 Acts of 1904, Chap. 521. See *Levin v. Hewes,* 118 Md. 637.
98 Act of 1912, Ch. 823; *Levin v. Hewes,* 118 Md. 624.
99 *Levin v. Hewes,* 118 Md. 624.
100 *Claude v. Wayson,* 118 Md. 477, 482.
101 *Balto. v. State,* 15 Md. 376, 465

after conviction for incompetency, wilful neglect of duty or misdemeanor in office. The legislature has full power over their numbers and their duties, but has no power of removal.[102]

The power to change the duties of constables and to change their compensation from fees to salary, has been held to be a power which the legislature may delegate to the Mayor and City Council, and when the people's court, above spoken of, was established, the city council exercised this power, and its action was held valid by the court.[103]

The appointment of constables is vested in the Mayor and City Council of Baltimore in its corporate capacity, and, therefore, such appointment must be made by regular ordinance duly passed by both branches and approved by the mayor, and an attempt to vest the appointments in the mayor subject to the approval of one branch has been held to be unconstitutional.[104]

When a constable is convicted of incompetency, wilful neglect of duty or misdemeanor in office, it would seem that his removal from office may properly be made a part of the sentence of the court in the case where he is convicted.

Article IV. Section 43.

"In the event of a vacancy in the office of a Justice of the Peace, the Governor shall appoint a person to serve as Justice of the Peace for the residue of the term; and in case of a vacancy in the office of Constable, the County Commissioners of the county in which the vacancy occurs, or the Mayor and City Council of Baltimore, as the case may be, shall appoint a person to serve as Constable for the residue of the term."

As we have already noticed, the office of justice of the peace and constable, is vacant at the expiration of the term of two years, and the incumbent does not hold *de jure* until his successor is appointed.

Such appointment of a justice of the peace is to be made by the governor alone, and such appointment of a constable is to be made by the Mayor and City Council in its corporate capacity. When either a justice of the peace or a constable is so

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102 *Little v. Schul.* 118 Md. 454. 460.
103 *Gould v. Baltimore,* 120 Md. 534.
104 *Little v. Schul,* 118 Md. 460; *Levin v. Hewes,* 118 Md. 624.

appointed to fill a vacancy, he is, in the same manner as if he were originally appointed, not subject to removal by the appointing power.[105]

ARTICLE IV.—PART VII.—SHERIFF.

Section 44.

"There shall be elected in each county in every second year, one person, resident in said county, above the age of twenty-five years, and at least five years preceding his election, a citizen of the State, to the office of Sheriff. He shall hold office for two years, and until his successor is duly elected and qualified; shall be ineligible for two years thereafter; shall give such bond, exercise such powers and perform such duties as now are or may hereafter be fixed by law. In case of a vacancy by death, resignation, refusal to serve, or neglect to qualify, or give bond, or by disqualification, or removal from the county, the Governor shall appoint a person to be Sheriff for the remainder of the official term.

(In the City of Baltimore at the general election to be held in the year 1915 and every four years thereafter, there shall be elected in said City of Baltimore, one person, who shall be a resident of said city above the age of twenty-five years, and who shall have been at least five years preceding his election a citizen of this State, to the office of Sheriff. He shall hold his office for four years, and until his successor is duly elected and qualified; shall be eligible for re-election; shall give such bond, exercise such powers and perform such duties as now are or may hereafter be fixed by law. The Sheriff elected in and for the City of Baltimore in November, 1913, shall be eligible for re-election.

In case of vacancy by death, resignation, refusal to serve, or neglect to qualify, or give bond, or by disqualification or removal from said city, the Governor shall appoint a person to be Sheriff for the remainder of the official term. The Sheriff hereafter elected and the Sheriff elected in and for the City of Baltimore on the 7th day of November, 1913, shall from the date of his qualification receive such salary as may be fixed by law, not to exceed six thousand dollars per year in any case, and such expenses necessary to the conduct of his office, as may be fixed by law, such salaries and expenses to be paid in such manner and at such times as may be prescribed by law.")

The section as above given is the section as amended by the

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105 *Little v. Schul*, 118 Md. 460; *Cantwell v. Owens*, 14 Md. 215.

Act of 1914, chapter 845, ratified by the people at the November election in 1914.[106] Previous to the adoption of this amendment the section read as follows:

"There shall be elected in each county, and in the City of Baltimore, in every second year, one person, resident in said county or city, above the age of twenty-five years, and at least five years preceding his election, a citizen of this state, to the office of Sheriff. He shall hold his office for two years, and until his successor is duly elected and qualified; shall be ineligible for two years thereafter; shall give such bond, exercise such powers, and perform such duties as now are or may hereafter be fixed by law. In case of a vacancy by death, resignation, refusal to serve, or neglect to qualify, or give bond, or by disqualification, or removal from the county or city, the governor shall appoint a person to be sheriff for the remainder of the official term."

It will be seen that the object accomplished by the amendment is to make a distinction between the sheriff of Baltimore City and the sheriff of any of the counties of the state.

While the term of the county sheriff is two years, the term of the sheriff of Baltimore City is four years. A county sheriff is ineligible for two years after any term of service, but a sheriff of Baltimore City is eligible for re-election, and while a county sheriff may receive his compensation by way of fees, the compensation of the city sheriff must be a salary not to exceed six thousand dollars a year.

The office of sheriff is an ancient and honorable one, and although perhaps it has never had the importance in this country that it formerly possessed in England, a glance at the provisions in the constitution of 1776 relating to sheriffs will show with how much dignity the office was invested in the eyes of our revolutionary fathers.

As late as 1902, it was argued that there are certain functions characteristic of the office of sheriff which it was not the purpose of the framers of the Constitution to place in the power of the legislature to take from him, and that among those essential powers was the custody of the jail.

It was accordingly contended that an act of assembly which took the control and supervision of a county jail from the sheriff of the county and committed it to a board of visitors

106 See comment upon Article XIV, Sec. 1, page—

and a warden, to be appointed by them, was unconstitutional, but our Court of Appeals held that in this state the office of the sheriff was purely ministerial, and his powers and duties are not such *alone* as were determined by the common law, but were those—save and except as then or thereafter fixed by law, whether the effect of such law was to repeal, enlarge, or limit those powers. The language could not have been more explicit or plainer in meaning, if the constitution had said, "the powers and duties of sheriffs shall be such as now are or may hereafter be conferred and prescribed by legislative enactment."[107]

Under the present Constitution, therefore, although the legislature may not abolish the office, it has absolute control over the powers and duties pertaining to it.

Article IV. Section 45.

"Coroners, Elisors and Notaries Public may be appointed for each County and the City of Baltimore in the manner, for the purpose and with the powers now fixed, or which may hereafter be prescribed by law."

Inasmuch as full power is given to the legislature to appoint or not to appoint the officers mentioned in this section, and if appointed, to prescribe for them the purposes of their appointment and their powers, this provision, so far as constitutional law is concerned, is of little importance, except perhaps so far as it may make these officers when appointed "Constitutional Officers."

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107 *Beasley v. Ridout*, 94 Md. 641, 657.

ILLUSTRATIONS.

CONSTITUTION, ARTICLE IV.

ILLUSTRATION XC.

The charter of Hagerstown empowered the municipal authorities of that city to take up, fine or commit to the workhouse "all vagrant, loose and disorderly persons, lewd women, keepers of bawdy houses," etc., and by ordinance, this authority was vested in the mayor. Elmira Mumma was arrested as being a lewd woman, and brought before the mayor under the provisions of this article. The mayor heard witnesses, adjudged Mrs. Mumma guilty, and fined her accordingly. She afterwards brought an action of trespass against the mayor on the theory that in so trying and fining her, he was exercising judicial power which could not be bestowed upon him under the Constitution.

HELD: The power exercised by the mayor in this case was properly vested in him by the legislature as a police power, and the trial and conviction of Mrs. Mumma, were legal.

Shafer v. Mumma, 17 Md. 331.

ILLUSTRATION XCI.

While the Constitution of 1851 was in force, an ejectment suit was brought before Judge Nelson. A warrant of resurvey was applied for and granted by Judge Nelson, but when the case came up for trial, Judge Nelson announced that he was disqualified because he had been of counsel in the case; and a special judge was appointed to hear the case. Thereupon the plaintiff moved to strike out all the proceedings had in the case up to that time.

HELD: Judge Nelson had jurisdiction to pass such an interlocutory order as a warrant of resurvey.

Buckingham v. Davis, 9 Md. 324.

ILLUSTRATION XCII.

An order was passed by the judges of the orphans' court for Baltimore County, appointing Harry A. Piersol, Administrator *pendente lite* of the estate of Charles H. C. Curtis. At the time of the appointment, H. Seymour Piersol, a nephew of the decedent, and named as a remainder man in the alleged will, a contest over which necessitated the appointment, was sitting as one of the judges of said orphans' court.

HELD: That as it did not appear that Judge Piersol actually signed the order, or that the order was not signed by the other two judges as well as by Judge Piersol, and inasmuch as if either of these contingencies were true, the order would be valid, there was no ground shown for declaring the order void.

Curtis' Estate v. Piersol, 117 Md. 171.

ILLUSTRATION XCIII.

The Maryland Coal Company sued the Atlantic and George's Creek Coal Company in the circuit court of Allegany County. On the suggestion of the plaintiff the case was removed to Washington County. The defendant then filed a suggestion for removal, and the court on the fourteenth day of May, 1885, passed an order for the removal of the case to Garrett County. On June third, 1885, before the record had been actually transmitted to Garrett County, and during the same term at which the order for removal to Garrett County had been made, the circuit court for Washington County changed its order, and directed the record to be transmitted to the circuit court for Carroll County.

HELD: That the circuit court for Washington County had jurisdiction, and the order changing the court to which the case was removed from Garrett County to Carroll County, was a valid exercise of the court's discretion.

A. & G. Coal Co. v. Md. Coal Co., 64 Md. 302.

ILLUSTRATION XCIV.

The circuit court for Montgomery County passed an order requiring the clerk of that court to transcribe the general index of the land records therein into new record books, and to bring

up the said general index to the date of the order; and further ordered that said clerk use record books known as "Campbell's Index," and that the clerk be paid therefor "such compensation as this court may deem reasonable."

HELD: That the passage of the order was beyond the constitutional power of the court. Although the method of doing the work—in so far as the work itself was required by legislation—was within the power of the judges to direct, the court had no power to fix the compensation for the same.

Peter v. Prettyman, 62 Md. 566.

ILLUSTRATION XCV.

Duvall and Ijams were opposing candidates for judge of the orphans' court for Anne Arundel County. Duvall was returned elected, received his commission from the governor, duly qualified and entered upon the discharge of his duties. Ijams contested his election, and the house of delegates considered the contest, and passed a resolution declaring Duvall "not duly and legally elected," and ordering a new election to be held. Because of certain legislation passed at the same session, the election as ordered, could not be held, and after the date fixed for the election, which as just stated, could not occur, the governor acting on the supposition that there was a vacancy in the office, appointed Ijams to fill such vacancy.

HELD: That there was no vacancy, and Duvall held the office, and that the appointment of Ijams by the governor was invalid.

Ijams v. Duvall, 85 Md. 252.

ILLUSTRATION XCVI.

The Act of 1872, chapter 316, provided that in all criminal trials it should be lawful for the accused or for the state's attorney, in behalf of the state, to except to any ruling of the court and to tender a bill of exceptions which should be signed and sealed by the court, as is now practiced in this state in civil cases, and the party tendering such exceptions might appeal from such rulings to the Court of Appeals. After the

passage of this act, Shields was tried for forgery and acquitted. At the trial, the state took three exceptions to the rulings of the court on the evidence, and after verdict the state appealed.

HELD: The appeal should be dismissed, inasmuch as after acquittal by a jury the Court of Appeals could not award a new trial. No matter what errors had been made by the trial court, the determination as to whether such errors had been made would be merely the decision of moot questions. In spite of the broad terms of the act, it must, therefore, be held to give a right to appeal only when the traverser had been convicted, and then on appeal by the traverser the Court of Appeals is required to decide all the questions raised in the court below on exception, either by the traverser or by the state.

State v. Shields, 49 Md. 301.

ILLUSTRATION XCVII.

The Supreme Bench of Baltimore City provided by its rules *inter alia* that the clerks of each of the common law courts at each term should prepare a stet docket, which would contain all cases that had been twice called for trial and continued except for certain reasons, and also adopted a rule providing for the trial of cases on this stet docket upon notice given by either party, but the Supreme Bench adopted no rule compelling the trial of these cases. Under these circumstances, during the May Term of 1878, the judge of the court of common pleas gave notice that after he had completed the trial of cases on the regular trial docket, he would *sua sponte* call the cases on the stet docket, and in pursuance of this notice a case that had been on this stet docket for about ten years was called for trial, and a judgment on default for lack of plea entered therein. The action of the court was contested on the ground that the making of such a rule was not within the power of the judge of any one court, but was exclusively within the province of the Supreme Bench.

HELD: The action of the court was right and proper.

Gibbons v. Cherry, 53 Md. 144.

ATTORNEY-GENERAL AND STATE'S ATTORNEYS.

Aricle V. Attorney General. Section 1.

"There shall be an Attorney-General elected by the qualified voters of the State, on general ticket, on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-seven, and on the same day in every fourth year thereafter, who shall hold his office for four years from the time of his election and qualification, and until his successor is elected and qualified, and shall be re-eligible thereto, and shall be subject to removal for incompetency, wilful neglect of duty or misdemeanor in office, on conviction in a court of law."

Article V. Section 2.

"All elections for Attorney-General shall be certified to, and returns made thereof by the Clerks of the Circuit Courts for the several Counties, and the Clerk of the Superior Court of Baltimore City, to the Governor of the State, whose duty it shall be to decide on the election and qualification of the person returned; and in case of a tie between two or more persons to designate which of said persons shall qualify as Attorney-General, and to administer the oath of office to the person elected."

One of the most interesting cases to be found in the Maryland Reports is concerned mainly with the construction of these two sections.

Eight years after the adoption of the present Constitution—or in 1875—a reform movement, whose purpose was to overthrow the Democratic party leaders then in power, developed much strength.

At the gubernatorial election in that year these reformers nominated S. Teackle Wallis for attorney-general against Charles J. M. Gwinn, the regular democratic candidate.

Mr. Gwinn was returned as elected, but Mr. Wallis had a clear majority of the voters outside of Baltimore City, and the election in the city was claimed to be attended with so much

fraud, violence and intimidation as to prevent it from being in any sense a valid election.

Mr. Wallis addressed a letter to the governor notifying him that he proposed to contest Mr. Gwynn's election, and the governor replied that he would like to receive written arguments from both parties as to his authority to entertain the proposed contest and the extent of his powers in regard thereto. Both written and oral arguments were accordingly given, after which the governor announced as his decision; First, That according to the returns, Mr. Gwinn was elected; Second, That Mr. Gwinn was duly qualified and eligible; Third, That if the governor had power under the constitution to hear the matter "outside of the returns" there was sufficient reason to induce such hearing; Fourth, That whether or not the governor had power to take evidence *dehors* the returns and decide the election of the attorney-general thereon, or upon anything except the returns, was so close and serious a question of the construction of the Constitution, that it ought to be settled by the courts and not by the executive.

In accordance with this suggestion Mr. Gwinn brought *mandamus* to compel the governor to issue to him a commission, and on appeal from a *pro forma* order, the Court of Appeals held that he was entitled to the writ.

The argument contained in the opinion of the court, delivered by Chief Justice Bartol, is substantially as follows, viz:

By the terms of section 11 of article 4 of the Constitution, unless modified by the sections we are now considering, the governor is required to issue a commission to the person regularly and duly returned as elected to any office except state's attorney, and of course, therefore, to the person regularly returned as elected attorney general.

The sections we are now considering, cannot withdraw the case of the attorney-general from the operation of the rule contained in article IV, section 11, because there is no inconsistency between them. Considering both these provisions together, the meaning and intent of the Constitution are perfectly clear that commissions should issue so soon as the result of the election can be ascertained from the official returns, and the newly elected officers enter at once upon the performance of their duties, whether their election be contested or not.

The governor, however, has sole *jurisdiction*, to hear and de-

cide such a contest, but this power is not self-executing and cannot be exercised by him until the legislature has clothed him by law with the authority, means and instrumentalities to enable him to execute that power. The authority to do this was granted to the legislature by section 56 of article 3 of the Constitution, and the duty to do it was imposed by section 47 of the same article.

But as at that time the legislature had not, as a matter of fact, provided any means for its exercise, this jurisdiction, although conferred upon the governor by the Constitution, could not be exercised at all.

"The person duly and regularly returned as elected, and who is qualified under the Constitution, has a *prima facie* title to the office which cannot be defeated except upon legal evidence."

The title of a person so returned as elected attorney-general, can only be defeated by the action of the governor.

Until, therefore, the legislature bestows upon the governor the power to take legal evidence, the *prima facie* title of the candidate for attorney-general who has been returned as elected, cannot be questioned at all.[1]

In the decision of this case, great names in our Maryland judicial history — Bartol, Miller, Alvey and Robinson — concurred, and the case has been frequently cited as authority.

But to the writer, the decision is less satisfactory than interesting.

When the governor is entrusted with a duty, it would seem that the means of discharging that duty were also given him, or in the words of the U. S. Supreme Court, that "the grant carries with it the right to exercise all the powers which make that power effective." To hold, then, that by Constitutional provision, jurisdiction to decide the case of a contested election of attorney-general is given to the governor, and yet can never be exercised by him without consent of the legislature, and some further provision made by it, seems doubtful in law. The remarkable consequence resulted in that case that, although the election was confessedly of doubtful validity there has never been any tribunal which could investigate it.

Still more remarkable is it, that from 1876 to 1914, the legis-

1 *Groome v. Gwinn,* 43 Md. 572.

lature has never performed what is stated in this case to be its constitutional duty; so that, there has never been a time since 1867, when if by fraud or violence a defeated candidate for attorney-general of Maryland could secure official returns in his favor, his defrauded opponent had any remedy whatever.

"*Inter arma leges silent,*" and politics are similar in many respects to war.

Article V. Section 3.

"It shall be the duty of the Attorney-General to prosecute and defend on the part of the State all cases, which at the time of his appointment and qualification, and which thereafter may be depending in the Court of Appeals, or in the Supreme Court of the United States, by or against the State, or wherein the State may be interested; and he shall give his opinion in writing whenever required by the General Assembly or either branch thereof, the Governor, the Comptroller of the Treasury, or any State's Attorney, on any legal matter or subject depending before them or either of them; and when required by the Governor or General Assembly he shall aid any State's Attorney in prosecuting any suit or action brought by the State in any Court of the State, and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended, and he shall have and perform such other duties and shall appoint such number of deputies or assistants as the General Assembly may from time to time by law prescribe; and he shall receive for his services an annual salary of three thousand dollars, or such annual salary as the General Assembly may from time to time by law prescribe; but he shall not be entitled to receive any fees, perquisites or rewards whatever in addition to the salary aforesaid for the performance of any official duty; nor shall the Governor employ any additional counsel in any case whatever, unless authorized by the General Assembly."

The section as above written is as amended according to the act of 1912, chapter 663. Previous to that time, it read as follows:

"It shall be the duty of the Attorney-General to prosecute and defend on the part of the State all cases which at the time of his appointment and qualification, and which thereafter may be depending in the Court of Appeals, or in the Supreme Court of the United States by or against the State, or wherein the State may be interested; and he shall give his opinion in writ-

ing whenever required by the General Assembly, or either branch thereof, the Governor, the Comptroller, the Treasurer, or any State's Attorney, on any legal matter, or subject depending before them, or either of them; and when required by the Governor or the General Assembly, he shall aid any State's Attorney in prosecuting any suit or action brought by the State in any Court of this State, and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended; and he shall receive for his services an annual salary of three thousand dollars; but he shall not be entitled to receive any fees, perquisites or rewards whatever, in addition to the salary aforesaid, for the performance of any official duty; nor have power to appoint any agent, representative or deputy, under any circumstances whatever; nor shall the Governor employ any additional counsel in any case whatever, unless authorized by the General Assembly."

The main changes are: First, That authority is given to the legislature to prescribe for the attorney-general such other duties in addition to those originally assigned to him in the Constitution, as the legislature may see fit; Second, To allow the attorney-general to appoint such deputies and assistants as may be allowed by the legislature; Third, to allow the legislature to fix the amount of the attorney-general's salary.

It is evident that the idea of these Constitutional provisions is that the attorney-general shall represent the state in all important matters of litigation.

In the Court of Appeals it is his duty to prosecute or defend the state's interest. If, therefore, other counsel be employed to assist the state's attorney in a criminal case and such counsel take an appeal without the consent or co-operation of the state's attorney, and a motion to dismiss be made by the traverser the appeal will be dismissed over the objection of such special counsel, provided the attorney-general does not oppose the motion.[2] At the same time, it is no part of the duty of the attorney-general to prosecute or defend suits which are of a public nature, but where the state itself is not directly interested. Thus a suit to restrain the improper expenditure of the funds of the City of Baltimore may be brought by tax-

[2] *State v. Carter*, 49 Md. 8.

payers without the joinder of the attorney-general, and they have no right to require his interposition on their behalf.[3] So private citizens, without the joinder of the attorney-general, may, if they have a special interest in the matter, sue out a *writ of mandamus* to compel a municipal corporation to perform a duty with which it is charged by the legislature.[4]

Up to the time of the amendment proposed by the Act of 1912, the office of the attorney-general of Maryland did not have quite the same importance that it has attained in certain other states.

A great many officials, like the sheriff and the insurance commissioner, are provided by the legislature with special counsel; and boards, such as the police board of Baltimore City, the board of supervisors of election, as well as the county commissioners had regular counsel. The purpose evident in adopting this amendment is to have all these legal duties attended to by one office with a head, competent assistants and complete records, and in all probability, such an office will be established by the legislature within a few years. Up to the present time, however, the legislature has not exercised the power given by the amendment.

Article V. Section 4.

"No person shall be eligible to the office of Attorney-General who is not a citizen of this State, and a qualified voter therein, and has not resided and practiced law in this State for at least ten years."

Article V. Section 5.

"In case of vacancy in the office of Attorney-General, occasioned by death, resignation, removal from the State or from office, or other disqualification, the said vacancy shall be filled by the Governor for the residue of the term thus made vacant."

Article V. Section 6.

"It shall be the duty of the Clerk of the Court of Appeals and of the Commissioner of the Land Office, respectively, whenever a case shall be brought into said court or office in which the State is a party or has interest, immediately to notify the Attorney-General thereof."

These sections are very plain and require no comment.

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3 *Baltimore v. Gill*, 31 Md. 375, 395.
4 *Pumphrey v. Baltimore*, 47 Md. 145.

Article V. The State's Attorney. Section 7.

"There shall be an Attorney for the State in each County and the City of Baltimore, to be styled 'The State's Attorney,' who shall be elected by the voters thereof, respectively, on the Tuesday next after the first Monday in November, in the year eighteen hundred and sixty-seven, and on the same day every fourth year thereafter; and shall hold his office for four years from the first Monday in January next ensuing his election, and until his successor shall be elected and qualified, and shall be re-eligible thereto, and be subject to removal therefrom for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a Court of Law, or by a vote of two-thirds of the Senate, on the recommendation of the Attorney-General."

It will be noted that the state's attorney may be removed, not only like other officers on conviction in a court of law for incompetency, wilful neglect of duty, or misdemeanor in office, but also by a vote of two-thirds of the senate on the recommendation of the attorney-general.

Article V. Section 8.

"All elections for the State's Attorney shall be certified to and returns made thereof by the Clerks of the said counties and city to the Judges thereof having criminal jurisdiction, respectively, whose duty it shall be to decide upon the elections and qualifications of the persons returned; and in case of a tie between two or more persons, to designate which of said persons shall qualify as State's Attorney, and to administer the oaths of office to the person elected."

Inasmuch as the duty to decide upon the election and qualifications of persons returned as elected state's attorney is by this section imposed upon the judges of the court who have power to take legal evidence, it is doubtless true that this provision is self-executing, and that while there is no power now anywhere to examine into the returns in case an election for attorney-general be contested, the judges would have this power in regard to an election for the state's attorney.

Article V. Section 9.

"The State's Attorney shall perform such duties and receive such fees and commissions or salary, not exceeding three thousand dollars, as are now or may hereafter be prescribed by law; and if any State's Attorney shall receive any other fee or reward than such as is or may be allowed by law, he shall, on conviction thereof, be removed from office; provided, that the State's Attorney for Baltimore City shall receive an annual salary of fifty-four hundred dollars, and shall have power to appoint one deputy at an annual salary not exceeding four thousand dollars, and such other assistants at such annual salaries, not exceeding twenty-five hundred dollars each, as the Supreme Bench of Baltimore City may authorize and approve; all of said salaries to be paid out of the fees of the said State's Attorney's office, as has heretofore been practiced."

This section as above written, is according to the amendment adopted by the Act of 1912, chapter 624. By the Act of 1900, chapter 185, this section was amended to read as follows:

"The State's Attorney shall perform such duties and receive such fees and commissions or salary, not exceeding three thousand dollars, as are now or may hereafter be prescribed by law; and if any State's Attorney shall receive any other fee or reward than such as is or may be allowed by law, he shall, on conviction thereof, be removed from office; provided, that the State's Attorney for Baltimore City shall receive an annual salary of forty-five hundred dollars, and shall have power to appoint one deputy, at an annual salary, not exceeding three thousand dollars, and such other assistants at such annual salaries not exceeding fifteen hundred dollars each, as the Supreme Bench of Baltimore City may authorize and approve; all of said salaries to be paid out of the fees of the said State's Attorney's office, as has heretofore been practiced."

In the original Constitution the wording of this section was:

"The State's Attorney shall perform such duties and receive such fees and commissions as are now or may hereafter be prescribed by law, and if any State's Attorney shall receive any other fee or reward than such as is or may be allowed by Law, he shall, on conviction thereof, be removed from office; provided, that the State's Attorney for Baltimore City shall have power to appoint one Deputy, at a salary of not more than fifteen hundred dollars per annum, to be paid by the State's Attorney out of the fees of his office, as has heretofore been practiced."

The changes made by the amendment of 1900 were: 1st, To allow the legislature to provide compensation for the state's attorneys by means of regular salaries instead of fees and commissions, providing the salary should not exceed $3,000.00; 2nd, To fix the salary of the state's attorney for Baltimore City at $4,500.00; and 3rd, To allow the Supreme Bench to authorize the appointment of such other assistants at annual salaries not exceeding $1,500.00, as should be approved by the Supreme Bench, all of said salaries to be paid out of the fees of the state's attorney's office.

The last amendment changed these provisions; 1st, By raising the salary of the state's attorney for Baltimore City to $5,400.00; 2nd, By raising the limit of the deputy state's attorney's salary to $4,000.00; and 3rd, By raising the limit of the salary of the asistant state's attorneys to $2,500 each.

The office of state's attorney is unknown to the common law. In Maryland the state's attorney is an officer created by our Constitution, and his powers and duties, whatever they may be, must be derived either from the Constitution itself or laws passed in pursuance thereof.

Under the Constitution of 1776 there was an attorney-general who administered his office in the several counties of the state and the City of Baltimore by his appointees, who were appointed his deputies.

By the Constitution of 1851, the office of attorney-general was abolished, and state's attorneys were provided for; but the Constitution of 1864 revived the office of attorney-general in a limited degree, and in our present Constitution, particularly since its last amendment, the office of attorney-general may become as we have seen a very important one. The state's attorneys, now have no other power or duty except such as the legislature may prescribe.[5]*

Article V. Section 10.

"No person shall be eligible to the office of State's Attorney who has not been admitted to practice law in this State, and who has not resided for at least two years in the county or city in which he may be elected."

These constitutional requirements for state's attorney, viz:

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5 *Hawkins v. State*, 81 Md. 306, *Illustration XCVIII.

"Admission to the bar and residence for two years," do not seem to err on the side of too great strictness.

Article V. Section 11.

"In case of vacancy in the office of State's Attorney, or of his removal from the county or city in which he shall have been elected, or on his conviction as herein specified, the said vacancy shall be filled by the Judge of the county or city, respectively, having criminal jurisdiction, in which said vacancy shall occur, for the residue of the term thus made vacant."

In *Jackson v. State,* 87 Md. 191, already cited, the case of a vacancy in the office of state's attorney for Baltimore City was suggested and some question made as to who would come under the designation of the judge of the city "having criminal jurisdiction" by whom the vacancy must be filled.

The judge of the criminal court and the judge of criminal court, part II, certainly have such jurisdiction, and inasmuch as each judge of the Supreme Bench is assigned to assist in the criminal court, it may well be contended that all the Baltimore City judges have criminal jurisdiction, and that a vacancy in the office of state's attorney should be filled by the whole bench.

The Court of Appeals declined to answer the question which in that case was a moot one, and referred to the fact that in every county there were three judges, each of whom had criminal jurisdiction, and yet vacancies in the office of state's attorney in the counties, have been filled "without difficulty or question." The same good sense which has prevented any difficulty or question in the counties and also in the city up to the present time, will also probably prevent difficulty or question in the future, but the opinion is hazarded that should the Court of Appeals finally have to pass upon the question, it will decide that while it is *proper* that the appointment be made by the circuit court or the Supreme Bench *in banc* an appointment made by any one judge sitting in the criminal court is *valid.*[6]

Under our present judicial system, however, it is undeniable that the wording of the section is inappropriate, and except for the slight importance of the subject, ought to be changed.

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6 See also the next section, Article V, Section 12, where the same words are used evidently with reference to one judge.

Article V. Section 12.

"The State's Attorney in each county, and the City of Baltimore, shall have authority to collect, and give receipt, in the name of the State, for such sums of money as may be collected by him, and forthwith make return of and pay over the same to the proper accounting officer. And the State's Attorney of each county, and the City of Baltimore, before he shall enter on the discharge of his duties, shall execute a bond to the State of Maryland, for the faithful performance of his duties, in the penalty of ten thousand dollars, with two or more securities, to be approved by the Judge of the Court having criminal jurisdiction in said counties or city."

ILLUSTRATIONS.

CONSTITUTION, ARTICLE V.

ILLUSTRATION XCVIII.

By the Act of 1894, chapter 215, the number of county commissioners of Charles County was increased from three to five, and the governor was authorized to appoint two to serve until the general election, etc. The governor, acting under this act, appointed Hawkins and another. A proceeding was then brought by the state's attorney of Charles County *sua sponte* in the nature of a *quo warranto* to oust Hawkins from his office on the ground that the act was unconstitutional.

HELD: That in Maryland state's attorneys possess no other powers than those prescribed by the Constitution or statute, and there being no special authority in the state's attorney to bring this action, he had no power to bring it and it must be dismissed.

Hawkins v. State, 81 Md. 306.

TREASURY DEPARTMENT.

Article VI. Section 1.

"There shall be a Treasury Department, consisting of a Comptroller, chosen by the qualified electors of the State, at each regular election of members of the House of Delegates, who shall receive an annual salary of two thousand five hundred dollars, and a Treasurer, to be appointed by the two Houses of the Legislature, at each regular session thereof on joint ballot who shall receive an annual salary of two thousand five hundred dollars; and the terms of office of the said Comptroller and Treasurer shall be for two years and until their successors shall qualify; and neither of the said officers shall be allowed or receive any fees, commissions or perquisites of any kind in addition to his salary for the performance of any duty or services whatsoever. In case of a vacancy in either of the offices by death, or otherwise, the Governor, by and with the advice and consent of the Senate, shall fill such vacancy by appointment, to continue until another election, or a choice by the Legislature, as the case may be, and until the qualification of the successor. The Comptroller and the Treasurer shall keep their offices at the seat of Government, and shall take such oath, and enter into such bonds for the faithful discharge of their duties as are now, or may hereafter, be prescribed by law."

Our Court of Appeals has said that "prominent among the safeguards which the Constitution was intended to cast around the liberties and property" of the people "was the supervisory and controlling power of a comptroller of the treasury department."[1]

It was in the case where this language is used, that the law was laid down, with especial reference to the comptroller's salary, that where the Constitution affixes a certain salary to an office there is no legal need for any additional appropriation by the legislature, but the treasurer is bound to pay such salary on the comptroller's warrant.[2]

So the provisions of this article in regard to the treasurer are

1 *Thomas v. Owens,* 4 Md. 189, 223.
2 *Thomas v. Owens,* 4 Md. 189, 224.

said to show the "extreme and sedulous care" with which the Constitution has "endeavored to guard the public money."[3]

Both comptroller and treasurer must have an office at Annapolis, must refrain from taking other compensation than their salary for the performance of their duties, and before entering upon their office must take the prescribed oaths and execute the prescribed bond.

The term of their office is, under the present Constitution clearly fixed and definite.

This term is "for two years at least, and is still further to continue until the occurrence of a distinct, definite and unequivocal event," to wit, the qualification of their successors.[3]

The intent of this is to render it certain that there should always be public officers in existence, competent to take charge of the treasury and that their fidelity should at all times be secured as far as possible by a stringent oath and bond embracing every detail of their duties.

Accordingly, where a treasurer is reelected, he holds over under his first election until he qualifies under his second election, and for all acts done until a new bond is filed the old bond is liable.[3]

The provision, in regard to vacancies, that the appointee by the governor should hold office "until another election or a choice by the legislature" seems also plain, but has furnished another illustration of the necessity of interpreting laws and particularly Constitutional provisions according to their spirit and not according to their letter. In 1859, Purnell and Jarrett were candidates for the office of comptroller. Purnell was returned elected and entered upon the duties of his office, but upon contest before the house of delegates—which had jurisdiction in the premises—the house passed an order setting aside Purnell's alleged election and declaring Jarrett entitled to the office.

Jarrett appeared before the governor to qualify, but the governor would not approve his bond, and Purnell continued in office. In May, 1861, Purnell *resigned,* and the governor appointed Dennis Claude to fill the vacancy. In June, 1861, the legislature passed a resolution authorizing Jarrett to qualify before any judge of the Court of Appeals.

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3 *Archer v. State,* 74 Md. 410, 428.

Jarrett did so qualify, but Claude contested his right to the office.

The Court of Appeals held that Jarrett was not comptroller until he qualified before the judge; that Purnell held the office until his resignation, and that, when Purnell resigned, a vacancy existed which the governor had power to fill.

Now if the governor's appointee were to hold until "another election," it is manifest that Jarrett—although decided by the proper tribunal to be entitled to the office, could never occupy it, and there would be an almost ludicrous failure of justice. The court accordingly held that the governor's appointment was *under these circumstances* merely *ad interim,* and that Claude was only entitled to the office until Jarrett qualified before the judge.[4]

It will be noted that the power given to the legislature to prescribe a special oath for the comptroller and treasurer is an exception to the general policy declared in article 37 of our Declaration of Rights, forbidding the requirement of any special oath as a qualification for office.[5]

Article VI. Section 2.

"The Comptroller shall have the general superintendence of the fiscal affairs of the State; he shall digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; prepare and report estimates of the revenue and expenditures of the State; superintend and enforce the prompt collection of all taxes and revenues; adjust and settle, on terms prescribed by law, with delinquent collectors and receivers of taxes and State revenue; preserve all public accounts; decide on the forms of keeping and stating accounts; grant, under regulations prescribed by law, all warrants for money to be paid out of the Treasury, in pursuance of appropriations by law, and countersign all checks drawn by the Treasurer upon any bank or banks, in which the moneys of the State may, from time to time, be deposited; prescribe the formalities of the transfer of stock, or other evidence of the State debt, and countersign the same, without which such evidence shall not be valid; he shall make to the General Assembly full reports of all his proceedings, and of the state of the treasury department within ten days after the commencement of each Session; and perform such other duties as shall be prescribed by law."

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4 *State v. Jarrett,* 17 Md. 309.

5 *Davidson v. Brice,* 91 Md. 681.

Article VI. Section 3.

"The Treasurer shall receive the moneys of the State, and, until otherwise prescribed by law, deposit them, as soon as received, to the credit of the State, in such bank or banks as he may, from time to time, with the approval of the Governor, select (the said bank or banks giving security, satisfactory to the Government, for the safekeeping and forthcoming, when required, of said deposits), and shall disburse the same for the purposes of the State, according to law, upon warrants drawn by the Comptroller, and on checks countersigned by him, and not otherwise; he shall take receipts for all moneys paid by him; and receipts for all moneys received by him shall be indorsed upon warrants signed by the Comptroller, without which warrants, so signed, no acknowledgment of money received into the Treasury shall be valid; and upon warrants issued by the Comptroller, he shall make arrangement for the payment of the interest of the public debt, and for the purchase thereof, on account of the sinking fund. Every bond, certificate, or other evidence of the debt of the State shall be signed by the Treasurer, and countersigned by the Comptroller; and no new certificate or other evidence intended to replace another shall be issued until the old one shall be delivered to the Treasurer, and authority executed in due form for the transfer of the same filed in his office, and the transfer accordingly made on the books thereof, and the certificate or other evidence cancelled; but the Legislature may make provisions for the loss of certificates, or other evidences of the debt; and may prescribe, by law, the manner in which the Treasurer shall receive and keep the moneys of the State."

Article VI. Section 4.

"The Treasurer shall render his accounts quarterly to the Comptroller, and shall publish monthly, in such newspapers as the Governor may direct, an abstract thereof, showing the amount of cash on hand, and the place or places of deposit thereof, and on the third day of each regular session of the Legislature he shall submit to the Senate and House of Delegates fair and accurate copies of all accounts by him, from time to time, rendered and settled with the Comptroller. He shall at all times submit to the Comptroller the inspection of the money in his hands, and perform all other duties that shall be prescribed by law."

These sections clearly set out what shall be the general scope of the duties of the two chief financial officers of the state, while allowing the legislature to prescribe such changes as may from time to time be found necessary.

Upon the comptroller, who is elected by the people, is de-

volved all the active duties pertaining to the management of the fiscal affairs of the state, and the power of adjusting and settling public accounts is exclusively conferred upon him.

The treasurer's chief duty is to keep the money safely, and be able to show a proper voucher for every cent paid out by him.[6]

Their respective duties are quite analogous to those belonging to the offices of "financial secretary" and "treasurer" of lodges and similar voluntary associations.

Article VI. Section 5.

"The Comptroller shall qualify and enter on the duties of his office on the third Monday of January next succeeding the time of his election, or as soon thereafter as practicable. And the Treasurer shall qualify within one month after his appointment by the Legislature."

The provisions in this section have been held to be mandatory, and not merely directory.

It has been expressly decided that a treasurer does not become such merely upon his appointment, but he must "qualify" by taking both the constitutional and statutory oath within one month after his appointment, and he must give the required bond. If he fails to take the oaths within thirty days his election is void, and nothing but a new appointment can give title to the office as against the prior incumbent. Neither can the new appointee exercise the duties of the office even after he has taken the oaths until he has also complied with the requirements as to bond.[7]

The argument applied in this case is to the effect that the presumption is that whatever the people deem of sufficient importance to be placed in a Constitution is *prima facie* a provision which the people intend to have enforced, and even though these provisions are mere directions as to the times or modes of proceeding in which a power should be executed, there is a strong presumption that the people designed it to be executed in that time and mode only, and "we impute to the people a want of due appreciation of the purpose and proper province

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6 *Billingsley v. State,* 14 Md. 369; *Thomas v. Owens,* 4 Md. 189.

7 *Archer v. State,* 74 Md. 443. See also *Little v. Schul,* 118 Md. 454, 466.

of such an instrument when we infer that such directions are given for any other end.''[7]

Article VI. Section 6.

"Whenever during the recess of the Legislature charges shall be preferred to the Governor against the Comptroller or Treasurer for incompetency, malfeasance in office, wilful neglect of duty, or misappropriation of the funds of the State, it shall be the duty of the Governor forthwith to notify the party so charged and fix a day for a hearing of said charges; and if from the evidence taken, under oath on said hearing before the Governor, the said allegations shall be sustained, it shall be the duty of the Governor to remove said offending officer and appoint another in his place, who shall hold the office for the unexpired term of the officer so removed."

SUNDRY OFFICERS, ARTICLE VII.

COUNTY COMMISSIONERS.

Section 1.

"County Commissioners shall be elected on general ticket of each county by the qualified voters of the several counties of the State, on the Tuesday next after the first Monday in the month of November, commencing in the year eighteen hundred and ninety-one; their number in each county, their compensation, powers and duties shall be such as now or may be hereafter prescribed by law; they shall be elected at such times, in such numbers and for such periods not exceeding six years, as may be prescribed by law."

The above wording is as the Constitution was amended in pursuance of the Act of 1890, chapter 255.

Prior to this amendment, it read:

''County commissioners shall be elected on general ticket of each county by the qualified voters of the several counties of this State, on the Tuesday next after the first Monday in the

[7]*Archer v. State,* 74 Md. 143. See also *Little v. Schul,* 118 Md. 454, 466.

month of November, eighteen hundred and sixty-seven, and on the same day in every second year thereafter. Their number in each county, their compensation, powers and duties, shall be such as are now or may be hereafter prescribed by law.''

The only reasons for the mention of ''County Commissioners'' in the Constitution at all seem to be that they are thereby created ''Constitutional Officers,'' and that they must be elected upon a ''general ticket'' for the several counties, thereby preventing any apportionment between smaller localities, such as assigning one or more to certain election districts.

In all other respects the office and its powers and duties are entirely subject to the control of the legislature. Until the adoption of the amendment above referred to, their term of office was fixed at two years and the term of all the members of the board commenced and expired at the same time.

The purpose of the amendment was to place the term of their office within the control of the legislature, evidently with the idea of allowing the legislature freedom of action as to varying the term in different counties, or when it deemed it wise to create a continuous board, each member of which should hold office for a longer term than two years, and whose terms should not expire simultaneously.

In the case of Anne Arundel County, the legislature did provide for such a continuous board by the Act of 1892, but afterwards changed the system back to a board holding office for two years, and legislated the hold-over members of the old board out of office.

The power of the legislature to so deprive the hold-over commissioners of their office was questioned, but upheld by the lower court, the action of which was sustained by an equally divided Court of Appeals, without an opinion being filed.[1]

The legislature had the power to fix the term of county commissioners elected in 1891, and therefore, commissioners elected in November of that year were elected for such term as the legislature might thereafter prescribe, and an act passed at the session of 1892, fixing their term at six years was held valid.[2]

The extent to which the tendency to allow the legislature to adapt the powers and duties and tenure of office of county commissioners to the individual needs of each county has gone,

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1 *Brown v. Brooke,* 95 Md. 738.
2 *Worman v. Hagan,* 78 Md. 152.

may be seen by comparing the present provision with the corresponding clause of the Constitution of 1851, which required that their "powers and duties and tenure of office" should be "uniform throughout the state."[3]

Article VII. Section 2.

Surveyor.

"The qualified voters of each County, and of the City of Baltimore, shall, on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-seven, and on the same day in every second year thereafter, elect a Surveyor for each County and the City of Baltimore, respectively, whose term of office shall commence on the first Monday of January next ensuing their election, and whose duties and compensation shall be the same as are now or may hereafter be prescribed by law. And any vacancy in the office of Surveyor shall be filled by the Commissioners of the Counties, or by the Mayor and City Council of Baltimore, respectively, for the residue of the term."

This section makes the county surveyor and the city surveyor constitutional officers, and prescribes their term of office. In every other respect the office is entirely subject to the control of the legislature.

Article VII. Section 3.

State Librarian.

"The State Librarian shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold his office during the term of the Governor, by whom he shall have been appointed, and until his successor shall be appointed and qualified. His salary shall be fifteen hundred dollars a year; and he shall perform such duties as are now, or may hereafter be prescribed by law; and no appropriation shall be made by law to pay for any clerk, or assistant to the Librarian. And it shall be the duty of the Legislature, at its first session after the adoption of this Constitution, to pass a law regulating the mode and manner in which the books in the Library shall be kept and accounted for by the Librarian, and requiring the Librarian to give a bond, in such penalty as the Legislature may prescribe, for the proper discharge of his duties."

This official is by the present Constitution a part of the govern-

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[3] Cf. *Washington Co. v. Nesbit,* 6 Md. 468, and *Commissioners of Public Schools v. Co. Comms.,* 20 Md. 449, with *Bonsal v. Yellott,* 100 Md. 481, 500.

or's official family whose term is measured by the governor's term. By the Constitution of 1851, the librarian was elected by the joint vote of the legislature for two years.[4]

The change follows the usual trend toward placing the whole power of appointment upon the executive and taking it away from the legislature.

Although the masculine pronouns are used throughout this section in reference to the librarian, it has become common of late years for a woman to fill this office.

Article VII. Section 4.

Commissioner of the Land Office.

"There shall be a Commissioner of the Land Office, who shall be appointed by the Governor by and with the advice and consent of the Senate, who shall hold his office during the term of the Governor, by whom he shall have been appointed, and until his successor shall be appointed and qualified. He shall perform such duties as are now required of the Commissioner of the Land Office, or such as may hereafter be prescribed by law, and shall also be the keeper of Chancery Records. He shall receive a salary of One Thousand five hundred dollars per annum, to be paid out of the treasury, and shall charge such fees as are now, or may be hereafter fixed by law. He shall make a semi-annual report of all the fees of his office, both as Commissioner of the Land Office, and as Keeper of the Chancery Records, to the Comptroller of the Treasury, and shall pay the same semi-annually into the Treasury."

This office has lost somewhat of its importance. Formerly the commissioner of the land office was a "Court of Record,"[5] but now his duties are wholly within the power of the legislature and apparently intended to be clerical in their general character. His term, like the state librarians, coincides with the term of the governor.

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4 See *Marshall v. Harwood*, 5 Md. 423.
5 *Smith v. Devecmon*, 30 Md. 473.

Article VII. Section 5.

"The Commissioner of the Land Office shall also, without additional compensation, collect, arrange, classify, have charge of, and safely keep all papers, records, relics and other memorials connected with the early history of Maryland, not belonging to any other office."

Article VII. Section 6.

Wreck-Master.

"The qualified voters of Worcester County shall on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-seven, and every two years thereafter, elect a Wreck-Master for said County, whose duties and compensation shall be the same as are now or may be hereafter prescribed by law; the term of office of said Wreck-Master shall commence on the first Monday of January next succeeding his election, and a vacancy in said office shall be filled by the County Commissioners of said County for the residue of the term."

It is not often that a provision is made in a State Constitution for a local official whose duties and compensation are entirely within the power of the legislature. But the "Wreck-master of Worcester County"—as to whom nothing is attempted to be fixed except the length of his official term and how he shall be elected or appointed—is the subject of a section of the Constitution of Maryland.

EDUCATION, ARTICLE VIII.

Section 1.

"The General Assembly, at its first session after the adoption of this Constitution, shall, by law, establish throughout the State a thorough and efficient system of free public schools; and shall provide by taxation or otherwise, for their maintenance."

The obligation imposed by this section upon the general assembly is "to establish and maintain a thorough and efficient system of free Public Schools." This means that the schools must be open to all without expense. The right is given to the whole body of the people.

It is justly held by the authorities that "to single out a certain portion of the people by the arbitrary standard of color, and say that these shall not have rights which are possessed by others, denies them the equal protection of the laws,"[1] but although the system of public schools established under this section must, as stated in the language above quoted, be free to all, without exception on the ground of color, the state or a municipal corporation may give aid to a private educational institution which admits only persons of a certain color,[1] and the same reasoning would seem to apply to such institutions as exclude persons on account of their race or religion.

Under the reasoning of the case just cited, it would, however, seem that the system of free public schools must first be provided for as one of the necessities of government, while gratuities to educational institutions, not a part of this free school system, are simply allowable where the needs of the public school system are already met.

Under this article, provision for free public education has become one of the ordinary functions of municipal government. The erection of proper school houses comes within this function, and the legislature has the power to compel a county or city to build proper schoolhouses and borrow money to pay for the same, without submitting the question to a vote of the people of the county affected.[2]

This idea that free public education is one of the normal functions of government was not reflected in any Constitution in Maryland prior to 1864, but the legislature of 1868 discharged the duty imposed upon it by the section we are now considering, and passed a comprehensive law which is the basis of our system today. The extension of the system has been continuous as well as the broadening of the field which it covers. Free school books have been made a part of the system only within quite recent years, and the number of branches now taught, the substantial character of the buildings used, and the greater willingness to bear expenditure that will promote the effectiveness of the system, testify to the increasing hold which the idea of a free education, to a high standard, has upon us.

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1 *Clark v. Maryland Institute,* 87 Md. 643.
2 *Revell v. Annapolis,* 81 Md. 1.

Article VIII. Section 2.

"The system of public schools, as now constituted, shall remain in force until the end of the first session of the General Assembly, and shall then expire, except so far as adopted or continued by the General Assembly."

It is apparent that by the passage of the act of 1868, and subsequent legislation, this section has become obsolete.

Article VIII. Section 3.

"The School Fund of the State shall be kept inviolate, and appropriated only to the purposes of education."

It would appear from the construction given by the Court of Appeals to this section that the "School Fund of the State" means whatever fund is devoted by the state authorities for the use of the schools, and covers whatever money may be received by the school commissioners of the various counties or Baltimore City. Such money can be used only for the purposes of education, and can not be devoted to such purposes as the payment of damages for the negligence either of such boards or the employees of such boards.[3*]

ILLUSTRATIONS, ARTICLE VIII.

ILLUSTRATION XCIX.

A little child in Frederick County who was a pupil at a public school, in response to a bell rung at the close of recess, ran towards the schoolhouse, and struck against a strand of wire fastened to the trees at a height of about four feet from the earth, was thrown violently backward, and died the next day from the injuries received. Suit was brought against the county commissioners of Frederick County claiming damages for the death on account of their negligence, but the court held that although the school commissioners were a body corporate for certain purposes, they were not such a corporation as could be sued in a damage suit, and that the funds held by them were funds held in trust for school purposes, which under the Constitution had to be kept and appropriated only to the purposes of education, and from which damages could not be paid.

Weddle v. School Commissioners, 94 Md. 334.

[3] *Weddle v. School Comms.*, 94 Md., 334, *Illustration XCIX.

MILITIA AND MILITARY OFFICERS, ARTICLE IX.

Section 1.

"The General Assembly shall make, from time to time, such provisions for organizing, equipping and disciplining the Militia, as the exigency may require, and pass such laws to promote Volunteer Militia Organizations as may afford them effectual encouragement."

This section is in recognition of the proposition expressed both in the second amendment to the Constitution of the United States, and in the twenty-eighth Article of the Maryland Declaration of rights, "that a well regulated Militia is the proper and natural defense of a free government." Prior to the general European war of 1914, the importance of having a militia trained and ready to take its place in the field was perhaps not sufficiently realized, but notwithstanding this, the general assembly has followed the directions of this section and has always maintained a state militia, capable of doing effective service. The whole matter is left to legislative discretion except so far as is provided in the next section.

Article IX. Section 2.

"There shall be an Adjutant-General appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office until the appointment and qualification of his successor, or until removed in pursuance of the sentence of a court-martial. He shall perform such duties and receive such compensation or emoluments as are now or may be prescribed by law. He shall discharge the duties of his office at the seat of government, unless absent under orders, on duty; and no other officer of the General Staff of the Militia shall receive salary or pay, except when on service and mustered in with troops."

The Constitutional requirements as to the adjutant-general refer to his tenure of office, and the place where he is required to perform his duties. There is no requirement of military training or other qualification.

Prior to the Constitution of 1851, the adjutant-general held his office during good behavior and was removable only by sentence of court-martial.

By the Constitution of 1851, it was provided that he should be appointed by the governor by and with the advice and consent of the senate, and that he should hold his office for a term of six years.

By the Constitution of 1864, he was to be appointed by the governor with the concurrence of the senate, but was to hold his office at the pleasure of the governor.

Under our present Constitution he is to be appointed by the governor with the concurrence of the senate, but no special length of time is named as constituting his term of office.

Under the terms of this section, taken in connection with the history of the clauses relating to this subject in previous Constitutions, our Court of Appeals has held that the adjutant-general when once appointed may be removed from or superseded in his office in two ways; First, the appointment by the governor, with the concurrence of the senate, of a successor; Second, on conviction and sentence of a court-martial. It is evident that the adjutant-general can be removed in the first of these ways only provided the senate is in session, but may be removed or superseded in this way, for any reason satisfactory to the governor and the senate, and this reason need not be disclosed. Whether or not the senate is in session, the adjutant-general can be removed on being convicted and sentenced by court-martial. Should this occur during a recess of the senate, the governor can remove him, and there is then created a vacancy which the governor has power to temporarily fill under section II of article 2 of the Constitution.[1]

It is expressly provided that unless absent under orders on duty, the adjutant-general shall discharge the duties of his office at Annapolis.

The provision preventing any salary or pay being given to any other officer of the general staff except when on service, is so plain as to require no comment.

Article IX. Section 3.

"The existing Militia Law of the State shall expire at the end of the next session of the General Assembly, except so far as it may be re-enacted, subject to the provisions of this Article."

It is evident that this section is no longer of importance.

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1 *McBlair v. Bond,* 41 Md. 137.

LABOR AND AGRICULTURE, ARTICLE X.

Section 1.

"There shall be a Superintendent of Labor and Agriculture elected by the qualified voters of this State at the first General Election for Delegates to the General Assembly, after the adoption of this Constitution, who shall hold his office for the term of four years, and until the election and qualification of his successor."

Article X. Section 2.

"His qualifications shall be the same as those prescribed for the Comptroller; he shall qualify and enter upon the duties of his office on the second Monday of January next succeeding the time of his election; and a vacancy in the office shall be filled by the Governor for the residue of the term."

Article X. Section 3.

"He shall perform such of the duties now devolved by law upon the Commissioner of Immigration, and the Immigration Agent, as will promote the object for which those officers were appointed, and such other duties as may be assigned to him by the General Assembly, and shall receive a salary of twenty-five hundred dollars a year; and after his election and qualification, the offices before mentioned shall cease."

Article X. Section 4.

"He shall supervise all the State Inspectors of agricultural products and fertilizers, and from time to time shall carefully examine and audit their accounts, and prescribe regulations not inconsistent with law, tending to secure economy and efficiency in the business of their offices. He shall have the supervision of the Tobacco Warehouses, and all other buildings used for inspection and storage purposes by the State; and may, at the discretion of the Legislature, have the supervision of all public buildings now belonging to, or which may hereafter be erected by the State. He shall frequently inspect such buildings as are committed to his charge, and examine all accounts for labor and materials required for their construction or repairs."

Article X. Section 5.

"He shall inquire into the undeveloped resources of wealth of the State of Maryland, more especially concerning those within the limits of the Chesapeake Bay and its tributaries, which belong to the State, and suggest such plans as may be calculated to render them available as sources of revenue."

Article X. Section 6.

"He shall make detailed reports to every General Assembly within the first week of its session, in reference to each of the subjects committed to his charge, and he shall also report to the Governor, in the recess of the Legislature, all abuses or irregularities which he may find to exist in any department of public affairs with which his office is connected."

Article X. Section 7.

"The office hereby established shall continue for four years from the date of the qualification of the first incumbent thereof, and shall then expire, unless continued by the General Assembly."

As will be seen by the provision of section 7, it was provided that the office created under this article, should expire after four years, unless continued by the general assembly.

The general assembly did not continue the office, and therefore, this whole article has now expired by limitation.

CITY OF BALTIMORE, ARTICLE XI.

As will appear from section 9 of this article, there is nothing contained therein except the seventh section which cannot be modified by an act of the legislature just as any statute can be repealed or amended.[1] It would, therefore, seem somewhat anomalous to have the other provisions of this article incorporated in the Constitution. Both Mr. Poe and Mr. Bagby have however, inserted in the Constitution as published by them in their codes, not only the provisions of this article of the old Constitution, but also the changes in city government made up to the present time by the legislature in the city charter, and the precedent set by them is followed in this book. The presence of this article in the Constitution, even with the clause allowing the change by the legislature of any of its sections except the seventh, does, however, make clear that Baltimore City is a separate and distinct part of the state for purposes of local

1 *Baltimore City v. Gorter,* 93 Md. 1, 5.

government, and is not included within Baltimore County or any other county.[2]

Article XI. Section 1.

"The inhabitants of the City of Baltimore qualified by law to vote in said city for members of the House of Delegates, shall on the fourth Wednesday of October, eighteen hundred and sixty-seven, and on the same day in every fourth year thereafter, elect a person to be Mayor of the City of Baltimore, who shall have such qualifications, receive such compensation, discharge such duties, and have such powers as are now, or may hereafter be prescribed by law; and the term of whose office shall commence on the first Monday of November succeeding his election, and shall continue for four years, and until his successor shall have qualified; and he shall be ineligible for the term next succeeding that for which he was elected."

Article XI. Section 2.

"The City Council of Baltimore shall consist of two branches, one of which shall be called the First Branch, and the other the Second Branch, and each shall consist of such number of members, having such qualification, receiving such compensation, performing such duties, possessing such powers, holding such terms of office, and elected in such manner as are now, or may hereafter be, prescribed by law."

Article XI. Section 3.

"An election for members of the First and Second Branch of the City of Baltimore shall be held in the City of Baltimore on the fourth Wednesday of October, eighteen hundred and sixty-seven; and for members of the First Branch on the same day in every year thereafter; and for members of the Second Branch on the same day in every second year thereafter; and the qualification for electors of the members of the City Council shall be the same as those prescribed for the electors of Mayor."

Article XI. Section 4.

"The regular sessions of the City Council of Baltimore (which shall be annual) shall commence on the third Monday of January of each year, and shall not continue more than ninety days, exclusive of Sundays; but the Mayor may convene the City Council in extra

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2 *Raab v. State,* 7 Md. 483; *State v. Shillinger,* 6 Md. 449; *Wright v. Hamner,* 5 Md. 370.

session whenever, and as often as it may appear to him that the public good may require, but no called or extra session shall last longer than twenty days, exclusive of Sundays."

These four sections have been completely changed, first by the Act of 1888, chapter 397, and then by the Act of 1898, chapter 123, and by the Act of 1908, chapter 157 (page 607). The existing provisions found in these latter acts are as follows:

Mayor.

Act of 1898, *Chapter* 123.

16. "The inhabitants of the City of Baltimore qualified to vote for members of the House of Delegates shall, on the Tuesday next after the first Monday in May, eighteen hundred and ninety-nine, and on the same day and month in every fourth year thereafter, elect by ballot a person of known integrity, experience and sound judgment, over twenty-five years of age, a citizen of the United States, and five years a resident of said City next preceding the election, and assessed with property in said City to the amount of two thousand dollars, and who has paid taxes thereon for two years preceding his election, to be Mayor of the City of Baltimore; but the Mayor chosen at the first election under this section shall not enter upon the discharge of the duties of the office until the expiration of the term for which the present Mayor was elected; unless the said office of Mayor shall become vacant by death, resignation, removal from the State or other disqualification of the present Mayor."

20. "The term of Mayor shall commence on the Tuesday next after the third Monday of May succeeding his election, and continue for four years, and until his successor shall be elected and qualified, and he shall receive a salary of six thousand dollars per annum, payable monthly. He may appoint such persons to aid him in the discharge of his duties as may be prescribed by ordinance."

Legislative Department.

209. "The Legislative Department of the Mayor and City Council of Baltimore shall be vested in the City Council, which

shall consist of two Branches, one of which shall be the First Branch and the other the Second Branch."

210. "The First Branch shall consist of one member from each ward of the City, who shall be a citizen of the United States, above the age of twenty-one years, a resident of the City three years preceding his election, and for the same time a resident of the ward for which he is elected, and assessed with property to the amount of three hundred dollars, who has paid taxes on the same one year prior to his election, and shall hold his office for two years. Each member of the First Branch shall be paid a salary of one thousand dollars per annum, payable monthly."

211. "The Second Branch shall consist of nine members, one of whom shall be the President thereof, and shall possess the qualifications and be elected as hereinafter provided. The other eight members shall be elected from four Councilmanic Districts, two from each district; said district to be established and fixed as herein defined by this Act. The members of the Second Branch, excepting the President thereof, shall be citizens of the United States above the age of twenty-five years, residents of the City of Baltimore four years prior to their election, each of whom has been assessed with property in the said city in the sum of five hundred dollars, and who has paid taxes on the same for two years prior to his election; and the said members of the Second Branch shall hold their offices for four years, except as provided in Section 213 of this Article, and each of them shall be paid a salary of one thousand dollars per annum, payable monthly."

Act of 1908, Chapter 157.

212. "The election for members of the First Branch shall be held on the Tuesday next after the first Monday in May, in the year nineteen hundred and eleven, and upon every fourth year thereafter. Their terms of office shall be for four years. Said election shall be held by wards, and no person shall be entitled to vote for any member of the First Branch except for the member for the ward of which the voter is a resident. The members of said branch now in office shall hold office until their successors have been elected under the provisions of this article, and have duly qualified."

213. "The election for the said eight members of the Second Branch shall be held on the Tuesday next after the first Monday in May, in the year nineteen hundred and eleven, and upon every fourth year thereafter. Their terms of office shall be for four years. The members of the Second Branch now in office shall hold office until their successors have been elected under the provisions of this Article, and have duly qualified."

Act of 1898, Chapter 123.

214. "There shall be elected on the Tuesday next after the first Monday in May, in the year eighteen hundred and ninety-nine, and upon every fourth year thereafter, from the City at large, a person to be the President of the Second Branch of the City Council, who shall possess the qualifications required and hereinbefore defined, of the Mayor of the City of Baltimore. His duty shall be to preside over the Second Branch of the City Council, and vote on all questions, and perform such other duties as may be prescribed by ordinances not inconsistent with this Article. He shall be paid a salary of three thousand dollars per annum, payable monthly. A joint convention of the two branches of the City Council, by a majority vote of all the members elected to the City Council, may remove from office the President of the Second Branch for incompetency, wilful neglect of duty or misdemeanor in office, upon charges preferred by the Mayor, and after notice of such charges is given to the President of the Second Branch, and an opportunity afforded him to be heard."

215. "The qualifications of electors of members of the City Council shall be the same as those of electors of the Mayor. All vacancies in the First Branch shall be filled without delay by the First Branch from the ward in which the said vacancy occurs, by an election of a person possessing the qualifications hereinbefore prescribed, to fill the unexpired term of the former incumbent. If a vacancy occurs in the Second Branch, then said Branch shall forthwith fill said vacancy by the election of a person possessing the qualifications hereinbefore prescribed from the City at large or from the proper Councilmanic District, if there be such district at that time."

216. "The City Council shall meet on the Thursday next after the third Monday in May, in the year eighteen hundred and ninety-nine, and upon the same day in each year thereafter, and may continue in session for one hundred and twenty days, and no longer, in each year; provided, that they may, by ordinance or resolution, so arrange their sittings that the same may be held continuously or otherwise, and provided further, that the Mayor may convene the City Council in extra session, as he may now do by the fourth section of the eleventh Article of the State Constitution."

Article XI. Section 5.

"No person elected and qualified as Mayor, or as a member of the City Council, shall, during the term for which he was elected, hold any other office of profit, or trust, created, or to be created by the Mayor and City Council of Baltimore, or by any law relating to the Corporation of Baltimore, or hold any employment or position, the compensation of which shall be paid, directly or indirectly, out of the City Treasury; nor shall any such person be interested, directly or indirectly, in any contract to which the City is a party; nor shall it be lawful for any person holding any office under the City, to be interested, while holding such office, in any contract to which the City is a party."

Article XI. Section 6.

"The Mayor shall, on conviction in a Court of Law, of wilful neglect of duty, or misbehavior in office, be removed from office by the Governor of the State, and a successor shall thereafter be elected, as in a case of vacancy."

Article XI. Section 7.

"From and after the adoption of this Constitution, no debt (except as hereinafter excepted), shall be created by the Mayor and City Council of Baltimore; nor shall the credit of the Mayor and City Council of Baltimore be given or loaned to, or in aid of any individual association, or corporation; nor shall the Mayor and City Council of Baltimore have the power to involve the City of Baltimore in the construction of works of internal improvement, nor in granting any aid thereto, which shall involve the faith and credit of the City, nor make any appropriation therefor, unless such debt or credit be authorized by an Act of the General Assembly of Maryland, and, by an ordinance of the Mayor and City Council of

Baltimore, submitted to the legal voters of the City of Baltimore, at such time and place as may be fixed by said ordinance, and approved by a majority of the votes cast at such time and place; but the Mayor and City Council may, temporarily, borrow any amount of money to meet any deficiency in the City Treasury, or to provide for any emergency arising from the necessity of maintaining the police, or preserving the safety and sanitary condition of the City, and may make due and proper arrangements and agreements for the renewal and extension, in whole or in part, of any and all debts and obligations created according to law before the adoption of this Constitution."

It will be noted that the terms of this section are evidently intended to be broad enough to embrace, outside of the specially mentioned exceptions, any form of indebtedness which the taxpayers of the city would be called upon to pay. The exceptions are four; First, deficiency in the city treasury; Second, any emergency arising from the necessity of maintaining the police; Third, any emergency arising from the necessity of preserving the safety and sanitary conditions of the city; Fourth, the renewal of debts created before the adoption of the Constitution.

With these exceptions, no loan can be validly made without a concurrence of three conditions; First, an act of the legislature authorizing it; Second, an ordinance of the mayor and city council; Third, an affirmative vote approving this ordinance by the legal voters of the city of Baltimore.

Our courts have held that this provision, like other parts of the Constitution, is not to have a narrow or technical construction; but must be understood and enforced according to the plain and common sense meaning of its terms, and that no mere device or form of words can be effectively used in order that a real indebtedness created by the city may appear as something else, and so escape from the operation of this constitutional provision.[3]*

This provision, however, does not interfere with the power of the legislature to compel the city of Baltimore, like any other municipal corporation, to perform the duties which are devolved upon it. Thus, it has been held that the legislature may require the city of Baltimore to take charge and maintain as a public highway, a certain bridge, even although to do so might require the expenditure of money which it is conceivable the

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3 *Baltimore v. Gill,* 31 Md. 375. *Illustration C.

city could not obtain without borrowing.[4] It is manifest that any other construction would deprive the legislature of all control over the city in regard to ordinary functions of municipal government where any expenditure is required.

Article XI. Section 8.

"All Laws and Ordinances now in force applicable to the City of Baltimore, not inconsistent with this Article, shall be, and they are hereby continued until changed in due course of Law."

Under this section, all the laws and ordinances which prior to the adoption of the Constitution of 1867 were in force applicable to the city of Baltimore, were as completely unaffected by the Constitution as if it had not been adopted.[5]

Article XI. Section 9.

"The General Assembly may make such changes in this Article, except in Section 7th thereof, as it may deem best; and this Article shall not be so construed or taken as to make the political corporation of Baltimore independent of, or free from the control which the General Assembly of Maryland has over all such corporations in this State."

In the language of the Court of Appeals, with the single exception contained in the seventh section, our legislature is left free as to its control over the city of Baltimore; "as much so as it is with respect to all corporations existing for like purposes in the State."[6] This, of course, means that with a single exception, which relates to the incurring of indebtedness, the legislature of Maryland has the same power over the charter of the city of Baltimore as it has over the charter of the city of Cumberland or the town of Belair. This control is not absolute nor unlimited, but is very far-reaching, and we have seen that it may compel a city to take over a certain bridge;[7] it may compel a city to build a schoolhouse against the will of its taxpayers;[8]

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4 *Pumphrey v. Baltimore,* 47 Md. 145.
5 *Hooper v. New.* 85 Md. 565, 578.
6 *Baltimore City, v. Gorter,* 93 Md. 6.
7 *Pumphrey v. Baltimore,* 47 Md. 145.
8 *Revell v. Annapolis,* 81 Md. 1.

or it may provide that habitual drunkards, may, after certain proceedings taken, be committed for treatment to particular institutions, and the expense to be paid by the city.[9]

In regard to all these matters the city of Baltimore has no constitutional protection from the power of the legislature.

ILLUSTRATIONS.—ARTICLE XI.

ILLUSTRATION C.

By ordinance of the mayor and city council, provision was made for raising the sum of $1,000,000.00 "by means of hypothecation of such number of shares of the capital stock of the Baltimore and Ohio Railroad Company, owned by the Mayor and City Council of Baltimore, as might be necessary for that purpose; and for investment of said sum of money in Bonds of the Western Maryland Railroad Company." By another section of the ordinance it was provided that the "parties lending the money should look for its repayment exclusively to the stock pledged and in no event should the City be liable or responsible for the return or repayment of any part thereof, even though the stock pledged should prove insufficient."

It was argued that inasmuch as the city did not have to repay the debt, the transaction was not a borrowing of money but a mere change in investment from Baltimore and Ohio stock to Western Maryland Bonds.

HELD: That in effect it was a debt, and within the constitutional prohibition.

Baltimore v. Gill, 31 Md. 375.

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9 *Baltimore v. Keeley Institute,* 81 Md. 106.

LOCAL LEGISLATION. PROPOSED ARTICLE XI-A.

Section 1.

"On demand of the Mayor of Baltimore and City Council of the City of Baltimore, or on petition bearing the signatures of not less than 20 per cent. of the registered voters of said City or any County (provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition), the Board of Election Supervisors of said City or County shall provide at the next general or Congressional election, occurring after such demand or the filing of such petition, for the election of a charter board of eleven registered voters of said City or five registered voters in any such Counties. Nominations for members for said charter board may be made not less than forty days prior to said election by the Mayor of Baltimore and City Council of the City of Baltimore or the County Commissioners of such County, or not less than twenty days prior to said election by petition bearing the signatures written in their own handwriting (and not by their mark) of not less than five per cent. of the registered voters of the said City of Baltimore or said County; provided, that in any case two thousand signatures of registered voters shall be sufficient to complete any such nominating petition, and if not more than eleven registered voters of the City of Baltimore, or not more than five registered voters in any such County are so nominated their names shall not be printed on the ballot, but said eleven registered voters in the City of Baltimore or five in such County shall constitute said charter board from and after the date of said election. At said election the ballot shall contain the names of said nominees in alphabetical order without any indication of the source of their nomination, and shall also be so arranged as to permit the voter to vote for or against the creation of said charter board, but the vote cast against said creation shall not be held to bar the voter from expressing his choice among the nominees for said board, and if the majority of the votes cast for and against the creation of said charter board shall be against said creation the election of the members of said charter board shall be void; but if such majority shall be in favor of the creation of said charter board, then, and in that event, the eleven nominees of the City of Baltimore, or five nominees in the County, receiving the largest number of votes shall constitute the charter board, and said charter board or a majority thereof, shall prepare within six months from the date of said election a charter or form of government for said city or such county and present the same to the Mayor of Baltimore or President of the Board of County Commissioners of such county, who shall publish the same in at least two newspapers of general circulation published in said the City of Baltimore or County within thirty days after it shall be reported to him. Such charter shall be submitted to the voters of said City or County and the next general or Congressional election after the report of said charter to said Mayor of Baltimore or President of the Board of

County Commissioners; and if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption, the said charter from and after the thirtieth days from the date of such election shall become the law of said City or County, subject only to the constitution and Public General Laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of said the City of Baltimore or County shall be thereby repealed."

Proposed Article XI-A. Section 2.

"The General Assembly at its first session after the adoption of this amendment shall by public general law provide a grant of express powers for such County or Counties as may thereafter form a charter under the provisions of this Article. Such express powers granted to the Counties and the powers heretofore granted to the City of Baltimore, as set forth in Article 4, Section 6, Public Local Laws of Maryland, shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly."

Proposed Article XI-A. Section 3

"Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said City or County. Such legislative body in the City of Baltimore, shall be known as the City Council of the City of Baltimore, and in any County shall be known as the County Council of the County. The chief executive officer, if any such charter shall provide for the election of such executive officer, or the presiding officer of said legislative body, if such charter shall not provide for the election of a chief executive officer, shall be known in the City of Baltimore as Mayor of Baltimore, and in any County as the President of the County Council of the County, and all references in the Constitution and Laws of this State to the Mayor of Baltimore and City Council of the City of Baltimore, or to the County Commissioners of the Counties, shall be construed to refer to the Mayor of Baltimore and City Council of the City of Baltimore, and to the President and County Council herein provided for whenever such construction would be reasonable. From and after the adoption of a charter by the City of Baltimore, or any County of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the City of Baltimore or the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County, including the power to repeal or amend local laws

of said city or county enacted by the General Assembly, upon all matters covered by the express powers granted as above provided; provided that nothing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in said County, on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto. Provided, however, that the charters for the various Counties shall provide that the County Council of the Counties shall not sit more than one month in each year for the purpose of enacting legislation for such Counties, and all legislation shall be enacted during the month so designated for that purpose in the charter, and all laws and ordinances so enacted shall be published once a week for three successive weeks in at least one newspaper published in such Counties, so that the taxpayers and citizens may have notice thereof. This provision shall not apply to Baltimore City. All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore, or the Council of the Counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control."

Proposed Article XI-A. Section 4.

"From and after the adoption of a charter under the provisions of this Article by the City of Baltimore or any County of this State, no public local law shall be enacted by the General Assembly for said City or County on any subject covered by the express powers granted as above provided. Any law so drawn as to apply to two or more of the geographical sub-divisions of this State shall not be deemed a local law, within the meaning of this Act. The term "geographical sub-division" herein used shall be taken to mean the City of Baltimore or any of the Counties of this State."

Proposed Article XI-A. Section 5.

"Amendments to any charter adopted by the City of Baltimore or by any County of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore and the City Council of said the City of Baltimore, or the Council of said County, or by a petition signed by not less than 20 per cent. of the registered voters of said City or County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition, and filed with the Mayor of Baltimore or the President of the County Council, and when so proposed shall be submitted to the

voters of said City or County at the next general or Congressional election occurring after the passage of said resolution, or the filing of said petition; and if at said election the majority of the votes cast for and against said amendment shall be in favor thereof, said amendment shall be adopted and become a part of the charter of said City or County from and after the thirtieth day after said election. Said amendments shall be published by said Mayor of Baltimore or President of the County Council once a week for five successive weeks prior to said election in at least one newspaper published in said City or County."

Proposed Article XI-A. Section 6.

"The power heretofore conferred upon the General Assembly to prescribe the number, compensation, powers and duties of the County Commissioners in each County, and the power to make changes in Sections 1 to 6 inclusive, Article XI of this Constitution, when expressly granted as hereinbefore provided, are hereby transferred to the voters of each County and the voters of City of Baltimore, respectively, provided that said powers so transferred shall be exercised only by the adoption or amendment of a charter as hereinbefore provided; and provided further that this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets forth."

Proposed Article XI-A. Section 7.

"The word 'Petition' as used in this Article means one or more sheets written or printed, or partly written and partly printed; 'Signature' means the signature of a registered voter written by himself in his own handwriting (and not by his mark), together with the ward or district and precinct in which he is registered. The authenticity of such signatures and the fact that the persons so signing are registered voters shall be evidenced by the affidavit of one or more registered voters of the City or County in which said voters so signing are registered, and one affidavit may apply to or cover any number of signatures to such petition. The false signing of any name, or the signing of any fictitious name to said petition shall be forgery, and the making of any false affidavit in connection with said petition shall be perjury."

This article, if adopted, would make very decided and fundamental changes in the law-making of our state, and is intended to secure "Home Rule" for such geographical divisions of the state as may show by their votes that they desire it.

ARTICLE XII.

Public Works. Section 1.

"The Governor, the Comptroller of the Treasury, and the Treasurer shall constitute the Board of Public Works in this State. They shall keep a journal of their proceedings, and shall hold regular sessions in the City of Annapolis on the first Wednesday in January, April, July and October in each year, and oftener, if necessary; at which sessions they shall hear and determine such matters as affect the Public Works of the State, and as the General Assembly may confer upon them the power to decide."

Article XII. Section 2.

"They shall exercise a diligent and faithful supervision of all Public Works in which the State may be interested as Stockholder or Creditor, and shall represent and vote the stock of the State of Maryland in all meetings of the stockholders of the Chesapeake and Ohio Canal; and shall appoint the Directors in every railroad and canal company in which the State has the legal power to appoint Directors, which said Directors shall represent the State in all meetings of the stockholders of the respective companies for which they are appointed or elected. And the President and Directors of the said Chesapeake and Ohio Canal Company shall so regulate the tolls of said company from time to time as to produce the largest amount of revenue, and to avoid the injurious effect to said company of rival competition by other internal improvement companies. They shall require the directors of all said public works to guard the public interest and prevent the establishment of tolls which shall discriminate against the interest of the citizens or products of this State, and from time to time, and as often as there shall be any change in the rates of toll on any of the said works, to furnish the said Board of Public Works a schedule of such modified rates of toll, and so adjust them as to promote the agricultural interests of the State; they shall report to the General Assembly at each regular session, and recommend such legislation as they may deem necessary and requisite to promote or protect the interests of the State in the said public works; they shall perform such other duties as may be hereafter prescribed by law, and a majority of them shall be competent to act. The Governor, Comptroller and Treasurer shall receive no additional salary for services rendered by them as members of the Board of Public Works. The provisions of the Act of the General Assembly of Maryland of the year 1867, Chapter 359, are hereby declared null and void."

Article XII. Section 3.

"The Board of Public Works is hereby authorized, subject to such regulations and conditions as the General Assembly may from time to time prescribe, to sell the State's interest in all works of internal improvement, whether as a stockholder or a creditor, and also the State's interest, in any banking corporation, receiving in payment the bonds and registered debt now owing by the State, equal in amount to the price obtained for the State's said interest."

The language of section 3 as above given, is that contained in the amendment proposed by the Act of 1890, chapter 362. Before the adoption of the amendment, section 3 ran as follows:

"The Board of Public Works is hereby authorized to exchange the State's interest as Stockholder and Creditor in the Baltimore and Ohio Railroad Company for an equal amount of the bonds or registered debt now owing by the State, to the extent only of all the preferred stock of the State on which the State is entitled to only six per cent interest, provided such exchange shall not be made at less than par, nor less than the market value of said stock; and the said board is authorized, subject to such regulations and conditions as the General Assembly may from time to time prescribe, to sell the State's interest in the other Works of Internal Improvement, whether as a stockholder or a Creditor, and also the State's interest in any banking corporation, receiving in payment the bonds and registered debt now owing by the State, equal in amount to the price obtained for the State's said interest; provided, that the interest of the State in the Washington Branch of the Baltimore and Ohio Railroad be reserved and excepted from sale; and provided further, that no sale or contract of sale of the State's interest in the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal, and the Susquehanna and Tidewater Canal Companies shall go into effect until the same shall be ratified by the ensuing General Assembly."

It will be seen that the amendment strikes out certain restrictions upon the power of the board of public works to sell investments owned by the state.

In the years immediately preceding the adoption of the Constitution of 1851, the State of Maryland, as already stated, invested very largely in schemes of internal development, including railroads, turnpikes and canals. Most of these investments

turned out badly, but some proved profitable and the holdings of the state in the Baltimore and Ohio Railroad, and the Chesapeake and Ohio Canals were, up to recent days, assets of importance, and the board of public works had upon it great responsibilities in the charge and management of these investments.

Now, however, most of these securities have been sold, and these provisions are very much less important. In a general way, it may be said that the governor, comptroller of the treasury, and treasurer, are by this article required to serve without salary, as a board to take charge of the proprietary interests of the State, in private public service corporations, whether as stockholder or creditor, and to manage these interests to the best advantage. This board may sell "subject to such regulations and conditions as the general assembly may from time to time prescribe," but this power is not exclusive, and it may also be exercised by the legislature.

Neither has the board, in the absence of express legislation, power to waive or surrender a state's lien or make a contract for a deferred lien on the property of any of the internal improvement properties in which the state has an interest.[1]

ARTICLE XIII.

New Counties. Section 1.

"The General Assembly may provide, by law, for organizing new Counties, locating and removing county seats, and changing county lines; but no new county shall be organized without the consent of the majority of the legal voters residing within the limits proposed to be formed into said new county; and whenever a new county shall be proposed to be formed out of portions of two or more counties, the consent of a majority of the legal voters of such part of each of said counties, respectively, shall be required; nor shall the lines of any county be changed without the consent of a majority of the legal voters residing within the district, which, under said proposed change, would form a part of a county different from that to which it belonged prior to said change; and no new county shall contain less than four hundred square miles, nor less than ten thousand white inhabitants; nor shall any change be made in the limits of any county, whereby the population of said

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1 *Brown v. C. & O. Canal Co.* (Opinion of Judge Alvey), 73 Md. 567.

county would be reduced to less than ten thousand white inhabitants, or its territory reduced to less than four hundred square miles."

Counties are in Maryland the units of our state political organization and of municipal government. As counties, we are represented in the senate, and house of delegates of the general assembly. As counties, we constitute portions of the several judicial circuits of the state. As counties, we elect our clerks, sheriffs, registers and commissioners. As counties, we assess our property and levy our taxes.[1]

By the Constitution of 1864 (article 10, section 2), it was provided that the general assembly should "provide by general law for dividing the counties into townships or permanent municipal corporations, in place of the existing election districts, prescribing their limits and confiding to them all powers necessary for the management of their public local concerns." It was evidently the design of the framers of this Constitution to introduce in Maryland what is sometimes called the "New England Township System" of local government, but in our present Constitution this provision is omitted entirely, and now there is no territorial sub-division of a county entitled to any form of self-government, except such municipal corporations as may be established by the legislature. It has, however, been held that laws are valid which provide that if a majority of the ballots in any election district of a county are "against license," no liquor should be sold in that election district,[2] thus allowing to election districts, although not incorporated and having no powers under the Constitution, a certain measure of local freedom when express provision therefore is made by the legislature.

It would seem from the wording of the section we are now considering, that the power to change county lines could not be exercised without the joinder of two requisites, viz: An act of the general assembly, and the consent of the voters affected; but it has been held by our courts, speaking *obiter,* that the limits of Baltimore City may be changed by the legislature either with or without the consent of the voters.

The case in which this dictum was given, is the case of *Daly v. Morgan,* 69 Md. 460.

1 *Fell v. State,* 42 Md. 71.
2 *Fell v. State,* 42 Md 71.

The act in question in that case, extended the limits of Baltimore City by adding thereto certain parts of Baltimore County, provided a majority of the voters in the parts of Baltimore County affected, should vote in favor of the annexation. Judge Robinson delivering the opinion of the court, stated: "The legislature has, therefore, in our opinion, the same power now which it has always exercised to extend the limits of Baltimore City by including therein parts of Baltimore County, and this with or without a consent of the majority of the voters residing within the district annexed."

Judge Bryan and Chief Judge Alvey dissented, Judge Alvey saying, "It would be difficult to suggest a reason why popular consent should be required as a condition of severance for annexation to another county, but not for annexation to the city. Such a distinction, I am sure, was never contemplated."

Whether or not the dictum of the court or the dissenting dictum of Judge Alvey will be followed in another case, should the question arise, is perhaps a matter of doubt.

It would seem that the argument from convenience was in favor of the dictum of the majority of the court, while the argument derived from the words of the Constitution supported the dissenting opinions of Judges Alvey and Bryan.

Under the provisions of this section, Garrett County was organized in pursuance of the Act of 1872, chapter 212.

Article XIII. Section 2.

"At the election to be held for the adoption or rejection of this Constitution, in each election district, in those parts of Worcester and Somerset Counties, comprised within the following limits, viz.: Beginning at the point where Mason and Dixon's line crosses the channel of Pocomoke River, thence following said line to the channel of the Nanticoke River, thence with the channel of said river to Tangier Sound, or the intersection of Nanticoke and Wicomico Rivers, thence up the channel of the Wicomico River to the mouth of Wicomico Creek, then with the channel of said creek and Passerdyke Creek to Dashiell's or Disharoon's Mills, thence with the mill pond of said mills and branch following the middle prong of said branch, to Meadow Bridge, on the road dividing the Counties of Somerset and Worcester, near the southwestern corner of farm of William P. Morris, thence due to the Pocomoke River, thence with the channel of said river to the beginning; the Judges of Election, in each of said districts, shall receive the ballots of each elector, voting at said election, who has resided for six

months preceding said election within said limits, for or against a new County; and the Return Judges of said election districts shall certify the result of such voting, in the manner now prescribed by law, to the Governor, who shall by proclamation make known the same, and if a majority of the legal votes cast within that part of Worcester County, contained within said lines, and also a majority of the legal votes cast within that part of Somerset County, contained within said lines, shall be in favor of a new County, then said parts of Worcester and Somerset Counties shall become and constitute a new County, to be called Wicomico County; and Salisbury shall be the County seat. And the inhabitants thereof shall henceforth have and enjoy all such rights and privileges as are held and enjoyed by the inhabitants of the other Counties of this State."

This section, as is evident, was enacted simply for the temporary purpose of creating a new county at the time of the adoption of the Constitution, provided such was the desire of the voters affected. As a matter of fact, the election held was favorable, and Wicomico County has been, since the adoption of the Constitution, one of the counties of the state. Almost immediately after the adoption of the Constitution, the board of county school commissioners of Wicomico County filed a bill against the county school commissioners of Worcester County for a part of the school fund which the bill alleged was in the hands of Worcester County, and belonged as of right to the inhabitants of the new Wicomico County, and reliance was placed upon the last clause of the above section, stating that the inhabitants of Wicomico County "shall thenceforth have and enjoy all such rights and privileges as are held and enjoyed by the other Counties of this State," but it was held that this money was a part of the "public property" which belonged to Worcester County, and therefore, under the next succeeding section of this article, the inhabitants of the newly made Wicomico County ceased to have any interest therein.[3]

Article XIII. Section 3.

"When said new County shall have been so created, the inhabitants thereof shall cease to have any claim to, or interest in, the county buildings and other public property of every description belonging to said Counties of Somerset and Worcester, respectively, and shall

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3 *School Commissioners v. School Commissioners,* 35 Md. 201.

be liable for their proportionate shares of the then existing debts and obligations of the said Counties, according to the last assessment in said Counties, to be ascertained and apportioned by the Circuit Court of Somerset County, as to the debts and obligations of said County, and by the Circuit Court of Worcester County as to the debts and obligations of Worcester County, on the petition of the County Commissioners of the said Counties, respectively, and the property in each part of the said Counties included in said new County shall be bound only for the share of the debts and obligations of the County from which it shall be separated; and the inhabitants of said new County shall also pay the County taxes levied upon them at the time of the creation of such new County, as if such new County had not been created; and on the application of twelve citizens of the proposed County of Wicomico, the Surveyor of Worcester County shall run and locate the line from Meadow Bridge to the Potomac River, previous to the adoption or rejection of this Constitution, and at the expense of said petitioners."

Article XIII. Section 4.

"At the first general election held under this Constitution the qualified voters of said new County shall be entitled to elect a Senator and two Delegates to the General Assembly, and all such County or other officers as this Constitution may authorize, or require to be elected by other Counties of the State; a notice of such election shall be given by the sheriffs of Worcester and Somerset Counties in the manner now prescribed by law; and in case said new County shall be established, as aforesaid, then the Counties of Somerset and Worcester shall be entitled to elect but two Delegates each to the General Assembly."

Article XIII. Section 5.

"The County of Wicomico, if formed according to the provisions of this Constitution, shall be embraced in the First Judicial Circuit, and the times for holding the Courts therein shall be fixed and determined by the General Assembly."

Article XIII. Section 6.

"The General Assembly shall pass all such laws as may be necessary more fully to carry into effect the provisions of this Article."

These sections, like section two, were enacted for the temporary purpose of creating Wicomico County, and have now become unimportant.

ARTICLE XIV.

Amendments to the Constitution. Section 1.

"The General Assembly may propose Amendments to this Constitution; provided that each Amendment shall be embraced in a separate Bill, embodying the Article or Section, as the same will stand when amended and passed by three-fifths of all the members elected to each of the two Houses, by yeas and nays, to be entered on the Journals with the proposed Amendment. The Bill or Bills proposing amendment or amendments shall be published by order of the Governor, in at least two newspapers in each County, where so many may be published, and where not more than one may be published, then in that newspaper, and in three newspapers published in the City of Baltimore, one of which shall be in the German language, once a week for at least three months preceding the next ensuing general election, at which the proposed amendment or amendments shall be submitted, in a form to be prescribed by the General Assembly, to the qualified voters of the State for adoption or rejection. The votes cast for and against said proposed amendment or amendments, severally, shall be returned to the Governor, in the manner prescribed in other cases, and if it shall appear to the Governor that a majority of the votes cast at said election on said amendment or amendments, severally, were cast in favor thereof, the Governor shall, by his proclamation, declare the said amendment or amendments having received said majority of votes, to have been adopted by the people of Maryland as part of the Constitution thereof, and thenceforth said amendment or amendments shall be part of the said Constitution. When two or more amendments shall be submitted in manner aforesaid, to the voters of this State at the same election, they shall be so submitted as that each amendment shall be voted on separately."

Under the Constitution of 1776, an amendment could be made merely by an act of the legislature passed at one session and a confirmatory act passed at the next session. A vote of the people was not required.

Under the Constitution of 1851, there could be no amendment except by a convention assembled for that purpose, and as matter of fact no amendment ever was made to that Constitution.

The Constitution of 1864 provided for amendments which might be proposed by the general assembly to be effective only when adopted by the people, and also for the amendments to be made by a convention convened for that purpose, provided such amendments were ratified by the people, but as matter

of fact during the three years of the life of that Constitution, no amendment was made.

By the above section of our present Constitution the following requirements, *and no others,* must be complied with, namely:

A proposal of an amendment by the general assembly in the form of a bill;

Its passage by three-fifths of all the members elected to each house by a yea and nay vote, to be recorded on the journal;

The entry of the proposed amendment on the journal;

The publication of the bill by order of the governor for at least three months before the next general election;

A vote of the people;

A majority of the votes cast favorable to its adoption;

A proclamation by the governor declaring the amendment to have been adopted.

If these requisites are complied with "thenceforth said amendment or amendments shall be part of the Constitution."[1]

The people are thus the source of power, and no amendment is operative unless adopted by them. Until sanctioned by them it is a mere proposal to amend.

The "general assembly," which under the section we are now considering, may propose amendments, means the senate and the house of delegates and does not include the governor.

The governor need not sign, and cannot veto an act submitting a constitutional amendment to the people. The governor has nothing to do with such proposed constitutional amendment except to order its publication for the period and in the manner designated in this article, and to proclaim its adoption after it has been approved by the people, and the first of these duties, at least, is a ministerial duty which can be enforced by *mandamus.*[1]

Among the requisites prescribed by this section, is as stated above, "the entry of the proposed amendment on the journal," but this does not mean that the act should be set out on the journals *verbatim.* An entry upon the journal of each house, setting forth the passage of "an Act to amend section 1 of article 7 of the Constitution of this State by more than three-fifths of all the members elected to each house, and also setting forth the yeas and nays" was held to be sufficient.[2]

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1 *Warfield v. Vandiver,* 101 Md. 78, 120.
2 *Worman v. Hagan,* 78 Md. 152.

The ordinary form of the bill under the terms of which the constitutional amendment is proposed, contains a section providing for the submission of the proposed amendment to vote, with quite full directions as to the manner of taking the vote, in compliance with the provision that the amendment shall be submitted in a form to be prescribed by the general assembly, but it would seem that the constitutional mandate that such proposed amendment should be submitted to a vote, and due returns should be made to the governor, were self-executing, and that it was not absolutely necessary that any form should be prescribed in the act itself.[3]

By the wording of this section it would seem that every amendment must be submitted to the voters at "the next ensuing general election," which has been understood to mean the next election for members of the house of delegates. The legislature of 1914, however, provided that the amendment to section 44 of article 4, relating to sheriffs in Baltimore city should be submitted "at the next general election for members of congress, the same being a general election to be held in this State." This amendment was accordingly submitted at the November election in 1914, and declared adopted, although seven other amendments to the constitution were also proposed by the same legislature, and none of these were then submitted, but held to be voted upon at the election for members of the house of delegates in 1915.

The practice would therefore, seem to have been introduced, of allowing the legislature to determine whether an amendment should be submitted at the next election for members of the house of delegates or at the next general election for members of congress, according to its option. This practice would seem to be anomalous and not sustainable on any legal principle if attacked, because it would appear that the constitutional provision requiring an amendment to be voted upon at the next general election must refer to some one election, and if it does so refer, no action of the legislature could make any other election a proper one.

In other words, all of the eight amendments proposed by the legislature of 1914 must be governed by the words of the constitution and must be submitted at the "next ensuing general election," and if such election be the election of 1914 they

3 *Vandiver v. Warfield,* 101 Md. 122.

should all be submitted at such election irrespective of any action of the legislature, or if such election were the election of 1915, no one of them could be submitted by virtue of any action of the legislature at a prior election.

Whether after an amendment has been proclaimed by the governor as adopted, any inquiry as to whether the election at which the amendment was submitted, was the proper election, can be made, is also a nice question, for ordinarily whether an amendment has been adopted or not, is a question confided exclusively to the governor, and his proclamation is final and cannot be inquired into by the courts or any other authority.

Immediately upon his proclamation that a proposed amendment has received a majority of the votes cast, it becomes *eo instanti* a part of the constitution. Should the governor violate his duty and wrongfully proclaim that an amendment was adopted, which in point of fact, has been rejected, our court of appeals has expressly refrained from saying what remedy the people possess, contenting themselves by saying that "the resources of a free government are ample, and will always be found adequate to punish and redress offenses against its sovereignty."[4]

Article XIV. Section 2.

"It shall be the duty of the General Assembly to provide by law for taking, at the general election to be held in the year eighteen hundred and eighty-seven, and every twenty years thereafter, the sense of the people in regard to calling a convention for altering this constitution; and if a majority of voters at such election or elections shall vote for a convention, the General Assembly, at its next session, shall provide by law for the assembling of such convention, and for the election of Delegates thereto. Each County and Legislative District of the City of Baltimore shall have in such convention a number of Delegates equal to its representation in both Houses at the time at which the convention is called. But any Constitution, or change, or amendment of the existing Constitution, which may be adopted by such convention, shall be submitted to the voters of this State, and shall have no effect unless the same shall have been adopted by a majority of the voters voting thereon."

As matter of fact, the above provision for calling a constitutional convention, has only been acted upon to the extent

4 *Worman v. Hagan*, 78 Md. 152.

of taking a vote upon the subject in 1887, and in 1907, as prescribed, but in each case the proposition has been voted down, our people apparently preferring to amend any particular section which may become obsolete or unsuited to existing conditions, rather than to take any chances upon an entirely new formulation of our fundamental state law.

ARTICLE XV.

Miscellaneous. Section 1.

"Every person holding any office created by, or existing under the Constitution, or Laws of the State (except Justices of the Peace, Constables and Coroners), or holding any appointment under any Court of this State, whose pay or compensation is derived from fees or moneys coming into his hands for the discharge of his official duties, or in any way growing out of or connected with his office, shall keep a book in which shall be entered every sum or sums of money received by him, or on his account, as a payment or compensation for his performance of official duties, a copy of which entries in said book verified by the oath of the officer by whom it is directed to be kept, shall be returned yearly to the Comptroller of the State for his inspection, and that of the General Assembly of the State, to which the Comptroller shall, at each regular session thereof, make a report showing what officers have complied with this Section; and each of the said officers, when the amount received by him for the year shall exceed the sum which he is by law entitled to retain as his salary or compensation for the discharge of his duties, and for the expenses of his office, shall yearly pay over to the Treasurer of the State, the amount of such excess, subject to such disposition thereof as the General Assembly may direct; if any of such officers shall fail to comply with the requisitions of this section for the period of thirty days after the expiration of each and every year of his office, such officer shall be deemed to have vacated his office, and the Governor shall declare the same vacant, and the vacancy therein shall be filled as in case of vacancy for any other cause, and such officer shall be subject to suit by the State for the amount that ought to be paid into the Treasury; and no person holding any office created by or existing under this Constitution or Laws of the State, or holding any appointment under any Court in this State, shall receive more than three thousand dollars a year as a compensation for the discharge of his official duties, except in cases specially provided in this Constitution."

The purpose of this provision is very plain. It establishes a maximum salary of $3,000.00 for any person (except justices

of the peace, constables and coroners) whose compensation is derived from fees. Such officer must keep an account of all fees collected, and pay whatever surplus there may be over $3,000.00, into the state treasury, subject as a penalty in case of his failure so to account, to the deprivation of office and suit for the amount which he should have returned.

In such suit, his official bond is liable.[1]

The phraseology of the section seems to have been adopted with the evident intention of preventing, by any device, the receipt of more than $3,000.00 per year because of the holding of any official position within the purview of the section, and this intention has been enforced by the courts to its full extent.

Thus when the register of wills of Baltimore city, sought to retain as his own money, and in addition to the salary of his office, the commissions allowed by law on the amount of taxes on collateral inheritances and on commissions of executors and administrators that had been received by him, it was held that such receipts came to him in a way which grew out of and was connected with his office, and must be taken into consideration in computing the $3,000.00, which was the maximum which he could retain.[2]

The same construction was given, and a similar ruling made, in a case where the clerk of the court had received interest on license fees paid to him, and deposited in bank in the clerk's name.[3]

There was a similar ruling where a sheriff claimed to retain as his own that portion of certain fines collected, which under the statute was payable to informers, and had not been claimed by them;[4] also where the sheriff claimed as his own money, in addition to his salary, fees allowed by statute for attending court;[5] also where a sheriff was allowed by statute $300.00 for executing the death penalty;[6] and where additional sums were allowed by statute to a sheriff for the "expenses of his office," the court held that he was entitled to pay from such sums the amount which was in fact such office expense, but that he must turn over the balance to the State.[6]

1 *Van Sant v. State,* 96 Md. 110, 124.
2 *Banks v. State,* 60 Md. 305.
3 *Van Sant v. State,* 96 Md. 110.
4 *State v. Green,* 120 Md. 681.
5 *Green v. State,* 122 Md. 288.
6 *Cecil v. Anne Arundel Co.,* 121 Md. 696.

Carrying out the same strict construction, it was held under a similar provision of the Constitution of 1851, that an official serving for a part of a year should have his fees pro rated, and if during the time he served, he exceeded the ratable part of the yearly sum of $3,000.00, he must pay into the treasury the excess.

On the other hand, this provision secures to officials the amount of the fees allowed them by statute, to the amount of $3,000.00 annually, and the legislature has no power to cut down the amount of fees so received by them below this Constitutional limit.[7]*

Article XV. Section 2.

"The several Courts existing in this State at the time of the adoption of this Constitution shall, until superseded under its provisions, continue with like powers and jurisdiction, and in the exercise thereof, both at law and in equity, in all respects, as if this Constitution had not been adopted; and when said Courts shall be so superseded, all causes then depending in said Courts shall pass into the jurisdiction of the several Courts, by which they may be respectively superseded."

Article XV. Section 3.

"The Governor and all officers, civil and military, now holding office under this State, whether by election or appointment, shall continue to hold, exercise and discharge the duties of their offices (unless inconsistent with or otherwise provided in this Constitution), until they shall be superseded under its provisions, and until their successors shall be duly qualified."

These sections are evidently intended simply to preserve the machinery of the government in the change from one constitution to another, and now that the present constitution has been in operation for almost fifty years, they have become unimportant.

Article XV. Section 4.

"If at any election directed by this Constitution, any two or more candidates shall have the highest and an equal number of votes, a new election shall be ordered by the Governor, except in cases specially provided for by this Constitution."

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7 *Goldsborough v. Lloyd,* 86 Md. 374, *Illustration CI.

Article XV. Section 5.

"In the trial of all criminal cases, the jury shall be the Judges of Law, as well as of fact."

This provision appeared first in our Constitution of 1851.

Similar provisions are in the constitutions of many states of the Union, and these have not always been construed in the same way so far as relates to the power of the jury to disregard the instructions of the judge in criminal cases.

In Maryland the construction given has gone perhaps to an extreme in upholding the jury's conclusive right to decide in a criminal case both law and fact.

It has been held that the words in the section we are now considering, are merely declaratory of the pre-existing common law upon the subject.[8]

In the convention of 1851, there were opposing views as to the power of a jury in a criminal case, which prevailed in different parts of the state, and to guard in the future against such conflicts, the provision we are now considering, was inserted in the Constitution.

Under the interpretation given by the courts to this section, the judges in a criminal trial determine what evidence is admissible and what witnesses are competent.[9]

They may also limit the effect of testimony which is receivable for a certain purpose only.[10*] They may also control the conduct of the trial, and prevent counsel from making reckless assertions as to the law,[11] and prevent counsel from arguing contrary to the instructions of the court.[12] They may also give instruction to the jury if questioned by the jury, or at their own volition, but they cannot be required to do so, and they must be careful to indicate to the jury that their instructions are advisory only and not binding.[13]

In *Beard v. State,* 71 Md. 275, the law is stated by Chief Justice Alvey so luminously that it seems fitting to quote largely from his opinion:

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8 *Franklin v. State,* 12 Md. 232; *State v. Glenn,* 54 Md. 572, 599; *Bell v. State,* 57 Md. 108; *Beard v. State,* 71 Md. 275.

9 *Jules v. State,* 85 Md. 305.

10 *Bell v. State,* 57 Md. 108, *Illustration CII.

11 *Garlitz v. State,* 71 Md. 293.

12 *Bell v. State,* 57 Md. 108.

13 *Wheeler v. State,* 42 Md. 563; *Broll v. State,* 45 Md. 356; *Esterline v. State,* 105 Md. 629.

"Whenever the judge has thought it proper to instruct, it has always been deemed necessary that he should be careful to put the instruction in an advisory form, so that the jury be left entirely free to find their verdict in accordance with their own judgment of the law, as well as the facts. The instruction, when given, goes to the jury simply as a means of enlightenment, and not as a binding and positive rule for their government, as it does in civil cases. The judge, therefore, cannot, by any instruction given in a criminal case, bind the jury as to the definition of the crime, or as to the legal effect of the evidence before them. He can only bind and conclude the jury as to what evidence shall be considered by them, he being the exclusive judge of what facts or circumstances are admissible for consideration. The practice of instructing the jury, within the limitations and under the restrictions just stated, has received the sanction of this court upon more than one occasion, and such practice must now be regarded as fully authorized. *Wheeler v. State,* 42 Md. 563, 569; *Broll v. State,* 45 Md. 356; *Bloomer v. State,* 48 Md. 521; *Forwood v. State,* 49 Md. 537; *Swann v. State,* 64 Md. 425. And such practice is founded in the soundest practical reason and good sense. For though the juries are made judges of the law, they are unlearned, and not infrequently composed, in part at least, of persons wholly uninstructed as to the laws under which they live. When sworn upon the panel it becomes their duty to decide the case according to the established rules of law of the State, and not according to any capricious rules of their own; and it must be supposed that they are always desirous of performing their duty, and making their verdicts conform to law. To enable them to accomplish that object, no proper light should be withheld from them. In the argument of the case before them by counsel, text-books, no matter of what authority, or whether of any authority at all; reported decisions of all grades of courts, from the highest to the lowest, and no matter where made, are read to the jury, with the gloss of counsel, to enforce certain theories; and the jury are required to discriminate and decide, upon the authorities cited, as to what is the law in their own State, which they are sworn to administer. In such state of doubt and perplexity, is it not reasonable and proper that they should have the advisory aid of the judge, who is supposed to know what the law of the State really is, and who has

the ultimate power of revising and setting aside their verdict, if they should mistake and misapply the law to the injury of the accused? It would seem that there could be no room for a diversity of opinion upon this question; and no case could more fully illustrate the propriety of the practice than the present. If the instruction given be erroneous, though in a mere advisory form, it may be made the subject of an exception, to be corrected on appeal."

If these instructions are not excepted to, they are the law of the case.[14] If the jury disregard the instructions and acquit the traverser, this acquittal is final, and there is no remedy. If the jury disregard the instructions of the court and convict, the lower court can grant a new trial. Should the instructions of the court be erroneous, an appeal will lie in spite of their advisory character, provided the traverser has been convicted and it is possible that he suffered damage by means of the erroneous instruction,[15] but if it is plain that the error has caused no damage to the traverser, the judgment will be affirmed.[16]*

There is no obligation upon the court to give an instruction, even if asked to do so,[17] and as late as 1885, our court of appeals stated that the trial court "rarely or never" do so instruct "except upon consent and request of counsel both for the state and the accused, or the jury themselves."[18]

Since the sanction of the Court of Appeals was given to the practice in the case of *Beard v. State,* above cited, there has been a growing feeling that these advisory instructions ought to be more frequently given, and the power of the court is being more frequently exercised in this regard.

But it has been held that, although the court can instruct as to the purpose for which evidence may be received, and in that way may be said to properly instruct as to the effect of evidence, the court has no power to go further, and pass upon what is practically a demurrer to the evidence by giving instructions whether or not the evidence is sufficient or insufficient to convict.[19]*

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14 *Bell v. State,* 57 Md. 108.

15 *Cochran v. State,* 119 Md. 539.

16 *Swann v. State,* 64 Md. 423, *Illustration CIII.

17 *Bloomer v. State,* 48 Md 521, 538; *B. & Y. T. Co. v. State,* 63 Md. 558.

18 *B. & Y. T. Co. v. State,* 63 Md. 558, 582.

19 *Jules v. State,* 85 Md. 305; *Ridgely v. State,* 75 Md. 510; *Bloomer v. State,* 48 Md. 521, *Illustration CIV.

In only one respect does it seem that the jury is bound to follow the opinion of the court as to the law, and that is when the question arises as to the constitutionality of a statute.

The jury have the right to affix their own meaning to any particular law and to determine for themselves whether the facts proven bring the traverser within that meaning, but the jury have no right to decide on the constitutionality of an act, and to disregard it because unconstitutional.[20]

Of course, if the party elects to be tried before the court instead of a jury, the judge or judges have the same functions to perform in that particular case, as if they were a jury.

Article XV. Section 6.

"The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five dollars, shall be inviolably preserved."

The right of trial by jury in criminal cases is doubtless secured by the 21st and 23rd articles of the Declaration of Rights, and in the same manner the right of jury trial in civil cases is secured by article 5 and article 23.

Consequently, either the section which we are now considering and the next prior section or the articles of the Declaration of Rights above referred to—so far as they relate to jury trials—are surplusage.

As these articles of the Declaration of Rights have already been considered, it may be necessary here only to repeat: 1st, That the right of trial by jury is something which may be waived;[21]

2nd: That it must be construed in connection with its history at common law and is not infringed when reasonable regulations are imposed as a condition of its exercise;[22]

3rd: That it is not infringed when a jury trial may be held upon appeal, even though the first trial must be had without a jury;[23]

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20 *Franklin v. State,* 12 Md. 236.
21 *Caledonian F. I. Co. v. Traub,* 86 Md. 86.
22 *Knee v. City Passenger Railway,* 87 Md. 623.
23 *Steuart v. Baltimore,* 7 Md. 500.

4th: That the courts will be careful to preserve the right and declare any law in substantial violation thereof unconstitutional.[24*]

Article XV. Section 7.

"All general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur; and the first election of all officers, who, under this Constitution, are required to be elected by the people, shall, except in cases herein specially provided for, be held on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-seven."

Article XV. Section 8.

"The Sheriffs of the several Counties of this State, and of the City of Baltimore, shall give notice of the several elections authorized by this Constitution, in the manner prescribed by existing laws for elections to be held in this State, until said laws shall be changed."

Article XV. Section 9.

"The term of office of all Judges and other officers, for whose election provision is made by this Constitution, shall, except in cases otherwise expressly provided herein, commence from the time of their election; and all such officers shall qualify as soon after their election as practicable, and shall enter upon the duties of their respective offices immediately upon their qualification; and the term of office of the State Librarian and of Commissioner of the Land Office shall commence from the time of their appointment."

Article XV. Section 10.

"Any officer elected or appointed in pursuance of the provisions of this Constitution, may qualify, either according to the existing provisions of law, in relation to officers under the present Constitution, or before the Governor of the State, or before any Clerk of any Court of Record in any part of the State; but in case an officer shall qualify out of the County in which he resides, an official copy of his oath shall be filed and recorded in the Clerk's Office of the Circuit Court of the County in which he may reside, or in the Clerk's Office of the Superior Court of the City of Baltimore, if he shall reside therein."

The provisions of the foregoing sections are plain and seem to require no comment.

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24 *McCoy v. Johnson,* 70 Md. 490, *Illustration CV.

ILLUSTRATIONS. ARTICLE XV.

ILLUSTRATION CI.

A local law for Dorchester County was construed by Judge Lloyd to restrict the compensation to be paid the state's attorney to $1,200.00 per annum. The attorney had no fixed salary, but was paid by fees prescribed by statute, and the law provided that the county commissioners should pay him these fees upon the approval of his account by the judges of the circuit court.

Phillips Lee Goldsborough, then state's attorney, presented to Judge Lloyd, who was one of these judges, his account, but the judge, acting on his construction of the law, as above given and assuming it to be constitutional, refused to certify Mr. Goldsborough's account beyond $1,200.00.

HELD: That it was not within the power of the legislature to prescribe a lower minimum than the $3,000.00 mentioned in the Constitution as the sum total of fees that an officer paid entirely by fees, should retain. It was admitted, however, that there was no limitation on the power of the legislature to adopt any schedule of fees that it might see fit, even though the result might be to reduce the aggregate for the year far below the sum of $3,000.00.

Goldsborough v. Lloyd, 86 Md. 374.

ILLUSTRATION CII.

Bell, alias Kimball, was twice indicted in Baltimore City for forging checks, one check being presented at the bank the day after the presentation of the other. He was tried in Baltimore City on the charge of forging the first check, and acquitted. The case of the second check was then removed to Howard County, and upon the trial in Howard County, the record of Bell's acquittal in the first case was offered as conclusive evidence of his innocence. The court refused to allow its admission for that purpose, but admitted it for the purpose only of affecting the weight and credibility of the evidence of identity produced against him on the second trial, and the weight of other evidence that might be produced tending to show him to be guilty of the crime for which he was then on trial.

HELD: That the court had power thus to limit the purpose and effect of the evidence.

Bell v. State, 57 Md. 108.

ILLUSTRATION CIII.

Swann was indicted in the criminal court of Baltimore City for selling liquor on Sunday. The indictment contained three counts, and in each of them a conviction on a former offense of like character was set out in order to make the offense by it charged a second offense, and to be punished accordingly. The court instructed the jury that "under the indictment they could only find a verdict of 'guilty of a second offense.'" This instruction was erroneous as the jury might have found a general verdict of guilty, which would have subjected the prisoner to punishment for a first offense.

HELD: The error of the court being plainly in the prisoner's favor, the conviction should be affirmed.

Swann v. State, 64 Md. 423.

ILLUSTRATION CIV.

Bloomer and another were indicted for conspiracy, there being three counts in the indictment. After the evidence for the state had been offered and received by the court, subject to exception reserved by the traverser as to its legal sufficiency and admissibility, and subject to the right reserved to move the court to exclude it from the jury, the traverser submitted three several motions, asking the court to exclude from the jury all the evidence upon which the state relied to support the three several counts of the indictment, "because, they say, that the said evidence is not sufficient in law to support said counts or either of them."

HELD: That these motions were equivalent to a demurrer to the evidence, and required the court to pronounce upon the legal effect of the evidence, and should be overruled, because it was the duty of the court to leave it to the jury to say whether the evidence was sufficient in law and in fact to prove the offense charged.

Blooomer v. State, 48 Md. 521.

ILLUSTRATION CV.

The Act of 1888 provided that "any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny his title to such legal character or right, and the court may, in its discretion make therein a declaration that he is entitled without any further or other relief being asked or given," the suit being in equity.

McCoy proceeding under this act, brought a bill alleging a title by adverse possession to a strip of ground, the paper title to which was alleged to be in the defendants.

HELD: That McCoy was asserting a mere "legal right in regard to which courts of law exercise exclusive jurisdiction" and the legislature cannot abridge or take away the right to have such questions tried before a jury by conferring jurisdiction of them upon an equity court.

McCoy v. Johnson, 70 Md. 490.

ARTICLE XVI. SECTION 1.

Proposed by the Act of 1914, Ch. 673.

(a) "The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor;

(b) "The provisions of this Article shall be self-executing; provided that additional legislation in furtherance thereof and not in conflict therewith may be enacted."

Proposed Article XVI. Section 2.

"No law enacted by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it contain a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and passed upon a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly; provided, however, that said period of suspension may be extended as provided in Section 3 (b) hereof. If before said first day of June there shall have been filed with the Secretary of the State a petition to refer to a vote of the people any law or part of a law capable of referendum, as in this Article provided, the same shall be referred by the Secretary of State to such vote, and shall not become a law or take effect until thirty days after its approval by a majority of the electors voting thereon at the next ensuing election held throughout the State for members of the House of Representatives of the United States. An emergency law shall remain in force notwithstanding such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified electors voting thereon; provided, however, that no measure creating or abolishing any office, or changing the salary, term or duty of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be enacted as an emergency law. No law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this Section. The increase in any such appropriation for maintaining or aiding any public institution shall only take effect as in the case of other laws, and such increase or any part thereof specified in the petition, may be referred to a vote of the people upon petition."

Proposed Article XVI. Section 3.

(a) "The referendum petition against an Act or part of an Act passed by the General Assembly, shall be sufficient if signed by ten thousand qualified voters of the State of Maryland, of whom not more than half shall be residents of Baltimore City, or of any one County; provided that any Public Local Law for any one County or the City of Baltimore, shall be referred by the Secretary of State only to the people of said County or City of Baltimore, upon a referendum petition of ten per cent of the qualified voters of said County or City of Baltimore as the case may be, calculated upon the whole number of votes cast therein respectively for Governor at the last preceding Gubernatorial election."

(b) "If more than one-half, but less than the full number of signatures required to complete any referendum petition against any law passed by the General Assembly, be filed with Secretary of State before the first day of June, the time for the law to take effect, and for filing the remainder of signatures to complete the petition shall be extended to the thirtieth day of the same month, with like effect."

Proposed Article XVI. Section 4.

"A petition may consist of several papers, but each paper shall contain the full text of the Act or part of Act petitioned upon; and there shall be attached to each such paper an affidavit of the person procuring the signatures thereon that of the said person's own personal knowledge every signature thereon is genuine and bona fide, and that the signers are registered voters of the State of Maryland, and of the City of Baltimore, or County, as the case may be, as set opposite their names, and no other verification shall be required."

Proposed Article XVI. Section 5.

(a) "The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed Constitutional Amendments."

(b) "All laws referred under the provisions of this Article shall be submitted separately on the ballots to the voters of the people, but if containing more than two hundred words, the full text shall not be printed on the official ballots, but the Secretary of State shall prepare and submit a ballot title of each such measure in such form as to present the purpose of said measure concisely and intelligently. The ballot title may be distinct from the legislative

title, but in any case the legislative title shall be sufficient. Upon each of the ballots, following the ballot title or text, as the case may be, of each such measure, there shall be printed the words 'For the referred law' and 'Against the referred law,' as the case may be. The votes cast for and against any such referred law shall be returned to the Governor in the manner prescribed with respect to proposed amendments to the Constitution under Article XIV of this Constitution, and the Governor shall proclaim the result of the election, and, if it shall appear that the majority of the votes cast on any such measure were cast in favor thereof, the Governor shall by his proclamation declare the same having received a majority of the votes to have been adopted by the people of Maryland as a part of the laws of the State, to take effect thirty days after such election, and in like manner and with like effect the Governor shall proclaim the result of the local election as to any Public Local Law which shall have been submitted to the voters of any County or the City of Baltimore."

Proposed Article XVI. Section 6.

"No law or Constitutional Amendment, licensing, regulating, prohibiting, or submitting to local option the manufacture or sale of malt or spirituous' liquors shall be referred or repealed under any Act of the provisions of this Article."

This article will be voted upon at the general election of 1915. As is apparent, its adoption would make a number of changes in our fundamental law. Comment upon them, however, would seen to be premature, until after the election.

VOTE ON THE CONSTITUTION.

"For the purpose of ascertaining the sense of the people of this state in regard to the adoption or rejection of this Constitution, the governor shall issue his proclamation, within five days after the adjournment of this convention, directed to the sheriffs of the City of Baltimore and of the several counties of this state, commanding them to give notice in the manner now prescribed by law in reference to the election of members of the house of delegates, that an election for the adoption or rejection of this Constitution will be held in the city of Baltimore and in the several counties of this state, on Wednesday, the eighteenth day of September, in the year eighteen hundred and sixty-seven, at the usual places of holding elections for members of the house of delegates in said city and counties. At the said election the vote shall be by ballot, and upon each ballot there shall be written or printed the words, "For the Constitution," or "Against the Constitution," as the voter may elect; and the provisions of the laws of this State relating to the holding of general elections for members of the house of delegates, shall in all respects apply to and regulate the holding of the said election. It shall be the duty of the Judges of Election in said city and in the several counties of the State to receive, accurately count and duly return the number of ballots so cast for or against the adoption of this Constitution, as well as any blank ballots which may be cast, to the several Clerks of the Circuit Courts of this State, and to the clerk of the Superior Court of Baltimore City, in the manner now prescribed by Law, in reference to the election of members of the House of Delegates, and duplicates thereof, directly to the Governor; and the several clerks aforesaid shall return to the Governor, within ten days after said election, the number of ballots cast, for or against the Constitution, and the number of blank ballots; and the Governor, upon receiving the returns from the Judges of Election, or the clerks as aforesaid, and ascertaining the aggregate vote throughout the State, shall, by his proclamation, make known the same; and if a majority of the votes cast shall be for the adoption of this Constitution it shall go into effect on Saturday, the fifth day of October, eighteen hundred and sixty-seven."

The work of the Constitutional Convention of 1867 was well done.

Meeting in a time when party feeling ran high and bitterness and passions were excited, they framed an instrument which for seven years was not amended at all, and which has lasted for almost fifty years with no radical changes. Even those of us who would prefer to have a practically new Constitution cannot refrain from offering our tribute of admiration for the work done by the men who laid on such broad and firm lines our State's fundamental law.

APPENDIX

CONSTITUTIONS OF MARYLAND

AND

AMENDMENTS THERETO

CONSTITUTIONS

OF

MARYLAND

CONSTITUTION OF MARYLAND, 1776.

A DECLARATION OF RIGHTS, AND THE CONSTITUTION AND FORM OF GOVERNMENT, AGREED TO BY THE DELEGATES OF MARYLAND, IN FREE AND FULL CONVENTION ASSEMBLED.

A DECLARATION OF RIGHTS, &c.

The parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the Colonies in all cases whatsoever, and, in pursuance of such claim, endeavoured by force of arms, to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves independent States, and to assume government under the authority of the people;—Therefore, We, the Delegates of Maryland, in free and full Convention assembled, taking into our most serious consideration the best means of establishing a good Constitution in this State, for the sure foundation and more permanent security thereof, Declare.

I. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

II. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

III. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes, as existed at the time of their first immigration, and which, by experience, have been found applicable to their local and other circumstances, and of such others as have been since made in England, or Great Britain, and have been introduced, used and practised by the courts of law or equity; and also to acts of Assembly, in force on the first of June seventeen hundred and seventy-four, except such as may have since expired, or have been or may be altered by acts of Convention, or this Declaration of Rights—subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State; and the inhabitants of Maryland are also entitled to all property, derived to them, from or under the Charter, granted by his Majesty Charles I, to Caecilius Calvert, Baron of Baltimore.

IV. That all persons invested with the legislative or executive powers of government are the trustees of the public, and, as such, accountable for their conduct; wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffiectual, the people may, and of right ought, to reform the old or establish a new government. The doctrine of non-resistance, against arbitrary power and oppression, is absured, slavish, and destructive, of the good and happiness of mankind.

V. That the right in the people to participate in the Legislature, is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every man, having property in, a common interest with, and an attachment to the community, ought to have a right of suffrage.

VI. That the legislative, executive and judicial powers of government, ought to be forever separate and distinct from each other.

VII. That no power of suspending laws, or the execution of laws, unless by or derived from the Legislature, ought to be exercised or allowed.

VIII. That freedom of speech and debates, or proceedings in the Legislature, ought not to be impeached in any other court or judicature.

IX. That a place for the meeting of the Legislature ought to be fixed, the most convenient to the members thereof, and to the depository of the public records; and the Legislature ought not to be convened or held at any other place, but from evident necessity.

X. That, for redress of grievances, and for amending, strengthening and preserving the laws, the Legislature ought to be frequently convened.

XI. That every man hath a right to petition the Legislature, for the redress of grievances, in a peaceable and orderly manner.

XII. That no aid, charge, tax, burthen, fee, or fees, ought to be set, rated, or levied, under any pretence, without the consent of the Legislature.

XIII. That the levying taxes by the poll is grievous and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government; but every other person in the State ought to contribute his proportion of public taxes, for the support of government, according to his actual worth, in real or personal property, within the State; yet fines, duties, or taxes, may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.

XIV. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the State; and no law, to inflict cruel and unusual pains and penalties, ought to be made in any case, or at any time hereafter.

XV. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no **ex post facto** law ought to be made.

XVI. That no law, to attaint particular persons of treason or felony, ought to be made in any case, or at any time hereafter.

XVII. That every freeman, for any injury done to him in his person or property, ought to have remedy, by the course of the law of the land, and ought to have justice and right freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

XVIII. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties and estate of the people.

XIX. That, in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment or charge in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses, for and against him, on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

XX. That no man ought to be compelled to give evidence against himself, in a court of common law, or in any other court, but in such cases as have been usually practised in this State, or may hereafter be directed by the Legislature.

XXI. That no freeman ought to 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 by the law of the land.

XXII. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted, by the courts of law.

XXIII. That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants—to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special—are illegal, and ought not to be granted.

XXIV. That there ought to be no forfeiture of any part of the estate of any person, for any crime except murder, or treason against the State, and then only on conviction and attainder.

XXV. That a well-regulated militia is the proper and natural defence of a free government.

XXVI. That standing armies are dangerous to liberty, and ought not to be raised or kept up, without consent of the Legislature.

XXVII. That in all cases, and at all times, the military ought to be under strict subordination to and control of the civil power.

XXVIII. That no soldier ought to be quartered in any house, in time of peace, without the consent of the owner; and in time of war, in such manner only, as the Legislature shall direct.

XXIX. That no person, except regular soldiers, mariners, and marines in the service of this State, or militia when in actual service, ought in any case to be subject to or punishable by martial law.

XXX. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the Chancellor and all Judges ought to hold commissions during good behavior; and the said Chancellor and Judges shall be removed for misbehavior, on conviction in a court of law, and may be removed by the Governor, upon the address of the General Assembly; *Provided*, That two-thirds of all the members of each House concur in such address. That salaries, liberal, but not profuse, ought to be secured to the Chancellor and the Judges, during the continuance of their commissions, in such manner, and at such time, as the Legislature shall hereafter direct, upon consideration of the circumstances of this State. No Chancellor or Judge ought to hold any other office, civil or military, or receive fees or perquisites of any kind.

XXXI. That a long continuance, in the first executive departments of power or trust, is dangerous to liberty; a rotation, there-

fore, in those departments, is one of the best securities of permanent freedom.

XXXII. That no person ought to hold, at the same time, more than one office of profit, nor ought any person, in public trust, to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this State.

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless under colour of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county; but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the Church of England forever. And all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed, unless the Legislature shall, by act, supersede or repeal the same; but no county court shall assess any quantity of tobacco, or sum of money, hereafter, on the application of any vestrymen or church wardens; and every encumbent of the church of England, who hath remained in his parish, and performed his duty, shall be entitled to receive the provision and support established by the act, entitled, "An act for the support of the clergy of the church of England, in this Province," till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish, and performed his duty.

XXXIV. That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination—and every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit—and also every devise of goods or chattels to or to or for the support, use or benefit of any minister, public teacher, or preacher of the gospel, as such, or any

religious sect, order, or denomination, without the leave of the Legislature, shall be void; except always any sale, gift, lease or devise of any quantity of land, not exceeding two acres, for a church, meeting, or other house of worship, and for a burying-ground, which shall be improved, enjoyed or used only for such purpose—or such sale, gift, lease or devise, shall be void.

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.

XXXVI. That the manner of administering an oath to any person, ought to be such, as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being. And that the people called Quakers, those called Dunkers, and those called Menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation, in the manner that Quakers have been heretofore allowed to affirm; and to be of the same avail as an oath, in all such cases as the affirmation of Quakers hath been allowed and accepted within this State, instead of an oath. And further, on such affirmation, warrants to search for stolen goods, or the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and Quakers, Dunkers or Menonists ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses, in all criminal cases not capital.

XXXVII. That the City of Annapolis ought to have all its rights, privileges and benefits, agreeable to its Charter, and the acts of Assembly, confirming and regulating the same, subject nevertheless to such alterations as may be made by this Convention, or any future Legislature.

XXXVIII. That the liberty of the press ought to be inviolably preserved.

XXXIX. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce; and ought not to be suffered.

XL. That no title of nobility, or hereditary honors, ought to be granted in this State.

XLI. That the subsisting resolves of this and the several Conventions held for this Colony, ought to be in force as laws, unless altered by this Convention, or the Legislature of this State.

XLII. That this Declaration of Rights, or the Form of Government, to be established by this Convention, or any part of either of them, ought not to be altered, changed or abolished, by the Legislature of this State, but in such manner as this Convention shall prescribe and direct.

This Declaration of Rights was assented to, and passed, in Convention of the Delegates of the freemen of Maryland, begun and held at Annapolis, the 14th day of August, A. D., 1776.

By order of the Convention,

MAT. TILGHMAN, *President.*

THE CONSTITUTION, OR FORM OF GOVERNMENT, &C.

I. THAT the Legislature consist of two distinct branches, a Senate and House of Delegates, which shall be styled, *The General Assembly of Maryland.*

II. That the House of Delegates shall be chosen in the following manner: All freemen, above twenty-one years of age, having a freehold of fifty acres of land, in the county in which they offer to vote, and residing therein—and all freemen, having property in this State above the value of thirty pounds current money, and having resided in the county, in which they offer to vote, one whole year next preceding the election, shall have a right of suffrage, in the election of Delegates for such county; and all freemen, so qualified, shall, on the first Monday of October, seventeen hundred and seventy-seven, and on the same day in every year thereafter, assemble in the counties, in which they are respectively qualified to vote, at the court-house, in the said counties, or at such other place as the Legislature shall direct; and, when assembled, they shall proceed to elect, *viva voce*, four Delegates, for their respective counties, of the most wise, sensible, and discreet of the people, residents in the county where they are to be chosen, one whole year next preceding the election, above twenty-one years of age, and having, in the State, real or personal property above the value of five hundred pounds current money; and upon the final casting of the polls, the four persons who shall appear to have the greatest number of legal votes shall be declared and returned duly elected for their respective counties.

III. That the Sheriff of each county, or, in case of sickness, his Deputy (summoning two Justices of the county, who are required to attend, for the preservation of the peace) shall be the judge of the election, and may adjourn from day to day, if necessary, till the same be finished, so that the whole election shall be concluded in four days; and shall make his return thereof, under his hand, to the Chancellor of this State for the time being.

IV. That all persons qualified by the charter of the city of Annapolis, to vote for Burgesses, shall, on the same first Monday of October, seventeen hundred and seventy-seven, and on the same day in every year forever thereafter, elect, *viva voce*, by a majority of votes, two Delegates, qualified agreeable to the said charter; that the Mayor, Recorder, and Aldermen of the said city, or any three of them, be judges of the election, appoint the place in the said city for holding the same, and may adjourn from day to day, as

aforesaid, and shall make return thereof, as aforesaid; but the inhabitants of the said city shall not be entitled to vote for Delegates for Anne Arundel county, unless they have a freehold of fifty acres of land in the county distinct from the city.

V. That all persons, inhabitants of Baltimore town, and having the same qualifications as electors in the county, shall, on the same first Monday in October, seventeen hundred and seventy-seven, and on the same day in every year forever thereafter, at such place in the said town as the Judges shall appoint, elect, *viva voce*, by a majority of votes, two Delegates, qualified as aforesaid; but if the said inhabitants of the town shall so decrease, as that the number of persons, having right of suffrage therein, shall have been, for the space of seven years successively, less than one-half of the number of voters in some one county in this State, such town thenceforward shall cease to send two Delegates or Representatives to the House of Delegates, until the said town shall have one-half of the number of voters in some one county in this State.

VI. That the Commissioners of the said town, or any three or more of them, for the time being, shall be judges of the said election, and may adjourn, as aforesaid, and shall make return thereof, as aforesaid; but the inhabitants of the said town shall not be entitled to vote for, or be elected, Delegates for Baltimore county; neither shall the inhabitants of Baltimore county, out of the limits of Baltimore town, be entitled to vote for, or be elected, Delegates for the said town.

VII. That on refusal, death, disqualification, resignation, or removal out of this State of any Delegate, or on his becoming Governor, or member of the Council, a warrant of election shall issue by the Speaker, for the election of another in his place; of which ten days' notice, at least, excluding the day of notice, and the day of election shall be given.

VIII. That not less than a majority of the Delegates, with their Speaker (to be chosen by them, by ballot) constitute a House, for the transacting any business other than that of adjourning.

IX. That the House of Delegates shall judge of the elections and qualifications of Delegates.

X. That the House of Delegates may originate all money bills, propose bills to the Senate, or receive those offered by that body; and assent, dissent, or propose amendments; that they may inquire, on the oath of witnesses, into all complaints, grievances, and offences, as the grand inquest of this State; and may commit any person, for any crime, to the public gaol, there to remain till he be discharged by due course of law. They may expel any member, for a great misdemeanor, but not a second time for the same cause. They may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, or appoint auditors, to state and adjust the same. They may call for all public or official papers

and records, and send for persons, whom they may judge necessary in the course of their inquiries, concerning affairs relating to the public interest; and may direct all office bonds (which shall be made payable to the State) to be sued for any breach of duty.

XI. That the Senate may be at full and perfect liberty to exercise their judgment in passing laws—and that they may not be compelled by the House of Delegates, either to reject a money bill, which the emergency of affairs may require, or to assent to some other act of legislation, in their conscience and judgment injurious to the public welfare—the House of Delegates shall not, on any occasion, or under any pretence, annex to, or blend with a money bill, any matter, clause, or thing, not immediately relating to, and necessary for the imposing, assessing, levying, or applying the taxes or supplies, to be raised for the support of government, or the current expenses of the State; and to prevent altercation about such bills, it is declared, that no bill, imposing duties or customs for the mere regulation of commerce, or inflicting fines for the reformation of morals, or to enforce the execution of the laws, by which an incidental revenue may arise, shall be accounted a money bill; but every bill, assessing, levying, or applying taxes or supplies, for the support of government, or the current expenses of the State, or appropriating money in the treasury, shall be deemed a money bill.

XII. That the House of Delegates may punish, by imprisonment, any person who shall be guilty of a contempt in their view, by any disorderly or riotous behavior, or by threats to, or abuse of their members, or by any obstruction to their proceedings. They may also punish, by imprisonment, any person who shall be guilty of a breach of privilege, by arresting on civil process, or by assaulting any of their members, during their sitting, or on their way to, or return from the House of Delegates, or by any assault of, or obstruction to their officers, in the execution of any order or process, or by assaulting or obstructing any witness, or any other person, attending on, or on their way to or from the House, or by rescuing any person committed by the House; and the Senate may exercise the same power, in similar cases.

XIII. That the Treasurers (one for the western, and another for the eastern shore) and the Commissioners of the Loan Office, may be appointed by the House of Delegates, during their pleasure; and in case of refusal, death, resignations, disqualification, or removal out of the State, of any of the said Commissioners or Treasurers, in the recess of the General Assembly, the governor, with the advice of the Council, may appoint and commission a fit and proper person to such vacant office, to hold the same until the meeting of the next General Assembly.

XIV. That the Senate be chosen in the following manner: All persons, qualified as aforesaid to vote for county Delegates, shall, on the first Monday of September, 1781, and on the same day in every fifth year forever thereafter, elect *viva voce*, by a majority of votes two

persons for their respective counties qualified as aforesaid to be elected county Delegates to be electors of the Senate; and the Sheriff of each county, or in case of sickness, his Deputy (summoning two Justices of the county, who are required to attend, for the preservation of the peace), shall hold and be judge of the said election, and make return thereof, as aforesaid. And all persons, qualified as aforesaid, to vote for Delegates for the city of Annapolis and Baltimore town, shall, on the same first Monday of September, 1781, and on the same day in every fifth year forever thereafter, elect *viva voce*, by a majority of votes, one person for the said city and town respectively, qualified as aforesaid to be elected a Delegate for the said city and town respectively; the said election to be held in the same manner, as the election of Delegates for the said city and town; the right to elect the said elector, with respect to Baltimore town, to continue as long as the right to elect Delegates for the said town.

XV. That the said electors of the Senate meet at the city of Annapolis, or such other place as shall be appointed for convening the Legislature, on the third Monday in September, 1781, and on the same day in every fifth year forever thereafter, and they, or any twenty-four of them so met, shall proceed to elect, by ballot, either out of their own body, or the people at large, fifteen Senators (nine of whom to be residents on the western, and six to be residents on the eastern shore) men of the most wisdom, experience and virtue, above twenty-five years of age, residents of the State above three whole years next preceding the election, and having therein real and personal property above the value of one thousand pounds current money.

XVI. That the Senators shall be balloted for, at one and the same time, and out of the gentlemen residents of the western shore, who shall be proposed as Senators, the nine who shall, on striking the ballots, appear to have the greatest numbers in their favour, shall be accordingly declared and returned duly elected; and out of the gentlemen residents of the eastern shore, who shall be proposed as Senators, the six who shall, on striking the ballots, appear to have the greatest number in their favour, shall be accordingly declared and returned duly elected; and if two or more on the same shore shall have an equal number of ballots in their favour, by which the choice shall not be determined on the first ballot, then the electors shall again ballot, before they separate; in which they shall be confined to the persons who on the first ballot shall have had an equal number; and they who shall have the greatest number in their favour on the second ballot, shall be accordingly declared and returned duly elected; and if the whole number should not thus be made up, because of an equal number, on the second ballot, still being in favour of two or more persons, then the election shall be determined by lot, between those who have equal numbers; which proceedings of the electors shall be certified under their hands, and returned to the Chancellor for the time being.

XVII. That the electors of Senators shall judge of the qualifications and elections of members of their body; and, on a contested

election, shall admit to a seat, as an elector, such qualified person as shall appear to them to have the greatest number of legal votes in his favour.

XVIII. That the electors, immediately on their meeting, and before they proceed to the election of Senators, take such oath of support and fidelity to this State, as this Convention, or the Legislature, shall direct; and also an oath "to elect without favour, affection, partiality, or prejudice, such persons for Senators, as they, in their judgment and conscience, believe best qualified for the office."

XIX. That in case of refusal, death, resignation, disqualification, or removal out of this State, of any Senator, or on his becoming Governor, or a member of the Council, the Senate shall, immediately thereupon, or at their next meeting thereafter, elect by ballot in the same manner as the electors are above directed to choose Senators another person in his place, for the residue of the said term of five years.

XX. That not less than a majority of the Senate, with their President (to be chosen by them, by ballot) shall constitute a House, for the transacting any business, other than that of adjourning.

XXI. That the Senate shall judge of the elections and qualification of Senators.

XXII. That the Senate may originate any other, except money bills, to which their assent or dissent only shall be given; and may receive any other bills from the House of Delegates, and assent, dissent, or propose amendments.

XXIII. That the General Assembly meet annually, on the first Monday of November, and if necessary, oftener.

XXIV. That each House shall appoint its own officers, and settle its own rules of proceeding.

XXV. That a person of wisdom, experience, and virtue, shall be chosen Governor, on the second Monday of November, seventeen hundred and seventy-seven, and on the second Monday in every year forever thereafter, by the joint ballot of both Houses to be taken in each House respectively, deposited in a conference room; the boxes to be examined by a joint committee of both Houses, and the numbers severally reported, that the appointment may be entered; which mode of taking the joint ballot of both Houses shall be adopted in all cases. But if two or more shall have an equal number of ballots in their favour, by which the choice shall not be determined on the first ballot, then a second ballot shall be taken, which shall be confined to the persons who, on the first ballot, shall have had an equal number; and, if the ballots should again be equal between two or more persons, then the election of the Governor shall be determined by lot, between those who have equal numbers; and if the person chosen Governor shall die, resign, move out of the

State, or refuse to act, (sitting the General Assembly) the Senate and House of Delegates shall, immediately thereupon, proceed to a new choice, in manner aforesaid.

XXVI. That the Senators and Delegates, on the second Tuesday of November, 1777, and annually on the second Tuesday of November forever thereafter, elect by joint ballot in the same manner as Senators are directed to be chosen five of the most sensible, discreet, and experienced men, above twenty-five years of age, residents in the State above three years next preceding the election, and having therein a freehold of lands and tenements, above the value of one thousand pounds current money, to be the Council to the Governor, whose proceedings shall be always entered on record, to any part whereof any member may enter his dissent; and their advice, if so required by the Governor, or any member of the Council, shall be given in writing, and signed by the members giving the same respectively; which proceedings of the Council shall be laid before the Senate, or House of Delegates, when called for by them or either of them. The Council may appoint their own Clerk, who shall take such oath of support and fidelity to this State, as this Convention, or the Legislature, shall direct; and of secrecy, in such matters as he shall be directed by the board to keep secret.

XXVII. That the Delegates to Congress, from this State, shall be chosen annually, or superseded in the meantime by the joint ballot of both Houses of Assembly; and that there be a rotation, in such manner, that at least two of the number be annually changed; and no person shall be capable of being a Delegate to Congress for more than three in any term of six years; and no person, who holds any office of profit in the gift of Congress, shall be eligible to sit in Congress; but if appointed to any such office, his seat shall be thereby vacated. That no person, unless above twenty-one years of age, and a resident in this State more than five years next preceding the election, and having real and personal estate in this State above the value of one thousand pounds current money, shall be eligible to sit in Congress.

XXVIII. That the Senators and Delegates, immediately on their annual meeting, and before they proceed to any business, and every person, hereafter elected a Senator or Delegate, before he acts as such, shall take an oath of support and fidelity to this State, as aforesaid; and before the election of a governor, or members of the Council, shall take an oath, "to elect without favour, affection, partiality, or prejudice, such person as Governor, or member of the Council, as they, in their judgment and conscience, believe best qualified for the office."

XXIX. That the Senate and Delegates may adjourn themselves respectively; but if the two Houses should not agree on the same time, but adjourn to different days, then shall the Governor appoint and notify one of those days, or some day between, and the Assembly shall then meet and be held accordingly; and he shall if neces-

sary, by advice of the Council, call them before the time, to which they shall in any manner be adjourned, on giving not less than ten days' notice thereof; but the Governor shall not adjourn the Assembly, otherwise than as aforesaid, nor prorogue or dissolve it, at any time.

XXX. That no person, unless above twenty-five years of age, a resident in this State above five years next preceding the election—and having in the State real and personal property, above the value of five thousand pounds, current money, one thousand pounds whereof, at least, to be freehold estate, shall be eligible as governor.

XXXI. That the Governor shall not continue in that office longer than three years successively, nor be eligible as Governor, until the expiration of four years after he shall have been out of that office.

XXXII. That upon the death, resignation, or removal out of this State, of the Governor, the first named of the Council, for the time being, shall act as Governor, and qualify in the same manner; and shall immediately call a meeting of the General Assembly, giving not less than fourteen days' notice of the meeting, at which meeting a Governor shall be appointed, in manner aforesaid, for the residue of the year.

XXXIII. That the Governor, by and with the advice and consent of the Council, may embody the militia; and when embodied, shall alone have the direction thereof; and shall also have the direction of all the regular land and sea forces, under the laws of this State, but he shall not command in person, unless advised thereto by the Council, and then, only so long as they shall approve thereof; and may alone exercise all other the executive powers of government, where the concurrence of the Council is not required, according to the laws of this State; and grant reprieves or pardons for any crime, except in such cases where the law shall otherwise direct; and may, during the recess of the General Assembly, lay embargoes, to prevent the departure of any shipping, or the exportation of any commodities, for any time not exceeding thirty days in any one year—summoning the General Assembly to meet within the time of the continuance of such embargo; and may also order and compel any vessel to ride quarantine, if such vessel, or the port from which she shall have come, shall, on strong grounds, be suspected to be infected with the plague; but the Governor shall not, under any pretense, exercise any power or prerogative by virtue of any law, statute, or custom of England or Great Britain.

XXXIV. That members of the Council, or any three or more of them, when convened, shall constitute a board for the transacting of business; that the Governor, for the time being, shall preside in the Council, and be entitled to vote, on all questions in which they shall be divided in opinion; and, in the absence of the Governor, the first named of the Council shall preside; and, as such, shall also vote, in all cases, where the other members disagree in their opinion.

XXXV. That, in case of refusal, death, resignation, disqualification, or removal out of the State, of any person chosen a member of the Council, the members thereof, immediately thereupon, or at their next meeting thereafter, shall elect by ballot another person qualified as aforesaid in his place, for the residue of the year.

XXXVI. That the Council shall have power to make the Great Seal of this State, which shall be kept by the Chancellor for the time being, and affixed to all laws, commissions, grants, and other public testimonials, as has been heretofore practised in this State.

XXXVII. That no Senator, Delegate of the Assembly, or member of the Council, if he shall qualify as such, shall hold or execute any office of profit, or receive the profits of any office exercised by any other person, during the time for which he shall be elected; nor shall any Governor be capable of holding any other office of profit in this State, while he acts as such. And no person, holding a place of profit or receiving any part of the profits thereof, or receiving the profits or any part of the profits arising on any agency, for the supply of clothing or provisions for the Army or Navy, or holding any office under the United States, or any of them—or a minister, or preacher of the gospel, of any denomination—or any person, employed in the regular land service, or marine, of this or the United States—shall have a seat in the General Assembly or the Council of this State.

XXXVIII. That every Governor, Senator, Delegate to Congress or Assembly, and member of the Council, before he acts as such, shall take an oath "that he will not receive, directly or indirectly, at any time, any part of the profits of any office, held by any other person, during his acting in his office of Governor, Senator, Delegate to Congress or Assembly, or member of the Council, or the profits or any part of the profits arising on any agency for the supply of clothing or provisions for the Army or Navy."

XXXIX. That if any Senator, Delegate to Congress or Assembly, or member of the Council, shall hold or execute any office of profit, or receive, directly or indirectly, at any time, the profits or any part of the profits of any office exercised by any other person, during his acting as Senator, Delegate to Congress or Assembly, or member of the Council—his seat on conviction, in a Court of Law, by the oath of two credible witnesses shall be void; and he shall suffer the punishment of wilful and corrupt perjury, or be banished this State forever, or disqualified forever from holding any office or place of trust or profit, as the Court may adjudge.

XL. That the Chancellor, all Judges, the Attorney-General, Clerks of the General Court, the Clerks of the County Courts, the Registers of the Land Office, and the Registers of Wills, shall hold their commissions during good behavior, removable only for misbehavior, on conviction in a Court of Law.

XLI. That there be a Register of Wills appointed for each county, who shall be commissioned by the Governor, on the joint recommenda-

tion of the Senate and House of Delegates; and that, upon the death, resignation, disqualification, or removal out of the county of any Register of Wills, in the recess of the General Assembly, the Governor, with the advice of the Council, may appoint and commission a fit and proper person to such vacant office, to hold the same until the meeting of the General Assembly.

XLII. That Sheriffs shall be elected in each county, by ballot, every third year; that is to say, two persons for the office of Sheriff for each county, the one of whom having the majority of votes, or if both have an equal number, either of them, at the discretion of the Governor, to be commissioned by the Governor for the said office; and having served for three years, such person shall be ineligible for the four years next succeeding; bond with security to be taken every year, as usual; and no Sheriff shall be qualified to act before the same is given. In case of death, refusal, resignation, disqualification, or removal out of the county before the expiration of the three years, the other person, chosen as aforesaid, shall be commissioned by the Governor to execute the said office, for the residue of the said three years, the said person giving bond and security as aforesaid; and in case of his death, refusal, resignation, disqualification, or removal out of the county before the expiration of the said three years, the Governor, with the advice of the Council, may nominate and commission a fit and proper person to execute the said office for the residue of the said three years, the said person giving bond and security as aforesaid. The election shall be held at the same time and place appointed for the election of Delegates; and the Justices, there summoned to attend for the preservation of the peace, shall be judges thereof, and of the qualification of candidates, who shall appoint a Clerk to take the ballots. All freemen above the age of twenty-one years, having a freehold of fifty acres of land in the county in which they offer to ballot, and residing therein—and all freemen above the age of twenty-one years, and having property in the State above the value of thirty pounds current money, and having resided in the county in which they offer to ballot one whole year next preceding the election—shall have a right of suffrage. No person to be eligible to the office of Sheriff for a county, but an inhabitant of the said county above the age of twenty-one years, and having real and personal property in the State above the value of one thousand pounds current money. The Justices aforesaid shall examine the ballots; and the two candidates properly qualified, having in each county the majority of legal ballots, shall be declared duly elected for the office of Sheriff for such county, and returned to the Governor and Council, with a certificate of the number of ballots for each of them.

XLIII. That every person who shall offer to vote for Delegates, or for the election of the Senate, or for the Sheriff, shall (if required by any three persons qualified to vote) before he be admitted to poll, take such oath or affirmation of support and fidelity to this State, as this Convention or the Legislature shall direct.

XLIV. That a Justice of the Peace may be eligible as a Senator, Delegate, or member of the Council, and may continue to act as a Justice of the Peace.

XLV. That no field officer of the militia be eligible as a Senator, Delegate, or member of the Council.

XLVI. That all civil officers, hereafter to be appointed for the several counties of this State, shall have been residents of the county, respectively, for which they shall be appointed, six months next before their appointment; and shall continue residents of their county, respectively, during their continuance in office.

XLVII. That theJudges of the General Court, and Justices of the County Courts may appoint the Clerks of their respective Courts; and in case of refusal, death, resignation, disqualification, or removal out of the State, or from their respective shores, of the Clerks of the General Court, or either of them, in the vacation of the said Court—and in case of the refusal, death, resignation, disqualification, or removal out of the county, of any of the said County Clerks, in the vacation of the County Court of which he is Clerk—the Governor, with the advice of the Council, may appoint and commission a fit and proper person to such vacant office respectively, to hold the same until the meeting of the next General Court, or County Court, as the case may be.

XLVIII. That the Governor, for the time being, with the advice and consent of the Council, may appoint the Chancellor, and all Judges and Justices, the Attorney-General, Naval Officers, officers in the regular land and sea service, officers of the militia, Registers of the Land Office, Surveyors, and all other civil officers of government (Assessors, Constables, and Overseers of the roads only excepted) and may also suspend or remove any civil officer who has not a commission, during good behaviour; and may suspend any militia officer, for one month; and may also suspend or remove any regular officer in the land or sea service; and the Governor may remove or suspend any militia officer, in pursuance of the judgment of a Court Martial.

XLIX. That all civil officers of the appointment of the Governor and Council, who do not hold commissions during good behaviour, shall be appointed annually in the third week of November. But if any of them shall be reappointed, they may continue to act, without any new commission or qualification; and every officer, though not reappointed, shall continue to act, until the person who shall be appointed and commissioned in his stead shall be qualified.

L. That the Governor, every member of the Council, and every Judge and Justice, before they act as such, shall respectively take an oath, That he will not, through favour, affection or partiality, vote for any person to office; and that he will vote for such person as, in his judgment and conscience, he believes most fit and best qualified for the office; and that he has not made, nor will make, any promise or engagement to give his vote or interest in favor of any person.

LI. That there be two Registers of the Land Office, one upon the western, and one upon the eastern shore; that short extracts of the grants and certificates of the land, on the western and eastern shores respectively, be made in separate books, at the public expense, and deposited in the offices of the said Registers, in such manner as shall hereafter be provided by the General Assembly.

LII. That every Chancellor, Judge, Register of Wills, Commissioner of the Loan Office, Attorney-General, Sheriff, Treasurer, Naval Officer, Register of the Land Office, Register of the Chancery Court, and every Clerk of the common law courts, Surveyor and Auditor of public accounts, before he acts as such, shall take an oath "That he will not directly or indirectly receive any fee or reward, for doing his office of , but what is or shall be allowed by law; nor will directly or indirectly, receive the profits or any part of the profits of any office held by any other person; and that he does not hold the same office in trust, or for the benefit of any other person."

LIII. That if any Governor, Chancellor, Judge, Register of Wills, Attorney-General, Register of the Land Office, Commissioner of the Loan Office, Register of the Chancery Court, or any Clerk of the common law courts, Treasurer, Naval Officer, Sheriff, Surveyor or Auditor of public accounts, shall receive, directly or indirectly, at any time, the profits, or any part of the profits of any office, held by any other person, during his acting in the office to which he is appointed; his election, appointment and commission, on conviction in a court of law, by the oath of two credible witnesses, shall be void; and he shall suffer the punishment for wilful and corrupt perjury, or be banished this State forever, or disqualified forever from holding any office or place of trust or profit, as the court may adjudge.

LIV. That if any person shall give any bribe, present, or reward, or any promise, or any security for the payment or delivery of any money, or any other thing, to obtain or procure a vote to be Governor, Senator, Delegate to Congress or Assembly, member of the Council, or Judge, or to be appointed to any of the said offices, or to any office of profit or trust, now created or hereafter to be created in this State—the person giving, and the person receiving the same, on conviction in a court of law, shall be forever disqualified to hold any office of trust or profit in this State.

LV. That every person, appointed to any office of profit or trust, shall, before he enters on the execution thereof, take the following oath, to-wit: "I, A. B., do swear that I do not hold myself bound in allegiance to the King of Great Britain, and that I will be faithful and bear true allegiance to the State of Maryland:" and shall also subscribe a declaration of his belief in the Christian religion.

LVI. That there be a Court of Appeals, composed of persons of integrity and sound judgment in the law, whose judgment shall be final and conclusive, in all cases of appeal, from the General Court,

Court of Chancery, and Court of Admiralty: That one person of integrity and sound judgment in the law, be appointed Chancellor: That three persons of integrity and sound judgment in the law, be appointed judges of the Court now called the Provincial Court; and that the same Court be hereafter called and known by the name of *The General Court;* which Court shall sit on the western and eastern shores, for transacting and determining the business of the respective shores, at such times and places as the future Legislature of this State shall direct and appoint.

LVII. That the style of all laws run thus: "*Be it enacted by the General Assembly of Maryland:*" that all public commissions and grants run thus: "*The State of Maryland,*" &c., and shall be signed by the Governor, and attested by the Chancellor, with the seal of the State annexed—except military and militia commissions, which shall not be attested by the Chancellor, or have the seal of the State annexed; that all writs shall run in the same style, and be attested, sealed and signed as usual; That all indictments shall conclude: "*Against the peace, government and dignity of the State.*"

LVIII. That all penalties and forfeitures, heretofore going to the King or proprietary, shall go to the State—save only such, as the General Assembly may abolish or otherwise provide for.

LIX. That this Form of Government, and the Declaration of Rights, and no part thereof, shall be altered, changed, or abolished, unless a bill so to alter, change or abolish the same shall pass the General Assembly, and be published at least three months before a new election, and shall be confirmed by the General Assembly, after a new election of Delegates, in the first session after such new election; provided that nothing in this form of government, which relates to the eastern shore particularly, shall at any time hereafter be altered, unless for the alteration and confirmation thereof at least two- thirds of all the members of each branch of the General Assembly shall concur.

LX. That every bill passed by the General Assembly, when engrossed, shall be presented by the Speaker of the House of Delegates, in the Senate, to the Governor for the time being, who shall sign the same, and thereto affix the Great Seal, in the presence of the members of both Houses; every law shall be recorded in the General Court office of the western shore, and in due time printed, published, and certified under the Great Seal, to the several County Courts, in the same manner as hath been heretofore used in this State.

LXI. That to introduce the new government, an election be held for the electors of the senate on Monday the twenty-fifth of November in this present year, and that the electors of the senate meet at Annapolis on Monday the ninth of December in this present year, and there choose senators, and that an election be held on Wednesday the eighteenth of December for delegates to serve in general assembly, and for sheriffs; and that the said elections be made by such persons

in the same manner and under the same qualifications as such elections are herein before directed to be made at the periodical times before mentioned; the returns of all which first elections shall be made to the council of safety for the time being, and the general assembly shall meet at Annapolis on Monday the tenth of February next, and shall in their then session, or in such future session as they shall think proper, choose a governor and council for the residue of the year in the manner before directed; and for filling in the first instance only all the offices in the disposition of the governor, with the advice of the council; the house of delegates may also propose to the senate a list of all officers in the appointment of the governor, with the advice of the council, and on the senate concurring therein, or in the recommendation of any of the persons therein mentioned, such persons so recommended shall be commissioned by the governor; but if the senate shall not concur in the recommendation of any of the persons proposed as aforesaid, then shall a joint ballot of both houses be taken in manner aforesaid for persons to be recommended for such offices, and the persons in whose favor such ballot shall pass shall be commissioned as aforesaid.

That the said elections for all the counties in this state, except Washington, Montgomery, Cecil, and Queen Anne's, be held at the places of holding the county courts of those counties respectively.

That the elections for Washington county be held at Hagerstown.

That the elections for Montgomery county be held at the house now occupied by Charles Hungerford.

That the elections for Cecil county be held at the Head of Elk.

And, That the elections for Queen Anne's county be held at Chester Mill, where George Hanson now dwells.

That Abraham Barnes, Hugh Hopewell, and Henry Tubman, esquires, or any two or one of them, be judge of and hold the elections for St. Mary's county.

That George Dent, Samuel Hanson, and Warren Dent, esquires, or any two or one of them, be judge of and hold the elections for Charles county.

That William Allnut, Samuel Chew, and Daniel Rawlings, esquires, or any two or one of them, be judge of and hold the elections for Calvert county.

That William Beanes, Enoch Magruder, and Jeremiah Magruder, esquires, or any two or one of them, be judge of and hold the elections for Prince George's county.

That Joseph Galloway, Thomas Dorsey, and Thomas Watkins, esquires, or any two or one of them, be judge of and hold the elections for Anne Arundel county.

That John Murdock, Zadock Magruder, and Joseph Wilson, esquires, or any two or one of them, be judge of and hold the elections for Montgomery county.

That William Luckett, John Adhun, and Joseph Wells, esquires, or any two or one of them, be judge of and hold the elections for Frederick county.

That Joseph Smith, Noah Hart, and Ely Williams, esquires, or any two or one of them, be judge of and hold the elections for Washington county.

That Thomas Gist, sen., Edward Cockey, and Henry Stevenson, jun., esquires, or any two or one of them, be judge of and hold the elections for Baltimore County.

That Amos Garrett, William Webb and Thomas Johnson, esquires, or any two or one of them, be judge of and hold the elections for Harford county.

That James Evans, Thomas May, and John Stockton, esquires, or any two or one of them, be judge of and hold the elections for Cecil county.

That John Page, William Rogers, and William Bordley, esquires, or any two or one of them, be judge of and hold the elections for Kent county.

That Thomas Ringgold, Nathaniel Wright, and Samuel Thompson, esquires, or any two or one of them, be judge of and hold the elections for Queen Anne's county.

That John Goldsborough, William Perry, and John Bracco, esquires, or any two or one of them, be judge of and hold the elections for Talbot county.

That Henry Hooper, Z. S. Bartholomew Ennalls, and James Muir, esquires, or any two or one of them, be judge of and hold the elections for Dorchester county.

That Henry Casson, Foster Goldsborough, and John White, esquires, or any two or one of them, be judge of and hold the elections for Caroline county.

That Thomas Hayward, Andrew Francis Cheney, and Thomas Bruff, esquires, or any two or one of them, be judge of and hold the elections for Somerset county.

That Joshua Mitchel, Benton Harris, and Robert Done, esquires, or any two or one of them, be judge of and hold the elections for Worcester county.

That the mayor, recorder and aldermen, of the city of Annapolis, or any three or more of them, be judges of and hold the elections for the city of Annapolis.

That John Merriman, jr., James Calhoun, and Benjamin Griffin, esquires, or any two or one of them, be judge of and hold the elections for Baltimore town.

That a clerk or clerks be appointed by the said judges for taking the polls at the said elections.

That every judge of the election, before he proceeds to take or receive any vote, shall take the following oath, or affirmation to-wit: "I, A. B., do swear, or affirm, that I will permit all persons to vote,

who shall offer to poll at the elections now to be held for county, City or town, who in my judgment shall, according to the directions contained in the form of government be entitled to poll at the same election, and that I will not admit any person to poll at the same election, who before his voting shall be objected against by any three of the electors, if such person is not in my judgment qualified to vote as aforesaid, and will in all things execute the office of judge of the said elections according to the best of my knowledge, without favour or partiality. So help me God."

That every clerk, before he enters any vote on the polls, shall take the following oath, to wit: "I, A. B., do declare that I will well and faithfully, without favour, affection, or partiality, execute the office of clerk of the elections for county, the city of Annapolis, or Baltimore town, according to the best of my knowledge. So help me God."

This Form of Government was assented to, and passed in Convention of the Delegates of the freemen of Maryland, begun and held at the city of Annapolis, the fourteenth of August, A. D. one thousand seven hundred and seventy-six.

By order of the Convention.

M. TILGHMAN, *President.*

AMENDMENTS TO THE CONSTITUTION OF 1776.

Proposed by Act of 1791, *chapter* 80. *Ratified* 1792.

Be it enacted by the General Assembly of Maryland, That no member of Congress, or person holding an office of trust or profit under the United States, shall be capable of having a seat in the general assembly, or being an elector of the senate, or holding any office of trust or profit under this State; and if any member of the general assembly, elector of the senate, or person holding an office of trust or profit under this State, shall take his seat in Congress, or accept of an office of trust or profit under the United States, or being elected to Congress, or appointed to an office of trust or profit under the United States, not make his resignation of his seat in Congress, or of his office, as the case may be, within thirty days after notice of his election or appointment to office as aforesaid, his seat in the legislature of this State, or as elector of the senate, or of his office held under this State as aforesaid, shall be void: *Provided,* That no person who is now, or may be at the time when this act becomes part of the Constitution, a member both of Congress and of the legislature of this State, or who now holds, or may hold at the time when this act becomes part of the Constitution, an office as aforesaid, both under this State and the United States, shall be affected by this act, if within fifteen days after the same shall become part of the Constitution he shall resign his seat in Congress or his office held under the United States.

Proposed by Act of 1794, *chapter* 49. *Ratified* 1795.

That every person being a member of either of the religious sects or societies called Quakers, Menonists, Tunkers or Nicolites, or New Quakers, and who shall be conscientously scrupulous of taking an oath on any occasion, being otherwise qualified and duly elected a senator, delegate, or elector of the senate, or being otherwise qualified and duly appointed or elected to any office of profit or trust, on making affirmation instead of taking the several oaths appointed by the Constitution and form of government, and the several acts of assembly of this State now in force, or that hereafter may be made, such person may hold and exercise any office of profit or trust to which he may be appointed or elected, and may, by such affirmation, qualify himself to take a seat in the legislature, and to act therein as a member of the same in all cases whatever, or to be an elector of the senate, in as full and ample a manner, to all intents and purposes whatever, as persons are now competent and qualified to act who are not conscientiously scrupulous of taking such oaths.

Proposed by Act of 1797, *chapter* 57. *Ratified* 1798.

That the mayor and second branch of the city council of the city of Baltimore, or any three or more of them, for the time being, shall be judges of the elections for delegates of the city of Baltimore, and for elector of the senate, and shall have and exercise all the rights and authorities respecting such elections, which were vested in the commissioners of Baltimore-town in virtue of the constitution and form of government.

Proposed by Act of 1797, *chapter* 118. *Ratified* 1798.

Sec. 1. That the people called Quakers, those called Nicolites or new Quakers, those called Tunkers, and those called Menonists, holding it unlawful to take an oath on any occasion, shall be allowed to take their solemn affirmation as witnesses, in the manner that Quakers have been heretofore allowed to affirm, which affirmation shall be of the same avail as an oath, to all intents and purposes whatever.

Sec. 2. Before any of the persons aforesaid shall be admitted as a witness in any court of justice in this State, the court shall be satisfied, by such testimony as they may require, that such person is one of those who profess to be conscientiously scrupulous of taking an oath.

Proposed by Act of 1798, *chapter* 115. *Ratified* 1799.

Sec. 1. That the several counties of this State, for the purpose of holding all future elections for delegates, electors of the senate, and sheriffs of the several counties, shall be divided into separate

districts in the manner hereinafter directed, viz: Saint Mary's County shall be divided and laid off into three separate districts; Kent County shall be divided and laid off into three separate districts; Calvert County shall be divided and laid off into three separate districts; Charles County shall be divided and laid off into four separate districts; Talbot County shall be divided and laid off into four separate districts; Somerset County shall be divided and laid off into three separate districts; Dorchester County shall be divided and laid off into three separate districts; Cecil County shall be divided and laid off into four separate districts; Prince George's County shall be divided and laid off into five separate districts; Queen Anne's County shall be divided and laid off into three separate districts; Worcester County shall be divided and laid off into five separate districts; Frederick County shall be divided and laid off into seven separate districts; Harford County shall be divided and laid off into five separate districts; Caroline County shall be divided and laid off into three separate districts; Washington County shall be divided and laid off into five separate districts; Montgomery County shall be divided and laid off into five separate districts; Allegany County shall be divided and laid off into six separate districts; Anne Arundel County, including the city of Annapolis, shall be divided and laid off into five separate districts; Baltimore County, out of the limits of the city of Baltimore, shall be divided and laid off into seven districts; and that the city of Baltimore shall be laid off into eight districts.

Sec. 2. All and every part of the Constitution and form of government, relating to the judges, time, place, and manner of holding elections in the city of Baltimore, and all and every part of the second, third, fifth, fourteenth, and forty-second sections of the constitution and form of government of this State, which relate to the judges, place, time, and manner of holding the several elections for delegates, electors of the senate, and sheriffs of the several counties, be and the same are hereby, abrogated, repealed, and annulled, and the same shall hereafter be regulated by law.

Proposed by Act of 1801, *chapter* 90. *Ratified* 1802.

That every free, white, male citizen of this State, and no other, above twenty-one years of age, having resided twelve months in the county next preceding the election at which he offers to vote, and every free, white, male citizen of this State above twenty-one years of age, and having obtained a residence of twelve months next preceding the election in the city of Baltimore or the city of Annapolis, and at which he offers to vote, shall have a right of suffrage, and shall vote by ballot in the election of such county or city, or either of them, for delegates to the General Assembly, electors of the senate and sheriffs.

Proposed by Act of 1802, *chapter* 82. *Ratified* 1803.

Providing for election districts in Frederick county.

Proposed by Act of 1804, *chapter* 55. *Ratified* 1805.

Sec. 1. That this State shall be divided into six judicial districts, in manner and form following, to-wit: Saint Mary's, Charles and Prince George's Counties shall be the first district; Cecil, Kent, Queen Anne's and Talbot Counties shall be the second district; Calvert, Anne Arundel and Montgomery Counties shall be the third district; Caroline, Dorchester, Somerset, and Worcester Counties shall be the fourth district; Frederick, Washington, and Allegany Counties shall be the fifth district; Baltimore and Harford Counties shall be the sixth district; and there shall be appointed for each of the said judicial districts three persons of integrity and sound legal knowledge, residents of the State of Maryland, who shall, previous to, and during their acting as judges, reside in the district for which they shall respectively be appointed, one of whom shall be styled in the commission chief judge, and the other two associate judges of the district for which they shall be appointed; and the chief judge, together with the two associate judges, shall compose the county courts in each respective district; and each judge shall hold his commission during good behavior; removable for misbehavior, on conviction in a court of law, or shall be removed by the governor, upon the address of the general assembly, provided that two-thirds of all the members of each house concur in such address; and the county courts, so as aforesaid established, shall have, hold, and exercise, in the several counties of this State, all and every the powers, authorities and jurisdictions which the county courts of this State now have, use, and exercise, and which shall be hereafter prescribed by law; and the said county courts established by this act shall respectively hold their sessions in the several counties at such times and places as the legislature shall direct and appoint; and the salaries of the said judges shall not be diminished during the period of their continuance in office.

Sec. 2. In any suit or action at law hereafter to be commenced or instituted in any county court of this State, the judges thereof, upon suggestion in writing, by either of the parties thereto, supported by affidavit or other proper evidence, that a fair and impartial trial cannot be had in the county court of the county where such suit or action is depending, shall and may order and direct the record of their proceedings in such suit or action to be transmitted to the judges of any county court within the district, for trial, and the judges of such county court, to whom the said record shall be transmitted, shall hear and determine the same in like manner as if such suit or action had been originally instituted therein; *Provided, nevertheless,* That such suggestion shall be made as aforesaid before or during the term in which the issue or issues may be joined in said suit

or action; *And provided also,* That such further remedy may be provided by law in the premises as the legislature shall from time to time direct and enact.

Sec. 3. If any party presented or indicted in any of the county courts of this State, shall suggest, in writing, to the court in which such prosecution is depending, that a fair and impartial trial cannot be had in such court, it shall and may be lawful for the said court to order and direct the record of their proceedings in the said prosecution to be transmitted to the judges of any adjoining county court for trial; and the judges of such adjoining county court shall hear and determine the same, in the same manner as if such prosecution had been originally instituted therein: *Provided,* That such further and other remedy may be provided by law in the premises as the legislature may direct and enact.

Sec. 4. If the attorney-general, or the prosecutor for the State, shall suggest, in writing, to any county court before whom an indictment is or may be depending, that the State cannot have a fair and impartial trial in such court, it shall and may be lawful for the said court, in their discretion, to order and direct the record of their proceedings in the said prosecution to be transmitted to the judges of any adjoining county court for trial; and the judges of such county court shall hear and determine the same as if such prosecution had been originally instituted therein.

Sec. 5. There shall be a court of appeals, and the same shall be composed of the chief judges of the several judicial districts of the State; which said court of appeals shall hold, use, and exercise all and singular the powers, authorities, and jurisdictions, heretofore held, used and exercised by the court of appeals of this State, and also the appellate jurisdiction heretofore used and exercised by the general court; and the said court of appeals hereby established shall sit on the western and eastern shores for transacting and determining the business of the respective shores at such times and places as the future legislature of this State shall direct and appoint; and any three of the said judges of the court of appeals shall form a quorum to hear and decide in all cases pending in said court; and the judge who has given a decision in any case in the county court shall withdraw from the bench upon the deciding of the same case before the court of appeals; and the judges of the court of appeals may appoint the clerks of said court for the western and eastern shores respectively, who shall hold their appointments during good behavior, removable only for misbehavior, on conviction in a court of law; and, in case of death, resignation, disqualification, or removal out of the State, or from their respective shores of either of the said clerks in the vacation of the said court, the governor, with the advice of the council, may appoint and commission a fit and proper person to such vacant office, to hold the same until the next meeting of the said court; and all laws passed after this act shall take effect shall be recorded in the office of the court of appeals of the western shore.

Proposed by Act of 1806, *chapter* 29. *Ratified* 1807.

Providing for election districts in St. Mary's County.

Proposed by Act of 1809 (*June Session*), *chapter* 16. *Ratified* 1809.

Sec. 1. That hereafter upon the death, resignation, or removal out of this State of the governor, it shall not be necessary to call a meeting of the legislature to fill the vacancy occasioned thereby, but the first named of the council for the time being shall qualify and act as governor, until the next meeting of the general assembly, at which meeting a governor shall be chosen in the manner heretofore appointed and directed.

Sec. 2. No governor shall be capable of holding any other office of profit during the time for which he shall be elected.

Proposed by Act of 1809, *chapter* 189. *Ratified* 1810.

That all such parts of the constitution and form of government as require a property qualification in persons to be appointed or holding offices of profit or trust in this State, and in persons elected members of the legislature or electors of the senate, shall be and the same are hereby repealed and abolished.

Proposed by Act of 1809, *chapter* 167. *Ratified* 1810.

That it shall not be lawful for the general assembly of this State to lay an equal and general tax, or any other tax, on the people of this State, for the support of any religion.

Proposed by Act of 1809, *chapter* 83. *Ratified* 1810.

That every free white male citizen of this State, above twenty-one years of age, and no other, having resided twelve months within this State and six months in the county, or in the city of Annapolis or Baltimore, next preceding the election at which he offers to vote, shall have a right of suffrage, and shall vote by ballot, in the election of such county or city, or either of them, for electors of the President and Vice-President of the United States, for Representatives of this State in the Congress of the United States, for delegates to the general assembly of this State, electors of the senate, and sheriffs.

Proposed by Act of 1809, *chapter* 38. *Ratified* 1810.

That no person residing in the city of Annapolis shall have a vote in the county of Anne Arundel for delegates for the said county; and all and every part of the constitution which enables persons holding fifty acres of land to vote in said county, be and is hereby abolished.

Proposed by Act of 1809, *chapter* 65. *Ratified* 1810.

That the forty-fifth article of the constitution and form of government be and the same is hereby repealed and utterly abolished.

Proposed by Act of 1811, *chapter* 211. *Ratified* 1812.

Sec. 1. That the time of the meeting of the general assembly shall be on the first Monday in December in each year, instead of the first Monday in November, as is now prescribed by the constitution and form of government.

Sec. 2. The governor of this State shall be chosen on the second Monday of December, in each and every year, in the same manner as is now prescribed by the constitution and form of government; and the council to the governor shall be elected on the first Tuesday after the second Monday of December, in each and every year, in the same manner as is now prescribed by the constitution and form of government.

Sec. 3. All annual appointments of civil officers in this State shall be made in the third week of December, in every year, in the same manner as the constitution and form of government now directs.

Proposed by Act of 1816, *chapter* 26. *Ratified* 1817.

Providing for election districts in Prince George's County.

Proposed by Act of 1816, *chapter* 32. *Ratified* 1817.

Providing for election districts in Allegany County.

Proposed by Act of 1816, *chapter* 35. *Ratified* 1817.

Providing for election districts in Dorchester County.

Proposed by Act of 1816, *chapter* 247. *Ratified* 1817.

Sec. 1. That all and every part of the constitution and form of government of this state, which relates to the attorney-general, be and the same is hereby abrogated, annulled, and made void.

Sec. 2. That the duties and services, now provided by law to be done and performed by the attorney-general, shall be done and performed by such persons, and in such manner, as the general assembly of Maryland shall hereafter direct.

Proposed by Act of 1816, *chapter* 252. *Ratified* 1817.

Providing for elections in the city of Annapolis.

Proposed by Act of 1817, *chapter* 51. *Ratified* 1818.

That the numbers and limits of election districts in the city of Baltimore shall always be the same as the wards therein.

Proposed by Act of 1817, *chapter* 61. *Ratified* 1818.

Sec. 1. That all persons professing the Christian religion, who hold it unlawful to take an oath on any occasion, shall be allowed to make their solemn affirmation, in the same manner that Quakers have heretofore been allowed to affirm, which affirmation shall be of same avail as an oath to all intents and purposes whatever.

Sec. 2. That before any such person shall be admitted as a witness or juror in any court of justice in this State, the Court shall be satisfied, by competent testimony, that such person is conscientiously scrupulous of taking an oath.

Proposed by Act of 1817, *chapter* 189. *Ratified* 1818.

That in all appointments to be hereafter made by the executive, it shall be the duty of the governor, and he is hereby required, to nominate, and by and with the advice and consent of the council, appoint, all such officers as are directed to be appointed by the executive, either by the constitution or laws of this state.

Proposed by Act of 1820, *chapter* 69. *Ratified* 1821.

Providing for election districts in Queen Anne's County.

Proposed by Act of 1820, *chapter* 85. *Ratified* 1821.

Providing for election districts in Washington County.

Proposed by Act of 1821, *chapter* 35. *Ratified* 1822.

Providing for election districts in Frederick County.

Proposed by Act of 1821, *chapter* 123. *Ratified* 1822.

Providing for elections in Anne Arundel County.

Proposed by Act of 1821, *chapter* 188. *Ratified* 1822.

Providing for election districts in Dorchester County.

Proposed by Act of 1821, *chapter* 38. *Ratified* 1822.

Providing for election districts in Baltimore County.

Proposed by Act of 1822, *chapter* 112. *Ratified* 1823.

Providing for election districts in St. Mary's County.

Proposed by Act of 1822, *chapter* 116. *Ratified* 1823.

Providing for election districts in Anne Arundel County.

Proposed by Act of 1822, *chapter* 204. *Ratified* 1823.

That every member of the senate and house of delegates, before he shall act as such, shall take and subscribe the following oath or affirmation, to wit: I, A. B., do swear (or affirm as the case may be), that I will be faithful and bear true allegiance, to the State of Maryland, and that I will support the constitution and laws thereof; that I will not directly or indirectly receive the profits, or any part of the profits of any other office during the time of my acting as senator (or member of the house of delegates), and that I will faithfully discharge my duties as senator (or member of the house of delegates), without prejudice or partiality to the best of my skill and judgment. And that electors of the senate and all executive and judicial officers, before they act as such, and all persons elected or appointed to any office of profit or trust, civil or military, before entering upon the duties thereof, shall respectively take and subscribe the following oath or affirmation, to wit: I, A. B., do swear (or affirm, as the case may be), that I will be faithful and bear true allegiance to the state of Maryland, and that I will support the constitution and laws thereof, and that I will to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of according to the constitution and laws of this state.

Proposed by Act of 1823, *chapter* 111. *Ratified* 1824.

Sec. 1. That the time of the meeting of the general assembly of this State shall be on the last Monday of December in each year instead of the first Monday of said month as is now prescribed by the constitution and form of government.

Sec. 2. That the governor of this State shall be chosen on the first Monday of January in each and every year in the same manner as is now prescribed by the constitution and form of government, and the council to the Governor shall be elected on the first Tuesday after the first Monday of January in each and every year in the same manner as is now prescribed by the constitution and form of government.

Sec. 3. That all annual appointments of civil officers in this State, shall be made in the third week of January in every year in the same manner as the constitution and form of government now directs.

Proposed by Act of 1824, *chapter* 67. *Ratified* 1825.

Providing for election districts in Allegany County.

Proposed by Act of 1824, *chapter* 205. *Ratified* 1825.

That every citizen of this State professing the Jewish Religion, and who shall hereafter be appointed to any office or public trust under the State of Maryland, shall in addition to the oaths required to be taken by the constitution and laws of the State, or of the United States, make and subscribe a declaration of his belief in a future state of rewards and punishments, in the stead of the declaration now required by the constitution and form of government of this State.

Proposed by Act of 1824, *chapter* 129. *Ratified* 1825.

That so much of the twenty-eighth section of the constitution of the State of Maryland as requires of the senators and delegates before the election of governor or council, on oath "to elect without favor, partiality or prejudice, such persons as governor or members of the council as they in their judgment and conscience believe best qualified for the office," be, and the same is hereby repealed.

Proposed by Act of 1824, *chapter* 146. *Ratified* 1825.

Providing for election districts in Somerset County.

Proposed by Act of 1825, *chapter* 69. *Ratified* 1826.

Providing for election districts in Somerset County.

Proposed by Act of 1826, *chapter* 180. *Ratified* 1827.

Providing for election districts in Queen Anne's County.

Proposed by Act of 1826, *chapter* 181. *Ratified* 1827.

Providing for election districts in Dorchester County.

Proposed by Act of 1827, *chapter* 50. *Ratified* 1828.

Providing for election districts in Worcester County.

Proposed by Act of 1828, *chapter* 1. *Ratified* 1829.

Providing for election districts in Dorchester County.

Proposed by Act of 1829, *chapter* 168. *Ratified* 1830.

Providing for election districts in Frederick County.

Proposed by Act of 1831, *chapter* 33. *Ratified* 1832.

Providing for election districts in Somerset County.

Proposed by Act of 1831, *chapter* 147. *Ratified* 1832.

Providing for election districts in Somerset County.

Proposed by Act of 1831, *chapter* 232. *Ratified* 1832.

Providing for election disticts in Baltimore County.

Proposed by Act of 1831, *chapter* 112. *Ratified* 1832.

Providing for election districts in Frederick County.

Proposed by Act of 1832, *chapter* 92. *Ratified* 1833.

Providing for election districts in Washington County.

Proposed by Act of 1832, *chapter* 252. *Ratified* 1833.

Providing for election districts in Allegany County.

Proposed by Act of 1833, *chapter* 11. *Ratified* 1834.

Providing for election districts in Somerset County.

Proposed by Act of 1834, *chapter* 219. *Ratified* 1835.

That after the expiration of existing lottery grants, the legislature of Maryland shall not pass any law authorizing the drawing of any lottery or the traffick or dealing in lottery tickets, or schemes or devices in the nature of lotteries, or the distribution of money or property by chance.

Proposed by Act of 1835, *chapter* 44. *Ratified* 1836.

Providing for election districts in Allegany County.

Proposed by Act of 1835, *chapter* 98. *Ratified* 1836.

That on the first Monday of October, eighteen hundred and thirty-seven, and on the same day annually thereafter, the citizens of Baltimore City having the necessary qualification of voters under the constitution, shall vote for and elect four persons as members of the House of Delegates, instead of two as is now provided for by the constitution.

Proposed by Act of 1835, *chapter* 256. *Ratified* 1836.

That after the confirmation of this act, such parts of the aforesaid counties of Baltimore and Frederick as are contained within the

bounds and limits following, to wit: * * * * shall be erected into a new county by the name of Carroll County, and that the seat of justice thereof be established at Westminster.

Proposed by Act of 1835, *chapter* 259. *Ratified* 1836.

Providing for election districts in Cecil County.

Proposed by Act of 1835, *chapter* 264. *Ratified* 1836.

Providing for election districts in Worcester County.

Proposed by Act of 1836, *chapter* 197. *Ratified* 1837.

Sec. 1. The term of office of the members of the present senate shall end and be determined whenever and as soon as a new senate shall be elected as herein after provided, and a quorum of its members shall have qualified, as directed by the constitution and laws of this State.

Sec. 2. At the December session of the general assembly for the year of our Lord eighteen hundred and thirty-eight, and forever thereafter, the senate shall be composed of twenty-one members, to be chosen as hereinafter provided, a majority of whom shall be a quorum for the transaction of business.

Sec. 3. At the time and place of holding elections in the several counties of this State, and in the city of Baltimore, for delegates to the general assembly for the December session of the year eighteen hundred and thirty-eight, and under the direction of the same judges by whom such elections for delegates shall be held, an election shall also be held in each of the several counties of this State and in the city of Baltimore respectively, for the purpose of choosing a senator of the State of Maryland for and from such county or said city, as the case may be, whose term of office shall commence on the day fixed by law for the commencement of the regular session of the general assembly next succeeding such election, and continue for two, four, or six years, according to the classification of a quorum of its members; and at every such election for senators, every person qualified to vote at the place at which he shall offer to vote for delegates to the general assembly, shall be entitled to vote for one person as senator; and of the persons voted for as senator in each of the several counties and in said city, respectively, the person having the highest number of legal votes, and possessing the qualifications hereinafter mentioned, shall be declared and returned as duly elected for said county or said city, as the case may be; and in case two persons possessing the required qualifications shall be found on the final casting of the votes given, in any one of said counties or said city, to have an equal number of votes, there shall be a new election ordered as

hereinafter mentioned; and immediately after the senate shall have convened in pursuance of their election under this act, the senators shall be divided, in such manner as the senate shall prescribe, 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 thereof may be elected on the first Wednesday of October in every second year; and elections shall be held in the several counties and city from which the retiring senators came, to supply the vacancies as they may occur in consequence of this classification.

Sec. 4. Such election for senators shall be conducted and the returns thereof be made, with proper variations in the certificate to suit the case, in like manner as in cases of elections for delegates.

Sec. 5. The qualifications necessary in a senator shall be the same as are required in a delegate to the general assembly, with the additional qualification that he shall be above the age of twenty-five years, and shall have resided at least three years next preceding his election, in the county or city in and for which he shall be chosen.

Sec. 6. In case any person who shall have been chosen as a senator shall refuse to act, remove from the county or city, as the case may be, for which he shall have been elected, die, resign, or be removed for cause, or in case of a tie between two or more qualified persons in any one of the counties or in the city of Baltimore, a warrant of election shall be issued by the president of the senate for the time being for the election of a senator to supply the vacancy, of which ten days' notice at the least, excluding the day of notice and the day of election, shall be given.

Sec. 7. So much of the thirty-seventh article of the constitution as provides that no senator or delegate to the general assembly, if he shall qualify as such, shall hold or execute any office of profit during the time for which he shall be elected, shall be, and the same is hereby repealed.

Sec. 8. No senator or delegate to the general assembly shall, during the time for which he was elected, be appointed to any civil office under the constitution and laws of this State which shall have been created or the emoluments thereof shall have been increased during such time; and no senator or delegate, during the time he shall continue to act as such, shall be eligible to any civil office whatever.

Sec. 9. At the election for delegates to the general assembly for the December session of the year of our Lord eighteen hundred and thirty-eight, and at each succeeding election for delegates, until after the next census shall have been taken and officially promulged, five delegates shall be elected in and for Baltimore city, and one delegate in and for the city of Annapolis, until the promulging of the census for the year eighteen hundred and forty, when the city of Annapolis

shall be deemed and taken as a part of Anne Arundel county, and her right to a separate delegation shall cease; five delegates in and for Baltimore county; five delegates in and for Frederick county, and four delegates in and for Anne Arundel county, and four delegates in and for each of the several counties respectively hereinafter mentioned, to-wit: Dorchester, Somerset, Worcester, Prince George's, Harford, Montgomery, Carroll, and Washington, and three delegates in and for each of the several counties respectively hereinafter next mentioned, to-wit: Cecil, Kent, Queen Anne's, Caroline, Talbot, Saint Mary's, Charles, Calvert, and Allegany.

Sec. 10. From and after the period when the next census shall have been taken and officially promulged, and from and after the official promulgation of every second census thereafter, the representation in the house of delegates from the several counties and from the city of Baltimore shall be graduated and established on the following basis: that is to say, every county which shall have by the said census a population of less than fifteen thousand souls, federal numbers, shall be entitled to elect three delegates; every county having a population by the said census of fifteen thousand souls and less than twenty-five thousand souls, federal numbers, shall be entitled to elect four delegates; and every county having by the said census a population of twenty-five thousand and less than thirty-five thousand souls, federal numbers, shall be entitled to elect five delegates; and every county having a population of upwards of thirty-five thousand souls, federal numbers, shall be entitled to elect six delegates; and the city of Baltimore shall be entitled to elect as many delegates as the county which shall have the largest representation, on the basis aforesaid, may be entitled to elect: *Provided and it is hereby enacted,* That if any of the several counties hereinbefore mentioned shall not, after the said census for the year eighteen hundred and forty shall have been taken, be entitled by the graduation on the basis aforesaid to a representation in the house of delegates equal to that allowed to such county by the ninth section of this act, at the election of delegates for the December session of the year eighteen hundred and thirty-eight, such county shall, nevertheless, after said census for the year eighteen hundred and forty, or any future census, and forever thereafter, be entitled to elect the number of delegates allowed by the provisions of said section for the said session; but nothing in the proviso contained shall be construed to include in the representation of Anne Arundel County the delegate allowed to the city of Annapolis in the said ninth section of this act.

Sec. 11. In all elections for senators, to be held after the election for delegates, for the December session, eighteen hundred and thirty-seven, the city of Annapolis shall be deemed and taken as part of Anne Arundel County.

Sec. 12. The general assembly shall have power from time to time to regulate all matters relating to the judges, time, place, and manner of holding election for senators and delegates, and of making returns

thereof, and to divide the several counties into election districts, for the more convenient holding of elections, not affecting their terms or tenure of office.

Sec. 13. So much of the constitution and form of government as relates to the council to the governor, and to the clerk of the council, be abrogated, abolished, and annulled, and that the whole executive power of the government of this State shall be vested exclusively in the governor, subject, nevertheless, to the checks, limitations, and provisions hereinafter specified and mentioned.

Sec. 14. The governor shall nominate, and, by and with the advice and consent of the senate, shall appoint all officers of the State whose offices are or may be created by law, and whose appointment shall not be otherwise provided for by the constitution and form of government, or by any laws consistent with the constitution and form of government: *Provided,* That this act shall not be deemed or construed to impair in any manner the validity of the commissions of such persons as shall be in office under previous executive appointment, when this act shall go into operation, or alter, abridge, or change the tenure, quality, or duration of the same, or of any of them.

Sec. 15. The governor shall have power to fill any vacancy that may occur in any such offices during the recess of the senate, by granting commissions which shall expire upon the appointment of the same person, or any other person, by and with the advice and consent of the senate, to the same office, or at the expiration of one calendar month, ensuing the commencement of the next regular session of the senate, whichever shall first occur.

Sec. 16. The same person shall in no case be nominated by the governor a second time during the same session for the same office, in case he shall have been rejected by the senate, unless after such rejection the senate shall inform the governor by message of their willingness to receive again the nomination of such rejected person for further consideration; and in case any person nominated by the governor for any office shall have been rejected by the senate, it shall not be lawful for the governor at any time afterwards, during the recess of the senate, in case of vacancy in the same office, to appoint such rejected person to fill said vacancy.

Sec. 17. It shall be the duty of the governor, within the period of one calandar month next after this act shall go into operation, and in the same session in which the same shall be confirmed, if it be confirmed, and annually thereafter during the regular session of the senate, and on such particular day, if any, or within such particular period as may be prescribed by law, to nominate, and by and with the advice and consent of the senate, to appoint a Secretary of State, who shall hold his office until a successor shall be appointed, and who shall discharge such duties, and receive such compensation, as shall be prescribed by law.

Sec. 18. In case a vacancy shall occur in the office of governor at any time after this act shall go into operation, the general assembly, if in session, or if in the recess at their next session, shall proceed to elect, by joint ballot of the two houses, some person, being a qualified resident of the gubernatorial district from which the governor for said term is to be taken, to be governor for the residue of said term in place of the person originally chosen; and in every case of vacancy, until the election and qualification of the person succeeding, the secretary of state, by virtue of his said office, shall be clothed, *ad interim*, with the executive powers of government; and in case there shall be no Secretary of State, or in case he shall refuse to act, remove from the State, die, resign, or be removed for cause, the person filling the office of president of the senate shall, by virtue of his said office, be clothed *ad interim*, with the executive powers of government; and in case there shall be no president of the senate, or in case he shall refuse to act, remove from the State, die, resign, or be removed for cause, the person filling the office of Speaker of the house of delegates shall, by virtue of his said office, be clothed, *ad interim*, with the executive powers of government.

Sec. 19. The term of office of the governor, who shall be chosen on the first Monday of January next, shall continue for the term of one year, and until the election and qualification of a successor, to be chosen as hereinafter mentioned.

Sec. 20. At the time and places of holding the elections in the several counties of this State, and in the city of Baltimore, for delegates to the General Assembly for the December session of the year eighteen hundred and thirty-eight, and before the same judges by whom the election for delegates shall be held, and in every third year forever thereafter, an election shall also be held for a governor of this State, whose term of office shall commence on the first Monday of January next ensuing the day of such election, and continue for three years, and until the election and qualification of a successor; at which said election every person qualified to vote for delegates to the General Assembly, at the place at which he shall offer to vote, shall be entitled to vote for governor, and the person voted for as governor shall possess the qualifications now required by the constitution and form of government, and the additional qualification of being at least thirty years of age, and of being, and of having been for at least three whole years before, a resident within the limits of the gubernatorial district from which the governor is to be taken at such election, according to the priority which shall be determined as hereinafter mentioned; that is to say, the State shall be, and the same is hereby, divided into three gubernatorial districts, as follows: The counties of Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Somerset, and Worcester shall together compose one district, and until its number shall be determined as hereinafter provided, shall be known as the eastern district; the counties of Saint Mary's, Charles, Calvert, Prince George's, Anne Arundel, inclusive of the city of Annapolis, Montgomery, and Baltimore City, shall together compose

one district, and, until its number shall be determined as hereinafter provided, shall be known as the southern district; Baltimore, Harford, Carroll, Frederick, Washington, and Allegany Counties shall together compose one district, and until its number shall be determined as hereinafter provided, shall be known as the northwestern district; and for the purpose of determining the respective numbers and order of priority of said districts in the same session in which this act shall be confirmed, if the same shall be confirmed as hereinafter mentioned, and on some day to be fixed by concurrence of the two branches, the speaker of the house of delegates shall present to the president of the senate, in the senate chamber, a box containing three ballots of similar size and appearance, and on which shall severally be written, eastern district, southern district, northwestern district; and the president of the senate shall thereupon draw from said box the said several ballots in succession, and the district, the name of which shall be written on the ballot first drawn, shall thenceforth be distinguished as the first gubernatorial district, and the person to be chosen governor at the election first to be held under the provisions of this section, and the person to be chosen at every succeeding third election for governor forever thereafter, shall be taken from the said first district; and the district, the name of which shall be written on the ballot secondly drawn, shall thenceforth be distinguished as the second gubernatorial district, and the person to be chosen governor at the second election to be held under the provisions of this section, and the person to be chosen at every succeeding third election for governor forever thereafter, shall be taken from the said second district, and the district, the name of which shall be written on the ballot thirdly drawn, shall thenceforth be distinguished as the third gubernatorial district, and the person to be chosen governor at the third election to be held under the provisions of this section, and the person to be chosen at every succeeding third election forever thereafter, shall be taken from the said third district; and the result of such drawing shall be entered on the journal of the senate, and be reported by the speaker of the house of delegates on his return to that body, and be entered on the journal thereof, and shall be certified by a joint letter, to be signed by the president of the senate and the speaker of the house of delegates, and be addressed and transmitted to the Secretary of State, if appointed, and if not, as soon as he shall be appointed, to be by him preserved in his office.

Sec. 21. The general assembly shall have power to regulate by law all matters which relate to the judges, time, place, and manner of holding elections for governor and of making returns thereof not affecting the tenure and term of office thereby, and that until otherwise directed, the returns shall be made in like manner as in elections for electors of President and Vice-President, save that the form of the certificates shall be varied to suit the case, and save also that the returns, instead of being made to the governor and council, shall be made to the senate, and be addressed to the president of the senate, and be enclosed under cover to the secretary of state, by whom they

shall be delivered to the president of the senate, at the commencement of the session next ensuing such election.

Sec. 22. Of the persons voted for as governor at any such election, the person having, in the judgment of the senate, the highest number of legal votes, and possessing the legal qualifications, and resident, as aforesaid, in the district from which the governor at such election is to be taken, shall be governor, and shall qualify in the manner prescribed by the constitution and laws, on the first Monday of January next ensuing his election, or as soon thereafter as may be, and all questions in relation to the number or legality of the votes given for each and any person voted for as governor, and in relation to the returns, and in relation to the qualifications of the persons voted for as governor, shall be decided by the senate, and in case two or more persons, legally qualified according to the provisions of this act, shall have an equal number of legal votes, then the senate and house of delegates, upon joint ballot, shall determine which one of them shall be governor, and the one which, upon counting the ballots, shall have the highest number of votes, shall be governor and shall qualify accordingly.

Sec. 23. No person who shall be elected, and shall act as governor, shall be again eligible for the next succeeding term.

Sec. 24. The elections to be held in pursuance of this act shall be held on the first Wednesday of October, in the year eighteen hundred and thirty-eight; and for the election of delegates on the same day in every year thereafter, for the election of governor on the same day in every third year thereafter, and for the election of senators of the first class, on the same day, in the second year after their election and classification, and on the same day in every sixth year thereafter; and for the election of senators of the second class, on the same day, in the fourth year after their election and classification, and on the same day in every sixth year thereafter; and for the election of senators of the third class, on the same day, in the sixth year after their election and classification, and on the same day in every sixth year thereafter.

Sec. 25. In all elections for governor, the city of Annapolis shall be deemed and taken as part of Anne Arundel County.

Sec. 26. The relation of master and slave, in this State, shall not be abolished, unless a bill so to abolish the same shall be passed by a unanimous vote of the members of each branch of the general assembly, and shall be published at least three months before a new election of delegates, and shall be confirmed by a unanimous vote of the members of each branch of the general assembly, at the next regular constitutional session after such new election, nor then, without full compensation to the master for the property of which he shall be thereby deprived.

Sec. 27. The city of Annapolis shall continue to be the seat of government, and the place of holding the sessions of the court of appeals for the western shore, and the high court of chancery.

Proposed by Act of 1836, *chapter* 148. *Ratified* 1837.

Providing for election districts in Washington County.

Proposed by Act of 1838, *chapter* 411. *Ratified* 1839.

That all future sessions of the General Assembly of this State shall close on the tenth day of March in each and every year, unless the same shall be closed at an earlier day by the agreement of the two Houses.

Proposed by Act of 1840, *chapter* 230. *Ratified* 1841.

That upon the resignation of a senator during the recess of the Senate, communicated in writing to the Governor, or upon the death of any Senator during the recess, it shall be the duty of the Governor to issue a warrant of election to supply vacancies thus created, in the same manner as the President of the Senate for the time being is authorized to do, in virtue of an act to amend the constitution and form of government of the State of Maryland, Chapter 197, passed at December session, eighteen hundred and thirty-six, and confirmed December session, eighteen hundred and thirty seven.

Sec. 2. That in all cases of resignation or death as aforesaid, the elections to supply the vacancies shall take place at the time and places of the annual election of delegates, unless such resignation or death shall occur between the first day of September and the meeting of the General Assembly in any year in which event elections shall be held at such time as shall be directed by the Governor, with such notice as is provided by the act of assembly for the amendments of the constitution and form of government as aforesaid.

Sec. 3. That the provisions of the fourteenth and fifteenth sections of the Act of December session of the year eighteen hundred and thirty-six, Chapter 197, be, and the same are hereby declared to extend to the offices of the judges of the several judicial districts of this State, and to all other offices of this State known to the Constitution, concerning the appointment of which no other mode shall have been or may hereafter be provided, so as to authorize the Governor to nominate, and by and with the advice and consent of the Senate to appoint to said offices in case of vacancies occuring therein, and to fill any vacancies that may occur during the recess of the Senate, by granting commissions which shall expire on the appointment of the same person or of any other person, by and with the advice and consent of the Senate to the said offices, or at the expiration of one calendar month ensuing the commencement of the next regular session of the Senate, whichever shall first occur.

Proposed by Act of 1841 (*Special Session*), *chapter* 55. *Ratified* 1841.

That it shall not be lawful for the legislature of this State to authorize any loans upon the credit of this State which are not redeemable at the pleasure of the State, until the proposed loans are sanctioned by an act passed at the session of the General Assembly next succeeding that at which they are proposed and passed, so that the opinion of the people of the State may be expressed thereon.

Proposed by Act of 1842, *chapter* 246. *Ratified* 1843.

Sec. 1. That at the next election for sheriff, and every third year thereafter, a sheriff shall be elected by the voters of Baltimore county, excluding the city of Baltimore, as sheriffs are now elected in other counties of this State; and shall exclusively perform the duties of sheriff within the limits of said county, excluding Baltimore city, and shall perform such duties within the city of Baltimore as shall be necessary for the proper performance of his duties as sheriff of said county, as the legislature shall by law hereafter direct.

Sec. 2. That at the next election for sheriff and every third year thereafter, a sheriff shall be elected for the city of Baltimore, by the voters residing in said city, whose duties shall be confined to the limits of said city, in the same manner as sheriffs are now elected for the counties of this State.

Proposed by Act of 1843, *chapter* 339. *Ratified* 1844.

That no money shall be drawn from the Treasury of this State, but in consequence of appropriations made by law.

Proposed by Act of 1845, *chapter* 269. *Ratified* 1846.

Sec. 1. That the first election for delegates held in pursuance of this act, shall take place on the first Wednesday of October, in the year of our Lord eighteen hundred and forty-seven, and on that day forever thereafter, elections for delegates shall be held once in two years.

Sec. 2. That the delegates elected on the first Wednesday in October, eighteen hundred and forty-seven, and at all succeeding elections forever thereafter, shall be chosen for two years.

Sec. 3. That the general assembly shall meet on the last Monday in December, eighteen hundred and forty-seven, and on the same day in every second year forever thereafter, and at no other time, unless convened by proclamation of the Governor, who shall have full power to convene the same whenever he may deem it expedient and proper.

Sec. 4. That from and after the first election of delegates, held in pursuance of this act, the officers to be appointed by the Governor,

with the advice and consent of the Senate, as now provided, shall be biennial instead of annual.

Sec. 5. That it shall be the duty of the Treasurer of Maryland, to transmit a written statement of the condition of the finances of the State to the Governor, on the first Monday of January, eighteen hundred and forty-eight, and on the same day in every year thereafter, in which the legislature does not convene.

Proposed by Act of 1846, *chapter* 342. *Ratified* 1847.

Sec. 1. That the returns of the election for Governor, in the year eighteen hundred and fifty, and forever thereafter, shall be made in like manner as in electors of President and Vice-President, save that the form of the certificate shall be varied to suit the case; and save also, that the returns, instead of being made to the Governor, shall be made to the Chancellor of the State, and addressed to the Chancellor of Maryland, under cover by the several judges of elections, in the different counties of this State, Howard district and the city of Baltimore.

Ses. 2. That, of the persons voted for as Governor at any such election, the person having, in the judgment of the Chancellor, the highest number of legal votes, and possessing the legal qualifications and resident in the district from which the Governor, at such election, is to be taken, shall be declared, by proclamation of the Chancellor, within ten days after such election returns have been received, duly elected Governor of Maryland, and shall qualify as such in the manner prescribed by the constitution and laws of this State, on the first Monday of January next ensuing his election, or as soon thereafter as may be.

Sec. 3. That excepting the cases hereinafter provided, the Chancellor shall decide all questions in relation to the number and legality of the votes given for each and every person voted for as Governor, and in relation to the returns, and in relation to the qualification of persons voted for as Governor.

Sec. 4. That in case two or more persons, legally qualified according to the provisions of the constitution of this State, shall have an equal number of legal votes, then and in that case, the Chancellor shall communicate the fact, within ten days after the reception of the election returns of the State, in writing to the then Governor, whose duty it shall be, and who is hereby authorized and directed to convene, by proclamation, upon reasonable notice, the general assembly, before whom the Chancellor shall forthwith lay all the election returns, and the Senate and House of Delegates, upon joint ballot, shall determine which one of them shall be Governor, and the one which, upon counting the ballots, shall have the highest number of votes, shall be Governor, and shall qualify as such.

Sec. 5. That in case any one voted for at such an election as Governor, and possessing the legal qualifications, according to the constitution of this State, shall come forward within thirty days after such election, and make oath, before the Chancellor of Maryland, that he has good and sufficient reason to believe that corruption existed on the part of the judges of elections, or any of them, and that he is prepared to prove the fact, or that he is prepared to prove that a sufficient number of illegal votes were cast at such election as to defeat the election of the candidate who may have the returns, then in that case, or either of them, the Chancellor shall, without delay, communicate, in writing, to the then Governor of the State, all the facts in the premises, and upon such representation of facts, the Governor is hereby authorized and directed to convene, by proclamation, upon reasonable notice, the Senate of Maryland, before whom the Chancellor shall forthwith lay all the election returns for Governor, with the affidavit of the contestant; the Senate, when so convened, shall decide all questions in relation to the number or legality of the votes given for each and any person voted for as Governor, and in relation to the returns, and in relation to the qualification of the persons voted for as Governor, and all other questions growing out of such a state of facts, shall be decided by the Senate.

CONSTITUTION OF MARYLAND, 1851.

THE DECLARATION OF RIGHTS.

We, the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good constitution in this State, for the sure foundation and more permanent security thereof, declare:

Article 1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole; and they have at all times, according to the mode prescribed in this constitution, the unalienable right to alter, reform, or abolish their form of government, in such manner as they may deem expedient.

Art. 2. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

Art. 3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law, and to the benefit of such of the English statutes as existed on the fourth day of July, seventeen hundred and seventy-six, and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used, and practiced by the courts of law or equity, and also of all acts of assembly in force on the first Monday of November, eighteen hundred and fifty, except such as may have since expired, or may be altered by this constitution, subject, nevertheless, to the revision of, and amendment or repeal by the legislature of this State; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.

Art. 4. That all persons invested with the legislative, or executive powers of government are the trustees of the public, and as such accountable for their conduct; wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to, reform the old or establish a new government. The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

Art. 5. That the right of the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every free white male citizen having the qualifications prescribed by the constitution ought to have the right of suffrage.

Art. 6. That the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said departments shall assume or discharge the duties of any other.

Art. 7. That no power of suspending laws, or the execution of laws, unless by or derived from the legislature, ought to be exercised or allowed.

Art. 8. That freedom of speech and debate, or proceedings in the legislature, ought not to be impeached in any court of judicature.

Art. 9. That Annapolis be the place for the meeting of the legislature; and the legislature ought not to be convened or held at any other place but from evident necessity.

Art. 10. That for the redress of grievances, and for amending, strengthening, and preserving the laws, the legislature ought to be frequently convened.

Art. 11. That every man hath a right to petition the legislature for the redress of grievances in a peaceable and orderly manner.

Art. 12. That no aid, charge, tax, burthen, or fees ought to be rated or levied, under any pretence, without the consent of the legislature.

Art. 13. That the levying of taxes by the poll is grievous and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government, but every other person in the State, or person holding property therein, ought to contribute his proportion of public taxes, for the support of government, according to his actual worth in real or personal property; yet fines, duties, or taxes may properly and justly be imposed or laid on persons or property, with a political view, for the good government and benefit of the community.

Art. 14. That sanguinary laws ought to be avoided as far as is consistent with the safety of the State; and no law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time hereafter.

Art. 15. That retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore, no *ex post facto* law ought to be made.

Art. 16. That no law to attaint particular persons of treason or felony ought to be made in any case or at any time hereafter.

Art. 17. That every freeman, for any injury done to him in his person or property, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

Art. 18. That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the people.

Art. 19. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment or charge in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Art. 20. That no man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases as have been usually practised in this State, or may hereafter be directed by the legislature.

Art. 21. That no freeman ought to 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 by the law of the land: *Provided,* That nothing in this article shall be so construed as to prevent the legislature from passing all such laws for the government, regulation, and disposition of the free colored population of this State as they may deem necessary.

Art. 22. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted by the courts of law.

Art. 23. That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

Art. 24. That no conviction shall work corruption of blood or forfeiture of estate.

Art. 25. That a well-regulated militia is the proper and natural defence of a free government.

Art. 26. That standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the legislature.

Art. 27. That in all cases and at all times the military ought to be under strict subordination to, and control of, the civil power.

Art. 28. That no soldier ought to be quartered in any house in time of peace without the consent of the owner, and in time of war in such manner only as the legislature shall direct.

Art. 29. That no person, except regular soldiers, mariners, and marines, in the service of this State, or militia when in actual service, ought in any case be subject to or punishable by martial law.

Art. 30. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the judges shall not be removed except for misbehavior, on conviction in a court of law, or by the governor, upon the address of the general assembly: *Provided,* That two-thirds of all the members of each house concur in such address. No such judge shall hold any other office, civil or military, or political trust or employment of any kind whatsoever, under the constitution or laws of this State, or of the United States, or any of them, or receive fees or perquisites of any kind for the discharge of his official duties.

Art. 31. That a long continuance in the executive departments of power or trust is dangerous to liberty; a rotation, therefore, in those departments is one of the best securities of permanent freedom.

Art. 32. That no person ought to hold at the same time more than one office of profit, created by the constitution or laws of this State; nor ought any person in public trust to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this State.

Art. 33. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice, unless under the color of religion any man shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person be deemed incompetent as a witness or juror who believes in the existence of a God, and that under his dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefore either in this world or the world to come.

Art. 34. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of office as may be prescribed by this constitution, or by the laws of the State, and a declaration of belief in the Christian religion; and if the party shall profess to be a Jew, the declaration shall be of his belief in a future state of rewards and punishments.

Art. 35. That every gift, sale, or devise of land, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order, or denomination, or to or for the support, use or benefit of, or in trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, and every gift or sale of goods or chattels to go in succession, or to take place after the death of the seller or donor, to or for such support, use, or benefit; and also every devise of goods or chattels, to or for the support, use, or benefit of any minister, public teacher, or preacher of the gospel, as such; or any religious sect, order, or denomination, without the leave of the legislature, shall be void; except always any sale, gift, lease, or devise of any quantity of land, not exceeding five acres, for a church, meeting-house, or other house of worship, or parsonage, or for a burying-ground, which shall be improved, enjoyed, or used only for such purpose; or such sale, gift, lease, or devise shall be void.

Art. 36. That the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession, or denomination of which he is a member generally esteem the most effectual confirmation by the attestation of the Divine Being.

Art. 37. That the city of Annapolis ought to have all its rights, privileges, and benefits, agreeably to its charter and the acts of assembly confirming and regulating the same, subject to such alterations as have been or as may be made by the legislature.

Art. 38. That the liberty of the press ought to be inviolably preserved.

Art. 39. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce, and ought not to be suffered.

Art. 40. That no title of nobility or hereditary honors ought to be granted in this State.

Art. 41. That the legislature ought to encourage the diffusion of knowledge and virtue, the promotion of literature, the arts, sciences, agriculture, commerce, and manufactures, and the general melioration of the condition of the people.

Art. 42. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Art. 43. That this constitution shall not be altered, changed, or abolished, except in the manner therein prescribed and directed.

THE CONSTITUTION

ARTICLE I.

ELECTIVE FRANCHISE.

Section 1. Every free white male person, of twenty-one years of age or upwards, who shall have been one year next preceding the election a resident of the State, and for six months a resident of the city of Baltimore, or of any county in which he may offer to vote, and being at the time of the election a citizen of the United States, shall be entitled to vote in the ward or election district in which he resides, in all elections hereafter to be held; and at all such elections the vote shall be taken by ballot. And in case any county or city shall be so divided as to form portions of different electoral districts for the election of congressmen, senator, delegate, or other officer or officers, then to entitle a person to vote for such officer, he must have been a resident of that part of the county or city which shall form a part of the electoral district in which he offers to vote for six months next preceding the election; but a person who shall have acquired a residence in such county or city entitling him to vote at any such election, shall be entitled to vote in the election district from which he removed until he shall have acquired a residence in the part of the county or city to which he has removed.

Sec. 2. That if any person shall give, or offer to give, directly or indirectly, any bribe, present, or reward, or any promise, or any security for the payment or delivery of money or any other thing to induce any voter to refrain from casting his vote, or forcibly to prevent him in any way from voting, or to obtain or procure a vote for any candidate or person proposed or voted for as elector of President and Vice-President of the United States, or Representative in Congress, or for any office of profit or trust created by the constitution or laws of this State, or by the ordinances or authority of the mayor and city council of Baltimore, the person giving or offering to give, and the person receiving the same, and any person who gives or causes to be given an illegal vote, knowing it to be so, at any election to be hereafter held in this State, shall, on conviction in a court of law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter.

Sec. 3. It shall be the duty of the general assembly of Maryland to pass laws to punish with fine and imprisonment any person who shall remove into any election district or ward of the city of Baltimore, not for the purpose of acquiring a *bona fide* residence therein, but for the purpose of voting therein at an approaching election, or who shall vote in any election district or ward in which he does not reside, (except in the case provided for in the first article of the constitution), or shall, at the same election, vote in more than one election district or ward, or shall vote or offer to vote in any name

not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside.

Sec. 4. Every person elected or appointed to any office of profit or trust under the constitution or laws made pursuant thereto, before he shall enter upon the duties of such office shall take and subscribe the following oath or affirmation: "I, A. B., do swear [or affirm, as the case may be] that I will support the Constitution of the United States, and that I will be faithful and bear true allegiance to the State of Maryland, and support the constitution and laws thereof; that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of———— according to the constitution and laws of this State, and that since the adoption of the present constitution I have not in any manner violated the provisions thereof in relation to bribery of voters or preventing legal or procuring illegal votes to be given; and [if a governor, senator, member of the house of delegates, or judge] "that I will not directly or indirectly receive the profits or any part of the profits of any other office during the time of my acting as ———." And if any person, elected or appointed to office as aforesaid, shall refuse or neglect to take the said oath or affirmation, he shall be considered as having refused to accept the said office, and a new election or appointment shall be made as in case of refusal or resignation, and any person swearing or affirming falsely in the premises shall, on conviction thereof in a court of law, incur the penalties for wilful and corrupt perjury, and be thereafter incapable of voting at any election, and also incapable of holding any office of profit or trust in this State.

Sec. 5. That no person above the age of twenty-one years, convicted of larceny or other infamous crime, unless he shall be pardoned by the executive, shall ever thereafter be entitled to vote at any election in this State, and no person under guardianship as a lunatic, or as a person *non compos mentis*, shall be entitled to vote.

ARTICLE II.

EXECUTIVE DEPARTMENT.

Section 1. The executive power of the State shall be vested in a governor, whose term of office shall commence on the second Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified.

Sec. 2. The first election for governor under this constitution shall be held on the first Wednesday of November, in the year eighteen hundred and fifty-three, and on the same day and month in every fourth year thereafter, at the places of voting for delegates to the general assembly, and every person qualified to vote for delegates shall be qualified and entitled to vote for governor; the election to be held in the same manner as the election of delegates, and the returns thereof, under seal, to be addressed to the speaker of the house of delegates, and enclosed and transmitted to the Secretary of

State, and delivered to the said speaker at the commencement of the session of the legislature next ensuing said election.

Sec. 3. The speaker of the house of delegates shall then open the said returns in the presence of both houses, and the person having the highest number of votes, and being constitutionally eligible, shall be the governor, and shall qualify in the manner herein prescribed, on the second Wednesday of January next ensuing his election, or as soon thereafter as may be practicable.

Sec. 4. If two or more persons shall have the highest and an equal number of votes, one of them shall be chosen governor by the senate and house of delegates; and all questions in relation to the eligibility of governor, and to the returns of said election, and to the number and legality of votes therein given, shall be determined by the house of delegates. And if the person or persons having the highest number of votes be ineligible, the governor shall be chosen by the senate and house of delegates. Every election of governor, by the legislature, shall be determined by a joint majority of the senate and house of delegates, and the vote shall be taken *viva voce.* But if two or more persons shall have the highest and an equal number of votes, then a second vote shall be taken, which shall be confined to the persons having an equal number; and if the votes should be again equal, then the election of governor shall be determined by lot between those who shall have the highest and an equal number on the first vote.

Sec. 5. The State shall be divided into three districts; Saint Mary's, Charles, Calvert, Prince George's, Anne Arundel, Montgomery, and Howard Counties, and the city of Baltimore, to be the first; the eight counties of the eastern shore to be the second; and Baltimore, Harford, Frederick, Washington, Allegany, and Carroll Counties to be the third. The governor, elected from the third district in October last, shall continue in office during the term for which he was elected. The governor shall be taken from the first district, at the first election of governor under this constitution; from the second district at the second election, and from the third district at the third election, and in like manner, afterwards, from each district, in regular succession.

Sec. 6. A person to be eligible to the office of governor must have attained the age of thirty years, and been for five years a citizen of the United States, and for five years next preceding his election a resident of the State, and for three years a resident of the district from which he was elected.

Sec. 7. In case of the death or resignation of the governor, or of his removal from the State, the general assembly, if in session, or if not, at their next session, shall elect some other qualified resident of the same district to be the governor for the residue of the term for which the said governor had been elected.

Sec. 8. In case of any vacancy in the office of governor during the recess of the legislature, the president of the senate shall discharge

the duties of said office till a governor is elected as herein provided for; and in case of the death or resignation of said president, or of his removal from the State, or of his refusal to serve, then the duties of said office shall, in like manner, and for the same interval, devolve upon the speaker of the house of delegates, and the legislature may provide by law for the case of impeachment or inability of the governor, and declare what person shall perform the executive duties during such impeachment or inability; and for any vacancy in said office, not herein provided for, provision may be made by law, and if such vacancy should occur without such provision being made, the legislature shall be convened by the secretary of state for the purpose of filling said vacancy.

Sec. 9. The governor shall be commander-in-chief of the land and naval forces of the State, and may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws; but shall not take the command in person without the consent of the legislature.

Sec. 10. He shall take care that the laws be faithfully executed.

Sec. 11. He shall nominate and, by and with the advice and consent of the senate, appoint all civil and military officers of the State, whose appointment or election is not otherwise herein provided for, unless a different mode of appointment be prescribed by the law creating the office.

Sec. 12. In case of any vacancy during the recess of the senate, in any office which the governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force till the end of the next session of the legislature, or till some other person is appointed to the same office, whichever shall first occur, and the nomination of the person thus appointed during the recess, or of some other person in his place, shall be made to the senate within thirty days after the next meeting of the legislature.

Sec. 13. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at the request of the senate; or be appointed to the same office during the recess of the legislature.

Sec. 14. All civil officers appointed by the governor and senate shall be nominated to the senate within fifty days from the commencement of each regular session of the legislature; and their term of office shall commence on the first Monday of May next ensuing their appointment, and continue for two years, (unless sooner removed from office), and until their successors, respectively, qualify according to law.

Sec. 15. The governor may suspend or arrest any military officer of the State for disobedience of orders, or other military offence, and may remove him in pursuance of the sentence of a court-martial; and

may remove, for incompetency or misconduct, all civil officers who receive appointments from the executive for a term of years.

Sec. 16. The governor may convene the legislature, or the senate alone, on extraordinary occasions; and whenever, from the presence of an enemy or from any other cause, the seat of government shall become an unsafe place for the meeting of the legislature, he may direct their sessions to be held at some other convenient place.

Sec. 17. It shall be the duty of the governor semi-annually, and oftener if he deem it expedient, to examine the bank-book, account-books, and official proceedings of the treasurer and comptroller of the State.

Sec. 18. He shall, from time to time, inform the legislature of the condition of the State, and recommend to their consideration such measures as he may judge necessary and expedient.

Sec. 19. He shall have power to grant reprieves and pardons, except in cases of impeachment, and in cases in which he is prohibited by other articles of this constitution, and to remit fines and forfeitures for offences against the State; but shall not remit the principal or interest of any debt due to the State, except in cases of fines and forfeitures; and before granting a *nolle prosequi*, or pardon, he shall give notice, in one or more newspapers, of the application made for it, and of the day on or after which his decision will be given; and in every case in which he exercises this power, he shall report to either branch of the legislature, whenever required, the petitions, recommendations, and reasons which influence his decision.

Sec. 20. The governor shall reside at the seat of government, and shall receive for his services an annual salary of thirty-six hundred dollars.

Sec. 21. When the public interest requires it, he shall have power to employ counsel, who shall be entitled to such compensation as the legislature may allow in each case after the services of such counsel shall have been performed.

Sec. 22. A secretary of state shall be appointed by the governor, by and with the advice and consent of the senate, who shall continue in office, unless sooner removed by the governor, till the end of the official term of the governor from whom he received his appointment, and shall receive an annual salary of one thousand dollars.

Sec. 23. He shall carefully keep and preserve a record of all official acts and procedings, (which may, at all times, be inspected by a committee of either branch of the legislature), and shall perform such other duties as may be prescribed by law, or as may properly belong to his office.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Section 1. The legislature shall consist of two distinct branches, a senate and a house of delegates, which shall be styled "The General Assembly of Maryland."

Sec. 2. Every county of the State, and the city of Baltimore, shall be entitled to elect one senator, who shall be elected by the qualified voters of the counties and city of Baltimore, respectively, and who shall serve for four years from the day of their election.

Sec. 3. The legislature at its first session after the returns of the national census of eighteen hundred and sixty are published, and in like manner after each subsequent census, shall apportion the members of the house of delegates among the several counties of the State, according to the population of each, and shall always allow to the city of Baltimore four more delegates than are allowed to the most populous county, but no county shall be entitled to less than two members, nor shall the whole number of delegates ever exceed eighty, or be less than sixty-five; and until the apportionment is made under the census of eighteen hundred and sixty, Saint Mary's County shall be entitled to two delegates; Kent, two; Anne Arundel, three; Calvert, two; Charles, two; Baltimore County, six; Talbot, two; Somerset, four; Dorchester, three; Cecil, three; Prince George's, three; Queen Anne's, two; Worcester, three; Frederick, six; Harford, three; Caroline, two; Baltimore City, ten; Washington, five; Montgomery, two; Allegany, four; Carroll, three, and Howard, two.

Sec. 4. The members of the house of delegates shall be elected by the qualified voters of the counties and city of Baltimore respectively, to serve for two years from the day of their election.

Sec. 5. The first election for delegates shall take place on the first Wednesday of November, eighteen hundred and fifty-one; and the elections for delegates, and for one-half of the senators, as nearly as practicable, shall be held on the same day in every second year thereafter, but an election for senators shall be held in the year eighteen hundred and fifty-one in Howard County, and all those counties in which senators were elected in the year eighteen hundred and forty-six.

Sec. 6. Immediately after the senate shall have convened after the first election under this constitution, the senators shall be divided, by lot, into two classes, as nearly equal in number as may be; the senators of the first class shall go out of office at the expiration of two years, and senators shall be elected on the first Wednesday of November, eighteen hundred and fifty-three, for the term of four years to supply their places; so that after the first election one-half of the senators may be chosen every second year: *Provided,* That in no case shall any senator be placed in a class which shall entitle him to serve for a longer term than that for which he was elected. In case the num-

ber of senators be hereafter increased, such classification of the additional senators shall be made as to preserve as nearly as may be an equal number in each class.

Sec. 7. The general assembly shall meet on the first Wednesday of January, eighteen hundred and fifty-two, on the same day in the year eighteen hundred and fifty-three, and on the same day in the year eighteen hundred and fifty-four, and on the same day in every second year thereafter, and at no other time unless convened by the proclamation of the governor.

Sec. 8. The general assembly may continue their first two sessions after the adoption of this constitution as long as, in the opinion of the two houses, the public interest may require it, but all subsequent regular sessions of the general assembly shall be closed on the tenth day of March next ensuing the time of their commencement, unless the same shall be closed at an earlier day by the agreement of the two houses.

Sec. 9. No person shall be eligible as a senator or delegate who, at the time of his election, is not a citizen of the United States, and who has not resided at least three years next preceding the day of his election in this State, and the last year thereof in the county or city which he may be chosen to represent, if such county or city shall have been so long established, and if not, then in the county from which, in whole or in part, the same may have been formed; nor shall any person be eligible as a senator unless he shall have attained the age of twenty-five years, nor as a delegate unless he shall have attained the age of twenty-one years at the time of his election.

Sec. 10. No member of Congress, or person holding any civil or military office under the United States, shall be eligible as a senator or delegate; and if any person shall, after his election as a senator or delegate, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat.

Sec. 11. No minister or preacher of the Gospel, of any denomination and no person holding any civil office of profit or trust under this State, except justices of the peace, shall be eligible as senator or delegate.

Sec. 12. Each house shall be judge of the qualifications and elections of its members, subject to the laws of the State; appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly or disrespectful behavior, and, with the consent of two-thirds, expel a member; but no member shall be expelled a second time for the same offence.

Sec. 13. A majority of each house shall constitute a quorum for the transaction of 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. The doors of each house and of committees of the whole shall be open, except when the business is such as ought to be kept secret.

Sec. 15. Each house shall keep a journal of its proceedings, and cause the same to be published. The yeas and nays of members on any question shall, at the call of any five of them, in the house of delegates, or one in the senate, be entered on the journal.

Sec. 16. 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 house shall be sitting, without the concurrent vote of two-thirds of the members present.

Sec. 17. The style of all laws of this State shall be, "*Be it enacted by the General Assembly of Maryland,*" and all laws shall be passed by original bill, and every law enacted by the legislature shall embrace but one subject, and that shall be described in the title, and no law or section of law shall be revived, amended, or repealed by reference to its title or section only, and it shall be the duty of the legislature, at the first session after the adoption of this constitution, to appoint two commissioners, learned in the law, to revise and codify the laws of this State; and the said commissioners shall report the said code, so formed, to the legislature, within a time to be by it determined, for its approval, amendment, or rejection; and, if adopted after the revision and codification of the said laws, it shall be the duty of the legislature, in amending any article or section thereof, to enact the same as the said article or section would read when amended. And whenever the legislature shall enact any public general law, not amendatory of any section or article in the said code, it shall be the duty of the legislature to enact the same in articles and sections, in the same manner as the said code may be arranged, and to provide for the publication of all additions and alterations which may be made to the said code; and it shall also be the duty of the legislature to appoint one or more commissioners, learned in the law, whose duty it shall be to revise, simplify, and abridge the rules of practice, pleadings, forms of conveyancing, and proceedings of the courts of record in this State.

Sec. 18. Any bill may originate in either house of the general assembly, and be altered, amended, or rejected by the other, but no bill shall originate in either house during the last three days of the session, or become a law, until it be read on three different days of the session in each house, unless three-fourths of the members of the house where such bill is pending shall so determine.

Sec. 19. No bill shall become a law unless it be passed in each house by a majority of the whole number of members elected, and on its final passage the ayes and noes be recorded.

Sec. 20. No money shall be drawn from the treasury of the State, except in accordance with an appropriation made by law, and every such law shall distinctly specify the sum appropriated, and the ob-

ject to which it shall be applied: *Provided,* That nothing herein contained shall prevent the legislature from placing a contingent fund at the disposal of the executive, who shall report to the legislature at each session the amount expended and the purposes to which it was applied. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws after each regular session of the general assembly.

Sec. 21. No divorce shall be granted by the general assembly.

Sec. 22. No debt shall hereafter be contracted by the legislature, unless such debt shall be authorized by a law provided for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same, and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and the interest thereon shall be fully discharged, and the amount of debts so contracted and remaining unpaid shall never exceed one hundred thousand dollars. The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation, nor shall the general assembly have the power, in any mode, to involve the State in the construction of works of internal improvement, or in any enterprise which shall involve the faith or credit of the State, or make any appropriations therefor. And they shall not use or appropriate the proceeds of the internal-improvement companies, or of the State tax now levied, or which may hereafter be levied, to pay off the public debt, to any other purpose, until the interest and debt are fully paid, or the sinking fund shall be equal to the amount of the outstanding debt; but the legislature may, without laying a tax, borrow an amount, never to exceed fifty thousand dollars, to meet temporary deficiencies in the treasury, and may contract debts to any amount that may be necessary for the defence of the State.

Sec. 23. No extra compensation shall be granted or allowed by the general asembly to any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into. Nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

Sec. 24. No senator or delegate, after qualifying as such, shall during the term for which he was elected, be eligible to any office which shall have been created, or the salary or profits of which shall have been increased, during such term, or shall, during said term, hold any office or receive the salary or profits of any office, under the appointment of the executive or legislature.

Sec. 25. Each house may punish by imprisonment, during the session of the general assembly, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings or any of its officers in the execution of their duties: *Provided,* Such imprisonment shall not, at any one time, exceed ten days.

Sec. 26. The members of each house shall, in all cases, except treason, felony, or other criminal offence, be privileged from arrest during their attendance at the session of the general assembly, and in going to and returning from the same, allowing one day for every thirty miles such member may reside from the place at which the general assembly is convened.

Sec. 27. No senator or delegate shall be liable, in any civil action or criminal prosecution whatever, for words spoken in debate.

Sec. 28. The house of delegates may inquire, on the oath of witnesses, into all complaints, grievances, and offences, as the grand inquest of the State, and may commit any person for any crime to the public jail, there to remain until discharged by due course of law; they may examine and pass all accounts of the State relating either to the collection or expenditure of the revenue, and appoint auditors to state and adjust the same; they may call for all public or official papers and records, and send for persons whom they may judge necessary in the course of their inquiries concerning affairs relating to the public interest, and may direct all office bonds which shall be made payable to the State to be sued for any breach of duty.

Sec. 29. In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city from which he shall have been elected, of any person who shall have been chosen as a delegate or senator, or in case of a tie between two or more such qualified persons, a warrant of election shall be issued by the speaker of the house of delegates or president of the senate, as the case may be, for the election of another person in his place, of which election not less than ten days' notice shall be given, exclusive of the day of the publication of the notice and of the day of election; and in case of such resignation or refusal to act being communicated in writing, to the governor, by the person making it, or if such death occur during the legislative recess and more than ten days before its termination, it shall be the duty of the governor to issue a warrant of election to supply the vacancy thus created in the same manner that the said speaker or president might have done during the session of the legislature: *Provided,* however, That unless a meeting of the general assembly may intervene, the election thus ordered to fill such vacancy shall be held on the day of the ensuing election for delegates and senators.

Sec. 30. The senators and delegates shall receive a per diem of four dollars, and such mileage as may be allowed by law, and the presiding officer of each house shall be allowed an addition of one dollar per day. No book or other printed matter not appertaining to the business of the session shall be purchased or subscribed for, for the use of the members, or be distributed among them at the public expense.

Sec. 31. No law passed by the general assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein.

Sec. 32. No law shall be passed creating the office of attorney-general.

Sec. 33. The general assembly shall have full power to exclude from the privilege of voting at elections, or of holding any civil or military office in this State, any person who may thereafter be convicted of perjury, bribery, or other felony, unless such person shall have been pardoned by the executive.

Sec. 34. Every bill, when passed by the general assembly, and sealed with the great seal, shall be presented to the governor, who shall sign the same in the presence of the presiding officers and chief clerks of the senate and house of delegates. Every law shall be recorded in the office of the court of appeals, and in due time be printed, published, and certified under the great seal to the several courts in the same manner as has been heretofore usual in this State.

Sec. 35. No person who may hereafter be a collector, receiver, or holder of public moneys shall be eligible as senator or delegate, or to any office of profit or trust under this State, until he shall have accounted for and paid into the treasury all sums on the books thereof, charged to and due by him.

Sec. 36. Any citizen of this State who shall, after the adoption of this constitution, either in or out of this State, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, shall ever thereafter be incapable of holding any office of trust or profit under this State.

Sec. 37. No lottery-grant shall ever hereafter be authorized by the legislature.

Sec. 38. The general assembly shall pass laws necessary to protect the property of the wife from the debts of the husband during her life, and for securing the same to her issue after her death.

Sec. 39. Laws shall be passed by the legislature to protect from execution a reasonable amount of property of a debtor, not exceeding in value the sum of five hundred dollars.

Sec. 40. The legislature shall, at its first session after the adoption of this constitution adopt some simple and uniform system of charges in the offices of clerks of courts and registers of wills in the counties of this State and the city of Baltimore, and for the collection thereof: *Provided,* The amount of compensation to any of said officers shall not exceed the sum of twenty-five hundred dollars a year, over and above office expenses, and compensation to assistants: *And provided further,* That such compensation of clerks, registers, assistants, and office expenses shall always be paid out of the fees or receipts of the offices respectively.

Sec. 41. The house of delegates shall have the sole power of impeachment in all cases, but a majority of all the members must

concur in an impeachment; all impeachments shall be tried by the senate, and when sitting for that purpose they shall be on oath or affirmation to do justice according to the law and evidence, but no person shall be convicted without the concurrence of two-thirds of all the senators.

Sec. 42. That it shall be the duty of the legislature, so soon as the public debt shall have been fully paid off, to cause to be transferred to the several counties and the city of Baltimore, stock in the internal-improvement companies, equal to the amount respectively paid by each towards the erection and completion of said works, at the then market value of said stock.

Sec. 43. The legislature shall not pass any law abolishing the relation of master or slave, as it now exists in this State.

Sec. 44. No person shall be imprisoned for debt.

Sec. 45. The legislature hereafter shall grant no charter for banking purposes or renew any banking corporation now in existence, except upon the condition that the stockholders and directors shall be liable to the amount of their respective share or shares of stock in such banking institution for all its debts and liabilities upon note, bill or otherwise; and upon the further condition that no director or other officer of said corporation shall borrow any money from said corporation; and if any director or other officer shall be convicted upon indictment of directly or indirectly violating this article, he shall be punished by fine or imprisonment at the discretion of the court. All banks shall be open to inspection of their books, papers and accounts, under such regulations as may be prescribed by law.

Sec. 46. The legislature shall enact no law authorizing private property to be taken for public use, without just compensation, as agreed upon between the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation.

Sec. 47. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the object of the corporation cannot be attained under general laws. All laws and special acts, pursuant to this section, may be altered from time to time, or repealed; *Provided,* nothing herein contained shall be construed to alter, change, or amend in any manner the article in relation to banks.

Sec. 48. The legislature shall make provision for all cases of contested elections of any of the officers not herein provided for.

Sec. 49. That the rate of interest in this State shall not exceed six per cent. per annum, and no higher rate shall be taken or demanded, and the legislature shall provide, by law, all necessary forfeitures and penalties against usury.

ARTICLE IV.

JUDICIARY DEPARTMENT.

Section 1. The judicial power of this State shall be vested in a court of appeals, in circuit courts, in such courts for the city of Baltimore as may be hereinafter prescribed, and in justices of the peace.

Sec. 2. The court of appeals shall have appellate jurisdiction only, which shall be coextensive with the limits of the State. It shall consist of a chief justice and three associate justices, any three of whom shall form a quorum, whose judgment shall be final and conclusive in all cases of appeals; and who shall have the jurisdiction which the present court of appeals of this State now has, and such other appellate jurisdiction as hereafter may be provided for by law. And in every case decided, an opinion, in writing, shall be filed, and provision shall be made by law for publishing reports of cases argued and determined in the said court. The governor, for the time being, by and with the advice and consent of the senate, shall designate the chief justice, and the court of appeals shall hold its sessions at the city of Annapolis, on the first Monday of June and the first Monday of December, in each and every year.

Sec. 3. The court of appeals shall appoint its own clerk, who shall hold his office for six years, and may be reappointed at the end thereof; he shall be subject to removal by the said court for incompetency, neglect of duty, misdemeanor in office, and for such other causes as may be prescribed by law.

Sec. 4. The State shall be divided into four judicial districts: Allegany, Washington, Frederick, Carroll, Baltimore, and Harford Counties shall compose the first; Montgomery, Howard, Anne Arundel, Calvert, Saint Mary's, Charles, and Prince George's the second; Baltimore City the third; and Cecil, Kent, Queen Anne's, Talbot, Caroline, Dorchester, Somerset, and Worcester shall compose the fourth district. And one person from among those learned in the law, having been admitted to practice in this State, and who shall have been a citizen of this State at least five years, and above the age of thirty years at the time of his election, and a resident of the judicial district, shall be elected from each of said districts by the legal and qualified voters therein, as a judge of the said court of appeals, who shall hold his office for the term of ten years from the time of his election, or until he shall have attained the age of seventy years, whichever may first happen, and be reeligible thereto until he shall have attained the age of seventy years, and not after, subject to removal for incompetency, wilful neglect of duty, or misbehavior in office, on conviction in a court of law, or by the governor upon the address of the general assembly, two-thirds of the members of each house concurring in such address; and the salary of each of the judges of the court of appeals shall be two thousand five hundred dollars annually, and shall not be increased or diminished during their continuance in office; and no

fees or perquisites of any kind shall be allowed by law to any of the said judges.

Sec. 5. No judge of the court of appeals shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or when he shall have been of counsel in said case; when the court of appeals, or any of its members, shall be thus disqualified to hear and determine any case or cases in said court, so that by reason thereof no judgment can be rendered in said court, the same shall be certified to the governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of said case or cases.

Sec. 6. All judges of the court of appeals, of the circuit courts, and of the courts for the city of Baltimore, shall, by virtue of their offices, be conservators of the peace throughout the State.

Sec. 7. All public commissions and grants shall run thus: "The State of Maryland," &c., and shall be signed by the governor, with the seal of the State annexed; all writs and process shall run in the same style, and be tested, sealed, and signed as usual; and all indictments shall conclude, "against the peace, government, and dignity of the State."

Sec. 8. The State shall be divided into eight judicial circuits, in manner and form following, to-wit: Saint Mary's, Charles, and Prince George's Counties shall be the first; Anne Arundel, Howard, Calvert, and Montgomery Counties shall be the second; Frederick and Carroll Counties shall be the third; Washington and Allegany Counties shall be the fourth; Baltimore City shall be the fifth; Baltimore, Harford, and Cecil counties shall be the sixth; Kent, Queen Anne's, Talbot, and Caroline Counties shall be the seventh, and Dorchester, Somerset, and Worcester counties shall be the eighth; and there shall be elected, as hereinafter directed, for each of the said judicial circuits, except the fifth, one person from among those learned in the law, having been admitted to practise in this State, and who shall have been a citizen of this State at least five years, and above the age of thirty years at the time of his election, and a resident of the judicial circuit, to be judge thereof; the said judges shall be styled circuit judges, and shall respectively hold a term of their courts at least twice in each year, or oftener if required by law, in each county composing their respective circuits; and the said courts shall be called circuit courts for the county in which they may be held, and shall have and exercise in the several counties of this State all the power, authority, and jurisdiction which the county courts of this State now have and exercise, or which may hereafter be prescribed by law, and the said judges in their respective circuits shall have and exercise all the power, authority, and jurisdiction of the present court of chancery of Maryland: *Provided, nevertheless,* That Baltimore County court may hold its sittings within the limits of the city of Baltimore until provision shall be made by law for the location of a county seat within the limits of the

said county proper, and the erection of a court-house and all other appropriate buildings for the convenient administration of justice in said court.

Sec. 9. The judges of the several judicial circuits shall be citizens of the United States, and shall have resided five years in this State, and two years in the judicial circuit for which they may be respectively elected, next before the time of their election, and shall reside therein while they continue to act as judges; they shall be taken from among those who, having the other qualifications herein prescribed, are most distinguished for integrity, wisdom, and sound legal knowledge, and shall be elected by the qualified voters of the said circuits, and shall hold their offices for the term of ten years, removable for misbehavior, on conviction in a court of law, or by the governor, upon the address of the general assembly, provided that two-thirds of the members of each house shall concur in such address; and the said judges shall each receive a salary of two thousand dollars a year, and the same shall not be increased or diminished during the time of their continuance in office; and no judge of any court in this State shall receive any perquisite, fee, commission, or reward, in addition thereto, for the performance of any judicial duty.

Sec. 10. There shall be established for the city of Baltimore one court of law, to be styled "the court of common pleas," which shall have civil jurisdiction in all suits where the debt or damage claim shall be over one hundred dollars, and shall not exceed five hundred dollars; and shall also have jurisdiction in all cases of appeal from the judgment of justices of the peace in the said city, and shall have jurisdiction in all applications for the benefit of the insolvent laws of this State, and the supervision and control of the trustees thereof.

Sec. 11. There shall also be established for the city of Baltimore another court of law, to be styled the "superior court of Baltimore City," which shall have jurisdiction over all suits where the debt or damage claimed shall exceed the sum of five hundred dollars; and in case any plaintiff or plaintiffs shall recover less than the sum or value of five hundred dollars, he or they shall be allowed or adjudged to pay costs in the discretion of the court. The said court shall also have jurisdiction as a court of equity within the limits of the said city, and in all other civil cases which have not been heretofore assigned to the court of common pleas.

Sec. 12. Each of the said two courts shall consist of one judge, who shall be elected by the legal and qualified voters of the said city, and shall hold his office for the term of ten years, subject to the provisions of this constitution with regard to the election and qualification of judges and their removal from office, and the salary of each of the said judges shall be twenty-five hundred dollars a year; and the legislature shall, whenever it may think the same proper and expedient, provide, by law, another court for the city of Baltimore, to consist of one judge, to be elected by the qualified voters of the said city, who shall be subject to the same constitutional provisions, hold

his office for the same term of years, and receive the same compensation as the judge of the court of common pleas of the said city, and the said court shall have such jurisdiction and powers as may be prescribed by law.

Sec. 13. There shall also be a criminal court for the city of Baltimore, to be styled "the criminal court of Baltimore," which shall consist of one judge, who shall also be elected by the legal and qualified voters of the said city, and who shall have and exercise all the jurisdiction now exercised by Baltimore City court, and the said judge shall receive a salary of two thousand dollars a year, and shall be subject to the provisions of this constitution with regard to the election and qualifications of judges, term of office, and removal therefrom.

Sec. 14. There shall be in each county a clerk of the circuit court, who shall be elected by the qualified voters of each county, and the person receiving the greatest number of votes shall be declared and returned duly elected clerk of said circuit court for the said county, and shall hold his office for the term of six years from the time of his election, and until a new election is held; shall be reeligible thereto, and subject to removal for wilful neglect of duty, or other misdemeanor in office, on conviction in a court of law. There shall also be a clerk of the court of common pleas in Baltimore City, and a clerk of the superior court of Baltimore City, and there shall also be a clerk of the criminal court of Baltimore City, and each of the said clerks shall be elected as aforesaid by the qualified voters of the city of Baltimore, and shall hold his office for six years from the time of his election, and until a new election is held, and be reeligible thereto, subject, in like manner, to be removed for wilful neglect of duty or other misdemeanor in office, on conviction in a court of law. In case of a vacancy in the office of a clerk, the judge or judges of the court of which he was clerk shall have the power to appoint a clerk until the general election of delegates held next thereafter, when a clerk shall be elected to fill such vacancy.

Sec. 15. The clerk of the court of common pleas for Baltimore City shall have authority to issue within the said city all marriage and other licenses required by law, subject to such provisions as the legislature shall hereafter prescribe; and the clerk of the superior court for said city shall have the custody of all deeds, conveyances, and other papers now remaining in the office of the clerk of Baltimore County court, and shall hereafter receive and record all deeds, conveyances, and other papers which are required by law to be recorded in said city. He shall also have the custody of all other papers connected with the proceedings on the law or equity side of Baltimore County court, and of the dockets thereof, so far as the same have relation to Baltimore City.

Sec. 16. That the clerk of the court of appeals, and the clerks of the circuit courts in the several counties shall respectively perform all the duties and be entitled to the fees which appertain to the offices

of the clerks of court of appeals for the eastern and western shores and of the clerks of county courts, and the clerks of the court of common pleas, the superior court, and the criminal court for Baltimore City shall perform all the duties appertaining to their respective offices, and heretofore vested in the clerks of Baltimore County court and Baltimore City court, respectively, and be entitled to all the fees now allowed by law; and all laws relating to the clerks of court of the criminal court of Baltimore City, and each of said clerks shall be elected as aforesaid by the qualified voters of the city of Baltimore, appeal, clerks of the several county courts, and Baltimore City court shall be applicable to the clerks respectively of the clerk of court of appeals, the circuit courts, the court of common pleas, the superior court, and the criminal court of Baltimore City, until otherwise provided by law; and the said clerks, when duly elected and qualified according to law, shall have the charge and custody of the records and other papers belonging to their respective offices.

Sec. 17. The qualified voters of the city of Baltimore, and of the several counties of the State, shall, on the first Wednesday of November, eighteen hundred and fifty-one, and on the same day of the same month in every fourth year forever thereafter, elect three men to be judges of the orphans' court of said city and counties respectively, who shall be citizens of the State of Maryland and citizens of the city or county for which they may be severally elected at the time of their election. They shall have all the powers now vested in the orphans' courts of this State, subject to such changes therein as the legislature may prescribe, and each of said judges shall be paid at a per diem rate for the time they are in session, to be fixed by the legislature and paid by the said counties and city respectively.

Sec. 18. There shall be a register of wills in each county of the State and in the city of Baltimore, to be elected by the legal and qualified voters of said counties and city respectively, who shall hold his office for six years from the time of his election, and until a new election shall take place, and be reeligible thereto, subject to be removed for wilful neglect of duty or misdemeanor in office, in the same manner that the clerks of the county courts are removable. In the event of any vacancy in the office of register of wills, said vacancy shall be filled by the judges of the orphans' court until the general election next thereafter for delegates to the general assembly when a register shall be elected to fill such vacancy.

Sec. 19. The legislature at its first session after the adoption of this constitution shall fix the number of justices of the peace and constables for each ward of the city of Baltimore, and for each election district in the several counties, who shall be elected by the legal and qualified voters thereof respectively, at the next general election for delegates thereafter, and shall hold their offices for two years from the time of their election, and until their sucessors in office are elected and qualified; and the legislature may, from time to time, increase or diminish the number of justices of the peace and constables to be

elected in the several wards and election districts as the wants and interests of the people may require. They shall be, by virtue of their offices, conservators of the peace in the said counties and city respectively, and shall have such duties and compensation as now exist or may be provided for by law. In the event of a vacancy in the office of a justice of the peace, the governor shall appoint a person to serve as justice of the peace, until the next regular election of said officers, and in case of a vacancy in the office of constable, the county commissioners of the county in which a vacancy may occur, or the Mayor and city council of Baltimore, as the case may be, shall appoint a person to serve as constable until the next regular election thereafter for said officers. An appeal shall lie in all civil cases from the judgment of a justice of the peace to the circuit court, or to the court of common pleas of Baltimore City, as the case may be, and on all such appeals, either party shall be entitled to a trial by jury, according to the laws now existing, or which may be hereafter enacted. And the mayor and city council may provide, by ordinance, from time to time, for the creation and government of such temporary additional police as they may deem necessary to preserve the public peace.

Sec. 20. There shall be elected in each county and in the city of Baltimore, every second year, two persons for the office of sheriff for each county and two for the said city, the one of whom having the highest number of votes of the qualified voters of said county or city, or if both have an equal number, either of them, at the discretion of the governor, to be commissioned by the governor for the said office, and, having served for two years, such person shall be ineligible for the two years next succeeding; bond with security, to be taken every year, and no sheriff shall be qualified to act before the same be given. In case of death, refusal, disqualification, or removal out of the county, before the expiration of the said two years, the other person chosen as aforesaid shall be commissioned by the governor to execute the said office for the residue of the said two years, the said person giving bond with security as aforesaid. No person shall be eligible to the office of sheriff but a resident of such county or city respectively, who shall have been a citizen of this State at least five years preceding his election, and above the age of twenty-one years. The two candidates, properly qualified, having the highest number of legal ballots, shall be declared duly elected for the office of sheriff for such county or city, and returned to the governor, with a certificate of the number of ballots for each of them.

Sec. 21. Coroners, elisors, and notaries public shall be appointed for each county and the city of Baltimore, in the manner now prescribed by law, or in such other manner as the general assembly may hereafter direct.

Sec. 22. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity, within such degrees as may be prescribed

by law, or where he shall have been of counsel in the case; and whenever any of the judges of the circuit courts, or of the courts of Baltimore City, shall be thus disqualified, or whenever, by reason of sickness, or any other cause, the said judges, or any of them, may be unable to sit in any cause, the parties may, by consent, appoint a proper person to try the said cause, or the judges, or any of them, shall do so when directed by law.

Sec. 23. The present chancellor and the register in chancery, and, in the event of any vacancy in their respective offices, their successors in office respectively, who are to be appointed as at present, by the governor and senate, shall continue in office, with the powers and compensation as at present established, until the expiration of two years after the adoption of this constitution by the people, and until the end of the session of the legislature next thereafter, after which the said offices of chancellor and register shall be abolished. The legislature shall, in the meantime, provide by law for the recording, safekeeping or other disposition of the records, decrees, and other proceedings of the court of chancery, and for the copying and attestation thereof, and for the custody and use of the great seal of the State, when required, after the expiration of the said two years, and for transmitting to the said counties, and to the city of Baltimore, all the cases and proceedings in said court then undisposed of and unfinished, in such manner and under such regulations as may be deemed necessary and proper: *Provided,* That no new business shall originate in the said court, nor shall any cause be removed to the same from any other court, from, and after the ratification of this constitution.

Sec. 24. The first election of judges, clerks, registers of wills, and all other officers, whose election by the people is provided for in this article of the constitution, except justices of the peace and constables, shall take place throughout the State on the first Wednesday of November next after the ratification of this constitution by the people.

Sec. 25. In case of the death, resignation, removal, or other disqualification of a judge of any of the courts of law, the governor, by and with the advice and consent of the senate, shall thereupon appoint a person, duly qualified, to fill said office until the next general election for delegates thereafter; at which time an election shall be held, as hereinbefore prescribed, for a judge, who shall hold the said office for ten years, according to the provisions of this constitution.

Sec. 26. In case of the death, resignation, removal, or other disqualification of the judge of an orphans' court, the vacancy shall be filled by the appointment of the governor, by and with the advice and consent of the senate.

Sec. 27. Whenever lands lie partly in one county and partly in another, or partly in a county and partly in the city of Baltimore, or whenever persons proper to be made defendants to proceedings in chancery reside some in one county and some in another, that court

shall have jurisdiction in which proceedings shall have been first commenced, subject to such rules, regulations, and alterations as may be prescribed by law.

Sec. 28. In all suits or actions at law, issues from the orphans' court, or from any court sitting in equity, in petitions for freedom, and in all presentments and indictments now pending, or which may be pending at the time of the adoption of this constitution by the people, or which may be hereafter instituted in any of the courts of law of this State, having jurisdiction thereof, the judge or judges thereof, upon suggestion in writing, if made by the State's attorney, or the prosecutor for the State, or upon suggestion in writing, supported by affidavit, made by any of the parties thereto, or other proper evidence, that a fair and impartial trial cannot be had in the court where such suit or action at law, issues or petitions, or presentment and indictment is depending, shall order and direct the record of proceedings in such suit or action, issues or petitions, presentment or indictment, to be transmitted to the court of any adjoining county: *Provided,* That the removal in all civil causes be confined to an adjoining county within the judicial circuit, except as to the city of Baltimore, where the removal may be to an adjoining county for trial, which court shall hear and determine the same in like manner as if such suit or action, issues or petition, presentment or indictment, had been originally instituted therein: *and provided also,* That such suggestion shall be made as aforesaid before or during the term in which the issue or issues may be joined in said suit or action, issues or petition, presentment or indictment, and that such further remedy in the premises may be provided by law as the legislature shall from time to time direct and enact.

Sec. 29. All elections of judges, and other officers provided for by this constitution, shall be certified, and the returns made by the clerks of the respective counties to the governor, who shall issue commissions to the different persons for the offices to which they shall have been respectively elected; and in all such elections the person having the greatest number of votes shall be declared to be elected.

Sec. 30. If in any case of election for judges, clerks of the courts of law, and registers of wills the opposing candidates shall have an equal number of votes, it shall be the duty of the governor to order a new election; and in case of any contested election, the governor shall send the returns to the house of delegates, who shall judge of the election and qualification of the candidates at such election.

Sec. 31. Every person of good moral character, being a voter, shall be admitted to practice law in all the courts of law in this State in his own case.

ARTICLE V.

THE STATE'S ATTORNEYS.

Section 1. There shall be an attorney for the State in each county and the city of Baltimore, to be styled "the State's attorney," who shall be elected by the voters thereof, respectively, on the first Wednesday of November next, and on the same day every fourth year thereafter, and hold his office for four years from the first Monday of January next ensuing his election, and until his successor shall be elected and qualified, and shall be re-eligible thereto, and be subject to removal therefrom for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a court of law.

Sec. 2. All elections for the State's attorney shall be certified to, and returns made thereof, by the clerks of the said counties and city to the judges thereof having criminal jurisdiction, respectively, whose duty it shall be to decide upon the elections and qualifications of the persons returned, and in case of a tie between two or more persons to designate which of said persons shall qualify as State's attorney, and to administer the oaths of office to the persons elected.

Sec. 3. The State's attorney shall perform such duties and receive such fees and commissions as are now prescribed by law for the attorney-general and his deputies, and such other duties, fees, and commissions as may hereafter be prescribed by law, and if any State's attorney shall receive any other fee or reward than such as is, or may be allowed by law, he shall on conviction thereof, be removed from office.

Sec. 4. No person shall be eligible to the office of State's attorney who has not been admitted to practice the law in this State, and who has not resided for at least one year in the county or city in which he may be elected.

Sec. 5. In case of vacancy in the office of State's attorney, or of his removal from the county or city in which he shall have been elected, or on his conviction as hereinbefore specified, the said vacancy shall be filled by the judge of the county or city, respectively, having criminal jurisdiction, in which said vacancy shall occur, until the election and qualification of his successor, at which election said vacancy shall be filled by the voters of the said county or city for the residue of the term thus made vacant.

Sec. 6. It shall be the duty of the clerk of the court of appeals and the commissioner of the land office, respectively, whenever a case shall be brought into said court or office in which the State is a party, or has an interest, immediately to notify the governor thereof.

ARTICLE VI.

TREASURY DEPARTMENT.

Section 1. There shall be a treasury department, consisting of a comptroller, chosen by the qualified electors of the State at each election of members of the house of delegates, who shall receive an annual salary of two thousand five hundred dollars; and of a treasurer, to be appointed by the two houses of the legislature, at each session thereof, on joint ballot, who shall also receive an annual salary of two thousand five hundred dollars; and neither of the said officers shall be allowed or receive any fees, commissions, or perquisites of any kind, in addition to his salary, for the performance of any duty or service whatever. In case of a vacancy in either of the offices, by death or otherwise, the governor, by and with the advice and consent of the senate, shall fill such vacancy by appointment, to continue until another election by the people or a choice by the legislature, as the case may be, and the qualification of the successor. The comptroller and the treasurer shall keep their offices at the seat of government, and shall take such oath and enter into such bonds for the faithful discharge of their duties as the legislature shall prescribe.

Sec. 2. The comptroller shall have the general superintendence of the fiscal affairs of the State; he shall digest and prepare plans for the improvement and management of the revenue and for the support of the public credit; prepare and report estimates of the revenue and expenditure of the State; superintend and enforce the collection of all taxes and revenue; adjust, settle, and preserve all public accounts; decide on the forms of keeping and stating accounts; grant, under regulations prescribed by law, all warrants for moneys to be paid out of the treasury, in pursuance of appropriations by law; prescribe the formalities of the transfer of stock or other evidences of the State debt; and countersign the same, without which such evidences shall not be valid; he shall make full reports of all his proceedings, and of the state of the treasury department, within ten days after the commencement of each session of the legislature, and perform such other duties as shall be prescribed by law.

Sec. 3. The treasurer shall receive and keep the moneys of the State, and disburse the same upon warrants drawn by the comptroller, and not otherwise; he shall take receipt for all moneys paid by him, and all receipts for moneys received by him shall be endorsed upon warrants signed by the comptroller, without which warrant, so signed, no acknowledgment of money received into the treasury shall be valid; and upon warrants issued by the comptroller he shall make arrangements for the payment of the interest of the public debt, and for the purchase thereof, on account of the sinking fund. Every bond, certificate, or other evidence of the debt of the State shall be signed by the treasurer and countersigned by the comp-

troller, and no new certificate or other evidence intended to replace another shall be issued until the old one shall be delivered to the treasurer, and authority executed in due form for the transfer of the same shall be filed in his office, and the transfer accordingly made on the books thereof, and the certificate or other evidence cancelled; but the legislature may make provision for the loss of certificates or other evidence of the debt.

Sec. 4. The treasurer shall render his accounts quarterly to the comptroller; and on the third day of each session of the legislature he shall submit to the senate and house of delegates fair and accurate copies of all accounts by him from time to time rendered and settled with the comptroller. He shall at all times submit to the comptroller the inspection of the moneys in his hands, and perform all other duties that shall be prescribed by law.

ARTICLE VII.

SUNDRY OFFICERS.

Section 1. At the first general election of delegates to the general assembly, after the adoption of this constitution, four commissioners shall be elected as hereinafter provided, who shall be styled "commissioners of public works," and who shall exercise a diligent and faithful supervision of all public works, in which the State may be interested as stockholder or creditor, and shall represent the State in all meetings of the stockholders, and shall appoint the directors in every railroad or canal company in which the State has the constitutional power to appoint directors. It shall also be the duty of the commissioners of public works to review, from time to time, the rate of tolls adopted by any company; use all legal powers which they may possess to obtain the establishment of rates of tolls, which may prevent an injurious competition with each other, to the detriment of the interests of the State; and so to adjust them as to promote the agriculture of the State. It shall also be the duty of the said commissioners of public works to keep a journal of their proceedings; and at each regular session of the legislature to make it a report, and to recommend such legislation as they shall deem necessary and requisite to promote or protect the interest of the State in the public works; and perform such other duties as may be prescribed by law. They shall each receive such salary as may be allowed by law, which shall not be increased or diminished during their continuance in office.

Sec. 2. For the election of the commissioners of public works, the State shall be divided into four districts. The counties of Allegany, Washington, Frederick, Carroll, Baltimore and Harford shall constitute the first district; the counties of Montgomery, Howard, Anne Arundel, Calvert, Saint Mary's, Charles, and Prince George's shall constitute the second district; Baltimore City shall constitute the third district; the counties of Cecil, Kent, Queen

Anne's, Talbot, Caroline, Dorchester, Somerset, and Worcester shall constitute the fourth district. One commissioner shall be elected in each district, who shall have been a resident thereof at least five years next preceding his election.

Sec. 3. The said commissioners shall be elected by the qualified voters of their districts respectively; the returns of their election shall be certified to the governor, who shall, by proclamation, declare the result of the election. Two of the said commissioners first elected shall hold their office for four years, and the other two for two years from the first Monday of December next succeeding their election. And at the first meeting after their election, or as soon thereafter as practicable, they shall determine by lot who of their number shall hold their offices for four and two years respectively; and thereafter there shall be elected as aforesaid, at each general election of delegates, two commissioners for the term of four years, to be taken from the districts respectively wherein the commissioners resided at the time of their election, whose term of service has expired. And in case of a vacancy in the office of either of said commissioners, by death, resignation, or otherwise, the governor, by and with the advice and consent of the senate, shall appoint some qualified person from the same district, to serve until the next general election of delegates, when an election shall be held, as aforesaid, for a commissioner for the residue of said term. And in case of an equal division in the board of commissioners, on any subject committed to their charge, the treasurer of the State shall have power, and shall be called on to decide the same. And in the event of a tie vote for any two of the candidates for the office of commissioner in the same district, it shall be the duty of the governor to commission one or the other of the candidates having the equal number of votes. And if the governor doubt the legality or result of any election held for said commissioners, it shall be his duty to send the returns of such election to the house of delegates. who shall judge of the election and qualification of the candidates at such election.

Sec. 4. During the continuance of the lottery system in this State, there shall be elected by the legal and qualified voters of the State, at every general election for delegates to the general assembly, one commissioner of lotteries, who shall hold his office for two years, and till the qualification of his successor, and shall be re-eligible. His whole compensation shall be paid out of the fund raised for the Maryland consolidated lottery grants, and shall not exceed the amount of commissions received by one of the present lottery commissioners, out of said fund; and he shall give such bond, for the faithful performance of his duties, as is now given by the lottery commissioners. The term of the commissioner, who shall be elected at the general election for delegates next succeeding the adoption of this constitution, shall commence at the expiration of the commissions of the present lottery commissioners, and continue for two years, and till the qualification of his successor.

Sec. 5. From and after the first day of April, eighteen hundred and fifty-nine, no lottery scheme shall be drawn, for any purpose whatever, nor shall any lottery-ticket be sold in this State; and it shall be the duty of the several commissioners elected under this constitution to make such contract or contracts as will extinguish all existing lottery-grants before the said first day of April, eighteen hundred and fifty-nine, and also secure to the State a clear yearly revenue equal to the average amount derived by the State from the system for the last five years; but no such contract or contracts shall be valid until approved by the treasurer and comptroller.

Sec. 6. There shall be a commissioner of the land office elected by the qualified voters of the State, at the first general election of delegates to the assembly after the ratification of this constitution, who shall hold his office for the term of six years from the first day of January next after his election. The returns of said election shall be made to the governor, and in the event of a tie between any two or more candidates, the governor shall direct a new election to be held by writs to the several sheriffs, who shall hold said election after at least twenty days' notice, exclusive of the day of election. The said commissioner shall sit as judge of the land office, and receive therefor the sum of two hundred dollars per annum, to be paid out of the State treasury. He shall also perform the duties of the register of the land office, and be entitled to receive therefor the fees now chargeable in said office; and he shall also perform the duties of examiner-general, and be entitled to receive therefor the fees now chargeable by said officer. The office of register of the land-office and examiner-general shall be abolished from and after the election and qualification of the commissioner of the land-office.

Sec. 7. The State librarian shall be elected by the joint vote of the two branches of the legislature, for two years, and until his successor shall be elected and qualified. His salary shall be one thousand dollars per annum. He shall perform such duties as are now or may hereafter be prescribed by law.

Sec. 8. The county authorities now known as levy courts or county commissioners, shall hereafter be styled "county commissioners," and shall be elected by general ticket, and not by districts, by the voters of the several counties, on the first Wednesday in November, one thousand eight hundred and fifty-one, and on the same day in every second year thereafter. Said commissioners shall exercise such powers and duties only as the legislature may from time to time prescribe; but such powers and duties, and the tenure of office, shall be uniform throughout the State, and the legislature shall, at or before its second regular session, after the adoption of this constitution, pass such laws as may be necessary for determining the number for each county, and ascertaining and defining the powers, duties, and tenure of office of said commissioners; and until the passage of such laws the commissioners elected under this

constitution shall have and exercise all the powers and duties in their respective counties, now exercised by the county authorities under the laws of the State.

Sec. 9. The general assembly shall provide by law for the election of road supervisors, in the several counties, by the voters of the election-districts respectively, and may provide by law for the election or appointment of such other county officers as may be required, and are not herein provided for, and prescribe their powers and duties; but the tenure of office, their powers and duties, and mode of appointment, shall be uniform throughout the State.

Sec. 10. The qualified voters of each county, and the city of Baltimore, shall, at the first election of delegates after the adoption of this constitution, and every two years thereafter, elect a surveyor for the counties, and the city of Baltimore, respectively, whose duties and compensation shall be the same as are now prescribed by law for the county and city surveyors, respectively, or as may hereafter be prescribed by law. The term of office of said county and city surveyors, respectively, shall commence on the first Monday of January next succeeding their election. And vacancies in said office of surveyors, by death, resignation, or removal from their respective counties or city, shall be filled by the commissioners of the counties, or mayor and city council of Baltimore, respectively.

Sec. 11. The qualified voters of Worcester county shall at the first election of delegates after the adoption of this constitution, and every two years thereafter, elect a wreck-master for the said county, whose duties and compensation shall be the same as are now prescribed or may be hereafter prescribed by law. The term of office of said wreck-master shall commence on the first Monday of January next succeeding his election; and a vacancy in said office, by death, resignation or removal from the county, shall be filled by the county commissioners of said county, for the residue of the term thus made vacant.

ARTICLE VIII.

NEW COUNTIES.

Section 1. That part of Anne Arundel County called Howard district, is hereby erected into a new county, to be called Howard County, the inhabitants whereof shall have, hold, and enjoy all such rights and privileges as are held and enjoyed by the inhabitants of the other counties in this State; and its civil and municipal officers, at the time of the ratification of this constitution, shall continue in office until their successors shall have been elected or appointed, and shall have qualified as such; and all rights, powers, and obligations incident to Howard district of Anne Arundel County shall attach to Howard county.

Sec. 2. When that part of Allegany County lying south and west of a line beginning at the summit of Big Back Bone or Savage Mountain, where that mountain is crossed by Mason and Dixon's line, and running thence by a straight line, to the middle of Savage River where it empties into the Potomac River, thence by a straight line, to the nearest point or boundary of the State of Virginia, then with said boundary to the Fairfax stone, shall contain a population of ten thousand, and the majority of electors thereof shall desire to separate and form a new county, and make known their desire by petition to the legislature, the legislature shall direct, at the next succeeding election, that the judges shall open a book at each election-district in said part of Allegany County, and have recorded therein the vote of each elector "for or against" a new county. In case the majority are in favor, then said part of Allegany County to be declared an independent county, and the inhabitants whereof shall have, and enjoy all such rights and privileges as are held and enjoyed by the inhabitants of the other counties in this State *Provided*, That the whole representation in the general assembly of the county when divided, shall not exceed the present delegation of Allegany County, allowed under this constitution until after the next census.

ARTICLE IX.

MILITIA.

Section 1. It shall be the duty of the legislature to pass laws for the enrolment of the militia; to provide for districting the State into divisions, brigades, battalions, regiments, and companies, and to pass laws for the effectual encouragement of volunteer corps by some mode which may induce the formation and continuance of at least one volunteer company in every county and division in the city of Baltimore. The company, battalion, and regimental officers (staff-officers excepted) shall be elected by the persons composing their several companies, battalions and regiments.

Sec. 2. The adjutant-general shall be appointed by the governor, by and with the advice and consent of the senate. He shall hold his office for the term of six years, and receive the same salary as heretofore, until changed by the legislature.

ARTICLE X.

MISCELLANEOUS.

Section 1. Every officer of this State, the governor excepted, the entire amount of whose pay or compensation received for the discharge of his official duties shall exceed the yearly sum of three thousand dollars, shall keep a book, in which shall be entered every sum or sums of money received by him or on his account as a pay-

ment or compensation for his performance of official duties, a copy of which entries in said book, verified by the oath of the officer by whom it is directed to be kept, shall be returned yearly to the treasurer of the State for his inspection and that of the general assembly of Maryland; and each of such officers, when the amount received by him for the year shall exceed the sum of three thousand dollars, shall yearly pay over to the treasurer the amount of such excess by him received, subject to such disposition thereof as the legislature may deem just and equitable. And any such officer failing to comply with the said requisition, shall be deemed to have vacated his office, and be subject to suit by the State for the amount that ought to have been paid into the treasury.

Sec. 2. The legislature shall have power to pass all such laws as may be necessary and proper for carrying into execution the powers vested by this constitution, in any department or office of the government, and the duties imposed upon them thereby.

Sec. 3. If in any election directed by this constitution any two or more candidates shall have the highest and an equal number of votes, a new election shall be ordered, unless in cases specially provided for by the constitution.

Sec. 4. The trial by jury of all issues of fact in civil proceedings, in the several courts of law in this State, where the amount in controversy exceeds the sum of five dollars, shall be inviolably preserved.

Sec. 5. In the trial of all criminal cases the jury shall be the judges of law as well as fact.

Sec. 6. The legislature shall have power to regulate by law all matters which relate to the judges, time, place, and manner of holding elections in this State, and of making returns thereof: *Provided*, That the tenure and term of office, and the day of election, shall not be affected thereby.

Sec. 7. All rights vested, and all liabilities incurred, shall remain as if this constitution had not been adopted.

Sec. 8. The governor and all officers, civil and military, now holding commissions under this State, shall continue to hold and exercise their offices, according to their present tenure, until they shall be superseded, pursuant to the provisions of this constitution, and until their successors be duly qualified.

Sec. 9. The sheriffs of the several counties of this State, and of the city of Baltimore, shall give notice of the several elections authorized by this constitution, in the manner prescribed by existing laws for elections under the present constitution.

Sec. 10. This constitution, if adopted by a majority of the legal votes cast on the first Wednesday of June next, shall go into operation on the fourth day of July next, and on and after said day shall supersede the present constitution of this State.

ARTICLE XI.

AMENDMENT OF THE CONSTITUTION.

It shall be the duty of the legislature, at its first session immediately succeeding the returns of every census of the United States, hereafter taken, to pass a law for ascertaining, at the next general election of delegates, the sense of the people of Maryland in regard to the calling a convention for altering the constitution; and in case the majority of votes cast at said election shall be in favor of calling a convention, the legislature shall provide for assembling such convention, and electing delegates thereto at the earliest convenient day; and the delegates to the said convention shall be elected by the several counties of the State and the city of Baltimore, in proportion to their representation respectively in the senate and house of delegates, at the time when said convention may be called.

Done in convention, the 13th day of May, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the seventy-fifth.

J. G. CHAPMAN, President.

GEORGE G. BREWER, Secretary.

CONSTITUTION OF MARYLAND, 1864.

DECLARATION OF RIGHTS.

We, the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good constitution in this State, for the sure foundation and more permanent security thereof, declare:

Article 1. That we hold it to be self-evident that all men are created equally free; that they are endowed by their Creator with certain unalienable rights, among which are life, liberty, the enjoyment of the proceeds of their own labor and the pursuit of happiness.

Art. 2. That all government of right originates from the people, is founded in compact only and instituted solely for the good of the whole; and they have at all times the unalienable right to alter, reform or abolish their form of government in such manner as they may deem expedient.

Art. 3. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

Art. 4. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes as existed on the fourth day of July, seventeen hundred and seventy-six, and which by experience have been found applicable to their local and other circumstances and have been introduced, used and practised by the courts of law or equity; and also of all acts of assembly in force on the first day of June, eighteen hundred and sixty-four, except such as may have since expired or may be inconsistent with the provisions of this constitution, subject, nevertheless, to the revision of and amendment or repeal by the legislature of this State; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his Majesty Charles the First, to Cæcilius Calvert, Baron of Baltimore.

Art. 5. The Constitution of the United States and the laws made in pursuance thereof being the supreme law of the land, every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and is not bound by any law or ordinance of this State in contravention or subversion thereof.

Art. 6. That all persons invested with the legislative or executive powers of government are the trustees of the public, and as such accountable for their conduct; wherefore, whenever the ends of government are perverted and public liberty manifestly endangered and

all other means of redress are ineffectual, the people may, and of right ought to reform the old or establish a new government. The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.

Art. 7. That the right of the people to participate in the legislature is the best security of liberty and the foundation of all free government; for this purpose elections ought to be free and frequent, and every free white male citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Art. 8. That the legislative, executive and judicial powers of government ought to be forever separate and distinct from each other, and no person exercising the functions of one of said departments shall assume or discharge the duties of any other.

Art. 9. That no power of suspending laws or the execution of laws, unless by or derived from the legislature ought to be exercised or allowed.

Art. 10. That freedom of speech and debate or proceedings in the legislature ought not to be impeached in any court of judicature.

Art. 11. That Annapolis be the place for the meeting of the legislature, and the legislature ought not to be convened or held at any other place, but from evident necessity.

Art. 12. That for the redress of grievances and for amending, strengthening and preserving the laws, the legislature ought to be frequently convened.

Art. 13. That every man hath a right to petition the legislature for the redress of grievances in a peaceable and orderly manner.

Art. 14. That no aid, charge, tax, burthen, or fees, ought to be rated or levied under any pretence without the consent of the legislature.

Art. 15. That the levying taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; but every other person in the State, or persons holding property therein, ought to contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed or laid with a political view for the good government and benefit of the community.

Art. 16. That sanguinary laws ought to be avoided as far as it is consistent with the safety of the State; and no law to inflict cruel and unusual pains and penalties ought to be made in any case or at any time hereafter.

Art. 17. That retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore no *ex post facto* law ought to be made.

Art. 18. That no law to attaint particular persons of treason or felony ought to be made in any case or at any time hereafter.

Art. 19. That every man, for any injury done to him in his person or property ought to have remedy by the course of the law of the land and ought to have justice and right, freely without sale, fully without any denial and speedily without delay, according to the law of the land.

Art. 20. That the trial of facts where they arise is one of the greatest securities of the lives, liberties and estate of the people.

Art. 21. That in all criminal prosecutions every man hath a right to be informed of the accusation against him; to have a copy of the indictment or charge in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Art. 22. That no man ought to be compelled to give evidence against himself in a criminal case.

Art. 23. That no man ought to 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 by the law of the land.

Art. 24. That hereafter in this State there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor as slaves are hereby declared free.

Art. 25. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted by the courts of law.

Art. 26. That all warrants, without oath or affirmation to search suspected places or to seize any person or property are grievous and oppressive; and all general warrants to search suspected places or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

Art. 27. That no conviction shall work corruption of blood, nor shall there be any forfeiture of the estate of any person for any crime, except treason, and then only on conviction.

Art. 28. That a well-regulated militia is the proper and natural defence of a free government.

Art. 29. That standing armies are dangerous to liberty and ought not to be raised or kept up without the consent of the Legislature.

Art. 30. That in all cases and at all times the military ought to be under strict subordination to, and control of the civil power.

Art. 31. That no soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

Art. 32. That no person, except regular soldiers, mariners and marines in the service of this State or militia when in actual service ought in any case to be subject to or punishable by martial law.

Art. 33. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the judges shall not be removed, except for mishebavior, on conviction in a court of law, or by the governor, upon the address of the General Assembly; *Provided,* That two-thirds of all the members of each House concur in such address. No Judge shall hold any other office, civil or military, or political trust or employment of any kind whatsoever, under the constitution or laws of this State, or of the United States, or any of them, or receive fees or perquisites of any kind for the discharge of his official duties.

Art. 34. That a long continuance in the executive departments of power or trust is dangerous to liberty; a rotation, therefore, in those departments is one of the best securities of permanent freedom.

Art. 35. That no person ought to hold at the same time more than one office of profit created by the constitution or laws of this State; nor ought any person in public trust to receive any present from any foreign prince or state or from the United States, or any of them, without the approbation of this State.

Art. 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him; all persons are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless under the color of religion any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any place of worship, or any minister, nor shall any person be deemed incompetent as a witness or juror who believes in the existence of God, and that under his dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come.

Art. 37. That no other test or qualification ought to be required on admission to any office of trust or profit, than such oath or allegiance and fidelity to this State and the United States as may be pre-

scribed by this constitution, and such oath of office and qualification as may be prescribed by this constitution, or by the laws of the State, and a declaration of belief in the Christian religion, or in the existence of God and in a future state of rewards and punishments.

Art. 38. That every gift, sale or devise of land to any minister, public teacher or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of or in trust for any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination; and every gift or sale of goods or chattels to go in succession or to take place after the death of the seller or donor to or for such support, use or benefit; and also every devise of goods or chattels to or for the support, use or benefit of any minister, public teacher, or preacher of the gospel, as such; or any religious sect, order or denomination without the prior or subsequent sanction of the legislature shall be void; except always any sale, gift, lease or devise of any quantity of land, not exceeding five acres, for a church, meeting-house or other house of worship or parsonage or for a burying-ground, which shall be improved, enjoyed or used only for such purpose; or such sale, gift, lease or devise shall be void.

Art. 39. That the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession or denomination of which he is a member generally esteem the most effectual confirmation by the attestation of the Divine Being.

Art. 40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Art. 41. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered.

Art. 42. That no title of nobility or hereditary honors ought to be granted in this State.

Art. 43. That the legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, science, agriculture, commerce and manufactures and the general melioration of the condition of the people.

Art. 44. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Art. 45. That the legislature shall pass no law providing for an alteration, change or abolishment of this constitution, except in the manner therein prescribed and directed.

CONSTITUTION.

ARTICLE I.

ELECTIVE FRANCHISE.

Section 1. All elections shall be by ballot, and every white male citizen of the United States, of the age of twenty-one years or upwards, who shall have resided in the State one year next preceding the election, and six months in any county, or in any legislative district of Baltimore City, and who shall comply with the provisions of this article of the constitution, shall be entitled to vote at all elections hereafter held in this State; and in case any county or city shall be so divided as to form portions of different electoral districts for the election of Congressmen, senator, delegate, or other officer or officers, then to entitle a person to vote for such officer he must have been a resident of that part of the county or city which shall form a part of the electoral district in which he offers to vote for six months next preceding the election; but a person who shall have acquired a residence in such county or city entitling him to vote at any such election shall be entitled to vote in the election district from which he removed, until he shall have acquired a residence in the part of the county or city to which he has removed.

Sec. 2. The general assembly shall provide by law for a uniform registration of the names of voters in this State, which registration shall be evidence of the qualification of said voters to vote at any election thereafter held, but no person shall be excluded from voting at any election on account of not being registered until the general assembly shall have passed an act of registration, and the same shall have been carried into effect, after which no person shall vote unless his name appears on the register. The general assembly shall also provide by law for taking the votes of soldiers in the Army of the United States serving in the field.

Sec. 3. No person above the age of twenty-one years, convicted of larceny or other infamous crime, unless pardoned by the governor, shall ever thereafter be entitled to vote at any election in this State, and no lunatic, or person *non compos mentis*, shall be entitled to vote.

Sec. 4. No person who has at any time been in armed hostility to the United States, or the lawful authorities thereof, or who has been in any manner in the service of the so-called "Confederate States of America," and no person who has voluntarily left this State and gone within the the military lines of the so-called "Confederate States or armies," with the purpose of adhering to said States or armies, and no person who has given any aid, comfort, countenance or support to those engaged in armed hostility to the United States or in any manner adhered to the enemies of the United States, either by contributing to the enemies of the United States, or unlawfully sending within the lines of such enemies money or goods, or letters, or information, or who has disloyally held communication with the enemies of the United States, or who has advised any person to enter the service of the

said enemies, or aided any person so to enter, or who has by any open deed or word declared his adhesion to the cause of the enemies of the United States, or his desire for the triumph of said enemies over the arms of the United States, shall ever be entitled to vote at any election to be held in this State, or to hold any office of honor, profit or trust under the laws of this State, unless since such unlawful acts he shall have voluntarily entered into the military service of the United States, and been honorably discharged therefrom, or shall be on the day of election actually and voluntarily in such service, or unless he shall be restored to his full rights of citizenship by an act of the general assembly passed by a vote of two-thirds of all the members elected to each house; and it shall be the duty of all officers of registration and judges of election carefully to exclude from voting, or being registered, all persons so as above disqualified; and the judges of election at the first election held under this constitution shall, and at any subsequent election may, administer to any person offering to vote the following oath or affirmation: "I do swear [or affirm] that I am a citizen of the United States; that I have never given any aid, countenance or support to those in armed hostility to the United States; that I have never expressed a desire for the triumph of said enemies over the arms of the United States; and that I will bear true faith and allegiance to the United States and support the constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will in all respects demean myself as a loyal citizen of the United States, and I make this oath or affirmation without any reservation or evasion, and believe it to be binding on me;" and any person declining to take such oath shall not be allowed to vote, but the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote; and any person swearing or affirming falsely shall be liable to penalties of perjury, and it shall be the duty of the proper officers of registration to allow no person to be registered until he shall have taken the oath or affirmation above set out, and it shall be the duty of the judges of election in all their returns of the first election held under this constitution to state in their said returns that every person who has voted has taken such oath or affirmation. But the provisions of this section in relation to acts against the United States shall not apply to any person not a citizen of the United States who shall have committed such acts while in the service of some foreign country at war against the United States, and who has since such acts been naturalized or may be naturalized under the laws of the United States and the oath above set forth shall be taken in the case of such persons in such sense.

Sec. 5. If any person shall give, or offer to give, directly or indirectly, or hath given, or offered to give, since the fourth day of July, eighteen hundred and fifty-one, any bribe, present, or reward, or any promise, or any security for the payment or delivery of money or any other thing to induce any voter to refrain from casting his vote, or forcibly to prevent him in any way from voting, or to pro-

cure a vote, for any candidate or person proposed or voted for as elector of President and Vice-President of the United States or Representative in Congress, or for any office of profit or trust created by the constitution or laws of this State, or by the ordinances or authority of the mayor and city council of Baltimore, the person giving or offering to give, and the person receiving the same, and any person who gives or causes to be given, an illegal vote knowing it to be such, at any election to be hereafter held in this State, or who shall be guilty of or accessory to any fraud, force, surprise or bribery to procure himself or any other person to be nominated to any office, national, State or municipal, shall, on conviction in a court of law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust or to vote at any election thereafter.

Sec. 6. It shall be the duty of the general assembly to pass laws to punish with fine and imprisonment any person who shall remove into any election district or precinct of any ward of the city of Baltimore, not for the purpose of acquiring a *bona-fide* residence therein, but for the purpose of voting at an approaching election, or who shall vote in any election district or ward in which he does not reside (except in the case provided for in this article), or shall at the same election vote in more than one election district or precinct, or shall vote or offer to vote in any name not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside.

Sec. 7. Every person elected or appointed to any office of trust or profit under this constitution, or under the laws made pursuant thereto, before he shall enter upon the duties of such office, shall take and subscribe the following oath or affirmation: "I,———, do swear [or affirm, as the case may be] that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ——— according to the constitution and laws of this State, and that since the fourth day of July, in the year eighteen hundred and fifty-one, I have not in any manner violated the provisions of the present or of the late constitution in relation to the bribery of voters or preventing legal votes or procuring illegal votes to be given and [if a governor, senator, member of the house of delegates or judge] that I will not, directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as ———. I do further swear [or affirm] that I will bear true allegiance to the State of Maryland and support the constitution and laws thereof, and that I will bear true allegiance to the United States and support, protect and defend the constitution, laws and government thereof as the supreme law of the land, any law or ordinance of this or any State to the contrary notwithstanding; that I have never directly or indirectly, by word, act or deed, given any aid, comfort or encouragement to those in rebellion against the United States or the lawful authorities thereof, but that I have been truly and loyally on the side of the United States against those in armed

rebellion against the United States; and I do further swear [or affirm] that I will, to the best of my abilities, protect and defend the Union of the United States, and not allow the same to be broken up and dissolved or the government thereof be destroyed under any circumstances, if in my power to prevent it, and that I will at all times discountenance and oppose all political combinations having for their object such dissolution or destruction."

Sec. 8. Every person holding any office of trust or profit under the late constitution or under any law of this State, and who shall be continued in office under this constitution or under any law of the State, shall, within thirty days after this constitution shall have gone into effect, take and subscribe the oath or affirmation set forth in the seventh section of this article, and if any such person shall fail to take said oath his office shall be *ipso facto* vacant. And every person hereafter elected or appointed to office in this State who shall refuse or neglect to take the oath or affirmation of office provided for in the said seventh section of this article shall be considered as having refused to accept the said office, and a new election or appointment shall be made as in case of refusal to accept or resignation of an office. And any person swearing or affirming falsely in the premises shall, on conviction thereof in a court of law, incur the penalties for wilful and corrupt perjury and thereafter shall be incapable of holding any office of profit or trust in this State.

ARTICLE II.

EXECUTIVE DEPARTMENT.

Section 1. The executive power of the State shall be vested in a governor, whose term of office shall commence on the second Wednesday of January next ensuing his election and continue for four years, and until his successor shall have qualified, but the governor chosen at the first election under this constitution shall not enter upon the discharge of the duties of the office until the expiration of the term for which the present incumbent was elected, unless the said office shall become vacant by death, resignation, removal from the State or other disqualification of said incumbent.

Sec. 2. An election for governor under this constitution shall be held on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-four, and on the same day and month in every fourth year thereafter, at the places of voting for delegates to the general assembly, and every person qualified to vote for delegates shall be qualified and entitled to vote for governor; the election to be held in the same manner as the election of delegates and the returns thereof, under seal, to be addressed to the speaker of the house of delegates, and inclosed and transmitted to the secretary of state, and delivered to the said speaker at the commencement of the session of the general assembly next ensuing said election.

Sec. 3. The speaker of the house of delegates shall then open the said returns in the presence of both houses, and the person having the highest number of votes, and being constitutionally eligible, shall be the governor, and shall qualify in the manner herein prescribed on the second Wednesday of January next ensuing his election, or as soon thereafter as may be practicable.

Sec. 4. If two or more persons shall have the highest and an equal number of votes, one of them shall be chosen governor by the senate and house of delegates; and all questions in relation to the eligibility of governor, and to the returns of said election, and to the number and legality of votes therein given, shall be determined by the house of delegates; and if the person or persons having the highest number of votes be ineligible, the governor shall be chosen by the senate and house of delegates. Every election of governor by the general assembly shall be determined by a joint majority of the senate and house of delegates, and the vote shall be taken *viva voce*. But if two or more persons shall have the highest and an equal number of votes, then a second vote shall be taken, which shall be confined to the persons having an equal number; and if the votes should be again equal, then the election of governor shall be determined by lot between those who shall have the highest and an equal number on the first vote.

Sec. 5. A person to be eligible to the office of governor must have attained the age of thirty years and must have been for five years a citizen of the United States and for five years next preceding his election a resident of the State.

Sec. 6. A lieutenant-governor shall be chosen at every regular election for governor. He shall continue in office for the same time, shall be elected in the same manner and shall possess the same qualifications as the governor. In voting for governor and lieutenant-governor, the electors shall state for whom they vote as governor and for whom as lieutenant-governor.

Sec. 7. The lieutenant-governor shall, by virtue of his office, be president of the senate, and whenever the senate are equally divided shall have the right to give the casting vote.

Sec. 8. In case of the death, resignation, removal from the State or other disqualification of the governor, the powers, duties and emoluments of the office shall devolve upon the lieutenant-governor; and in case of his death, resignation, removal or other disqualification, then upon the president of the senate for the time being, until the disqualification or inability shall cease, or until a new governor shall be elected and qualified; and for any vacancy in said office not herein provided for, provision may be made by law, and if such vacancy should occur without such provision being made, the general assembly shall be convened by the secretary of state for the purpose of filling said vacancy.

Sec. 9. Whenever the office of governor 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 its own members as president *pro tempore.*

Sec. 10. 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 delegates, and no more.

Sec. 11. The governor shall be commander-in-chief of the land and naval forces of the State and may call out the militia to repel invasions, suppress insurrections and enforce the execution of the laws; but shall not take the command in person without the consent of the general assembly.

Sec. 12 He shall take care that the laws be faithfully executed.

Sec. 13. He shall nominate and, by and with the advice and consent of the senate, appoint all civil and military officers of the State, whose appointment or election is not otherwise herein provided for, unless a different mode of appointment be prescribed by the law creating the office.

Sec. 14. In case of vacancy during the recess of the senate in any office which the governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force till the end of the next session of the general assembly, or till some other person is appointed to the same office, whichever shall first occur, and the nomination of the person thus appointed during the recess, or of some other person in his place shall be made to the senate within thirty days after the next meeting of the general assembly.

Sec. 15. No person after being rejected by the senate shall be again nominated for the same office at the same session, unless at the request of the senate, or be appointed to the same office during the recess of the general assembly.

Sec. 16. All civil officers appointed by the governor and senate shall be nominated to the senate within fifty days from the commencement of each regular session of the general assembly, and their term of office, except in cases otherwise provided for in this constitution, shall commence on the first Monday of May next ensuing their appointment and continue for two years (unless sooner removed from office) and until their successors respectively qualify according to law.

Sec. 17. The governor may suspend or arrest any military officer of the State for disobedience of orders or other military offence; and may remove him in pursuance of the sentence of a court-martial; and may remove for incompetency or misconduct all civil officers who received appointments from the executive for a term not exceeding two years.

shall become an unsafe place for the meeting of the general assembly,

Sec. 18. The governor may convene the general assembly or the senate alone on extraordinary occasions; and whenever from the presence of an enemy or from any other cause the seat of government he may direct their sessions to be held at some other convenient place.

Sec. 19. It shall be the duty of the governor semi-annually and oftener if he deem it expedient to examine the bank-book, account-books and official proceedings of the treasurer and comptroller of the State.

Sec. 20. He shall, from time to time, inform the general assembly of the condition of the State and recommend to their consideration such measures as he may judge necessary and expedient.

Sec. 21. He shall have power to grant reprieves and pardons, except in cases of impeachment and in cases in which he is prohibited by other articles of this constitution, and to remit fines and forfeitures for offences against the State; but shall not remit the principal or interest of any debt due to the State, except in cases of fines and forfeitures; and before granting a *nolle prosequi*, or pardon, he shall give notice in one or more newspapers of the application made for it and of the day on or after which his decision will be given; and in every case in which he exercises this power, he shall report to either branch of the general assembly whenever required the petitions, recommendations and reasons which influenced his decision.

Sec. 22. The governor shall reside at the seat of government and shall receive for his services an annual salary of four thousand dollars.

Sec. 23. A secretary of state shall be appoined by the governor, by and with the advice and consent of the senate, who shall continue in office, unless sooner removed by the governor, till the end of the official term of the governor from whom he received his appointment, and shall receive an annual salary of one thousand dollars.

Sec. 24. The secretary of state shall carefully keep and preserve a record of all official acts and proceedings which may at all times be inspected by a committee of either branch of the general assembly, and shall perform such other duties as are now or may hereafter be prescribed by law or as may properly belong to his office.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Section 1. The legislature shall consist of two distinct branches, a senate and a house of delegates, which shall be styled "The General Assembly of Maryland."

Sec. 2. Immediately after the adoption of this constitution, and before there shall have been held any general election under it, the mayor and city council of Baltimore shall proceed to lay off and

divide the said city into three several districts, of equal population and contiguous territory, as near as may be; which said districts shall be called the first, second, and third legislative districts of Baltimore city.

Sec. 3. Every county in the State and each legislative district of Baltimore City, as hereinbefore provided for, shall be entitled to one senator, who shall be elected by the qualified voters of the counties and of the legislative districts of Baltimore City respectively, and shall serve for four years from the date of his election, subject to the classification of senators hereinafter provided for.

Sec. 4. The white population of the State shall constitute the basis of representation in the house of delegates, and the apportionment of the delegates among the several counties and legislative districts of the city of Baltimore shall be as follows: For every five thousand persons, or a fractional part thereof above one-half, one delegate shall be chosen, until the number of delegates in each county and legislative district of the city of Baltimore shall reach five; above that number, one delegate shall be chosen for the next twenty thousand persons, or a fractional portion over one-half thereof, in each county and legislative district of the city of Baltimore; above that number each county and legislative district of the said city shall elect one delegate for every eighty thousand persons, or fractional portion thereof above one half. Upon this principle, and as soon as practicable after each national census, or State enumeration of inhabitants, the general assembly shall apportion the members of the house of delegates among the several counties and the several legislative districts of Baltimore city according to the white population of each. But until such apportionment is made the house of delegates shall consist of eighty members, distributed as follows: Allegany, five members; Anne Arundel, two; each of the three legislative districts in Baltimore city, six; Baltimore county, six; Calvert, one; Caroline, two; Carroll, five; Cecil, four; Charles, one; Dorchester, two; Frederick, six; Harford, four; Howard, two; Kent, two; Montgomery, two; Prince George's, two; Queen Anne's, two; Saint Mary's, one; Somerset, three; Talbot, two; Washington, five; Worcester, three.

Sec. 5. The members of the house of delegates shall be elected by the qualified voters of the counties and the legislative districts of Baltimore city, respectively, to serve for two years from the day of their election.

Sec. 6. The first election for senators and delegates shall take place on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-four; and the elections for delegates, and, as nearly as practicable, for one-half of the senators, shall be held on the same day in every second year thereafter.

Sec. 7. Immediately after the senate shall have convened, after the first election under this constitution, the senators shall be divided

by lot into two classes, as nearly equal in number as may be; senators of the first class shall go out of office at the expiration of two years, and senators shall be elected on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-six, for the term of four years, to supply their places; so that, after the first election, one-half of the senators may be chosen every second year. In case the number of senators be hereinafter increased, such classification of the additional senators shall be made as to preserve, as nearly as may be, an equal number in each class.

Sec. 8. No person shall be eligible as a senator or delegate who, at the time of his election, is not a citizen of the United States, and who has not resided at least three years next preceding the day of his election in this State, and the last year thereof in the county or in the legislative district of Baltimore city which he may be chosen to represent, if such county or legislative district of said city shall have been so long established, and if not, then in the county or city from which, in whole or in part, the same may have been formed; nor shall any person be eligible as a senator unless he shall have attained the age of twenty-five years, nor as delegate unless he shall have attained the age of twenty-one years, at the time of his election.

Sec. 9. No member of Congress or person holding any civil or military office under the United States shall be eligible as a senator or delegate; and if any person shall, after his election as a senator or delegate, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat.

Sec. 10. No person holding any civil office of profit or trust under this State, except justices of the peace, shall be eligible to the office of senator or delegate.

Sec. 11. No collector, receiver, or holder of public moneys, shall be eligible as senator or delegate, or to any office of profit or trust under this State, until he shall have accounted for and paid into the treasury all sums on the books thereof charged to and due by him.

Sec. 12. In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or legislative district of Baltimore city for which he shall have been elected, of any person who shall have been chosen as a delegate or senator, or in case of a tie between two or more such qualified persons, a warrant of election shall be issued by the speaker of the house of delegates, or president of the senate, as the case may be, for the election of another person in his place, of which election not less than ten days' notice shall be given, exclusive of the day of the publication of the notice and of the day of election; and in case of such resignation or refusal to act, being communicated in writing to the governor by the person so resigning or refusing to act, or if such death occur during the legislative recess, and more than ten days before its termination, it shall be the duty of the governor to issue a warrant of election to

supply the vacancy thus created, in the same manner the said speaker or president might have done during the session of the general assembly. *Provided, however,* That unless a meeting of the general assembly may intervene, the election thus ordered to fill such vacancy shall be held on the day of the ensuing election for delegates and senators.

Sec. 13. The general assembly shall meet on the first Wednesday of January, eighteen hundred and sixty-five, and on the same day in every second year thereafter, and at no other time, unless convened by the proclamation of the governor.

Sec. 14. The general assembly shall continue its session so long as in its judgment the public interest may require, and each member thereof shall receive a compensation of five dollars per diem, for every day he shall attend the sessions, unless absent on account of sickness: *Provided, however,* That no member shall receive any other or larger sum than four hundred dollars. When the general assembly shall be convened by proclamation of the governor, the session shall not continue longer than thirty days, and in such case the compensation shall be at the rate of five dollars per diem.

Sec. 15. No book or other printed matter not appertaining to the business of the session shall be purchased or subscribed for, for use of the members of the general assembly, or be distributed among them at the public expense.

Sec. 16. No senator or delegate, after qualifying as such, notwithstanding he may thereafter resign, shall, during the whole period of time for which he was elected, be eligible to any office which shall have been created, or the salary or profits of which shall have been increased, during such term, or shall during said whole period of time be appointed to any civil office by the executive or general assembly.

Sec. 17. No senator or delegate shall be liable, in any civil action or criminal prosecution whatever, for words spoken in debate.

Sec. 18. Each house shall be judge of the qualifications and elections of its members, subject to the laws of the State; shall appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly or disrespectful behavior, and, with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence.

Sec. 19. A majority of the whole number of the members elected to each house shall constitute a quorum for the transaction of 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. 20. The doors of each house and of the committees of the whole shall be open, except when the business is such as ought to be kept secret.

Sec. 21. Each house shall keep a journal of its proceedings, and cause the same to be published. The yeas and nays of members on any question shall, at the call of any five of them in the house of delegates, or one in the senate, be entered on the journal.

Sec. 22. Each house may punish, by imprisonment during the session of the general assembly, any person not a member for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings, or any of its officers in the execution of their duties: *Provided,* Such imprisonment shall not, at any one time, exceed ten days.

Sec. 23. The house of delegates may inquire, on the oath of witnesses, into all complaints, grievances, and offences, as the grand inquest of the State, and may commit any person, for any crime, to the public jail, there to remain until discharged by due course of law; they may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, and appoint auditors to state and adjust the same; they may call for all public or official papers and records, and send for persons whom they may judge necessary in the course of their inquiries concerning affairs relating to the public interest, and may direct all office bonds, which shall be made payable to the State, to be sued for any breach thereof.

Sec. 24. Neither house shall, without the consent of the other, adjourn for more than three days at any one time, nor to any other place than that in which the house shall be sitting, without the concurrent vote of two-thirds of the members present.

Sec. 25. The house of delegates shall have the sole power of impeachment in all cases, but a majority of all the members elected must concur in an impeachment; 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 the law and evidence, but no person shall be convicted without the concurrence of two-thirds of all the senators elected.

Sec. 26. Any bill may originate in either house of the general assembly, and be altered, amended, or rejected by the other; but no bill shall originate in either house during the last ten days of the session, nor become a law until it be read on three different days of the session in each house, unless three-fourths of the members of the house where such bill is pending shall so determine.

Sec. 27. No bill shall become a law unless it be passed in each house by a majority of the whole number of members elected, and on its final passage the ayes and noes be recorded.

Sec. 28. The style of all laws of this State shall be: "*Be it enacted by the General Assembly of Maryland,*" and all laws shall be passed by original bill; and every law enacted by the general assembly shall embrace but one subject, and that shall be described in the title; and no law nor section of a law shall be revised or amended by reference to its title or section only, and it shall be the duty of the general assembly in amending any article or section of the code of laws of this State, to enact the same as the said article or section would read when amended; and whenever the general assembly shall enact any public general law, not amendatory of any section or article in the said code, it shall be the duty of the general assembly to enact the same in articles and sections, in the same manner as the said code is arranged, and to provide for the publication of all additions and alterations which may be made to the said code.

Sec. 29. Every bill when passed by the general assembly and sealed with the great seal shall be presented to the governor, who shall sign the same in the presence of the presiding officers and chief clerks of the senate and house of delegates. Every law shall be recorded in the office of the court of appeals and in due time be printed, published and certified under the great seal to the several courts in the same manner as has been heretofore usual in this State.

Sec. 30. No law passed by the general assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein; and in case any public law is made to take effect before the said first day of June, the general assembly shall provide for the immediate publication of the same.

Sec. 31. No money shall be drawn from the treasury of the State, except in accordance with an appropriation by law and every such law shall distinctly specify the sum appropriated and the object to which it shall be applied: *Provided,* That nothing herein contained shall prevent the general assembly from placing a contingent fund at the disposal of the executive, who shall report to the general assembly at each session the amount expended and the purposes to which it was applied. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws after each regular session of the general assembly.

Sec. 32. The general assembly shall not pass local or special laws in any of the following-enumerated cases, viz: For the assessment and collection of taxes for State or county purposes or extending the time for the collection of taxes; providing for the support of public schools; the preservation of school funds; the location or the regulation of school-houses; granting divorces; relating to fees or salaries; relating to the interest on money; providing for regulating the election or compensation of State or county officers; or designing the places of voting; or the boundaries of election districts; providing for the sale of real estate belonging to minors or other persons laboring under

legal disabilities, by executors, administrators, guardians or trustees; giving effect to informal or invalid deeds or wills; refunding money paid into the State treasury or releasing persons from their debts or obligations to the State, unless recommended by the governor or officers of the treasury department; or establishing, locating or affecting the construction of roads and the repairing or building of bridges. And the general assembly shall pass no special law for any case for which provision has been made by an existing general law. The general assembly, at its first session after the adoption of this constitution, shall pass general laws providing for the cases enumerated in this section and for all other cases where a general law can be made applicable.

Sec. 33. No debt shall be hereafter contracted by the general assembly unless such debts shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same, and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and interest thereon shall be fully discharged. The credit of the State shall not in any manner be given or loaned to or in aid of any individual association or corporation, nor shall the general assembly have the power in any mode to involve the State in the construction of works of internal improvement, nor in any enterprise which shall involve the faith or credit of the State, nor make any appropriations therefor; and they shall not use or appropriate the proceeds of the internal improvement companies or of the State tax now levied, or which may hereafter be levied, to pay off the public debt to any other purpose until the interest and debt are fully paid, or the sinking fund shall be equal to the amount of the outstanding debt; but the general assembly may, without laying a tax, borrow an amount, never to exceed fifty thousand dollars, to meet temporary deficiencies in the treasury, and may contract debts to any amount that may be necessary for the defence of the State.

Sec. 34. No extra compensation shall be granted or allowed by the general assembly to any public officer, agent, servant or contractor after the services shall have been rendered or the contract entered into; nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

Sec. 35. No lottery grant shall ever hereafter be authorized by the general assembly.

Sec. 36. The general assembly shall pass no law nor make any appropriation to compensate the masters or claimants of slaves emancipated from servitude by the adoption of this constitution.

Sec. 37. No person shall be imprisoned for debt.

Sec. 38. The general assembly shall grant no charter for banking purposes, nor renew any banking corporation now in existence, except upon the condition that the stockholders shall be liable to the

amount of their respective share or shares of stock in such banking institution for all its debts and libabilities upon note, bill or otherwise, and upon the further condition that no director or other officer of said corporation shall borrow any money from said corporation, and if any director or other officer shall be convicted, upon indictment, of directly or indirectly violating this section, he shall be punished by fine or imprisonment at the discretion of the court. The books, papers and accounts of all banks shall be open to inspection under such regulations as may be prescribed by law.

Sec. 39. The general assembly shall enact no law authorizing private property to be taken for public use without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation.

Sec. 40. Any citizen of this State who shall after the adoption of this constitution, either in or out of this State, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, and any citizen who has thus offended or who has so aided or assisted those thus offending, since the first Wednesday of June, eighteen hundred and fifty-one, shall ever thereafter be incapable of holding any office of trust or profit under this State.

Sec. 41. The general assembly shall pass laws for the preservation of the purity of elections by the registration of voters, and by such other means as may be deemed expedient; and to make effective the provisions of the constitution disfranchising certain persons or disqualifying them from holding office.

Sec. 42. The general assembly shall pass laws necessary to protect the property of the wife from the debts of the husband during her life, and for securing the same to her issue after her death.

Sec. 43. Laws shall be passed by the general assembly to protect from execution a reasonable amount of property of a debtor, not exceeding in value the sum of five hundred dollars.

Sec. 44. The general assembly shall provide a simple and uniform system of charges in the offices of clerks of courts and registers of will in the counties of this State and the city of Baltimore, and for the collection thereof: *Provided,* The amount of compensation to any of said officers shall not exceed the sum of twenty-five hundred dollars a year over and above office expenses and compensation to assistants: *And provided further,* That such compensation of clerks, registers, assistants and office expenses shall always be paid out of the fees or receipts of the offices respectively.

Sec. 45. The general assembly shall have power to receive from the United States any grant or donation of land, money or securities for any purpose designated by the United States, and shall administer or distribute the same according to the conditions of the said grant.

Sec. 46. The general assembly shall make provision for all cases of contested elections of any of the officers not herein provided for.

Sec. 47. The general assembly shall pass laws requiring the president, directors, trustees or agents of corporations created or authorized by the laws of this State, teachers or superintendents of the public schools, colleges or other institutions of learning; attorneys at law, jurors and such other persons as the general assembly shall from time to time prescribe to take the oath of allegiance to the United States set forth in the first article of this constitution.

Sec. 48. The general assembly shall have power to accept the cession of any territory contiguous to this State from the States of Virginia and West Virginia, or from the United States, with the consent of Congress and of the inhabitants of such ceded territory, and in case of such cessions the general assembly may divide such territory into counties and shall provide for the representation of the same in the general assembly on the basis fixed by this constitution, and may for that purpose increase the number of senators and delegates, and the general assembly shall enact such laws as may be required to extend the constitution and laws of this State over such territory, and may create courts conformably to the constitution for such territory, and may for that purpose increase the number of judges of the court of appeals.

Sec. 49. The general assembly shall provide by law for the registration of births, marriages and deaths, and shall pass laws providing for the celebration of marriage between any persons legally competent to contract marriage, and shall provide that any persons prevented by conscientious scruples from being married by any of the existing provisions of law may be married by any judge or clerk of any court of record or any mayor of any incorporated city in this State.

Sec. 50. The rate of interest in this State shall not exceed 6 per centum per annum and no higher rate shall be taken or demanded; and the general assembly shall provide by law all necessary forfeitures and penalties against usury.

Sec. 51. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes and in cases where, in the judgment of the general assembly, the object of the corporation cannot be attained under general laws. All laws and special acts, pursuant to this section, may be altered from time to time or repealed: *Provided,* Nothing herein contained shall be construed to alter, change or amend in any manner the section in relation to banks.

Sec. 52. The governor, comptroller and treasurer of the State are hereby authorized conjointly, or any two of them, to exchange the State's interest as stockholder and creditor in the Baltimore and Ohio Railroad Company for an equal amount of the bonds or reg-

istered debt now owing by the State; and subject to such regulations and conditions as the general assembly may from time to time prescribe, to sell the State's interest in the other works of internal improvement, whether as a stockholder or a creditor; also the State's interest in any banking corporation and receive in payment the bonds and registered debt now owing by the State equal in amount to the price obtained for the State's said interest: *Provided,* That the interest of the State in the Washington Branch of the Baltimore and Ohio Railroad be reserved and excepted from sale: *And provided further,* That no sale or contract of sale of the State's interest in the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal and the Susquehanna and Tide Water Canal Companies shall go into effect until the same shall be ratified by the ensuing general assembly.

Sec. 53. The general assembly before authorizing the sale of the State's interest in the Chesapeake and Ohio Canal and before prescribing regulations and conditions for said sale shall pass all laws that may be necessary to authorize the counties of Alleghany, Washington, Frederick and Montgomery, or any one of them, to create a debt by the issue of bonds or otherwise, so as to enable them, or any of them, to become the purchasers of said interest.

Sec. 54. The general assembly shall have power to regulate by law, not inconsistent with this constitution, all matters which relate to the judges of election, time, place and manner of holding elections in this State and of making returns thereof.

Sec. 55. The general assembly shall have power to pass all such laws as may be necessary and proper for carrying into execution the powers vested by this constitution in any department or office of the government and the duties imposed upon them thereby.

ARTICLE IV.—JUDICIARY DEPARTMENT.

PART I.—*General Provisions.*

Section 1. The judicial power of this State shall be vested in a court of appeals, circuit courts, orphans' courts, such courts for the city of Baltimore as may be hereinafter prescribed or provided for and justices of the peace; all said courts shall be courts of record and each shall have a seal, to be used in the authentication of all process issuing from them. The process and official character of justices of the peace shall be authenticated as hath heretofore been practised in this State or may hereafter be prescribed by law.

Sec. 2. The judges of the several courts, except the judges of the orphans' courts, shall be citizens of the United States and residents of this State, not less than five years next preceding their election or appointment by the executive in case of a vacancy; and not less than one year next preceding their election or appointment, residents in the judicial district or circuit, as the case may be, for which they

may be elected or appointed; they shall be not less than thirty years of age at the time of their election and selected from those who have been admitted to practise law in this State, and who are most distinguished for integrity, wisdom and sound legal knowledge.

Sec. 3. The judges of the court of appeals shall be elected by the qualified voters of the State; and the governor, by and with the advice and consent of the senate, shall designate the chief justice; and the judges of the judicial circuits shall be elected by the qualified voters of their respective circuits; each judge of the court of appeals and of each judicial circuit shall hold his office for the term of fifteen years from the time of his election, or until he shall have attained the age of seventy years, whichever may first happen, and be re-eligible thereto until he shall have attained the age of seventy years and not after.

Sec. 4. Any judge shall be removed from office by the governor on conviction in a court of law of incompentency, of wilful neglect of duty, of misbehavior in office, or any other crime; or on impeachment according to this constitution or the laws of the State; or on the address of the general assembly, two-thirds of each house concurring in such address, and the accused having been notified of the charges against him and had opportunity of making his defence.

Sec. 5. In case of the death, resignation, removal or other disqualification of a judge of any court of this State, except of the orphans' courts, the governor, by and with the advice and consent of the senate, shall thereupon appoint a person duly qualified to fill said office until the next general election thereafter, whether for members of general assembly or county officers, whichever shall first occur, at which time an election shall be held as herein prescribed for a judge, who shall hold said office for the term of fifteen years and until the election and qualification of his successor.

Sec. 6. All judges shall, by virtue of their offices, be conservators of the peace throughout the State, and no fees or perquisites, commission or reward of any kind shall be allowed to any judge in this State besides his annual salary or fixed per diem for the discharge of any judicial duty.

Sec. 7. No judge shall sit in any case wherein he may be interested or where either of the parties may be connected with him by affinity or consanguinity within such degrees as now are or may hereafter be prescribed by law, or where he shall have been of counsel in the case.

Sec. 8. The general assembly shall provide for the trial of causes in case of the disqualification of the judge of the superior court of Baltimore City, the court of common pleas, the circuit court of Baltimore City and the criminal court of Baltimore, and also in case of the disqualification of any judge of other circuit courts of this State, to hear and determine the same, but in case of such disqualification the

parties thereto may by consent appoint a person to try the same; and the parties to any cause may submit the same to the court for determination without the aid of a jury.

Sec. 9. The judge or judges of any court of this State, except the court of appeals, shall order and direct the record of proceedings in any suit or action, issue, or petition, presentment or indictment pending in such court to be transmitted to some other court in the same or any adjoining circuit having jurisdiction in such causes, whenever any party to such cause, or the counsel of any party shall make it satisfactorily appear to the court that such party cannot have a fair and impartial trial in the court in which such suit or action, issue or petition, presentment or indictment is pending; and the general assembly shall make such modifications of existing law as may be necessary to regulate and give force to this provision.

Sec. 10. The judge or judges of any court may appoint such officers for their respective courts as may be found necessary, and it shall be the duty of the general assembly to prescribe by law a fixed compensation for all such officers.

Sec. 11. Every person being a citizen of the United States shall be permitted to appear to and try his own case in all the courts of this State.

Sec. 12. Any person who shall, after this constitution shall have gone into effect, detain in slavery any person emancipated by the provisions of this constitution, shall, on conviction, be fined not less than five hundred dollars nor more than five thousand dollars or be imprisoned not more than five years; and any of the judges of this State shall discharge, on *habeas corpus*, any person so detained in slavery.

Sec. 13. The clerks of the several courts created or continued by this constitution shall have charge and custody of the records and other papers, shall perform all the duties and be allowed the fees which appertain to their several offices, as the same now are or may hereafter be regulated by law.

Sec. 14. All elections of judges and other officers provided for by this constitution, State's attorneys excepted, shall be certified and the returns made by the clerks of the respective counties to the governor, who shall issue commissions to the different persons for the offices to which they shall have been respectively elected; and in all such elections, the person having the greatest number of votes shall be declared to be elected.

Sec. 15. If in any case of election for judges, clerks of the courts of law, and registers of wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the governor to order a new election; and in case of any contested election the governor shall send the returns to the house of delegates, who shall judge of the election and qualification of the candidates at such election.

Sec. 16. All public commissions and grants shall run thus, "The State of Maryland," &c., and shall be signed by the governor, with the seal of the State annexed; all writs and process shall run in the same style, and be tested, sealed and signed as usual; and all indictments shall conclude "against the peace, government, and dignity of the State."

PART II. *Court of Appeals.*

Sec. 17. The court of appeals shall consist of a chief justice and four associate justices, and for their selection the State shall be divided into five judicial districts, as follows, viz: Worcester, Somerset, Dorchester, Talbot, Caroline, Queen Anne, Kent, and Cecil counties shall compose the first district; Harford and Baltimore counties, and the first seven wards of Baltimore city, shall compose the second district; Baltimore city, except the first seven wards, shall compose the third district; Allegany, Washington, Frederick, Howard and Carroll counties shall compose the fourth district; Saint Mary's, Charles, Anne Arundel, Calvert, Prince George's and Montgomery counties shall compose the fifth district, and one of the justices of the court of appeals shall be elected from each of said districts, by the qualified voters of the whole State. The present chief justice and associate justices of the court of appeals shall continue to act as such until the expiration of the term for which they were respectively elected, and until their successors are elected and qualified; and an election for a justice of the court of appeals, to be taken from the fourth judicial district, shall be held on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-four.

Sec. 18. The court of appeals shall hold its sessions in the city of Annapolis, on the first Monday in April and the first Monday in October of each and every year, or at such other times as the general assembly may by law direct, and it shall be competent for the justices of said court, sufficient cause appearing to them, temporarily to transfer their sittings elsewhere.

Sec. 19. The jurisdiction of the court of appeals shall be coextensive with the limits of the State, and such as now is or may hereafter be prescribed for it by law, and its sessions shall continue for not less than ten months in the year, if the business before it shall so require.

Sec. 20. Any three of the justices of the court of appeals may constitute a quorum, but no cause shall be decided without the concurrence of at least three justices in the decision; and in every case decided, an opinion in writing shall be filed within three months after the argument or submission of the cause, and the judgment of the court shall be final and conclusive.

Sec. 21. The salary of the justices of the court of appeals shall be three thousand dollars each per annum, payable quarterly.

Sec. 22. Provision shall be made by law for publishing reports of all causes argued and determined in the court of appeals, which the justices shall designate as proper for publication.

Sec. 23. The court of appeals shall appoint its own clerk, who shall hold his office for six years, and may be reappointed at the end thereof; he shall be subject to removal by the said court for incompetency, neglect of duty, misdemeanor in office, or such other cause or causes as may be prescribed by law.

PART III. *Circuit Courts.*

Sec. 24. The State shall be divided into thirteen judicial circuits, in manner following: The counties of Saint Mary's and Charles shall constitute the first circuit; the counties of Anne Arundel and Calvert, the second; the counties of Prince George's and Montgomery, the third; the county of Frederick, the fourth; the county of Washington, the fifth; the county of Allegany, the sixth; the counties of Carroll and Howard, the seventh; the county of Baltimore the eighth; the counties of Harford and Cecil, the ninth; the counties of Kent and Queen Anne's, the tenth; the counties of Talbot and Caroline, the eleventh; the counties of Dorchester, Somerset, and Worcester, the twelfth; and the city of Baltimore, the thirteenth.

Sec. 25. One court shall be held in each county of the State. The said courts shall be called circuit courts for the county in which they may be held, and shall have and exercise all the power, authority, and jurisdiction, original and appellate, which the present circuit courts of this State now have and exercise, or which may hereafter be prescribed by law.

Sec. 26. For each circuit (the thirteenth excepted) there shall be one judge, who shall be styled circuit judge, who, during his term of office, shall reside in one of the counties composing the circuit for which he may be elected; the said judges shall hold a term of their courts in each of the counties composing their respective circuits at such times as now are or may hereafter be fixed by law, such terms to be never less than two in each year in each county; special terms may be held by said judges in their discretion, whenever the business of their several counties renders such terms necessary.

Sec. 27. The present judges of the circuit courts shall continue to act as judges of the respective circuit courts within the judicial circuits in which they respectively reside, until the expiration of the term for which they were respectively elected, and until their successors are elected and qualified, viz: The present judges of the first, second, third, fourth, sixth, and eighth judicial circuits, as

organized at the time of the adoption of this constitution, shall continue to act as judges respectively of the first, second, fourth, fifth, ninth, and twelfth judicial circuits as organized under the constitution; and an election for judges of the third, sixth, seventh, eighth, tenth, and eleventh judicial circuits shall be held on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-four.

Sec. 28. The salary of each judge of the circuit court shall be twenty-five hundred dollars per annum, payable quarterly, and shall not be increased or diminished during his continuance in office.

Sec. 29. There shall be a clerk of the circuit court for each county, who shall be selected by a plurality vote of the qualified voters of said county; he shall hold his office for the term of six years from the time of his election, and until a new election is held and his successor duly qualified; he shall be re-eligible at the end of his term, and shall at any time be subject to removal for wilful neglect of duty, or other misdemeanor in office, on conviction in a court of law. In the event of any vacancy in the office of the clerk of any of the circuits courts, said vacancy shall be filled by the judge of said circuit in which said vacancy occurs, until the next general election, for county officers, when a clerk of said circuit court shall be elected to serve for six years thereafter.

Sec. 30. The judges of the respective circuit courts of this State, and of the courts of Baltimore city, shall render their decisions, in all cases argued before them, or submitted for their judgment, within two months after the same shall have been so argued or submitted.

PART IV. *Courts of Baltimore City.*

Sec. 31. There shall be in the thirteenth judicial circuit, four courts to be styled the superior court of Baltimore city; the court of common pleas; the circuit court of Baltimore city; and the criminal court of Baltimore. Each court shall consist of one judge, who shall be elected by the legal and qualified voters of said city, and shall hold his office for the term of fifteen years, subject to the provisions of this constitution with regard to the election and qualification of judges, and their removal from office, and shall exercise the jurisdiction hereinafter specified.

Sec. 32. Each of said judges shall receive an annual salary of three thousand dollars, payable quarterly.

Sec. 33. The superior court of Baltimore city shall have jurisdiction over all suits where the debt or damage claimed, exclusive of interest, shall exceed the sum of one thousand dollars, and in case any plaintiff or plaintiffs shall recover less than the sum or value of one thousand dollars, he or they shall be allowed or adjudged to pay costs in the discretion of the court. The said court shall also have jurisdiction as a court of equity within the limits of

said city, and in all other civil cases which are not hereinafter assigned to the court of common pleas, and also have jurisdiction in all cases of appeals from the commissioners for opening streets.

Sec. 34. The court of common pleas shall have civil jurisdiction in all suits where the debt or damage claimed, exclusive of interest, shall be over one hundred dollars, and shall not exceed one thousand dollars; and shall also have jurisdiction in all cases of appeal in civil cases from the judgment of justices of the peace in the said city, and shall have jurisdiction in all applications for the benefit of the insolvent laws of this State, and the supervision and control of the trustees thereof.

Sec. 35. The circuit court of Baltimore city shall have jurisdiction concurrent with the superior court of Baltimore city, in all cases in equity, in cases arising under the act to direct descents, and its supplements, and shall exercise all the power that is now conferred by law: *Provided,* Said court shall not have jurisdiction in applications for the writ of *habeas corpus,* in cases of persons charged with criminal offenses.

Sec. 36. The criminal court of Baltimore shall have and exercise all the jurisdiction now held and exercised by the criminal court of Baltimore, except in cases in appeals from commissioners for opening streets, and shall have jurisdiction in all cases of appeals from justices of the peace in said city, for the recovery of fines, penalties, and forfeitures.

Sec. 37. The present judges of the several courts of Baltimore city shall continue to act as such until the expiration of the terms for which they were respectively elected, and until their successors are elected and qualified.

Sec. 38. All causes pending in the several courts of Baltimore city at the adoption of this constitution shall be prosecuted to final judgment, as though the jurisdiction of the several courts in which they may be pending had not been changed.

Sec. 39. There shall be a clerk of each of the said courts of Baltimore city, who shall be elected by the legal and qualified voters of said city, and shall hold his office for six years from the time of his election, and until his successor is elected and qualified, and be re-eligible thereto, subject to be removed for wilful neglect of duty or other misdemeanor in office on conviction in a court of law. In case of a vacancy in the office of a clerk of any of the said courts, the judge of the court of which he was clerk shall have the power to appoint a clerk until the general election for county officers held next thereafter, when a clerk of said court shall be elected to serve for six years thereafter.

Sec. 40. The present clerk of the superior court of Baltimore city and of the court of common pleas and of the criminal court of Baltimore shall continue to act as clerks of said courts respectively

during the time for which they were severally elected, and until their successors are elected and qualified, and in case of the death, resignation, or disqualification of either of said clerks before the expiration of the time for which they were elected, the judge of the court where such death, resignation, or other disqualification may occur shall have the power to appoint a clerk as provided by the thirty-ninth section of this article. The present clerk of the circuit court of Baltimore city shall continue to act as clerk of said court until the first election for county officers next after the adoption of this constitution, when a clerk of said court shall be elected in the same manner, and hold his office for the same time, and be subject to the same provisions of this constitution, as the clerks of the courts in said city.

Sec. 41. The general assembly shall, whenever it may think the same proper and expedient, provide by law another court for the city of Baltimore, to consist of one judge, to be elected by the legal and qualified voters of said city, who shall be subject to the same constitutional provisions, hold his office for the same term of years, and receive the same compensation as the judge of the superior court of said city, and said court shall have such jurisdiction and powers as may be prescribed by law; and the general assembly may reapportion the civil jurisdiction among the several courts in Baltimore city from time to time, as in their judgments the public interest and convenience may require.

Sec. 42. The clerk of the court of common pleas shall have authority to issue within said city all marriage and other licenses required by law, subject to such provisions as the general assembly have now or may hereafter prescribe, and the clerk of the superior court of said city shall receive and record all deeds, conveyances, and other papers which are required by law to be recorded in said city. He shall also have custody of all papers connected with the proceedings on the law or equity side of Baltimore County Court, and of the dockets thereof, so far as the same have relation to the city of Baltimore.

PART V. *Orphans' Court.*

Sec. 43. There shall be an orphans' court in the city of Baltimore, and in each of the counties of this State. The qualified voters of the city of Baltimore and of the several counties of the State, shall, on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-seven, elect three men to be judges of the orphans' court of said city and counties respectively; one of the said judges first elected shall hold his office for two years, one for four years, and the other for six years; and at the first meeting after their election and qualification, or as soon thereafter as practicable, they shall determine by lot which one of their number shall hold his office for two, four and six years respectively, and there-

after there shall be elected as aforesaid, at each general election for county officers, one judge to serve for the term of six years. No person shall be elected judge of the orphans' court, unless he be at the time of his election a citizen of the United States and resident for twelve months in the city or county for which he may be elected. Each of said judges shall receive such compensation, to be paid by the said counties and city respectively, as is now or may hereafter be prescribed by the general assembly.

Sec. 44. In case of the death, resignation, removal, or other disqualification of a judge of an orphans' court, the governor, by and with the advice and consent of the senate, shall appoint a person duly qualified to fill said office for the residue of the term thus made vacant.

Sec. 45. The orphans' courts shall have all the powers now vested by law in the orphans' courts of this State, subject to such changes as the general assembly may prescribe, and shall have such other jurisdiction as may from time to time be provided by law.

Sec. 46. There shall be a register of wills in each county of the State and in the city of Baltimore, to be elected by the legal and qualified voters of said counties and city respectively, who shall hold his office for six years from the time of his election, and until his successor is elected and qualified; he shall be re-eligible and subject at all times to removal for wilful neglect of duty or misdemeanor in office in the same manner that the clerks of courts are removable. In the event of any vacancy in the office of register of wills, said vacancy shall be filled by the judges of the orphans' court in which such vacancy occurs, until the next general election for county officers, when a register shall be elected to serve for six years thereafter.

PART VI. *Justices of the Peace.*

Sec. 47. The governor, by and with the advice and consent of the senate, shall appoint such number of justices of the peace, and the county commissioners of the several counties, and the mayor and city council of Baltimore, shall appoint such number of constables for the several election-districts of the counties and wards of the city of Baltimore, as are now or may hereafter be prescribed by law; and justices of the peace and constables so appointed shall be subject to removal by the judge having criminal jurisdiction in the county or city for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a court of law. The justices of the peace and constables so appointed and commissioned shall be conservators of the peace, shall hold their office for two years, and shall have such jurisdiction, duties and compensation, subject to such right of appeal in all cases, from the judgment of justices of the peace, as hath been heretofore exercised; or shall be hereafter prescribed by law.

Sec. 48. In the event of a vacancy in the office of a justice of the peace, the governor shall appoint a person to serve as justice of the peace for the residue of the term, and in case of a vacancy in the office of constable, the county commissioners of the county in which the vacancy occurs, or the mayor and city council of Baltimore, as the case may be, shall appoint a person to serve as constable for the residue of the term.

PART VII.—*Sheriffs.*

Sec. 49. There shall be elected in each county, and in the city of Baltimore, in every second year, one person, resident in said county or city, above the age of twenty-five years, and at least five years preceding his election a citizen of this State, to the office of sheriff. He shall hold his office for two years, and until his successor is duly elected and qualified; shall be ineligible for two years thereafter; shall give such bond, exercise such powers, and perform such duties as now are or may hereafter be fixed by law. In case of a vacancy by death, refusal to serve, or neglect to qualify or give bond, by disqualification or removal from the county or city, the governor shall appoint a person to be sheriff for the remainder of the official term.

Sec. 50. Coroners, elisors, and notaries public may be appointed for each county and the city of Baltimore, in the manner, for the purposes, and with the powers now fixed or which may hereafter be prescribed by law.

ARTICLE V.

ATTORNEY-GENERAL.

Section 1. There shall be an attorney-general elected by the qualified voters of the State, on general ticket, on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-four, and on the same day in every fourth year thereafter, who shall hold his office for four years from the first Monday of January next ensuing his election, and until his successor shall be elected and qualified, and shall be re-eligible thereto, and shall be subject to removal for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a court of law.

Sec. 2. All elections for attorney-general shall be certified to, and returns made thereof by the clerks of the circuit courts for the several counties, and the clerk of the superior court of Baltimore city, to the governor of the State, whose duty it shall be to decide upon the election and qualifications of the person returned, and in case of a tie between two or more persons, to designate which of said persons shall qualify as attorney-general, and to administer the oath of office to the person elected.

Sec. 3. It shall be the duty of the attorney-general to prosecute and defend, on the part of the State, all cases which at the time of his election and qualification, and which thereafter may be depending in the court of appeals, or in the Supreme Court of the United States, by or against the State, or wherein the State may be interested; and he shall give his opinion in writing whenever required by the general assembly, or either branch thereof, the governor, the comptroller, the treasurer, or any State's attorney, on any matter or subject depending before them, or either of them, and when required by the governor or the general assembly he shall aid any State's attorney in prosecuting any suit or action brought by the State in any court of this State; and he shall commence and prosecute or defend any suit or action in any of said courts, on the part of the State, which the general assembly or the governor, acting according to law, shall direct to be commenced, prosecuted, or defended; and he shall receive for his services an annual salary of twenty-five hundred dollars; but he shall not be entitled to receive any fees, perquisites, or rewards, whatever in addition to the salary aforesaid for the performance of any official duty, nor have power to appoint any agent, representative, or deputy, under any circumstances whatever.

Sec. 4. No person shall be eligible to the office of attorney-general who has not resided and practiced law in this State for at least seven years next preceding his election.

Sec. 5. In case of vacancy in the office of attorney-general, occasioned by death, resignation, or his removal from the State, or his conviction, as hereinbefore specified, the said vacancy shall be filled by the governor for the residue of the term thus made vacant.

Sec. 6. It shall be the duty of the clerk of the court of appeals and the commissioner of the land-office, respectively, whenever a case shall be brought into said court or office, in which the State is a party or has an interest, immediately to notify the attorney-general thereof.

THE STATE'S ATTORNEYS

Sec. 7. There shall be an attorney for the State in each county and the city of Baltimore, to be styled "the State's attorney," who shall be elected by the voters thereof, respectively, on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-seven, and on the same day every fourth year thereafter, and shall hold his office for four years from the first Monday in January next ensuing his election, and until his successor shall be elected and qualified, and shall be re-eligible thereto, and be subject to removal therefrom for incompetency, wilful neglect of duty, or misdemeanor in office on conviction in a court of law.

Sec. 8. All elections for the State's attorney shall be certified to and returns made thereof by the clerks of the said counties and city to the judges thereof having criminal jurisdiction, respectively, whose duty it shall be to decide upon the elections and qualifications of the persons returned, and in case of a tie between two or more persons, to designate which of said persons shall qualify as State's attorney, and to administer the oaths of office to the persons elected.

Sec. 9. The State's attorney shall perform such duties and receive such fees and commissions as are now or may be hereafter prescribed by law, and if any State's attorney shall receive any other fee or reward than such as is or may be allowed by law, he shall, on conviction thereof, be removed from office: *Provided,* That the State's attorney for Baltimore city shall have power to appoint one deputy, at a salary of not more than fifteen hundred dollars per annum, to be paid by the State's attorney out of the fees of his office, as has heretofore been practiced.

Sec. 10. No person shall be eligible to the office of State's attorney who has not been admitted to practice law in this State, and who has not resided for at least one year in the county or city in which he may be elected.

Sec. 11. In case of vacancy in the office of State's attorney, or of his removal from the county or city in which he shall have been elected, or on his conviction as herein specified, the said vacancy shall be filled by the judge of the county or city respectively, having criminal jurisdiction, in which said vacancy shall occur, for the residue of the term thus made vacant.

ARTICLE VI.

TREASURY DEPARTMENT.

Section 1. The treasury department of this State shall consist of a comptroller and a treasurer.

Sec. 2. The comptroller shall be chosen by the qualified electors of the State at each regular election for members of the general assembly. He shall hold his office for two years, commencing on the second Wednesday in January next ensuing his election, and shall receive an annual salary of twenty-five hundred dollars, but shall not be allowed, nor shall he receive, any fees, commissions, or perquisites of any kind, in addition thereto, for the performance of any official duty or service. He shall keep his office at the seat of government, and shall take such oath and enter into such bond for the faithful performance of his duty as are now or may hereafter be prescribed by law. A vacancy in the office of comptroller shall be filled by the governor for the residue of the term. The first election for comptroller under this constitution shall be held on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-four; but the comptroller then elected

shall not enter upon the discharge of the duties of his office until the expiration of the term of the present incumbent, unless the said office shall sooner become vacant.

Sec. 3. The comptroller shall have the general superintendence of the fiscal affairs of the State; he shall digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; prepare and report estimates of the revenue and expenditure of the State; superintend and enforce the collection of all taxes and revenue; adjust, settle, and preserve all public accounts; decide on the forms of keeping and stating accounts; grant, under regulations prescribed by law, all warrants for moneys to be paid out of the treasury in pursuance of appropriations by law, prescribe the formalities of the transfer of stock or other evidences of the State debt, and countersign the same, without which such evidences shall not be valid; he shall make full reports of all his proceedings and of the state of the treasury department within ten days after the commencement of each session of the general assembly, and perform such other duties as are now or may hereafter be prescribed by law.

Sec. 4. The treasurer shall be elected on joint ballot by the two houses of the general assembly at each regular session thereof. He shall hold his office for two years, and shall receive an annual salary of twenty-five hundred dollars, but shall not be allowed, nor shall he receive, any fees, commissions, or perquisites of any kind in addition thereto for the performance of any official duty or service. He shall keep his office at the seat of government, and shall take such oath and enter into such bond for the faithful discharge of his duty as are now or may hereafter be prescribed by law. A vacancy in the office of treasurer shall be filled by the governor for the residue of the term. The general assembly, at its first session after the adoption of this constitution, shall elect a treasurer, but the treasurer then elected shall not enter upon the discharge of the duties of his office until the expiration of the term of the present incumbent, unless the said office shall sooner become vacant.

Sec. 5. The treasurer shall receive and keep the moneys of the State, and disburse the same upon warrants drawn by the comptroller, and not otherwise; he shall take receipts for all moneys paid by him, and all receipts for moneys received by him shall be indorsed upon warrants signed by the comptroller, without which warrants, so signed, no acknowledgment of money received into the treasury shall be valid; and, upon warrants issued by the comptroller, he shall make arrangements for the payment of the interest of the public debt, and for the purchase thereof, on account of the sinking-fund. Every bond, certificate, or other evidence of the debt of the State shall be signed by the treasurer and countersigned by the comptroller, and no new certificate or other evidence intended to replace another shall be issued until the old one shall be delivered to the treasurer, and authority executed in due form for the transfer

of the same shall be filed in his office, and the transfer accordingly made on the books thereof, and the certificate or other evidence cancelled; but the general assembly may make provision for the loss of certificates or other evidence of the debt.

Sec. 6. The treasurer shall render his accounts quarterly to the comptroller, and on the third day of each regular session of the general assembly he shall submit to the senate and house of delegates fair and accurate copies of all accounts by him from time to time rendered and settled with the comptroller. He shall at all times submit to the comptroller the inspection of the moneys in his hands, and perform all other duties that are now or may hereafter be prescribed by law.

ARTICLE VII.

SUNDRY OFFICERS.

Section 1. The governor, the comptroller of the treasury, and the treasurer shall constitute the board of public works in this State; they shall keep a journal of their proceedings, and shall hold regular sessions in the city of Annapolis on the first Wednesday in January, April, July, and October in each year, and oftener if necessary, at which sessions they shall hear and determine such matters as affect the public works of the State, and as the general assembly may confer upon them the power to decide.

Sec. 2. They shall exercise a diligent and faithful supervision of all public works in which the State may be interested as stockholder or creditor, and shall appoint the directors in every railroad or canal company in which the State has the legal power to appoint directors, which said directors shall represent the State in all meetings of the stockholders of every railroad or canal company in which the State is a stockholder; they shall require the directors of all said public works, from time to time, and as often as there shall be any change in the rates of toll on any of said works, to furnish said board of public works a schedule of such modified rates of toll, and shall use all legal powers which they may possess to obtain the establishment of rates of toll which may prevent an injurious competition with each other to the detriment of the interests of the State; and so to adjust them as to promote the agricultural interests of the State; they shall report to the general assembly at each regular session, and recommend such legislation as they shall deem necessary and requisite to promote or protect the interests of the State in the said public works; they shall perform such other duties as may be hereafter prescribed by law, and a majority of them shall be competent to act.

The governor, comptroller, and treasurer shall receive no additional salary for services rendered by them as members of the board of public works.

Sec. 3. There shall be a commissioner of the land office, elected by the qualified voters of the State, on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and seventy, and on the same day in every sixth year thereafter, who shall hold his office for the term of six years from the first Monday in January ensuing his election. The returns of said election shall be made to the governor, and in the event of a tie between two or more candidates, the governor shall direct a new election to be held, by writs to the sheriffs of the several counties, and of the city of Baltimore, who shall hold said election after at least twenty days' notice, exclusive of the day of election. He shall perform such duties as are now required of the commissioner of the land office, or such as may hereafter be prescribed by law, and shall also be the keeper of the chancery records. He shall receive a salary of two thousand dollars per annum, to be paid out of the treasury, and shall charge such fees as are now or may be hereafter fixed by law. He shall make a semi-annual report of all the fees of his office, both as commissioner of the land office and as keeper of the chancery records, to the comptroller of the treasury, and shall pay the same semi-annually into the treasury. In case of vacancy in said office by death, resignation, or other cause, the governor shall fill such vacancy until the next general election for members of the general assembly thereafter, when a commissioner of the land-office shall be elected for the full term of six years ensuing.

Sec. 4. The State librarian shall be elected by a joint vote of the two branches of the general assembly for four years, and until his successor shall be elected and qualified. His salary shall be fifteen hundred dollars per annum, and the general assembly shall pass no law whereby he shall receive any additional compensation. He shall perform such duties as are now or may hereafter be prescribed by law. In case of a vacancy in the office of State librarian from death, resignation, or other cause, the governor shall fill such vacancy until the next meeting of the general assembly thereafter, and until a successor be elected and qualified.

Sec. 5. The county commissioners shall be elected, on general ticket, by the qualified voters of the several counties in this State; an election for county commissioners shall be held on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-five, and as nearly one-half as may be of said commissioners shall hold their office for two years, and the other half for four years. At the first meeting after their election and qualification, or as soon thereafter as practicable, the said commissioners shall determine by lot which of their number shall hold office for two and four years respectively; and thereafter there shall be elected as aforesaid, at each general election for county officers, county commissioners for four years to fill the places of those whose term has expired. The said commissioners shall exercise such powers and perform such duties (which shall be similar throughout the State) as are now or

may hereafter be prescribed by law. Their number in each county, and their compensation, their powers and duties, may at any time hereafter be changed and regulated by the general assembly.

Sec. 6. The general assembly shall provide by law for the appointment of road supervisors in the several counties by the county commissioners, and the number of said supervisors, as well as their powers and duties in the several election districts in the several counties, shall be determined by the said county commissioners.

Sec. 7. The qualified voters of each county and of the city of Baltimore shall, on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-five, and every two years thereafter, elect a surveyor for the counties and city of Baltimore, respectively, whose term of office shall commence on the first Monday of January next ensuing their election, and whose duties and compensation shall be the same as are now or may hereafter be prescribed by law. Any vacancy in the office of surveyor shall be filled by the commissioners of the counties or by the mayor and city council of Baltimore, respectively, for the residue of the term.

Sec. 8. The qualified voters of Worcester county shall, on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-five, and every two years thereafter, elect a wreck-master for said county, whose duties and compensation shall be the same as are now or may be hereafter prescribed by law; the term of office of said wreck-master shall commence on the first Monday of January next succeeding his election, and a vacancy in said office shall be filled by the county commissioners of said county for the residue of the term.

Sec. 9. The general assembly may provide by law for the election or appointment of such other officers as may be required, and are not herein provided for, and prescribe their tenure of office, powers, and duties.

ARTICLE VIII.

EDUCATION.

Section 1. The governor shall, within thirty days after the ratification by the people of this constitution, appoint, subject to the confirmation of the senate, at its first session thereafter, a State superintendent of public instruction, who shall hold his office for four years and until his successor shall have been appointed and shall have qualified. He shall receive an annual salary of twenty-five hundred dollars, and such additional sum for traveling and incidental expenses as the general assembly may by law allow; shall report to the general assembly , within thirty days after the commencement of its first session under this constitution, a uniform system of free public schools, and shall perform such other duties pertaining to his office as may from time to time be prescribed by law.

Sec. 2. There shall be a State board of education, consisting of the governor, the lieutenant-governor, the speaker of the house of delegates, and the State superintendent of public instruction, which board shall perform such duties as the general assembly may direct.

Sec. 3. There shall be in each county such number of school commissioners as the State superintendent of public instruction shall deem necessary, who shall be appointed by the State board of education; shall hold office for four years, and shall perform such duties and receive such compensation as the general assembly or State superintendent may direct; the school commissioners of Baltimore City shall remain as at present constituted, and shall be appointed, as at present, by the mayor and city council, subject to such alterations and amendments as may be made from time to time by the general assembly, or the said mayor and city council.

Sec. 4. The general assembly, at its first session after the adoption of this constitution, shall provide a uniform system of free public schools, by which a school shall be kept open and supported free of expense for tuition in each school-district, for at least six months in each year; and in case of a failure on the part of the general assembly so to provide, the system reported to it by the State superintendent of public instruction shall become the system of free public schools of the State: *Provided,* That the report of the State superintendent shall be in conformity with the provisions of this constitution, and such system shall be subject to such alterations, conformable to this article, as the general assembly may from time to time enact.

Sec. 5. The general assembly shall levy at each regular session after the adoption of this constitution an annual tax of not less than ten cents on each one hundred dollars of taxable property throughout the State, for the support of the free public schools, which tax shall be collected at the same time and by the same agents as the general State levy; and shall be paid into the treasury of the State, and shall be distributed, under such regulations as may be prescribed by law, among the counties and the city of Baltimore, in proportion to their respective population between the ages of five and twenty years: *Provided,* That the general assembly shall not levy any additional school-tax upon particular counties, unless such county express by popular vote its desire for such tax. The city of Baltimore shall provide for its additional school-tax as at present, or as may hereafter be provided by the general assembly, or by the mayor and city council of Baltimore.

Sec. 6. The general assembly shall further provide by law, at its first session after the adoption of this constitution, a fund for the support of the free public schools of the State, by the imposition of an annual tax of not less than five cents on each one hundred dollars of taxable property throughout the State, the proceeds of which tax shall be known as the public-school fund, and shall be invested by the treasurer, together with its annual interest, until such time as

said fund shall, by its own increase and any additions which may be made to it from time to time, together with the present school-fund amount to six millions of dollars, when the tax of ten cents in the hundred dollars authorized by the preceding section may be discontinued in whole or in part, as the general assembly may direct. The principal fund of six millions hereby provided shall remain forever inviolate as the free public-school fund of the State, and the annual interest of said school-fund shall be disbursed for educational purposes only, as may be prescribed by law.

ARTICLE IX.

MILITIA AND MILITARY AFFAIRS.

Section 1. The militia shall be composed of all able-bodied male citizens, residents of this State, being eighteen years of age, and under the age of forty-five years, who shall be enrolled in the militia, and perform military duty in such manner, not incompatible with the constitution and laws of the United States, as may be prescribed by the general assembly of Maryland; but persons whose religious opinions and conscientious scruples forbid them to bear arms shall be relieved from doing so on producing to the proper authorities satisfactory proof that they are thus conscientious.

Sec. 2. The general assembly shall provide at its first session after the adoption of this constitution, and from time to time thereafter, as the exigency may require, for organizing, equipping, and disciplining the militia in such a manner, not incompatible with the laws of the United States, as shall be most effective to repel invasion and suppress insurrection, and shall pass such laws as shall promote the formation of volunteer militia associations in the city of Baltimore and in every county, and to secure them such privileges or assistance as may afford them effectual encouragement.

Sec. 3. There shall be an adjutant-general, who shall be appointed by the governor, by and with the advice and consent of the senate. He shall hold his office at the pleasure of the governor; shall perform such duties, and shall receive such compensation or emoluments as are now or may be hereafter fixed by law.

ARTICLE X.

COUNTIES AND TOWNSHIPS.

Section 1. The general assembly may provide for organizing new counties, locating and removing county-seats, and changing county-lines, but no new county shall be organized without the consent of the majority of the legal voters residing within the limits about to form said county, nor shall the lines of any county be changed without the consent of a majority of the legal voters residing within the limits of the lines proposed to be changed, nor shall

any new county contain less than four hundred square miles nor less than ten thousand white inhabitants, nor shall any county be reduced below that amount of square miles, nor below that number of white inhabitants.

Sec. 2. The general assembly shall provide by general law for dividing the counties into townships or permanent municipal corporations, in place of the existing election-districts, prescribing their limits and confiding to them all powers necessary for the management of their public local concerns; and whenever the organization of these township corporations shall be perfected, all officers provided for in this constitution, but whose official functions shall have been superseded by such organizations shall be dispensed with, and the affairs of such townships and of the counties as affected by the action of such townships shall be transacted in such manner as the general assembly shall direct.

ARTICLE XI.

AMENDMENTS OF THE CONSTITUTION.

Section 1. The general assembly may propose any amendment or amendments to this constitution, which shall be agreed to by three-fifths of all the members elected to both houses. Such proposed amendment or amendments, with the yeas and nays thereon, shall be entered on the journal of each house; shall be printed with the laws passed at the same session, and shall be published, by order of the governor, in all the newspapers printed in the different counties of this State, and in three newspapers printed in the city of Baltimore, (one of which shall be printed in the German language,) for at least three months preceding the next election for members of the general assembly, at which election the said proposed amendment or amendments shall be submitted to the qualified electors of the State for their confirmation or rejection; and if it shall appear to the satisfaction of the governor, from the returns of the said election made to him by the proper authorities, that a majority of the qualified votes cast at said election on the proposed amendment or amendments were in favor of the said proposed amendment or amendments, he shall, by proclamation, declare said amendment or amendments to be part of the constitution of this State. When two or more amendments shall be submitted by the general assembly to the qualified electors of the State at the same election, they shall be so submitted that the electors may vote for or against each amendment separately.

Sec. 2. Whenever two-thirds of the members elected to each branch of the general assembly shall think it necessary to call a convention to revise, amend, or change this constitution, they shall recommend to the electors to vote at the next election for members of the general assembly for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the general assembly shall, at their next session, provide by law for calling the same.

The convention shall consist of as many members as both houses of the general assembly, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

Sec. 3. At the general election to be held in the year one thousand eight hundred and eighty-two, and in each twentieth year thereafter, the question, "Shall there be a convention to revise, alter or amend the constitution," shall be submitted to the electors of the State, and in case a majority of all the electors voting at such election shall decide in favor of a convention, the general assembly at its next session shall provide by law for the election of delegates and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution agreed upon by any convention assembled in pursuance of this article shall take effect until the same shall have been submitted to the electors of the State, and adopted by a majority of those voting thereon.

ARTICLE XII.

SCHEDULE.

Section 1. Every person holding any office created by or existing under the constitution or laws of the State, the entire amount of whose pay or compensation received for the discharge of his official duties shall exceed the yearly sum of three thousand dollars except wherein otherwise provided by this constitution, shall keep a book in which shall be entered every sum or sums of money received by him or on his account as a payment or compensation for his performance of official duties, a copy of which entries in said book, verified by the oath of the officer by whom it is directed to be kept, shall be returned yearly to the comptroller of the State for his inspection and that of the general assembly of the State, and each of the said officers, when the amount received by him for the year shall exceed three thousand dollars, shall yearly pay over to the treasurer of the State the amount of such excess by him received, subject to such disposition thereof as the general assembly may direct; any such officer failing to comply with this requisition shall be deemed to have vacated his office and be subject to suit by the State for the amount that ought to be paid into the treasury.

Sec. 2. The several courts, except as herein otherwise provided, shall continue with like powers and jurisdiction, both at law and in equity, as if this constitution had not been adopted, and until the organization of the judicial department provided by this constitution.

Sec. 3. If at any election directed by this constitution any two or more candidates shall have the highest and an equal number of votes, a new election shall be ordered, except in cases specially provided for by this constitution.

Sec. 4. In the trial of all criminal cases, the jury shall be the judges of law as well as fact.

Sec. 5. The trial by jury of all issues of fact in civil proceedings in the several courts of law in this State, where the amount in controversy exceeds the sum of five dollars, shall be inviolably preserved.

Sec. 6. All officers, civil and military, now holding office, whether by election or appointment, under the State, shall continue to hold and exercise their offices, according to their present tenure, unless otherwise provided in this constitution, until they shall be superseded pursuant to its provisions, and until their succesors be duly qualified, and the compensation of such officers which has been increased by this constitution shall take effect from the first day of January, eighteen hundred and sixty-five.

Sec. 7. General elections shall be held throughout the State on the Tuesday next after the first Monday in the month of November of each and every year; at the election held in the year eighteen hundred and sixty-four, all State officers required to be elected under this constitution during that year shall be elected, and in like manner in every second year thereafter an election shall be held for those State officers whose terms are about to expire; at the election held in the year eighteen hundred and sixty-five, all county officers required to be elected under this constitution in that year shall be elected, and in like manner in every second year thereafter an election shall be held for those county officers whose terms are about to expire: *Provided,* however, The judges of the several courts of this State, except the judges of the orphans' court, shall be elected at the regular election, whether for State or county officers, as the case may be, immediately preceding the expiration of the term of the incumbent whose place is to be filled.

VOTE ON THE CONSTITUTION.

Sec. 8. For the purpose of ascertaining the sense of the people of this State in regard to the adoption or rejection of this constitution, the governor shall issue his proclamation within five days after the adjournment of this convention, directed to the sheriff of the city of Baltimore, and to the sheriffs of the several counties of this State, commanding them to give notice, in the manner prescribed by law, that an election will be held in the city of Baltimore on the twelfth day of October, in the year eighteen hundred and sixty-four, and in the several counties in this State on the twelfth and thirteenth days of October, in the same year, at the usual places of holding elections in said city and counties, for the adoption or rejection of this constitution, which election shall be held in the said city of Baltimore on the twelfth day of October, eighteen hundred and sixty-four, between the hours of eight o'clock a. m. and five o'clock p. m., and in the said several counties of this State on the said twelfth and thir-

teenth days of October, eighteen hundred and sixty-four, between the hours of eight o'clock a. m. and five o'clock p. m., and the judges of election of said city, and of the several counties of the State, shall receive at said election the votes only of such electors as are qualified according to the provisions of this constitution, who may offer to vote at such election, and the said sheriffs shall also give notice on or after the twelfth day of October, eighteen hundred and sixty-four, for all elections provided for by this constitution, to be held during that year.

Sec. 9. At the said election the vote shall be by ballot, and each ballot shall describe thereon the words "For the constitution," or "Against the constitution," as the voter may elect, and it shall be conducted in all respects as the general elections of this State are now conducted. The judges of election shall administer to every person offering to vote the oath or affirmation prescribed by this constitution, and should any person offering to vote refuse or decline to take said oath, he shall not be permitted to vote at such election, but the taking of such oath or affirmation shall not be deemed conclusive evidence of the right of such person to vote, and it shall be the duty of the return judges of said city, and of the several counties of the State, having counted the votes given for or against the adoption of this constitution, to certify the result thereof in the manner now prescribed by law, accompanied with a special statement that every person who has voted has taken the oath or affirmation prescribed by this constitution; and the governor, upon receiving such result, and ascertaining the aggregate vote throughout the State, including the soldiers' vote, hereinafter provided for, shall, by his proclamation, make known the same, and if a majority of the votes cast shall be for the adoption of this constitution, it shall go into effect on the first day of November, eighteen hundred and sixty-four.

Sec. 10. And the governor shall exclude from count the votes of any county or city, the return judges of which shall fail to certify in the returns, as provided by this schedule, that all persons who have voted have taken the oath prescribed to be taken, unless the governor shall be satisfied that such oath was actually administered, and that the failure to make the certificate has been from inadvertence or mistake.

SOLDIERS' VOTE.

Sec. 11. Any qualified voter of this State who shall be absent from the county or city of his residence by reason of being in the military service of the United States, so as not to be able to vote at home, on the adoption or rejection of this constitution, or for all State officers elected on general ticket, and for presidential electors and for members of Congress, at the election to be held on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty four, shall be entitled to vote at such elections as follows:

A poll shall be opened in each company of every Maryland regiment in the service of the United States or of this State on the day appointed by this convention for taking the vote on the new constitution, or some other day not more than five days thereafter, at the quarters of the commanding officer thereof, and voters of this State belonging to such company who shall be within ten miles of such quarters on the day of election may vote at such poll; the polls shall be opened at eight o'clock a. m., and close at six o'clock p. m.; the commissioned officers of such company, or such of them as are present at the opening of the polls, shall act as judges, and any one officer shall be competent so to act, and if no officer be present, then the voters in such company present shall elect two of the voters present to act as judges of the election; before any votes are received, each of the judges shall take an oath or affirmation that he will perform the duties of judge according to law; will prevent fraud, and observe and make proper return thereof, and such oath the judges may administer to each other; the election shall be by ballot, and any voter may vote either "For the constitution" or "Against the constitution."

Sec. 12. Any qualified voter of this State who shall be absent from the city or county of his residence on the day for taking the vote on the adoption or rejection of this constitution by reason of his being in the military service of the United States, but shall be at some hospital or military post, or on duty within this State, and not with his company, may vote at the nearest poll to such place on satisfying the judges that he is a legal and qualified voter of this State.

Sec. 13. The judges may swear any one offering to vote as to his being a legal voter of this State. The judges shall take down on a poll-book or list the names of all the voters as their votes are taken, and the tickets shall be placed in a box as taken; after the polls are closed, the tickets shall be counted and strung on a thread, and the judges shall make out a certificate, which they shall sign, addressed to the governor, at Annapolis, in which they shall state they have taken the oath hereby prescribed, and shall certify the number of votes taken, and the number of votes for the constitution and against the constitution; the said certificates shall be accompanied with the names of the voters, and shall be plainly expressed, but no particular words shall be required.

Sec. 14. The judges shall, as soon as possible, transmit said returns, with the tickets so strung, to the governor, who shall receive the return of the soldiers' vote, and shall cast up the same and judge of the genuineness and correctness of the returns, and may recount the threaded tickets so as to satisfy himself, and the governor shall count said vote with the aggregate vote of the State on the adoption or rejection of this constitution, and shall wait for fifteen days after the day on which the State vote is taken, so as to allow the returns of the soldiers' vote to be made before the result of the whole vote is

announced. The governor shall receive the returns of the soldiers' vote on said election for State officers, presidential electors, and members of Congress, and shall count the same with the aggregate home vote on State officers, and the aggregate home vote in each district, respectively, for members of Congress.

Sec. 15. The governor shall make known to the officers of the State regiments the provisions of this article of the schedule, and request them to exercise the rights hereby conferred upon them, and shall take all means proper to secure the soldiers' vote; and the general assembly, at its first session after the adoption of this constitution, shall make proper appropriation to pay any expense that may arise herein.

Sec. 16. If this constitution shall be adopted by the people, the provisions contained herein for taking the soldiers' vote on the adoption of the constitution shall apply to all elections to be held in this State until the general assembly shall provide some other mode of taking the same.

Done in convention the sixth day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth.

HENRY H. GOLDSBOROUGH, *President.*

Attest: W. R. COLE, *Secretary.*

CONSTITUTION OF MARYLAND.

DECLARATION OF RIGHTS.

We, the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good constitution in this State, for the sure foundation and more permanent security thereof, declare:

Article 1. That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient.

Art. 2. The Constitution of the United States, and the Laws made or which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are and shall be the Supreme Law of the State; and the judges of this State, and all the People of this State, are, and shall be bound thereby, anything in the Constitution or Law of this State to the contrary notwithstanding.

Art. 3. The powers not delegated to the United States by the Constitution thereof, nor prohibited by it to the States, are reserved to the States respectively, or to the People thereof.

Art. 4. That the People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.

Art. 5. That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legisla-

ture of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from or under the Charter granted by His Majesty, Charles the First, to Cæcilius Calvert, Baron of Baltimore.

Art. 6. That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and as such accountable for their conduct: Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought to reform the old, or establish a new Government: the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.

Art. 7. That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose elections ought to be free and frequent, and every white male citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Art. 8. That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

Art. 9. That no power of suspending Laws, or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed.

Art. 10. That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature.

Art. 11. That Annapolis be the place of meeting of the Legislature; and the Legislature ought not to be convened, or held at any other place but from evident necessity.

Art. 12. That for redress of grievances, and for amending, strengthening, and for preserving the laws, the Legislature ought to be frequently convened.

Art. 13. That every man hath a right to petition the Legislature for the redress of grievances in a peaceful and orderly manner.

Art. 14. That no aid, charge, tax, burthen or fees ought to be rated, or levied, under any pretence, without the consent of the Legislature.

Art. 15. That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the Government; but every person in the State, or person holding property therein, ought to contribute

his proportion of public taxes for the support of the Government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community.

Art. 16. That sanguinary Laws ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter.

Art. 17. That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed or required.

Art. 18. That no Law to attaint particular persons of treason or felony, ought to be made in any case, or at any time, hereafter.

Art. 19. That every man, for any injury done to him in his person or property ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to Law of the Land.

Art. 20. That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People.

Art. 21. That in all criminal prosecutions every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or Charge in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Art. 22. That no man ought to be compelled to give evidence against himself in a criminal case.

Art. 23. That no man ought to 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 by the Law of the Land.

Art. 24. That slavery shall not be re-established in this State; but, having been abolished, under the policy and authority of the United States, compensation, in consideration thereof, is due from the United States.

Art. 25. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted by the Courts of Law.

Art. 26. That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

Art. 27. That no conviction shall work corruption of blood or forfeiture of estate.

Art. 28. That a well regulated Militia is the proper and natural defence of a free Government.

Art. 29. That Standing Armies are dangerous to liberty, and ought not to be raised, or kept up, without the consent of the Legislature.

Art. 30. That in all cases, and at all times, the military ought to be under strict subordination to and control of the civil power.

Art. 31. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, except in the manner prescribed by Law.

Art. 32. That no person except regular soldiers, marines, and mariners in the service of this State, or militia, when in actual service, ought, in any case, to be subject to, or punishable by, Martial Law.

Art. 33. That the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People; wherefore, the Judges shall not be removed, except in the manner, and for the causes, provided in this Constitution. No Judge shall hold any other office, civil or military or political trust, or employment of any kind whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them; or receive fees, or perquisites of any kind, for the discharge of his official duties.

Art. 34. That a long continuance in the Executive Departments of power or trust is dangerous to liberty; a rotation, therefore, in those Departments is one of the best securities of permanent freedom.

Art. 35. That no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State; nor shall any person in public trust receive any present from any foreign Prince or State, or from the United States, or any of them, without the approbation of this State.

Art. 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb

the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or the world to come.

Art. 37. That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.

Art. 38. That every gift, sale or devise of land to any Minister, Public Teacher or Preacher of the Gospel, as such, or to any Religious Sect, Order or Denomination, or to, or for the support, use or benefit of, or in trust for, any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination; and every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the Seller or Donor, to or for such support, use or benefit; and also every devise of goods or chattels to or for the support, use or benefit of any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order of Denomination, without the prior or subsequent sanction of the Legislature, shall be void; except always, any sale, gift, lease or devise of any quantity of land, not exceeding five acres, for a church, meeting-house, or other house of worship, or parsonage, or for a burying-ground, which shall be improved, enjoyed or used only for such purpose; or such sale, gift, lease or devise shall be void.

Art. 39. That the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession, or denomination, of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being.

Art. 40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.

Art. 41. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered.

Art. 42. That no title of nobility or hereditary honors ought to be granted in this State.

Art. 43. That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the people.

Art. 44. That the provisions of the Constitution of the United States, and of this State, apply as well in time of war as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good government and tends to anarchy and despotism.

Art. 45. This enumeration of Rights shall not be construed to impair or deny others retained by the People.

CONSTITUTION.

ARTICLE I.

ELECTIVE FRANCHISE.

Section 1. All elections shall be by ballot; and every white male citizen of the United States, of the age of twenty-one years, or upwards, who has been a resident of the State for one year, and of the Legislative District of Baltimore city, or of the county, in which he may offer to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district in which he resides, at all elections hereafter to be held in this State; and in case any county or city shall be so divided as to form portions of different electoral districts, for the election of Representatives in Congress, Senators, Delegates, or other Officers, then to entitle a person to vote for such officer, he must have been a resident of that part of the county, or city, which shall form a part of the electoral district, in which he offers to vote, for six months next preceding the election; but a person, who shall have acquired a residence in such county or city, entitling him to vote at any such election, shall be entitled to vote in the election district from which he removed, until he shall have acquired a residence in the part of the county or city to which he has removed.

Sec. 2. No person above the age of twenty-one years, convicted of larceny or other infamous crime, unless pardoned by the Governor, shall ever thereafter, be entitled to vote at any election in this State; and no person under guardianship, as a lunatic, or as a person *non compos mentis*, shall be entitled to vote.

Sec. 3. If any person shall give, or offer to give, directly or indirectly, any bribe, present, or reward, or any promise, or any security, for the payment or the delivery of money, or any other thing, to induce any voter to refrain from casting his vote, or to prevent him in any way from voting, or to procure a vote for any candidate

or person proposed, or voted for, as Elector of President and Vice-President of the United States, or Representative in Congress, or for any office of profit or trust, created by the Constitution or Laws of this State, or by the Ordinances, or Authority of the Mayor and City Council of Baltimore, the person giving, or offering to give, and the person receiving the same, and any person who gives, or causes to be given, an illegal vote, knowing it to be such, at any election to be hereafter held in this State, shall, on conviction in a Court of Law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter.

Sec. 4. It shall be the duty of the General Assembly to pass Laws to punish, with fine and imprisonment, any person who shall remove into any election district or precinct of any ward of the city of Baltimore, not for the purpose of acquiring a *bona fide* residence therein, but for the purpose of voting at an approaching election, or who shall vote in any election district or ward in which he does not reside, (except in the case provided for in this Article), or shall, at the same election, vote in more than one election district, or precinct, or shall vote, or offer to vote, in any name not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside.

Sec. 5. The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of election of the right of every person thus registered to vote at any election thereafter held in this State; but no person shall vote at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; and until the General Assembly shall hereafter pass an Act for the Registration of the names of voters, the law in force on the first day of June, in the year eighteen hundred and sixty-seven, in reference thereto, shall be continued in force, except so far as it may be inconsistent with the provisions of this Constitution; and the registry of voters, made in pursuance thereof, may be corrected, as provided in said law but the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof.

Sec. 6. Every person elected or appointed to any office of profit or trust, under this Constitution, or under the laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath or affirmation: I, ———, do swear, (or affirm, as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and

Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ———, according to the Constitution and Laws of this State, (and, if a Governor, Senator, Member of the House of Delegates, or Judge), that I will not, directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as———

Sec. 7. Every person hereafter elected or appointed to office in this State, who shall refuse or neglect to take the oath or affirmation of office provided for in the sixth section of this Article, shall be considered as having refused to accept the said office; and a new election or appointment shall be made, as in case of refusal to accept, or resignation of an office; and any person violating said oath shall, on conviction thereof, in a Court of Law, in addition to the penalties now or hereafter to be imposed by law, be thereafter incapable of holding any office of profit or trust in this State.

ARTICLE II.

EXECUTIVE DEPARTMENT.

Section 1. The executive power of the State shall be vested in a Governor, whose term of office shall commence on the second Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified; but the Governor chosen at the first election under this Constitution shall not enter upon the discharge of the duties of the office until the expiration of the term for which the present incumbent was elected; unless the said office shall become vacant by death, resignation, removal from the State, or other disqualification of the said incumbent.

Sec. 2. An election for Governor, under this Constitution, shall be held on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-seven, and on the same day and month in every fourth year thereafter, at the places of voting for delegates to the General Assembly; and every person qualified to vote for Delegates shall be qualified and entitled to vote for Governor; the election to be held in the same manner as the election of Delegates, and the returns thereof under seal to be addressed to the Speaker of the House of Delegates, and enclosed and transmitted to the Secretary of State, and delivered to said speaker, at the commencement of the session of the General Assembly next ensuing said election.

Sec. 3. The Speaker of the House of Delegates shall then open the said returns in the presence of both Houses; and the person having the highest number of votes, and being constitutionally eligible, shall be the Governor, and shall qualify, in the manner herein prescribed, on the second Wednesday of January next ensuing his election, or as soon thereafter as may be practicable.

Sec. 4. If two or more persons shall have the highest and an equal number of votes for Governor, one of them shall be chosen Governor by the Senate and House of Delegates, and all questions in relation to the eligibility of Governor, and to the returns of said election, and to the number and legality of votes therein given, shall be determined by the House of Delegates; and if the person or persons, having the highest number of votes, be ineligible, the Governor shall be chosen by the Senate and House of Delegates. Every election of Governor by the General Assembly shall be determined by a joint majority of the Senate and House of Delegates, and the vote shall be taken *viva voce*. But if two or more persons shall have the highest and an equal number of votes, then a second vote shall be taken, which shall be confined to the persons having an equal number; and if the vote should again be equal, then the election of Governor shall be determined by lot between those who shall have the highest and an equal number on the first vote.

Sec. 5. A person to be eligible to the office of Governor must have attained the age of thirty years, and must have been for ten years a citizen of the State of Maryland, and for five years next preceding his election a resident of the State, and, at the time of his election, a qualified voter therein.

Sec. 6. In the case of death or resignation of the Governor, or of his removal from the State, or other disqualification, the General assembly, if in session, or if not, at their next session, shall elect some other qualified person to be Governor for the residue of the term for which the said governor had been elected.

Sec. 7. In case of any vacancy in the office of Governor, during the recess of the Legislature, the President of the Senate shall discharge the duties of said office, until a Governor is elected, as herein provided for; and in case of the death or resignation of the said President, or of his removal from the State, or of his refusal to serve, then the duties of said office shall, in like manner, and for the same interval, devolve upon the Speaker of the House of Delegates. And the Legislature may provide by Law, for the impeachment of the Governor; and in case of his conviction, or his inability, may declare what person shall perform the Executive duties, and for any vacancy in said office not herein provided for, provision may be made by Law; and if such vacancy should occur without such provision being made, the Legislature shall be convened by the Secretary of State for the purpose of filling said vacancy.

Sec. 8. The Governor shall be the Commander-in-Chief of the land and naval forces of the State; and may call out the Militia to repel invasions, suppress insurrections, and enforce the execution of the Laws; but shall not take the command in person, without the consent of the Legislature.

Sec. 9. He shall take care that the Laws are faithfully executed.

Sec. 10. He shall nominate, and by and with the advice and consent of the Senate, appoint all civil and military officers of the State, whose appointment or election is not otherwise herein provided for; unless a different mode of appointment be prescribed by the Law creating the office.

Sec. 11. In case of any vacancy during the recess of the Senate, in any office which the Governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force until the end of the next session of the Legislature, or until some other person is appointed to the same office, whichever shall first occur; and the nomination of the person thus appointed during the recess, or of some other person in his place, shall be made to the Senate within thirty days after the next meeting of the Legislature.

Sec. 12. No person, after being rejected by the Senate, shall be again nominated for the same office at the same session, unless at the request of the Senate; or be appointed to the same office during the recess of the Legislature.

Sec. 13. All civil officers appointed by the Governor and Senate, shall be nominated to the Senate within fifty days from the commencement of each regular session of the Legislature; and their term of office, except in cases otherwise provided for in this Constitution, shall commence on the first Monday of May next ensuing their appointment, and continue for two years, (unless removed from office),and until their successors, respectively, qualify according to Law; but the term of office of the Inspectors of Tobacco shall commence on the first Monday of March next ensuing their appointment.

Sec. 14. If a vacancy shall occur during the session of the Senate, in any office which the Governor and Senate have the power to fill, the governor shall nominate to the Senate, before its final adjournment, a proper person to fill said vacancy, unless such vacancy occurs within ten days before said final adjournment.

Sec. 15. The Governor may suspend or arrest any military officer of the State for disobedience of orders or other military offence; and may remove him in pursuance of the sentence of a Court Martial; and may remove for incompetency or misconduct, all civil officers who received appointment from the Executive for a term of years.

Sec. 16. The Governor shall convene the Legislature, or the Senate alone, on extraordinary occassions; and whenever from the presence of an enemy, or from any other cause, the Seat of Government shall become an unsafe place for the meeting of the Legislature, he may direct their sessions to be held at some other convenient place.

Sec. 17. To guard against hasty or partial legislation and encroachments of the Legislative Department upon the co-ordinate Executive and Judicial Departments, every Bill which shall have

passed the House of Delegates, and the Senate shall, before it becomes a law, be presented to the Governor of the State; if he approve he shall sign it, but if not he shall return it with his objections to the House in which it originated, which House shall enter the objections at large on its Journal and proceed to reconsider the Bill; if, after such reconsideration, three-fifths of the members elected to that House shall pass the Bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if passed by three-fifths of the members elected to that House it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House, respectively. If any bill shall not be returned by the Governor within six days (Sundays excepted), after it shall have been presented to him, the same shall be a law in like manner as if he signed it, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a law.

Sec. 18. It shall be the duty of the Governor, semi-annually, (and oftener, if he deem it expedient), to examine under oath the Treasurer and Comptroller of the State on all matters pertaining to their respective offices, and inspect and review their bank and other account books.

Sec. 19. He shall, from time to time, inform the Legislature of the condition of the State, and recommend to their consideration such measures as he may judge necessary and expedient.

Sec. 20. He shall have power to grant reprieves and pardons, except in cases of impeachment, and in cases in which he is prohibited by other Articles of this Constitution; and to remit fines and forfeitures for offences against the State; but shall not remit the principal or interest of any debt due the State, except in cases of fines and forfeitures; and before granting a *nolle presequi*, or pardon, he shall give notice, in one or more newspapers, of the application made for it, and of the day on or after which his decision will be given; and in every case in which he exercises this power, he shall report to either Branch of the Legislature, whenever required, the petitions, recommendations and reasons which influenced his decision.

Sec. 21. The Governor shall reside at the seat of government, and receive for his services an annual salary of four thousand five hundred dollars.

Sec. 22. A Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate, who shall continue in office, unless sooner removed by the governor, till the end of the official term of the Governor from whom he received his appointment, and receive an annual salary of two thousand dollars, and shall reside at the seat of government; and the office of Private Secretary shall thenceforth cease.

Sec. 23. The Secretary of State shall carefully keep and preserve a record of all official acts and proceedings, which may at all times be inspected by a committee of either branch of the Legislature; and he shall perform such other duties as may be prescribed by law, or as may properly belong to his office, together with all clerical duty belonging to the Executive Department.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Section 1. The Legislature shall consist of two distinct branches —a Senate and a House of Delegates—and shall be styled the General Assembly of Maryland.

Sec. 2. Each County in the State, and each of the three Legislative Districts of Baltimore City, as they are now, or may hereafter be defined, shall be entitled to one Senator, who shall be elected by the qualified voters of the Counties, and of the Legislative Districts of Baltimore City, respectively, and shall serve for four years from the date of his election, subject to the classification of Senators hereafter provided for.

Sec. 3. Until the taking and publishing of the next National Census, or until the enumeration of the population of this State, under the authority thereof, the several counties and the City of Baltimore, shall have a representation in the House of Delegates, as follows: Allegany County, five Delegates; Anne Arundel County, three Delegates; Baltimore County, six Delegates; each of the three Legislative Districts of the City of Baltimore, six Delegates; Calvert County, two Delegates; Caroline County, two Delegates; Carroll County, four Delegates; Cecil County, four Delegates; Charles County, two Delegates; Dorchester County, three Delegates; Frederick County, six Delegates; Harford County, four Delegates; Howard County, two Delegates; Kent County, two Delegates; Montgomery County, three Delegates; Prince George's County, three Delegates; Queen Anne's County, two Delegates; St. Mary's County, two Delegates; Somerset County, three Delegates; Talbot County, two Delegates; Washington County, five Delegates, and Worcester County, three Delegates.

Sec. 4. As soon as may be, after the taking and publishing of the next National Census, or after the enumeration of the population of this State, under the authority thereof, there shall be an apportionment of representation in the House of Delegates, to be made on the following basis, to wit: Each of the several Counties of the State having a population of eighteen thousand souls, or less, shall be entitled to two Delegates, and every County having a population of over eighteen thousand, and less than twenty-eight thousand souls, shall be entitled to three Delegates; and every County having a population of twenty-eight thousand, and less than forty thousand

souls, shall be entitled to four Delegates; and every County having a population of forty thousand, and less than fifty-five thousand souls, shall be entitled to five Delegates; and every County having a population of fifty-five thousand souls, and upwards, shall be entitled to six Delegates, and no more; and each of the three Legislative Districts of the City of Baltimore shall be entitled to the number of Delegates to which the largest County shall or may be entitled, under the aforegoing apportionment. And the General Assembly shall have power to provide by law, from time to time, for altering and changing the boundaries of the three existing Legislative Districts of the City of Baltimore, so as to make them, as near as may be, of equal population; but said Districts shall always consist of contiguous territory.

Sec. 5. Immediately after the taking and publishing of the next National Census, or after any State enumeration of population, as aforesaid, it shall be the duty of the Governor, then being, to arrange the representation in said House of Delegates in accordance with the apportionment herein provided for; and to declare, by Proclamation, the number of Delegates to which each County and the City of Baltimore may be entitled under such apportionment; and after every National Census taken thereafter, or after any State enumeration of population thereafter made, it shall be the duty of the Governor, for the time being, to make similar adjustment of representation, and to declare the same by Proclamation, as aforesaid.

Sec. 6. The members of the House of Delegates shall be elected by the qualified voters of the Counties, and the Legislative Districts of Baltimore City, respectively, to serve for two years from the day of their election.

Sec. 7. The first election for Senators and Delegates shall take place on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-seven; and the election for Delegates, and as nearly as practicable, for one-half of the Senators shall be held on the same day in every second year thereafter.

Sec. 8. Immediately after the Senate shall have convened, after the first election, under this Constitution the Senators shall be divided by lot into two classes, as nearly equal in number as may be. Senators of the first class shall go out of office at the expiration of two years, and Senators shall be elected on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-nine, for the term of four years, to supply their places; so that, after the first election, one-half of the Senators may be chosen every second year. In case the number of Senators be hereafter increased, such classification of the additional Senators shall be made as to preserve, as nearly as may be, an equal number in each class.

Sec. 9. No person shall be eligible as a Senator or Delegate who, at the time of his election, is not a citizen of the State of Maryland,

and who has not resided therein for at least three years next preceding the day of his election, and the last year thereof, in the County, or in the Legislative District of Baltimore City, which he may be chosen to represent, if such County or Legislative District of said City shall have been so long established; and if not, then in the County or City, from which, in whole or in part, the same may have been formed; nor shall any person be eligible as a senator unless he shall have attained the age of twenty-five years, nor as a Delegate unless he shall have attained the age of twenty-one years, at the time of his election.

Sec. 10. No member of Congress, or person holding any civil or military office under the United States shall be eligible as a Senator or Delegate; and if any person shall, after his election as Senator or Delegate, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat.

Sec. 11. No Minister or Preacher of the Gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except Justices of the Peace, shall be eligible as Senator or Delegate.

Sec. 12. No Collector, Receiver or holder of public money shall be eligible as Senator or Delegate, or to any office of profit or trust under this State, until he shall have accounted for and paid into the Treasury all sums on the books thereof charged to and due by him.

Sec. 13. In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a Delegate or Senator, or in case of a tie between two or more such qualified persons, a warrant of election shall be issued by the Speaker of the House of Delegates, or President of the Senate, as the case may be, for the election of another person in his place, of which election not less than ten days' notice shall be given, exclusive of the day of the publication of the notice and of the day of election; and if during the recess of the Legislature, and more than ten days before its termination, such death shall occur, or such resignation, refusal to act or disqualification be communicated in writing to the Governor by the person so resigning, refusing or disqualified, it shall be the duty of the Governor to issue a warrant of election to supply the vacancy thus created, in the same manner the said Speaker or President might have done during the session of the General Assembly; provided, however, that unless a meeting of the General Assembly may intervene, the election thus ordered to fill such vacancy shall be held on the day of the ensuing election for Delegates and Senators.

Sec. 14. The General Assembly shall meet on the first Wednesday of January, eighteen hundred and sixty-eight, and on the same day in every second year thereafter, and at no other time, unless convened by Proclamation of the Governor.

Sec. 15. The General Assembly may continue its session so long as in its judgment the public interest may require, for a period not longer than ninety days; and each member thereof shall receive a compensation of five dollars per diem for every day he shall attend the session, but not for such days as he may be absent, unless absent on account of sickness or by leave of the House of which he is a member; and he shall also receive such mileage as may be allowed by law, not exceeding twenty cents per mile; and the presiding officer of each House shall receive an additional compensation of three dollars per day. When the General Assembly shall be convened by Proclamation of the Governor, the session shall not continue longer than thirty days, and in such case the compensation shall be the same as herein prescribed.

Sec. 16. No book, or other printed matter, not appertaining to the business of the session, shall be purchased or subscribed for, for the use of the members of the General Assembly, or be distributed among them, at the public expense.

Sec. 17. No Senator or Delegate, after qualifying as such, notwithstanding he may thereafter resign, shall during the whole period of time for which he was elected be eligible to any office which shall have been created, or the salary or profits of which shall have been increased, during such term.

Sec. 18. No Senator or Delegate shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.

Sec. 19. Each House shall be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State; shall appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly or disrespectful behavior, and with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence.

Sec. 20. A majority of the whole number of members elected to each House shall constitute a quorum for the transaction of 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. 21. The doors of each House and of the Committee of the Whole shall be open, except when the business is such as ought to be kept secret.

Sec. 22. Each House shall keep a Journal of its proceedings, and cause the same to be published. The yeas and nays of members on any question shall, at the call of any five of them in the House of Delegates, or one in the Senate, be entered on the Journal.

Sec. 23. Each House may punish by imprisonment, during the session of the General Assembly, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing

any of its proceedings, or any of its officers in the execution of their duties; provided, such imprisonment shall not at any one time exceed ten days.

Sec. 24. The House of Delegates may inquire, on the oath of witnesses, into all complaints, grievances and offences, as the Grand Inquest of the State, and may commit any person for any crime to the public jail, there to remain until discharged by due course of law. They may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, and appoint auditors to state and adjust the same. They may call for all public or official papers and records, and send for persons whom they may judge necessary, in the course of their inquiries, concerning affairs relating to the public interest, and may direct all office bonds which shall be made payable to the State, to be sued for any breach thereof; and with the view to the more certain prevention or correction of the abuses in the expenditures of the money of the State, the General Assembly shall create, at every session thereof, a Joint Standing Committee of the Senate and House of Delegates, who shall have power to send for persons and examine them on oath and call for public or official papers and records; and whose duty it shall be to examine and report upon all contracts made for printing, stationery, and purchases for the public offices and the library, and all expenditures therein, and upon all matters of alleged abuse in expenditures, to which their attention may be called by resolution of either House of the General Assembly.

Sec. 25. Neither House shall, without the consent of the other, adjourn for more than three days at any one time, nor adjourn to any other place than that in which the House shall be sitting, with-the concurrent vote of two-thirds of the members present.

Sec. 26. The House of Delegates shall have the sole power of impeachment in all cases; but a majority of all the members elected must concur in the impeachment. 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 the law and the evidence; but no person shall be convicted without the concurrence of two-thirds of all the Senators elected.

Sec. 27. Any bill may originate in either House of the General Assembly, and be altered, amended or rejected by the other; but no bill shall originate in either House during the last ten days of the session, unless two-thirds of the members elected thereto shall so determine by yeas and nays; nor shall any bill become a law until it be read on three different days of the session in each House, unless two-thirds of the members elected to the House where such bill is pending shall so determine by yeas and nays; and no bill shall be read a third time until it shall have been actually engrossed for a third reading.

Sec. 28. No bill shall become a law unless it be passed in each House by a majority of the whole number of members elected, and on

its final passage the yeas and nays be recorded; nor shall any resolution requiring the action of both Houses be passed except in the same manner.

Sec. 29. The style of all laws of this State shall be, "Be it enacted by the General Assembly of Maryland," and all laws shall be passed by original bill; and every law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title; and no law, nor section of law, shall be revived or amended by reference to its title or section only; nor shall any law be construed by reason of its title to grant powers or confer rights which are not expressly contained in the body of the Act; and it shall be the duty of the General Assembly, in amending any article or section of the Code of Laws of this State, to enact the same as the said article or section would read when amended. And whenever the General Assembly shall enact any Public General Law, not amendatory of any section or article in the said Code, it shall be the duty of the General Assembly to enact the same, in articles and sections, in the same manner as the Code is arranged, and to provide for the publication of all additions and alterations which may be made to the said Code.

Sec. 30. Every bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented to the Governor, who, if he approves it, shall sign the same in the presence of the presiding officers and chief clerks of the Senate and House of Delegates. Every law shall be recorded in the office of the Court of Appeals, and in due time be printed, published and certified under the Great Seal, to the several courts, in the same manner as has been heretofore usual in this State.

Sec. 31. No law passed by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein.

Sec. 32. No money shall be drawn from the Treasury of the State by any order or resolution, nor except in accordance with an appropriation by law; and every such law shall distinctly specify the sum appropriated and the object to which it shall be applied; provided that nothing herein contained shall prevent the General Assembly from placing a contingent fund at the disposal of the Executive, who shall report to the General Assembly at each session the amount expended, and the purposes to which it was applied. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws after each regular session of the General Assembly.

Sec. 33. The General Assembly shall not pass local or special laws in any of the following enumerated cases, viz: For extending the time for the collection of taxes, granting divorces, changing the name of any person, providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees, giving effect to informal or in-

valid deeds or wills, refunding money paid into the State Treasury, or releasing persons from their debts or obligations to the State, unless recommended by the Governor or officers of the Treasury Department. And the General Assembly shall pass no special law for any case for which provision has been made by an existing general law. The General Assembly, at its first session after the adoption of this Constitution, shall pass general laws providing for the cases enumerated in this section which are not already adequately provided for, and for all other cases where a General Law can be made applicable.

Sec. 34. No debt shall be hereafter contracted by the General Assembly unless such debt shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same; and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and interest thereon shall be fully discharged. The credit of the State shall not in any manner be given, or loaned to, or in aid of any individual association or corporation; nor shall the General Assembly have the power in any mode to involve the State in the construction of Works of Internal Improvement, nor in granting any aid thereto, which shall involve the faith or credit of the State; nor make any appropriations therefor, except in aid of the construction of Works of Internal Improvement in the counties of St. Mary's, Charles and Calvert, which have had no direct advantage from such works as have been heretofore aided by the State; and provided that such aid, advances or appropriations shall not exceed in the aggregate the sum of five hundred thousand dollars. And they shall not use or appropriate the proceeds of the Internal Improvement Companies, or of the State tax, now levied, or which may hereafter be levied, to pay off the public debt to any other purpose until the interest and debt are fully paid or the sinking fund shall be equal to the amount of the outstanding debt; but the General Assembly may, without laying a tax, borrow an amount never to exceed fifty thousand dollars to meet temporary deficiencies in the Treasury, and may contract debts to any amount that may be necessary for the defence of the State.

Sec. 35. No extra compensation shall be granted or allowed by the General Assembly to any Public Officer, Agent, Servant or Contractor, after the service shall have been rendered, or the contract entered into; nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

Sec. 36. No Lottery grant shall ever hereafter be authorized by the General Assembly.

Sec. 37. The General Assembly shall pass no Law providing for payment by this State for Slaves emancipated from servitude in this State; but they shall adopt such measures as they may deem expedient to obtain from the United States compensation for such Slaves,

and to receive and distribute the same equitably to the persons entitled.

Sec. 38. No person shall be imprisoned for debt.

Sec. 39. The General Assembly shall grant no charter for Banking purposes, nor renew any Banking Corporation now in existence, except upon the condition that the Stockholders shall be liable to the amount of their respective share or shares of stock in such Banking Institution, for all its debts and liabilities upon note, bill or otherwise; the books, papers and accounts of all Banks shall be open to inspection under such regulations as may be prescribed by Law.

Sec. 40. The General Assembly shall enact no Law authorizing private property to be taken for public use, without just compensation as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation.

Sec. 41. Any Citizen of this State who shall, after the adoption of this Constitution, either in or out of this State, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in any manner those offending, shall ever thereafter be incapable of holding any office of profit or trust under this State, unless relieved from the disability by an Act of the Legislature.

Sec. 42. The General Assembly shall pass Laws necessary for the preservation of the purity of elections.

Sec. 43. The property of the wife shall be protected from the debts of her husband.

Sec. 44. Laws shall be passed by the General Assembly to protect from execution a reasonable amount of the property of the debtor, not exceeding in value the sum of five hundred dollars.

Sec. 45. The General Assembly shall provide a simple and uniform system of charges in the offices of Clerks of Courts and Registers of Wills, in the Counties of this State and the City of Baltimore, and for the collection thereof; provided, the amount of compensation to any of the said officers in the various Counties shall not exceed the sum of three thousand dollars a year, and in the City of Baltimore thirty-five hundred dollars a year, over and above office expenses, and compensation to assistants; and provided further that such compensation of Clerks, Registers, assistants and office expenses shall always be paid out of the fees or receipts of the offices, respectively.

Sec. 46. The General Assembly shall have power to receive from the United States any grant or donation of land, money, or securities for any purpose designated by the United States, and shall administer or distribute the same according to the conditions of the said grant.

Sec. 47. The General Assembly shall make provisions for all cases of contested elections of any of the officers, not herein provided for.

Sec. 48. Corporations may be formed under general Laws; but shall not be created by special act, except for municipal purposes and except in cases where no general Laws exist, providing for the creation of Corporations of the same general character, as the corporation proposed to be created; and any act of incorporation passed in violation of this section shall be void. And as soon as practicable, after the adoption of this Constitution, it shall be the duty of the Governor to appoint three persons learned in the Law, whose duty it shall be to prepare drafts of general Laws, providing for the creation of corporations, in such cases as may be proper, and for all other cases, where a general Law can be made; and for revising and amending, so far as may be necessary or expedient, the General Laws which may be in existence on the first day of June, eighteen hundred and sixty-seven, providing for the creation of corporations, and for other purposes; and such drafts of Laws shall by said commissioners, be submitted to the General Assembly, at its first meeting, for its action thereon; and each of said commissioners shall receive a compensation of five hundred dollars for his services, as such commissioner.

All Charters granted or adopted in pursuance of this section, and all Charters heretofore granted and created, subject to repeal or modification, may be altered, from time to time, or be repealed; provided, nothing herein contained shall be construed to extend to Banks, or the incorporation thereof.

Sec. 49. The General Assembly shall have power to regulate by law, not inconsistent with this Constitution, all matters which relate to the Judges of Election, time, place and manner of holding elections in this State, and of making returns thereof.

Sec. 50. It shall be the duty of the General Assembly at its first session, held after the adoption of this Constitution, to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary or both, in the discretion of the Court, of any person who shall bribe or attempt to bribe any Executive, or Judicial officer of the State of Maryland, or any member, or officer of the General Assembly of the State of Maryland, or of any Municipal Corporation in the State of Maryland, or any Executive officer of such corporation, in order to influence him in the performance of any of his official duties; and also, to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary, or both, in the discretion of the Court, of any of said officers, or members, who shall demand or receive any bribe, fee, reward or testimonial for the performance of his official duties, or for neglecting or failing to perform the same; and also, to provide by Law for compelling any person so bribing, or attempting to bribe, or so demanding or receiv-

ing a bribe, fee, reward or testimonial, to testify against any person or persons who may have committed any of said offences; provided, that any person so compelled to testify shall be exempted from trial and punishment for the offence of which he may have been guilty; and any person convicted of such offence shall, as part of the punishment thereof, be forever disfranchised and disqualified from holding any office of trust or profit in this State.

Sec. 51. The personal property of residents of this State shall be subject to taxation in the county or city where the resident *bona fide* resides for the greater part of the year, for which the tax may or shall be levied, and not elsewhere, except goods and chattels permanently located, which shall be taxed in the city or county where they are so located.

Sec. 52. The General Assembly shall appropriate no money out of the Treasury for payment of any private claim against the State exceeding three hundred dollars, unless said claim shall have been first presented to the Comptroller of the Treasury, together with the proofs upon which the same is founded, and reported upon by him.

Sec. 53. No person shall be incompetent, as a witness, on account of race or color, unless hereafter so declared by Act of the General Assembly.

Sec. 54. No County of this State shall contract any debt, or obligation, in the construction of any Railroad, Canal, or other Work of Internal Improvement, nor give, or loan its credit to or in aid of any association, or corporation, unless authorized by an Act of the General Assembly, which shall be published for two months before the next election for members of the House of Delegates in the newspapers published in such County, and shall also be approved by a majority of all the members elected to each House of the General Assembly, at its next session after said election.

Sec. 55. The General Assembly shall pass no law suspending the privilege of the Writ of *Habeas Corpus.*

Sec. 56. The General Assembly shall have power to pass all such Laws as may be necessary and proper for carrying into execution the powers vested by this Constitution, in any Department or office of the Government, and the duties imposed upon them thereby.

Sec. 57. The legal rate of Interest shall be *six per cent. per annum, unless otherwise provided by the General Assembly.*

Sec. 58. The Legislature, at its first session after the ratification of this Constitution, shall provide by Law for State and municipal taxation upon the revenues accruing from business done in the State by all foreign corporations.

Sec. 59. The office of "State Pension Commissioner" is hereby abolished; and the Legislature shall pass no law creating such office, or establishing any general pension system within this State.

ARTICLE IV.

JUDICIARY DEPARTMENT.

Part I—General Provisions.

Section 1. The Judicial power of this State shall be vested in a Court of Appeals, Circuit Courts, Orphans' Courts, such Courts for the City of Baltimore as are hereinafter provided for, and Justices of the Peace; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom. The process and official character of Justices of the Peace shall be authenticated as hath heretofore been practiced in this State, or may hereafter be prescribed by Law.

Sec. 2. The Judges of all of the said Courts shall be citizens of the State of Maryland, and qualified voters under this Constitution, and shall have resided therein not less than five years, and not less than six months next preceding their election or appointment in the judicial circuit, as the case may be, for which they may be respectively elected or appointed. They shall be not less than thirty years of age at the time of their election or appointment, and shall be selected from those who have been admitted to practice Law in this State, and who are most distinguished for integrity, wisdom and sound legal knowledge.

Sec. 3. The Judges of the said several Courts shall be elected in the Counties by the qualified voters in their respective Judicial Circuits as hereinafter provided, at the general election to be held on the Tuesday after the first Monday in November next, and in the City of Baltimore, on the fourth Wednesday of October next. Each of the said Judges shall hold his office for the term of fifteen years from the time of his election, and until his successor is elected and qualified, or until he shall have attained the age of seventy years, whichever may first happen, and be re-eligible thereto until he shall have attained the age of seventy years, and not after; but in case of any Judge who shall attain the age of seventy years whilst in office, such Judge may be continued in office by the General Assembly for such further time as they may think fit, not to exceed the term for which he was elected, by a resolution to be passed at the session next preceding his attaining said age. In case of the inability of any of said Judges to discharge his duties with efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each House concurring, with the approval of the Governor, to retire said Judge from office.

Sec. 4. Any Judge shall be removed from office by the Governor, on conviction in a Court of Law, of incompetency, of wilful neglect of duty, misbehavior in office or any other crime, or on impeachment, according to this Constitution, or the Laws of the

State; or on the address of the General Assembly, two thirds of each House concurring in such address, and the accused having been notified of the charges against him, and having had opportunity of making his defence.

Sec. 5. After the election for Judges, to be held as above mentioned, upon the expiration of the term, or in case of the death, resignation, removal, or other disqualification of any Judge, the Governor shall appoint a person duly qualified to fill said office, who shall hold the same until the next general election for members of the General Assembly, when a successor shall be elected, whose tenure of office shall be the same, as hereinbefore provided; but if the vacancy shall occur in the city of Baltimore, the time of election shall be the fourth Wednesday in October following.

Sec. 6. All Judges shall, by virtue of their offices be Conservators of the Peace throughout the State; and no fees, or perquisites, commission or reward of any kind, shall be allowed to any Judge in this State, besides his annual salary, for the discharge of any Judicial duty.

Sec. 7. No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within such degrees as now are or may hereafter be prescribed by Law, or where he shall have been of counsel in the case.

Sec. 8. The parties to any cause may submit the same to the court for determination, without the aid of a jury; and the Judge, or Judges of any Court of this State, except the Court of Appeals, shall order and direct the record of proceedings in any suit or action, issue or petition, presentment or indictment, pending in such court, to be transmitted to some other court, (and of a different circuit, if the party applying shall so elect,) having jurisdiction in such cases, whenever any party to such cause, or the counsel of any party, shall make a suggestion, in writing, supported by the affidavit of such party or his counsel, or other proper evidence, that the party cannot have a fair or impartial trial in the court in which suit, or action, issue or petition, presentment or indictment is pending, or when the Judges of said court shall be disqualified under the provisions of this Constitution to sit in any such suit, action, issue or petition, presentment or indictment; and the General Assembly shall make such modifications of existing Law as may be necessary to regulate and give force to this provision.

Sec. 9. The Judge or Judges of any Court may appoint such officers for their respective Courts as may be found necessary; and such officers of the Courts in the City of Baltimore shall be appointed by the Judges of the Supreme Bench of Baltimore City. It shall be the duty of the General Assembly to prescribe by law a fixed compensation for all such officers, and said Judge or Judges shall from

time to time investigate the expenses, costs and charges of their respective Courts, with a view to a change or reduction thereof, and report the result of such investigation to the General Assembly for its action.

Sec. 10. The Clerks of the several Courts created or continued by this Constitution shall have charge and custody of the records and other papers; shall perform all the duties, and be allowed the fees which appertain to their several offices, as the same now are or may hereafter be regulated by law. And the office and business of said Clerks, in all their departments, shall be subject to the visitorial power of the Judges of their respective Courts, who shall exercise the same, from time to time, so as to insure the faithful performance of the duties of said offices; and it shall be the duty of the Judges of said Courts, respectively, to make from time to time such rules and regulations as may be necessary and proper for the government of said Clerks, and for the performance of the duties of their offices, which shall have the force of law until repealed or modified by the General Assembly.

Sec. 11. The election for Judges hereinbefore provided, and all elections for Clerks, Registers of Wills and other officers provided in this Constitution, except State's Attorneys, shall be certified, and the returns made by the Clerks of the Circuit Courts of the Counties, and the Clerk of the Superior Court of Baltimore City, respectively, to the Governor, who shall issue commissions to the different persons for the offices to which they shall have been, respectively, elected; and in all such elections the person having the greatest number of votes shall be declared to be elected.

Sec. 12. If in any case of election for Judges, Clerks of the Courts of Law, and Registers of Wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the Governor to order a new election; and in case of any contested election the Governor shall send the returns to the House of Delegates, which shall judge of the election and qualification of the candidates at such election, and if the judgment shall be against the one who has been returned elected, or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days.

Sec. 13. All Public Commissions and Grants shall run thus: "The State of Maryland, &c.," and shall be signed by the Governor, with the Seal of the State annexed; all writs and process shall run in the same style, and be tested, sealed and signed as heretofore, or as may hereafter be provided by law; and all indictments shall conclude, "against the peace, government and dignity of the State."

Part II.—Court of Appeals.

Sec. 14. The Court of Appeals shall be composed of the Chief Judges of the first seven of the several Judicial Circuits of the State and a Judge from the City of Baltimore specially elected thereto, one

of whom shall be designated by the Governor, by and with the advice and consent of the Senate, as the Chief Judge; and in all cases until action by the Senate can be had, the Judge so designated by the Governor shall act as Chief Judge. The Judge of the Court of Appeals from the City of Baltimore shall be elected by the qualified voters of said city at the election of Judges to be held therein, as hereinbefore provided; and in adddition to his duties as Judge of the Court of Appeals, shall perform such other duties as the General Assembly shall prescribe. The jurisdiction of said Court of Appeals shall be co-extensive with the limits of the State, and such as now is or may hereafter be prescribed by Law. It shall hold its sessions in the City of Annapolis, on the first Monday in April, and the first Monday in October, of each and every year, or at such other times as the General Assembly may by Law direct. Its sessions shall continue not less than ten months in the year, if the business before it shall so require; and it shall be competent for the Judges temporarily to transfer their sittings elsewhere upon sufficient cause.

Sec. 15. Four of said Judges shall constitute a quorum; no cause shall be decided without the concurrence of at least three; but the Judge who heard the cause below shall not participate in the decision; in every case an opinion, in writing, shall be filed within three months after the argument or submission of the cause; and the judgment of the court shall be final and conclusive; and all cases shall stand for hearing at the first term after the transmission of the record.

Sec. 16. Provision shall be made by law for publishing reports of all causes argued and determined in the Court of Appeals, which the Judges shall designate as proper for publication.

Sec. 17. There shall be a Clerk of the Court of Appeals, who shall be elected by the legal and qualified voters of the State, who shall hold his office for six years, and until his successor is duly qualified; he shall be subect to removal by the said Court for incompetency, neglect of duty, misdemeanor in office, or such other cause or causes as may be prescribed by law; and in case of a vacancy in the office of said Clerk, the Court of Appeals shall appoint a Clerk of said Court, who shall hold his office until the election and qualification of his successor, who shall be elected at the next general election for members of the General Assembly; and the person so elected shall hold his office for the term of six years from the time of election.

Sec. 18. It shall be the duty of the Judges of the Court of Appeals, as soon after their election under this Constitution as practicable, to make and publish rules and regulations for the prosecution of appeals to said appellate court whereby they shall prescribe the periods within which appeals may be taken, what part or parts of the proceedings in the court below shall constitute the record on appeal and the manner in which such appeals shall be brought to hearing or determination, and shall regulate, generally, the practice of said Court

of Appeals so as to prevent delays and promote brevity in all records and proceedings brought into said Court, and to abolish and avoid all unnecessary costs and expenses in the prosecution of appeals therein; and the said Judges shall make such reductions in the fees and expenses of the said court as they may deem advisable. It shall also be the duty of said Judges of the Court of Appeals, as soon after their election as practicable, to devise and promulgate by rules or orders, forms and modes of framing and filing bills, answers and other proceedings and pleadings in Equity; and also forms and modes of taking and obtaining evidence, to be used in Equity cases; and to revise and regulate, generally, the practice in the Courts of Equity of this State, so as to prevent delays, and to promote brevity and conciseness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses attending the same. And all rules and regulations hereby directed to be made shall, when made, have the force of Law until rescinded, changed or modified by the said Judges, or the General Assembly.

Part III.—Circuit Courts.

Sec. 19. The State shall be divided into eight Judicial Circuits, in manner folowing, viz: The Counties of Worcester, Somerset, and Dorchester, shall constitute the First Circuit; the Counties of Caroline, Talbot, Qneen Anne's, Kent, and Cecil, the Second; the Counties of Baltimore and Harford, the Third; the Counties of Allegany and Washington, the Fourth; the Counties of Carroll, Howard, and Anne Arundel, the Fifth; the Counties of Montgomery and Frederick, the Sixth; the Counties of Prince George's, Charles, Calvert, and St. Mary's, the Seventh, and Baltimore City, the Eighth.

Sec. 20. A court shall he held in each County of the State, to be styled the Circuit Court for the County in which it may be held. The said Circuit Courts shall have and exercise, in the respective Counties, all the power, authority and jurisdiction, original and appellate, which the present Circuit Courts of this State now have and exercise, or which may hereafter be prescribed by Law.

Sec. 21. For each of the said Circuits (excepting the Eighth) there shall be a Chief Judge and two Associate Judges, to be styled Judges of the Circuit Court, to be elected or appointed, as herein provided, and no two of said Associate Judges shall at the time of their election, or appointment, or during the term for which they may have been elected or appointed, reside in the same County. If two or more persons shall be candidates for Associate Judge in the same County, that one only in said County shall be declared elected who has the highest number of votes in the Circuit. In case any two candidates for Associate Judge, residing in the same County, shall have an equal number of votes greater than any other candidate for Associate Judge in the Circuit, it shall be the duty of the Governor to order a new election for one Associate Judge; but the person residing in any other County of the Circuit, and who has

the next highest number of votes, shall be declared elected. The said Judges shall hold not less than two terms of the Circuit Court in each of the Counties, composing their respective Circuits, at such times as are now, or may hereafter be prescribed, to which Jurors shall be summoned; and in those Counties where only two such terms are held, two other and intermediate terms, to which Jurors shall not be summoned; they may alter or fix the times for holding any or all terms, until otherwise prescribed, and shall adopt rules to the end that all business not requiring the interposition of a Jury shall be, as far as practicable, disposed of at said intermediate terms. One Judge in each of the above Circuits shall constitute a quorum for the transaction of any business; and the said Judges, or any of them, may hold Special Terms of their Courts, whenever in their discretion, the business of the several Counties renders such Terms necessary.

Sec. 22. Where any Term is held, or trial conducted by less than the whole number of said Circuit Judges, upon the decision or determination of any point or question by the Court, it shall be competent to the party against whom the ruling or decision is made, upon motion, to have the point or question reserved for the consideration of the three Judges of the Circuit, who shall constitute a court in *banc* for such purpose; and the motion for such reservation shall be entered of record during the sitting at which such decision may be made; and the several Circuit Courts shall regulate, by rules, the mode and manner of presenting such points or questions to the Court in *banc*, and the decision of the said Court in *banc* shall be the effective decision in the premises, and conclusive, as against the party at whose motion said points or questions were reserved; but such decision in *banc* shall not preclude the right of appeal or writ of error to the adverse party in those cases, civil or criminal, in which appeal or writ of error to the Court of Appeals may be allowed by law. The right of having questions reserved shall not, however, apply to trials of Appeals from judgments of Justices of the Peace, nor to Criminal cases below the grade of felony, except when the punishment is confinement in the penitentiary; and this section shall be subject to such provisions as may hereafter be made by law.

Sec. 23. The Judges of the respective Circuit Courts of this State, and of the Courts of Baltimore City, shall render their decisions in all cases argued before them, or submitted for their judgment, within two months after the same shall have been so argued or submitted.

Sec. 24. The salary of each Chief Judge, and of the Judge of the Court of Appeals from the City of Baltimore, shall be three thousand five hundred dollars, and of each Associate Judge of the Circuit Court, shall be two thousand eight hundred dollars per annum payable quarterly, and shall not be diminished during his continuance in office.

Sec. 25. There shall be a Clerk of the Circuit Court for each County, who shall be elected by a plurality of the qualified voters of said County, and shall hold his office for six years from the time of his election, and until his successor is elected and qualified, and be re-

eligible, subject to be removed for wilful neglect of duty or other misdemeanor in office, on conviction in a Court of Law. In case of a vacancy in the office of Clerk of a Circuit Court, the Judges of said Court shall have power to fill such vacancy until the general election for Delegates to the General Assembly, to be held next thereafter, when a successor shall be elected for the term of six years.

Sec. 26. The said Clerks shall appoint, subject to the confirmation of the Judges of their respective Courts, as many deputies under them as the said Judges shall deem necessary to perform, together with themselves, the duties of the said office, who shall be removable by the said Judges for incompetency, or neglect of duty, and whose compensation shall be according to existing or future provisions of the General Assembly.

Part IV.—Courts of Baltimore City.

Sec. 27. There shall be in the Eighth Judicial Circuit six Courts, to be styled the Supreme Bench of Baltimore City, the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Circuit Court of Baltimore City and the Criminal Court of Baltimore.

Sec. 28. The Superior Court of Baltimore City, the Court of Common Pleas, and the Baltimore City Court shall each have concurrent jurisdiction in all civil common law cases, and concurrently all the jurisdiction which the Superior Court of Baltimore City and the Court of Common Pleas now have, except jurisdiction in Equity, and except in applications for the benefit of the Insolvent Laws of Maryland, and in cases of Appeal from judgments of Justices of the Peace in said city, whether civil or criminal, or arising under the ordinances of the Mayor and City Council of Baltimore, of all of which appeal cases the Baltimore City Court shall have exclusive jurisdiction; and the said Court of Common Pleas shall have exclusive jurisdiction in all applications for the benefit of the Insolvent Laws of Maryland, and the supervision and control of the Trustees thereof.

Sec. 29. The Circuit Court of Baltimore City shall have exclusive jurisdiction in Equity within the limits of said city, and all such jurisdiction as the present Circuit Court of Baltimore City has; provided, the said Court shall not have jurisdiction in applications for the writ of *habeas corpus* in cases of persons charged with criminal offenses.

Sec. 30. The Criminal Court of Baltimore shall have and exercise all the jurisdiction now held and exercised by the Criminal Court of Baltimore, except in such Appeal Cases as are herein assigned to the Baltimore City Court.

Sec. 31. There shall be elected by the legal and qualified voters of said city, at the election, hereinbefore provided for, one Chief Judge and four Associate Judges, who, together, shall constitute the Supreme Bench of Baltimore City, and shall hold their offices for the term of

fifteen years, subject to the provisions of this Constitution with regard to the election and qualifications of Judges and their removal from office, and shall exercise the jurisdiction, hereinafter specified, and shall each receive an annual salary of three thousand five hundred dollars, payable quarterly, which shall not be diminished during their term of office; but authority is hereby given to the Mayor and City Council of Baltimore to pay to each of the said Judges an annual addition of five hundred dollars to their respective salaries; provided, that the same being once granted shall not be diminished nor increased during the continuance of said Judges in office.

Sec. 32. It shall be the duty of the said Supreme Bench of Baltimore City, as soon as the Judges thereof shall be elected and duly qualified, and from time to time, to provide for the holding of each of the aforesaid Courts, by the assignment of one or more of their number to each of the said Courts, who may sit either separately or together in the trial of cases; and the said Supreme Bench of Baltimore City may, from time to time, change the said assignment, as circumstances may require, and the public interest may demand; and the Judge or Judges, so assigned to the said several Courts, shall, when holding the same, have all the powers and exercise all the jurisdiction which may belong to the Court so being held; and it shall also be the duty of the said Supreme Bench of Baltimore City, in case of the sickness, absence or disability of any Judge or Judges assigned as aforesaid, to provide for the hearing of the cases, or transaction of the business assigned to said Judge or Judges, as aforesaid, before some one or more of the Judges of said Court.

Sec. 33. The said Supreme Bench of Baltimore City shall have power, and it shall be its duty, to provide for the holding of as many general Terms as the performance of its duties may require, such general Terms to be held by not less than three Judges; to make all needful rules and regulations for the conduct of business in each of the said Courts. during the session thereof, and in vacation, or in Chambers, before any of said Judges; and shall also have jurisdiction to hear and determine all motions for a new trial in cases tried in any of said Courts, where such motions arise either, on questions of fact, or for misdirection upon any matters of Law, and all motions in arrest of judgment, or upon any matters of Law determined by the said Judge, or Judges, while holding said several Courts; and the said Supreme Bench of Baltimore City shall make all needful rules and regulations for the hearing before it of all of said matters; and the same right of appeal to the Court of Appeals shall be allowed from the determination of the said Court on such matters, as would have been the right of the parties if said matters had been decided by the Court in which said cases were tried.

Sec. 34. No appeal shall lie to the Supreme Bench of Baltimore City from the decision of the Judge or Judges holding the Baltimore City Court in case of appeal from a Justice of the Peace; but

the decision by said Judge or Judges shall be final; and all writs and other process isued out of either of said Courts, requiring attestation, shall be attested in the name of the Chief Judge of the said Supreme Bench of Baltimore City.

Sec. 35. Three of the Judges of said Supreme Bench of Baltimore City shall constitute a quorum of said Court.

Sec. 36. All causes depending, at the adoption of this Constitution, in the Superior Court of Baltimore City, the Court of Common Pleas, the Criminal Court of Baltimore, and the Circuit Court of Baltimore City, shall be proceeded in, and prosecuted to final judgment or decree, in the Courts, respectively, of the same name established by this Constitution, except cases belonging to that class, jurisdiction over which is by this Constitution transferred to the Baltimore City Court, all of which shall, together with all cases now pending in the City Court of Baltimore, be proceeded in and prosecuted to final judgment in said Baltimore City Court.

Sec. 37. There shall be a Clerk of each of the said Courts of Baltimore City, except the Supreme Bench, who shall be elected by the legal and qualified voters of said city, at the election to be held in said city on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-seven, and shall hold his office for six years from the time of his election, and until his successor is elected and qualified, and be re-eligible thereto, subject to be removed for wilful neglect of duty or other misdemeanor in office, on conviction in a Court of Law. The salary of each of the said Clerks shall be thirty-five hundred dollars a year, payable only out of the fees and receipts collected by the Clerks of said city, and they shall be entitled to no other perquisites or compensation. In case of a vacancy in the office of Clerk of any of said Courts, the judges of said Supreme Bench of Baltimore City shall have power to fill such vacancy until the general election of Delegates to the General Assembly to be held next thereafter, when a Clerk of said Court shall be elected to serve for six years thereafter; and the provisions of this Article in relation to the appointment of Deputies by the Clerks of the Circuit Courts in the counties shall apply to the Clerks of the Courts in Baltimore City.

Sec. 38. The Clerk of the Court of Common Pleas shall have authority to issue within said city all marriage and other licenses required by law, subject to such provisions as are now or may be prescribed by Law. The Clerk of the Superior Court of said city shall receive and record all deeds, conveyances and other papers, which are or may be required by Law to be recorded in said city. He shall also have custody of all papers connected with the proceedings on the Law or Equity side of Baltimore County Court and of the dockets thereof, so far as the same have relation to the City of Baltimore, and shall also discharge the duties of Clerk to the Supreme Bench of Baltimore City unless otherwise provided by Law.

Sec. 39. The General Assembly shall, whenever it may think the same proper and expedient, provide, by Law, another Court for the City of Baltimore, and prescribe its jurisdiction and powers; in which case there shall be elected by the voters of said City, qualified under this Constitution, another Judge of the Supreme Bench of Baltimore City, who shall be subject to the same constitutional provisions, hold his office for the same term of years, receive the same compensation, and have the same powers, as are herein provided for the Judges of said Supreme Bench of Baltimore City; and all of the provisions of this Constitution relating to the assignment of Judges to the Courts, now existing in said City, and for the dispatch of business therein, shall apply to the Court, for whose creation provision is made by this Section. And the General Assembly may reapportion, change or enlarge the jurisdiction of the several Courts in Baltimore City. Until otherwise provided by Law, the Clerk of the Superior Court of Baltimore City, of the Court of Common Pleas, of the Circuit Court of Baltimore City, of the Baltimore City Court, and of the Criminal Court of Baltimore, shall each give Bond in such penalty as is now prescribed by Law to be given by the Clerks of the Courts, bearing the same names, under the present Constitution.

Part V.—Orphans' Courts.

Sec. 40. The qualified voters of the City of Baltimore, and of the several counties, shall on the Tuesday next after the first Monday in November next, and on the same day in every fourth year thereafter, elect three men to be Judges of the Orphans' Courts of said city and counties, respectively, who shall be citizens of the State, and residents for the twelve months preceding, in the city, or county, for which they may be elected. They shall have all the powers now vested in the Orphans' Courts of the State, subject to such changes as the Legislature may prescribe. Each of said Judges shall be paid a per diem for the time they are actually in session, to be regulated by Law, and to be paid by the said city, or counties, respectively. In case of a vacancy in the office of Judge of the Orphans' Court, the Governor shall appoint, subject to confirmation or rejection by the Senate, some suitable person to fill the same for the residue of the term.

Sec. 41. There shall be a Register of Wills in each county of the State, and the City of Baltimore, to be elected by the legal and qualified voters of said counties and city, rescpectively, who shall hold his office for six years from the time of his election, and until his successor is elected and qualified; he shall be re-eligible, and subject at all times to removal for wilful neglect of duty, or misdemeanor in office in the same manner that the Clerks of the Courts are removable. In the event of any vacancy in the office of Register of Wills, said vacancy shall be filled by the Judges of the Orphans' Court, in which such vacancy occurs, until the next general election for Delegates to the General Assembly, when a Register shall be elected to serve for six years thereafter.

Part VI.—Justices of the Peace.

Sec. 42. The Governor, by and with the advice and consent of the Senate, shall appoint such number of Justices of the Peace, and the County Commissioners of the several counties, and the Mayor and City Council of Baltimore, respectively, shall appoint such number of Constables, for the several Election Districts of the counties and wards of the City of Baltimore, as are now or may hereafter be prescribed by Law; and Justices of the Peace and Constables so appointed shall be subject to removal by the Judge or Judges having criminal jurisdiction in the county or city, for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a Court of Law. The Justices of the Peace and Constables so appointed and commissioned shall be Conservators of the Peace; shall hold their office for two years, and shall have such jurisdiction, duties and compensation, subject to such right of appeal in all cases from the judgment of Justices of the Peace, as hath been heretofore exercised, or shall be hereafter prescribed by Law.

Sec. 43. In the event of a vacancy in the office of a Justice of the Peace, the Governor shall appoint a person to serve as Justice of the Peace for the residue of the term; and in case of a vacancy in the office of Constable, the County Commissioners of the county in which the vacancy occurs, or the Mayor and City Council of Baltimore, as the case may be, shall appoint a person to serve as constable for the residue of the term.

Part VII.—Sheriffs.

Sec. 44. There shall be elected in each County, and in the City of Baltimore, in every second year, one person, resident in said County or City, above the age of twenty-five years, and at least five years preceding his election, a citizen of this State, to the office of Sheriff. He shall hold his office for two years, and until his successor is duly elected and qualified; shall be ineligible for two years thereafter; shall give such bond, exercise such powers, and perform such duties as now are or may hereafter be fixed by law. In case of a vacancy by death, resignation, refusal to serve, or neglect to qualify, or give bond, or by disqualification, or removal from the County or City, the Governor shall appoint a person to be Sheriff for the remainder of the official term.

Sec. 45. Coroners, Elisors and Notaries Public may be appointed for each County and the City of Baltimore in the manner, for the purpose and with the powers now fixed, or which may hereafter be prescribed by law.

ARTICLE V.

ATTORNEY-GENERAL AND STATE'S ATTORNEYS.

Attorney-General.

Section 1. There shall be an Attorney-General elected by the qualified voters of the State, on general ticket, on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-seven, and on the same day in every fourth year thereafter, who shall hold his office for four years from the time of his election and qualification, and until his successor is elected and qualified, and shall be re-eligible thereto, and shall be subject to removal for incompetency, wilful neglect of duty or misdemeanor in office, on conviction in a court of law.

Sec. 2. All elections for Attorney-General shall be certified to, and returns made thereof by the Clerks of the Circuit Courts of the several Counties, and the Clerk of the Superior Court of Baltimore City, to the Governor of the State, whose duty it shall be to decide on the election and qualification of the person returned; and in case of a tie between two or more persons to designate which of said persons shall qualify as Attorney-General, and to administer the oath of office to the person elected.

Sec. 3. It shall be the duty of the Attorney-General to prosecute and defend on the part of the State all cases which at the time of his appointment and qualification, and which thereafter may be depending in the Court of Appeals, or in the Supreme Court of the United States by or against the State, or wherein the State may be interested; and he shall give his opinion in writing whenever required by the General Assembly, or either branch thereof, the Governor, the Comptroller, the Treasurer, or any State's Attorney, on any legal matter, or subject depending before them, or either of them; and when required by the Governor or the General Assembly, he shall aid any State's Attorney in prosecuting any suit or action brought by the State in any Court of this State, and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended; and he shall receive for his services an annual salary of three thousand dollars; but he shall not be entitled to receive any fees, perquisites or rewards whatever, in addition to the salary aforesaid, for the performance of any official duty; nor have power to appoint any agent, representative or deputy, under any circumstances whatever; nor shall the Governor employ any additional counsel in any case whatever, unless authorized by the General Assembly.

Sec. 4. No person shall be eligible to the office of Attorney-General, who is not a citizen of this State, and a qualified voter therein, and has not resided and practiced Law in this State for at least ten years.

Sec. 5. In case of vacancy in the office of Attorney-General, occassioned by death, resignation, removal from the State or from office, or other disqualification, the said vacancy shall be filled by the Governor for the residue of the term thus made vacant.

Sec. 6. It shall be the duty of the Clerk of the Court of Appeals and of the Commissioner of the Land Office, respectively, whenever a case shall be brought into said court or office, in which the State is a party or has interest, immediately to notify the Attorney-General thereof.

The State's Attorneys.

Sec. 7. There shall be an Attorney for the State in each County and the City of Baltimore, to be styled "The State's Attorney," who shall be elected by the voters thereof, respectively, on the Tuesday next after the first Monday in November, in the year eighteen hundred and sixty-seven, and on the same day every fourth year thereafter; and shall hold his office for four years from the first Monday in January next ensuing his election, and until his successor shall be elected and qualified, and shall be re-eligible thereto, and be subject to removal therefrom for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a Court of Law, or by a vote of two-thirds of the Senate, on the recommendation of the Attorney-General.

Sec. 8. All elections for the State's Attorney shall be certified to and returns made thereof by the Clerks of the said counties and city to the Judges thereof having criminal jurisdiction, respectively, whose duty it shall be to decide upon the elections and qualifications of the persons returned; and in case of a tie between two or more persons, to designate which of said persons shall qualify as State's Attorney, and to administer the oaths of office to the person elected.

Sec. 9. The State's Attorney shall perform such duties and receive such fees and commissions as are now or may hereafter be prescribed by law, and if any State's Attorney shall receive any other fee or reward than such as is or may be allowed by Law, he shall, on conviction thereof, be removed from office; *provided,* that the State's Attorney for Baltimore City shall have power to appoint one Deputy, at a salary of not more than fifteen hundred dollars per annum, to be paid by the State's Attorney out of the fees of his office, as has heretofore been practiced.

Sec. 10. No person shall be eligible to the office of State's Attorney who has not been admitted to practice Law in this State, and who has not resided for at least two years in the county or city in which he may be elected.

Sec. 11. In case of vacancy in the office of State's Attorney, or of his removal from the county or city in which he shall have been elected, or on his conviction as herein specified, the said vacancy shall

be filled by the Judge of the county or city, respectively, having criminal jurisdiction, in which said vacancy shall occur, for the residue of the term thus made vacant.

Sec. 12. The State's Attorney in each county, and the City of Baltimore, shall have authority to collect, and give receipt, in the name of the State, for such sums of money as may be collected by him, and forthwith make return of and pay over the same to the proper accounting officer. And the State's Attorney of each county, and the City of Baltimore, before he shall enter on the discharge of his duties, shall execute a bond to the State of Maryland, for the faithful performance of his duties, in the penalty of ten thousand dollars, with two or more sureties, to be approved by the Judge of the Court having criminal jurisdiction in said counties or city.

ARTICLE VI.

TREASURY DEPARTMENT.

Section 1. There shall be a Treasury Department, consisting of a Comptroller, chosen by the qualified electors of the State, at each regular election of members of the House of Delegates, who shall receive ananual salary of two thousand five hundred dollars; and a Treasurer, to be appointed by the two Houses of the Legislature, at each regular session thereof, on joint ballot, who shall receive an annual salary of two thousand five hundred dollars; and the terms of office of the said Comptroller and Treasurer shall be for two years, and until their successors shall qualify; and neither of the said officers shall be allowed, or receive any fees, commissions or perquisites of any kind in addition to his salary for the performance of any duty or services whatsoever. In case of a vacancy in either of the offices by death, or otherwise, the Governor, by and with the advice and consent of the Senate, shall fill such vacancy by appointment, to continue until another election, or a choice by the Legislature, as the case may be, and until the qualification of the successor. The Comptroller and the Treasurer shall keep their offices at the seat of Government, and shall take such oath, and enter into such bonds for the faithful discharge of their duties as are now, or may hereafter be prescribed by law.

Sec. 2. The Comptroller shall have the general superintendence of the fiscal affairs of the State; he shall digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; prepare and report estimates of the revenue and expenditures of the State; superintend and enforce the prompt collection of all taxes and revenue; adjust and settle, on terms prescribed by law, with delinquent collectors and receivers of taxes and State revenue; preserve all public accounts; decide on the forms of keeping and stating accounts; grant, under regulations prescribed by Law, all warrants for money to be paid out of the Treasury,

in pursuance of appropriations by Law, and countersign all checks drawn by the Treasurer upon any bank or banks, in which the moneys of the State may, from time to time, be deposited; prescribe the formalities of the transfer of stock, or other evidence of the State debt, and countersign the same, without which such evidence shall not be valid; he shall make to the General Assembly full reports of all his proceedings, and of the state of the treasury department within ten days after the commencement of each Session; and perform such other duties as shall be prescribed by Law.

Sec. 3. The Treasurer shall receive the moneys of the State, and, until otherwise prescribed by law, deposit them, as soon as received, to the credit of the State, in such bank or banks as he may, from time to time, with the approval of the Governor, select (the said bank or banks giving security, satisfactory to the Governor, for the safe-keeping and forthcoming, when required, of said deposits), and shall disburse the same for the purposes of the State, according to law, upon warrants drawn by the Comptroller, and on checks countersigned by him, and not otherwise; he shall take receipts for all moneys paid by him; and receipts for moneys received by him shall be endorsed upon warrants signed by the Comptroller, without which warrants, so signed, no acknowledgment of money received into the Treasury shall be valid; and upon warrants, issued by the Comptroller, he shall make arrangements for the payment of the interest of the public debt, and for the purchase thereof, on account of the sinking fund. Every bond, certificate, or other evidence of the debt of the State shall be signed by the Treasurer, and countersigned by the Comptroller; and no new certificate or other evidence intended to replace another shall be issued until the old one shall be delivered to the Treasurer, and authority executed in due form for the transfer of the same filed in his office, and the transfer accordingly made on the books thereof, and the certificate or other evidence cancelled; but the Legislature may make provisions for the loss of certificates, or other evidences of the debt; and may prescribe, by Law, the manner in which the Treasurer shall receive and keep the moneys of the State.

Sec. 4. The Treasurer shall render his accounts quarterly to the Comptroller, and shall publish monthly, in such newspapers as the Governor may direct, an abstract thereof, showing the amount of cash on hand, and the place or places of deposit thereof; and on the third day of each regular session of the Legislature he shall submit to the Senate and House of Delegates fair and accurate copies of all accounts by him, from time to time, rendered and settled with the Comptroller. He shall at all times submit to the Comptroller the inspection of the money in his hands, and perform all other duties that shall be prescribed by Law.

Sec. 5. The Comptroller shall qualify and enter on the duties of his office on the third Monday of January next succeeding the time of his election, or as soon thereafter as practicable. And the Treasurer

shall qualify within one month after his appointment by the Legislature.

Sec. 6. Whenever during the recess of the Legislature charges shall be preferred to the Governor against the Comptroller or Treasurer for incompetency, malfeasance in office, wilful neglect of duty, or misappropriation of the funds of the State, it shall be the duty of the Governor forthwith to notify the party so charged, and fix a day for a hearing of said charges; and if from the evidence taken, under oath on said hearing before the Governor, the said allegations shall be sustained, it shall be the duty of the Governor to remove said offending officer and appoint another in his place, who shall hold the office for the unexpired term of the officer so removed.

ARTICLE VII.

SUNDRY OFFICERS.

County Commissioners—Surveyor—State Librarian—Commissioner of the Land Office—Wreck Master.

Section 1. County Commissioners shall be elected on general ticket of each county by the qualified voters of the several counties of this State, on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-seven, and on the same day in every second year thereafter. Their number in each county, their compensation, powers and duties, shall be such as are now or may be hereafter prescribed by Law.

Sec. 2. The qualified voters of each County, and of the City of Baltimore shall, on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-seven, and on the same day in every second year thereafter, elect a Surveyor for each County and the City of Baltimore, respectively, whose term of office shall commence on the first Monday of January next ensuing their election, and whose duties and compensation shall be the same as are now or may hereafter be prescribed by law. And any vacancy in the office of Surveyor shall be filled by the Commissioners of the Counties, or by the Mayor and City Council of Baltimore, respectively, for the residue of the term.

Sec. 3. The State Librarian shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold his office during the term of the Governor, by whom he shall have been appointed, and until his successor shall be appointed and qualified. His salary shall be fifteen hundred dollars a year; and he shall perform such duties as are now, or may hereafter be prescribed by Law; and no appropriation shall be made by Law to pay for any clerk, or assistant to the Librarian. And it shall be the duty of the Legislature, at its first session after the adoption of this Constitution, to pass a Law regulating the mode and manner in which the books in

the Library shall be kept and accounted for by the Librarian, and requiring the Librarian to give a bond, in such penalty as the Legislature may prescribe, for the proper discharge of his duties.

Sec. 4. There shall be a Commissioner of the Land Office, who shall be appointed by the Governor, by and with the advice and consent of the Senate, who shall hold his office during the term of the Governor, by whom he shall have been appointed, and until his successor shall be appointed and qualified. He shall perform such duties as are now required of the Commissioner of the Land Office, or such as may hereafter be prescribed by Law, and shall also be the Keeper of the Chancery Records. He shall receive a salary of One Thousand, five hundred dollars per annum, to be paid out of the Treasury, and shall charge such fees as are now, or may be hereafter fixed by Law. He shall make a semi-annual report of all the fees of his office, both as Commissioner of the Land Office, and as Keeper of the Chancery Records, to the Comptroller of the Treasury, and shall pay the same semi-annually into the treasury.

Sec. 5. The Commissioner of the Land Office shall also, without additional compensation, collect, arrange, classify, have charge of, and safely keep all papers, records, relics, and other memorials connected with the early history of Maryland, not belonging to any other office.

Sec. 6. The qualified voters of Worcester County shall on the Tuesday next after the first Monday in the month of November, in the year eighteen hundred and sixty-seven, and every two years thereafter, elect a Wreck-Master for said County, whose duties and compensation shall be the same as are now or may be hereafter prescribed by law; the term of office of said Wreck-Master shall commence on the first Monday of January next succeeding his election, and a vacancy in said office shall be filled by the County Commissioners of said County for the residue of the term.

ARTICLE VIII.

EDUCATION.

Section 1. The General Assembly, at its first session after the adoption of this Constitution, shall, by law, establish throughout the State a thorough and efficient system of free Public Schools; and shall provide by taxation, or, otherwise, for their maintenance.

Sec. 2. The system of Public Schools, as now constituted, shall remain in force until the end of the said first session of the General Assembly, and shall then expire, except so far as adopted or continued by the General Assembly.

Sec. 3. The School Fund of the State shall be kept inviolate, and appropriated only to the purposes of education.

ARTICLE IX.

MILITIA AND MILITARY AFFAIRS.

Section 1. The General Assembly shall make, from time to time, such provisions for organizing, equipping and disciplining the Militia, as the exigency may require, and pass such Laws to promote Volunteer Militia Organizations as may afford them effectual encouragement.

Sec. 2. There shall be an Adjutant-General appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office until the appointment and qualification of his successor, or until removed in pursuance of the sentence of a court-martial. He shall perform such duties and receive such compensation or emoluments as are now or may be prescribed by law. He shall discharge the duties of his office at the seat of government, unless absent under orders, on duty; and no other officer of the General Staff of the Militia shall receive salary or pay, except when on service and mustered in with troops.

Sec. 3. The existing Militia Law of the State shall expire at the end of the next session of the General Assembly, except so far as it may be re-enacted, subject to the provisions of this Article.

ARTICLE X.

LABOR AND AGRICULTURE.

Section 1. There shall be a Superintendent of Labor and Agriculture elected by the qualified voters of this State at the first General Election for Delegates to the General Assembly after the adoption of this Constitution, who shall hold his office for the term of four years, and until the election and qualification of his successor.

Sec. 2. His qualifications shall be the same as those prescribed for the Comptroller; he shall qualify and enter upon the duties of his office on the second Monday of January next succeeding the time of his election; and a vacancy in the office shall be filled by the Governor for the residue of the term.

Sec. 3. He shall perform such of the duties now devolved by Law upon the Commissioner of Immigration, and the Immigration Agent, as will promote the object for which those officers were appointed, and such other duties as may be assigned to him by the General Assembly, and shall receive a salary of twenty-five hundred dollars a year; and after his election and qualification, the offices before mentioned shall cease.

Sec. 4. He shall supervise all the State Inspectors of agricultural products and fertilizers, and from time to time shall carefully examine and audit their accounts, and prescribe regulations not in-

consistent with Law, tending to secure economy and efficiency in the business of their offices. He shall have the supervision of the Tobacco Warehouses, and all other buildings used for inspection and storage purposes by the State; and may, at the discretion of the Legislature, have the supervision of all public buildings now belonging to, or which may hereafter be, erected by the State. He shall frequently inspect such buildings as are committed to his charge, and examine all accounts for labor and materials required for their construction or repairs.

Sec. 5. He shall inquire into the undeveloped resources of wealth of the State of Maryland, more especially concerning those within the limits of the Chesapeake Bay and its tributaries, which belong to the State, and suggest such plans as may be calculated to render them available as sources of revenue.

Sec. 6. He shall make detailed reports to every General Assembly within the first week of its session, in reference to each of the subjects committed to his charge, and he shall also report to the Governor, in the recess of the Legislature, all abuses or irregularities which he may find to exist in any department of public affairs with which his office is connected.

Sec. 7. The office hereby established shall continue for four years from the date of the qualification of the first incumbent thereof, and shall then expire, unless continued by the General Assembly.

ARTICLE XI.

CITY OF BALTIMORE.

Section 1. The inhabitants of the City of Baltimore qualified by Law to vote in said city for members of the House of Delegates, shall on the fourth Wednesday of October, eighteen hundred and sixty-seven, and on the same day in every fourth year thereafter, elect a person to be Mayor of the City of Baltimore, who shall have such qualifications, receive such compensation, discharge such duties, and have such powers as are now, or may hereafter be prescribed by Law; and the term of whose office shall commence on the first Monday of November succeeding his election, and shall continue for four years, and until his successor shall have qualified; and he shall be ineligible for the term next succeeding that for which he was elected.

Sec. 2. The City Council of Baltimore shall consist of two branches, one of which shall be called the First Branch, and the other the Second Branch, and each shall consist of such number of members, having such qualification, receiving such compensation, performing such duties, possessing such powers, holding such terms of office, and elected in such manner, as are now, or may hereafter be prescribed by Law.

Sec. 3. An election for members of the First and Second Branch of the City Council of Baltimore shall be held in the City of Baltimore on the fourth Wednesday of October, eighteen hundred and sixty-seven; and for members of the First Branch on the same day in every year thereafter; and for members of the Second Branch on the same day in every second year thereafter; and the qualification for electors of the members of the City Council shall be the same as those prescribed for the electors of Mayor.

Sec. 4. The regular sessions of the City Council of Baltimore (which shall be annual), shall commence on the third Monday of January of each year, and shall not continue more than ninety days, exclusive of Sundays; but the Mayor may convene the City Council in extra session whenever, and as often as it may appear to him that the public good may require, but no called or extra session shall last longer than twenty days, exclusive of Sundays.

Sec. 5. No person elected and qualified as Mayor, or as a member of the City Council, shall, during the term for which he was elected, hold any other office of profit or trust, created, or to be created by the Mayor and City Council of Baltimore, or by any Law relating to the Corporation of Baltimore, or hold any employment or position, the compensation of which shall be paid, directly or indirectly, out of the City Treasury; nor shall any such person be interested, directly or indirectly, in any contract to which the City is a party; nor shall it be lawful for any person holding any office under the City, to be interested, while holding such office, in any contract to which the City is a party.

Sec. 6. The Mayor shall, on conviction in a Court of Law, of wilful neglect of duty, or misbehavior in office, be removed from office by the Governor of the State, and a successor shall thereafter be elected, as in a case of vacancy.

Sec. 7. From and after the adoption of this Constitution, no debt (except as hereinafter excepted), shall be created by the Mayor and City Council of Baltimore; nor shall the credit of the Mayor and City Council of Baltimore be given or loaned to, or in aid of any individual, association, or corporation; nor shall the Mayor and City Council of Baltimore have the power to involve the City of Baltimore in the construction of works of internal improvement, nor in granting any aid thereto, which shall involve the faith and credit of the City, nor make any appropriation therefor, unless such debt or credit be authorized by an Act of the General Assembly of Maryland, and by an ordinance of the Mayor and City Council of Baltimore, submitted to the legal voters of the City of Baltimore, at such time and place as may be fixed by said ordinance, and approved by a majority of the votes cast at such time and place; but the Mayor and City Council may, temporarily, borrow any amount of money to meet any deficiency in the City Treasury, or to provide for any emergency arising from the necessity of maintaining the police, or preserving

the safety and sanitary condition of the City, and may make due and proper arrangements and agreements for the removal and extension, in whole or in part, of any and all debts and obligations created according to Law before the adoption of this Constitution.

Sec. 8. All Laws and Ordinances now in force applicable to the City of Baltimore, not inconsistent with this Article, shall be, and they are hereby continued until changed in due course of Law.

Sec. 9. The General Assembly may make such changes in this Article, except in section 7th thereof, as it may deem best; and this Article shall not be so construed or taken as to make the political corporation of Baltimore independent of, or free from the control which the General Assembly of Maryland has over all such corporations in this State.

ARTICLE XII.

PUBLIC WORKS.

Section 1. The Governor, the Comptroller of the Treasury, and the Treasurer shall constitute the Board of Public Works in this State. The shall keep a journal of their proceeedings, and shall hold regular sessions in the City of Annapolis on the first Wednesday in January, April, July and October in each year, and oftener if necessary; at which sessions they shall hear and determine such matters as affect the Public Works of the State, and as the General Assembly may confer upon them the power to decide.

Sec. 2. They shall exercise a diligent and faithful supervision of all Public Works in which the State may be interested as Stockholder or Creditor, and shall represent and vote the stock of the State of Maryland in all meetings of the stockholders of the Chesapeake and Ohio Canal; and shall appoint the Directors in every Railroad and Canal Company in which the State has the legal power to appoint Directors, which said Directors shall represent the State in all meetings of the Stockholders of the respective Companies for which they are appointed or elected. And the President and Directors of the said Chesapeake and Ohio Canal Company shall so regulate the tolls of said Company from time to time as to produce the largest amount of revenue, and to avoid the injurious effects to said Company of rival competition by other Internal Improvement Companies. They shall require the Directors of all said Public Works to guard the public interest and prevent the establishment of tolls which shall discriminate against the interest of the citizens or products of this State, and from time to time, and as often as there shall be any change in the rates of toll on any of the said Works, to furnish the said Board of Public Works a schedule of such modified rates of toll, and so adjust them as to promote the agricultural interests of the State; they shall report to the General Assembly at each regular

session, and recommend such legislation as they may deem necessary and requisite to promote or protect the interests of the State in the said Public Works; they shall perform such other duties as may be hereafter prescribed by Law, and a majority of them shall be competent to act. The Governor, Comptroller and Treasurer shall receive no additional salary for services rendered by them as members of the Board of Public Works. The provisions of the Act of the General Assembly of Maryland of the year 1867, chapter 359, are hereby declared null and void.

Sec. 3. The Board of Public Works is hereby authorized to exchange the State's interest as Stockholder and Creditor in the Baltimore and Ohio Railroad Company for an equal amount of the bonds or registered debt now owing by the State, to the extent only of all the preferred stock of the State on which the State is entitled to only six per cent. interest, provided such exchange shall not be made at less than par, nor less than the market value of said stock; and the said Board is authorized, subject to such regulations and conditions as the General Assembly may from time to time prescribe, to sell the State's interest in the other Works of Internal Improvement, whether as a Stockholder or a Creditor, and also the State's interest in any banking corporation, receiving in payment the bonds and registered debt now owing by the State, equal in amount to the price obtained for the State's said interest; provided, that the interest of the State in the Washington Branch of the Baltimore and Ohio Railroad be reserved and excepted from sale; and provided further, that no sale or contract of sale of the State's interest in the Chesapeake and Ohio Canal, the Chesapeake and Deleware Canal, and the Susquehanna and Tidewater Canal Companies shall go into effect until the same shall be ratified by the ensuing General Assembly.

ARTICLE XIII.

NEW COUNTIES.

Section 1. The General Assembly may provide, by Law, for organizing new Counties, locating and removing county seats, and changing county lines; but no new county shall be organized without the consent of the majority of the legal voters residing within the limits proposed to be formed into said new county; and whenever a new county shall be proposed to be formed out of portions of two or more counties, the consent of a majority of the legal voters of such part of each of said counties, respectively, shall be required; nor shall the lines of any county be changed without the consent of a majority of the legal voters residing within the district, which, under said proposed change, would form a part of a county different from that to which it belonged prior to said change; and no new county shall contain less than four hundred square miles, nor less than ten thousand white inhabitants; nor shall any change be made in the limits of any

county, whereby the population of said county would be reduced to less than ten thousand white inhabitants, or its territory reduced to less than four hundred square miles.

Sec. 2. At the election to be held for the adoption or rejection of this Constitution, in each election district, in those parts of Worcester and Somerset Counties, comprised within the following limits, viz: Beginning at the point where Mason and Dixon's line crosses the channel of Pocomoke River, thence following said line to the channel of the Nanticoke River, thence with the channel of said river to Tangier Sound, or the intersection of Nanticoke and Wicomico Rivers, thence up the channel of the Wicomico River to the mouth of Wicomico Creek, thence with the channel of said creek and Passerdyke Creek to Dashield's or Disharoon's Mills, thence with the millpond of said mills and branch following the middle prong of said branch, to Meadow Bridge, on the road dividing the Counties of Somerset and Worcester, near the southwest corner of the farm of William P. Morris, thence due east to the Pocomoke River, thence with the channel of said river to the beginning; the Judges of Election, in each of said districts, shall receive the ballots of each elector, voting at said election, who has resided for six months preceding said election within said limits, for or against a new County; and the Return Judges of said election districts shall certify the result of such voting, in the manner now prescribed by Law, to the Governor, who shall by proclamation make known the same, and if a majority of the legal votes cast within that part of Worcester County, contained within said lines, and also a majority of the legal votes cast within that part of Somerset County, contained within said lines, shall be in favor of a new County, then said parts of Worcester and Somerset Counties shall become and constitute a new County, to be called Wicomico County; and Salisbury shall be the County seat. And the inhabitants thereof shall thenceforth have and enjoy all such rights and privileges as are held and enjoyed by the inhabitants of the other Counties of this State.

Sec. 3. When said new county shall have been so created, the inhabitants thereof shall cease to have any claim to, or interest in, the county buildings and other public property of every description belonging to said Counties of Somerset and Worcester respectively, and shall be liable for their proportionate shares of the then existing debts and obligations of the said Counties according to the last assessment in said Counties, to be ascertained and apportioned by the Circuit Court of Somerset County, as to the debts and obligations of said County, and by the Circuit Court of Worcester County as to the debts and obligations of Worcester County, on the petition of the County Commissioners of the said Counties, respectively; and the property in each part of the said Counties included in said new County shall be bound only for the share of the debts and obligations of the County from which it shall be separated; and the inhabitants of said new County shall also pay the County taxes levied

upon them at the time of the creation of such new County, as if such new County had not been created; and on the application of twelve citizens of the proposed County of Wicomico, the Surveyor of Worcester County shall run and locate the line from Meadow Bridge to the Pocomoke River previous to the adoption or rejection of this Constitution, and at the expense of said petitioners.

Sec. 4. At the first genereal election held under this Constitution the qualified voters of said new County shall be entitled to elect a Senator and two Delegates to the General Assembly, and all such County or other officers as this Constitution may authorize, or require to be elected by other Counties of the State; a notice of such election shall be given by the sheriffs of Worcester and Somerset Counties in the manner now prescribed by Law; and in case said new County shall be established, as aforesaid, then the Counties of Somerset and Worcester shall be entitled to elect but two Delegates each to the General Assembly.

Sec. 5. The County of Wicomico, if formed according to the provisions of this Constitution, shall be embraced in the First Judicial Circuit, and the times for holding the Courts therein shall be fixed and determined by the General Assembly.

Sec. 6. The General Assembly shall pass all such Laws as may be necessary more fully to carry into effect the provisions of this Article.

ARTICLE XIV.

AMENDMENTS TO THE CONSTITUTION.

Section 1. The General Assembly may propose Amendments to this Constitution; provided that each Amendment shall be embraced in a separate Bill, embodying the Article or Section, as the same will stand when amended and passed by three-fifths of all the members elected to each of the two Houses, by yeas and nays, to be entered on the Journals with the proposed Amendment. The Bill or Bills proposing amendment or amendments shall be published by order of the Governor, in at least two newspapers in each County, where so many may be published, and where not more than one may be published, then in that newspaper, and in three newspapers published in the City of Baltimore, one of which shall be in the German language, once a week for at least three months preceding the next ensuing general election, at which the said proposed amendment or amendments shall be submitted, in a form to be prescribed by the General Assembly, to the qualified voters of the State for adoption or rejection. The votes cast for and against said proposed amendment or amendments, severally, shall be returned to the Governor, in the manner prescribed in other cases, and if it shall appear to the Governor that a majority of the votes cast at said election on said amendment or amendments, severally, were cast in favor thereof, the Governor shall, by his proclamation, declare the said amendment or amendments having re-

ceived said majority of votes, to have been adopted by the people of Maryland as part of the Constitution thereof, and thenceforth said amendment or amendments shall be part of the said Constitution. When two or more amendments shall be submitted in manner aforesaid, to the voters of this State at the same election, they shall be so submitted as that each amendment shall be voted on separately.

Sec. 2. It shall be the duty of the General Assembly to provide by Law for taking, at the general election to be held in the year eighteen hundred and eighty-seven, and every twenty years thereafter, the sense of the people in regard to calling a convention for altering this Constitution; and if a majority of voters at such election or elections shall vote for a convention, the General Assembly, at its next session, shall provide by Law for the assembling of such convention, and for the election of Delegates thereto. Each County and Legislative District of the City of Baltimore shall have in such convention a number of Delegates equal to its representation in both Houses at the time at which the convention is called. But any Constitution, or change, or amendment of the existing Constitution, which may be adopted by such convention, shall be submitted to the voters of this State, and shall have no effect unless the same shall have been adopted by a majority of the voters voting thereon.

ARTICLE XV.

MISCELLANEOUS.

Section 1. Every person holding any office created by, or existing under the Constitution, or Laws of the State (except Justices of the Peace, Constables and Coroners), or holding any appointment under any Court of this State, whose pay or compensation is derived from fees or moneys coming into his hands for the discharge of his official duties, or in any way growing out of or connected with his office, shall keep a book in which shall be entered every sum or sums of money received by him, or on his account, as a payment or compensation for his performance of official duties, a copy of which entries in said book, verified by the oath of the officer by whom it is directed to be kept, shall be returned yearly to the Comptroller of the State for his inspection, and that of the General Assembly of the State, to which the Comptroller shall, at each regular session thereof, make a report showing what officers have complied with this section; and each of the said officers, when the amount received by him for the year shall exceed the sum which he is by Law entitled to retain as his salary or compensation for the discharge of his duties, and for the expenses of his office, shall yearly pay over to the Treasurer of the State, the amount of such excess, subject to such disposition thereof as the General Assembly may direct; if any of such officers shall fail to comply with the requisitions of this section for the period of thirty days after the expiration of each and every year of his office, such officer shall be deemed to have vacated his office, and the Governor

shall declare the same vacant, and the vacancy therein shall be filled as in case of vacancy for any other cause, and such officer shall be subject to suit by the State for the amount that ought to be paid into the Treasury; and no person holding any office created by or existing under this Constitution or Laws of the State, or holding any appointment under any Court in this State, shall receive more than three thousand dollars a year as a compensation for the discharge of his official duties, except in cases specially provided in this Constitution.

Sec. 2. The several Courts existing in this State at the time of the adoption of this Constitution shall, until superseded under its provisions, continue with like powers and jurisdiction, and in the exercise thereof, both at Law and in Equity, in all respects, as if this Constitution had not been adopted; and when said Courts shall be so superseded, all causes then depending in said Courts shall pass into the jurisdiction of the several Courts, by which they may be respectively superseded.

Sec. 3. The Governor and all officers, civil and military, now holding office under this State, whether by election or appointment, shall continue to hold, exercise and discharge the duties of their offices (unless inconsistent with or otherwise provided in this Constitution), until they shall be superseded under its provisions, and until their successors shall be duly qualified.

Sec. 4. If at any election directed by this Constitution, any two or more candidates shall have the highest and an equal number of votes, a new election shall be ordered by the Governor, except in cases specially provided for by this Constitution.

Sec. 5. In the trial of all criminal cases, the jury shall be the Judges of Law, as well as of fact.

Sec. 6. The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five dollars, shall be inviolably preserved.

Sec. 7. All general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur; and the first election of all officers, who, under this Constitution, are required to be elected by the people, shall, except in cases herein specially provided for, be held on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-seven.

Sec. 8. The Sheriffs of the several Counties of this State, and of the City of Baltimore, shall give notice of the several elections authorized by this Constitution, in the manner prescribed by existing Laws for elections to be held in this State, until said Laws shall be changed.

Sec. 9. The term of office of all Judges and other officers, for whose election provision is made by this Constitution, shall, except in cases

otherwise expressly provided herein, commence from the time of their election; and all such officers shall qualify as soon after their election as practicable, and shall enter upon the duties of their respective offices immediately upon their qualification; and the term of office of the State Librarian and of the Commissioner of the Land Office shall commence from the time of their appointment.

Sec. 10. Any officer elected or appointed in pursuance of the provisions of this Constitution, may qualify, either according to the existing provisions of Law, in relation to officers under the present Constitution, or before the Governor of the State, or before any Clerk of any Court of Record in any part of the State; but in case an officer shall qualify out of the County in which he resides, an official copy of his oath shall be filed and recorded in the Clerk's office of the Circuit Court of the County in which he may reside, or in the Clerk's office of the Superior Court of the City of Baltimore, if he shall reside therein.

VOTE ON THE CONSTITUTION.

For the purpose of ascertaining the sense of the people of this State in regard to the adoption or rejection of this Constitution, the Governor shall issue his Proclamation within five days after the adjournment of this convention, directed to the Sheriffs of the City of Baltimore and of the several Counties of this State, commanding them to give notice in the manner now prescribed by Law in reference to the election of members of the House of Delegates, that an election for the adoption or rejection of this Constitution will be held in the City of Baltimore, and in the several Counties of this State, on Wednesday, the eighteenth day of September, in the year eighteen hundred and sixty-seven, at the usual places of holding elections for members of the House of Delegates in said city and counties. At the said election the vote shall be by ballot, and upon each ballot there shall be written or printed the words, "For the Constitution," or "Against the Constitution," as the voter may elect; and the provisions of the Laws of this State relating to the holding of general elections for members of the House of Delegates, shall in all respects apply to and regulate the holding of the said election. It shall be the duty of the Judges of Election in said city and in the several counties of the State to receive, accurately count and duly return the number of ballots so cast for or against the adoption of this Constitution, as well as any blank ballots which may be cast, to the several Clerks of the Circuit Courts of this State, and to the Clerk of the Superior Court of Baltimore City, in the manner now prescribed by Law, in reference to the election of members of the House of Delegates, and duplicates thereof, directly to the Governor; and the several clerks aforesaid shall return to the Governor, within ten days after said election, the number of ballots cast for or against the Constitution, and the number of blank ballots; and the Governor, upon receiving the returns from the Judges of Election, or the clerks as aforesaid,

and ascertaining the aggregate vote throughout the State, shall, by his proclamation, make known the same; and if a majority of the votes cast shall be for the adoption of this Constitution it shall go into effect on Saturday, the fifth day of October, eighteen hundred and sixty-seven.

Done in Convention, the seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States the ninety-second.

RICHARD B. CARMICHAEL,
President of the Convention.

MILTON Y. KIDD,
Secretary.

AMENDMENTS TO CONSTITUTION OF 1867.

Proposed by Act of 1890, *Chapter* 194; *ratified November* 3*rd,* 1891. *Article* 2, *Section* 17.

Sec. 17. The governor shall have power to disapprove of any item or items of any Bills making appropriations 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 or limitations prescribed for the passage of other Bills over the Executive veto.

Proposed by Act of 1900, *Chapter* 469; *ratified November,* 1901. *Article* 3, *Section* 2.

Sec. 2. The City of Baltimore shall be divided into four legislative districts, as near as may be, of equal population and of contiguous territory, and each of said legislative districts of Baltimore City, as they may from time to time be laid out, in accordance with the provisions hereof, and each county in the State shall be entitled to one Senator, who shall be elected by the qualified voters of the said legislative districts of Baltimore City, and of the counties of the State, respectively, and shall serve for four years from the date of his election, subject to the classification of Senators hereafter provided for.

Proposed by Act of 1900, *Chapter* 432; *ratified November,* 1901. *Article* 3, *Section* 4.

Sec. 4. As soon as may be, after the taking and publishing of the National Census of 1900, or after the enumeration of the population of this State, under the authority thereof, there shall be an apportionment of representation in the House of Delegates, to be made on the following basis, to wit: Each of the several counties of the State, having a population of eighteen thousand souls or less, shall be entitled to two delegates; and every county having a population of over eighteen thousand and less than twenty-eight thousand souls, shall be entitled to three delegates; and every county having a population of twenty-eight thousand and less than forty thousand souls, shall be entitled to four delegates; and every county having a population of forty thousand and less than fifty-five thousand souls, shall be entitled to five delegates; and every county having a population of fifty-five thousand souls and upwards, shall be entitled to six delegates and no more; and each of the four Legislative Districts of the City of Baltimore shall be entitled to the number of delegates to which the largest county shall or may be entitled under the aforegoing apportionment, and the General Assembly shall have the power to provide by law, from time to time, for altering and changing the boundaries of the existing legislative districts of the City of Baltimore, so as to make them as near as may be of equal population; but said district shall always consist of contiguous territory.

Proposed by Act of 1890, *chapter* 195; *ratified November* 3, 1891.
Article 3, *Section* 48.

Sec. 48. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and except in cases where no general Laws exist, providing for the creation of corporations of the same general character as the corporation proposed to be created, and any act of incorporation passed in violation of this section shall be void; all charters granted or adopted in pursuance of this section, and all charters heretofore granted and created subject to repeal or modification, may be altered from time to time, or be repealed; provided, nothing herein contained shall be construed to extend to banks or the incorporation thereof; the General Assembly shall not alter or amend the charter of any corporation existing at the time of the adoption of this Article, or pass any other general or special Law for the benefit of such corporation except upon the condition that such corporation shall surrender all claim to exemption from taxation or from the repeal or modification of its charter, and that such corporation shall thereafter hold its charter subject to the provisions of this Constitution; and any corporation chartered by this State which shall accept, use, enjoy or in anywise avail itself of any rights, privileges, or advantages that may hereafter be granted or conferred by any general or special Act, shall be conclusively presumed to have thereby surrendered any exemption from taxation to which it may be entitled under its charter, and shall be thereafter subject to taxation as if no such exemption has been granted by its charter.

Proposed by Act of 1890, *chapter* 426; *ratified November* 3*rd*, 1891.
Article 3, *Section* 51.

Sec. 51. The personal property of residents of this State shall be subject to taxation in the county or city where the resident *bona fide* resides for the greater part of the year for which the tax may or shall be levied, and not elsewhere, except goods and chattels permanently located, which shall be taxed in the city or county where they are so located, but the General Assembly may by law provide for the taxation of mortgages upon property in this State and the debts secured thereby in the county or city where such property is situated.

Proposed by Act of 1880, *Chapter* 417; *ratified November*, 1881.
Article 4, *Section* 5.

Sec. 5. After the election for Judges, as hereinbefore provided, there shall be held in this State, in every fifteenth year thereafter, on the Tuesday after the first Monday in November of such year, an election for Judges as herein provided; and in case of death, resignation, removal or disqualification by reason of age or otherwise of any Judge, the Governor shall appoint a person duly qualified to fill said office, who shall hold the same until the next General Election for members of the General Assembly, when a successor shall be elected, whose term of office shall be the same as hereinbefore provided, and upon the expiration of the term of fifteen years for which

any Judge may be elected to fill a vacancy, an election for his successor shall take place at the next General Election for members of the General Assembly to occur upon or after the expiration of his said term; and the Governor shall appoint a person duly qualified to hold said office from the expiration of such term of fifteen years until the election and qualification of his successor.

Proposed by Act of 1874, *chapter* 364; *ratified November,* 1875.
Article 4, *Section* 8.

Sec. 8. The parties to any cause may submit the same to the court for determination without the aid of a Jury and in all suits or actions at law, issues from the orphans' court or from any court sitting in Equity, and in all cases of presentments or indictments for offences which are or may be punishable by death pending in any of the courts of law in this State having jurisdiction thereof, upon suggestion in writing under oath of either of the parties to said proceedings, that such party cannot have a fair and impartial trial in the Court in which the same may be pending, the said court shall order and direct the record of proceedings in such suit or action, issue, presentment or indictment to be transmitted to some other court having jurisdiction in such case, for trial; but in all other cases of presentment or indictment pending in any of the courts of law in this State having jurisdiction thereof, in addition to the suggestion in writing of either of the parties to such presentment or indictment that such party cannot have a fair and impartial trial in the Court in which the same may be pending, it shall be necessary for the party making such suggestion to make it satisfactorily appear to the court that such suggestion is true, or that there is reasonable ground for the same; and thereupon the said court shall order and direct the record of proceedings in such presentment or indictment to be transmitted to some other court having jurisdiction in such cases for trial; and such right of removal shall exist upon suggestion in cases when all the judges of said court may be disqualified, under the provisions of this Constitution to sit in any such case; and said court to which the record of proceedings in such suit or action, issue, presentment or indictment may be so transmitted, shall hear and determine the same in like manner as if such suit or action, issue, presentment or indictment had been originally instituted therein; and the General Assembly shall make such modification of existing law as may be necessary to regulate and give force to this provision.

Proposed by Act of 1892, *chapter* 313; *ratified November 7th,* 1893.
Article 4, *Section* 39.

Sec. 39. The General Assembly shall, as often as it may think the same proper and expedient, provide by Law for the election of an additional Judge of the Supreme Bench of Baltimore City, and whenever provision is so made by the General Assembly, there shall be elected by the voters of said City another Judge of the Supreme Bench of Baltimore City, who shall be subject to the same constitutional provisions, hold his office for the same term of years, receive

the same compensation, and have the same powers as are, or shall be, provided by the Constitution or Laws of this State, for the Judges of said Supreme Bench of Baltimore City, and the General Assembly may provide by Laws, or the Supreme Bench by its rules for requiring causes in any of the Courts of Baltimore City to be tried before the court without a jury, unless the litigants or some one of them shall within such reasonable time or times as may be prescribed, elect to have their causes tried before a jury. And the General Assembly may reapportion, change or enlarge the jurisdiction of the several Courts in said city.

Proposed by Act of 1900, *chapter* 185; *ratified November* 1901.
Article 5, *Section* 9.

Sec. 9. The State's Attorney shall perform such duties and receive such fees and commissions or salary, not exceeding three thousand dollars, as are now or may hereafter be prescribed by law; and if any State's Attorney shall receive any other fee or reward than such as is or may be allowed by law, he shall, on conviction thereof, be removed from office; provided, that the State's Attorney for Baltimore City shall receive an annual salary of forty-five hundred dollars, and shall have power to appoint one deputy, at an annual salary, not exceeding three thousand dollars, and such other assistants at such annual salaries not exceeding fifteen hundred dollars each, as the Supreme Bench of Baltimore City may authorize and approve; all of said salaries to be paid out of the fees of the said State's Attorney's office, as has heretofore been practiced.

Proposed by Act of 1890, *chapter* 255; *ratified November* 3*rd*, 1890.
Article 7, *Section* 1.

Sec. 1. County Commissioners shall be elected on general ticket of each county by the qualified voters of the several counties of the State, on the Tuesday next after the first Monday in the month of November, commencing in the year eighteen hundred and ninety-one; their number in each county, their compensation, powers and duties shall be such as now or may be hereafter prescribed by law, they shall be elected at such times, in such numbers and for such periods not exceeding six years, as may be prescribed by law.

Article 11.
For amendments to this article see text pages 313-321.

Proposed by Act of 1890, *chapter* 362; *ratified November* 3*rd*, 1891.
Article 12, *Section* 3.

Sec. 3. The board of public works is hereby authorized, subject to such regulations and conditions as the General Assembly may from time to time prescribe, to sell the State's interest in all works of internal improvement, whether as a stockholder or a creditor, and also the State's interest in any banking corporation, receiving in payment the bonds and registered debt now owing by the State, equal in amount to the price obtained for the State's said interest.

GENERAL INDEX.

INDEX.

Page

A

Abolition of involuntary servitude..... 10
Absent members of legislature, attendance may be enforced... 144
Absentees, administration upon estates of..... 47-48
Abutting owners, interests of in beds of streets..... 198-9
Accountability to God, belief in a necessary qualification for a witness or juror..... 54
Accounts:
  of state, house of delegates may pass..... 146
  of treasurer, abstract of to be published..... 301
Acts of Assembly:
  in force in Maryland..... 16
  how to be passed..... 150
  title of, to describe subject..... 150
Additional servitude:
  meaning of 198-9
  change of use not an..... 199
Ad interim appointments..... 112
Adjournments:
  of the legislature..... 147
    signing of bills by governor after..... 120
Adjustment of accounts of the State by legislature..... 146
Adjutant-General:
  to be appointed by governor..... 310
  appointment, tenure, duties, removal.....310-11
  to discharge his duties at seat of government.....310-11
Admission to bar, in Baltimore City..... 270
Adoption of the constitution..... 351
Adverse possession by religious corporation..... 60
Affidavit, form of, for removal of case..... 247
Affinity of judges to parties in cases..... 238
Age required for voters..... 88
Agents, no extra compensation to be allowed to..... 189
Agriculture:
  to be encouraged by the legislature..... 63
  tolls to be adjusted so as to promote..... 326
Aids, not to be levied without consent of the legislature..... 24
Alexander's British Statutes:
  now guide to statutes found applicable..... 17
  takes place of Kilty's Report of the Statutes..... 17
Allegiance:
  paramount to United States..... 10
  oath of 96
Allowance, additional, not to be made to public officers..... 189

Amendment:
proposed to Article XV, Declaration of Rights..... 36
of bills 148
not required to be entered on journal..... 146
of laws 150
not to be made by reference to title only..... 176
object of this provision..... 176
does not apply to repeals..... 176
of corporate charters, voids tax exemptions..... 206
may be by special act..... 206
of irrepealable charters..... 206-7
of Art. XI, City of Baltimore, may be made by mere act of legislature 320
of the constitution..... 333-7
how made under former constitutions..... 333-4
to be proposed by general assembly in form of bill..... 334
general assembly does not include governor..... 334
vote on, in general assembly..... 334
entry on journal..... 334
what satisfies this requirement..... 334
publication of 334
vote on, by people..... 334
proclamation by governor..... 334
governor need not sign..... 334
governor cannot veto..... 334
to be submitted to voters at next ensuing general election.. 335
what is next ensuing general election..... 335-6
quaere; can validity of amendment be inquired into on any ground after proclamation by governor of its adoption? 336
Annapolis:
to be the place of meeting of legislature.....23, 118
court of appeals to sit at..... 252
Appeal tax court, not a judicial body..... 234
Appeal will lie from order granting or refusing removal of case 245
Appointment, power of, not essentially executive..... 109
Appointments:
by the governor..... 109
during recess of senate..... 110
not to made until vacancy actually exists..... 110
ad interim 112
when confirmed by senate, relate back..... 114
of judges 237
Apportionment of delegates..... 136-7
Appropriation bills:
may be approved in part..... 119
may originate in either house..... 148
Appropriations:
how to be made by legislature..... 180

Appropriations:—(*Continued*).
object of provisions as to..... 180
bills for must specify amount and object..... 180
meaning and application of..... 181
not to be made for works of internal improvement..... 186
exceptions 187
may be made for public roads..... 187-8
for payment of private claims, how made..... 213
of proceeds of internal improvement companies..... 186
duties of comptroller in relation to.....213, 300
Arrest:
of judgment, motions in..... 268
of military officers..... 116
causes for 117
Articles:
laws to be enacted in..... 150
provision merely directory..... 177
Arts to be encouraged by the legislature..... 63
Assemble:
right to, secured by 14th Amendment to Federal Constitution 23
not provided for by Section 13, Maryland Declaration of Rights 23
Assembly:
acts of, in force..... 16
to consist of two branches..... 133
to meet on first Wednesday in January biennially..... 141
Assessments, special, for local improvements, power of legislature to make..... 30
Atheists, cannot serve on grand jury..... 54
Attainder, laws of:
not to be made..... 39
definition of 39
Attendance of absent members of legislature; how enforced.. 144
Attorney-general:
tenure, removal of..... 287
returns of elections of..... 287
in case of tie vote..... 287
oath of office, to be administered by governor..... 287
contested elections, governor to determine..... 288
effect of decisions upon this power.....289-90
duties of 290-2
deputies and assistants of..... 290
salary of 290
not to receive fees or perquisites..... 290
additional counsel 290
qualifications of 292
vacancies 292
to be notified of cases in which State has an interest..... 292
may recommend removal of State's Attorney..... 293
significance of recent amendments.....292, 295

Attorney, State's—(see *State's Attorney*).
Auditors of accounts of the State may be appointed by the house of delegates..... 146
Authentication of law:
not conclusive as to validity..... 149
how made 178

B

Bail, excessive, not to be required..... 49
Ballot, all elections to be by..... 86
Baltimore City:
representation of, restricted..... 136
legislative districts of..... 135-7
mayor and city council of.....313-21
special provisions for condemnation of land by.....192, 201
judge to court of appeals from, especially elected..... 252
duties of 252
not a part of any county..... 314
mayor of; election, qualifications, tenure, salary..... 315
legislative department vested in city council..... 315-6
city council to consist of two branches..... 316
first branch—
number and election of members, qualifications, term, salary 316
vacancies 317
second branch—
number and election of members, qualifications, term, salary 316-7
vacancies 317
president of the second branch of, qualifications, duty, salary, removal 317
meetings of 318
mayor or councilmen, not to hold what offices..... 318
not to be interested in city contracts..... 318
removal of mayor..... 318
debts not to be created..... 318
exceptions 318
appropriations for works of internal improvement, how to be made 318
continuation of ordinances in effect at time of adoption of constitution 320
control of legislature over.....320-321
limits of may be changed without consent of voters.....329-30
courts of.....264, 274
(see *Courts of Baltimore City*).
Baltimore & Ohio Railroad..... 327
Banc, court in—(see *Courts*).

Banks:
charters of 191, 205
sale of state's interest in..... 327
liability of stockholders in..... 191
books and papers of to be open to inspection..... 191
purchase of own stock by..... 191
Bar, admission of members, in Baltimore City..... 270
Belief in the existence of God required of witness and juror..54-56, 60
Bill, may become law in three ways..... 121
Billiard tables, tax on owners of, valid..... 33
Bills 148-178
of attainder, prohibited by Article XVIII, Declaration of Rights 39
defined 39
passage of over executive veto..... 118
to be returned by governor, when not approved..... 118
to be presented to governor before becoming law.....118, 178
may be approved in part, what..... 119
may originate in either house..... 148
not to originate during last ten days of session..... 148
to be read on three different days in each house..... 148
not to be read third time until engrossed..... 148
importance of these requirements..... 149
enrolled and presented to governor after passage..... 149
must be passed by majority of members elected..... 150
yeas and nays to be recorded on final reading..... 150
an indispensable requirement..... 150
authentication of 179
Board of public works—(see *Public Works*).
Bonds:
of officers, to be sued by order of house of delegates..... 146
shall be made payable to state..... 146
of State, to be signed by comptroller and treasurer..... 301
release by legislature of sureties upon official—valid..... 188
of officers, liable in suit for surplus fees not turned over to State 338
Books, and papers of accused not to be used against him..... 46
not to be bought by legislature, what..... 142
of banks to be open to inspection..... 191
Borrow, power of legislature to..... 187
Bribery:
of voters 93
of officers 209
disfranchisement for 209
Bridges, not works of internal improvement..... 215
Burthen not to be levied without consent of legislature..... 24

C

Calvert County, appropriations for..... 186

Canals:
counties not to give aid to 214
State's stock in, how represented 326-7
Canons of construction 11
Cases, pending at adoption of constitution 270
Cases:
removal of 240
criminal, jury to be judges of law and fact 340
Certification of laws to courts 178
effect of 178-9
of election of various officers 249
Challenge to a duel, effect of 202
Chancery records 306
Change of grade:
of street, not a taking of property 195
limitation upon rule 196
Change of name, not to be made by legislature 181
Charges:
not to be levied without consent of legislature 24
of clerks and registers of wills, to be regulated by law 204
Charitable corporation, gift to, valid 58
Charles County, appropriations for 186
Charter:
of the State 16
of banks 191
of corporations 205
subject to repeal or modification 205
amendment of voids tax exemption 206
irrepealable, amendment of 206-7
where amended by legislature, corporation entitled to indemnity, when 207
Chauffeurs, license fee upon—valid 33
Chesapeake and Delaware Canal 326-7
Chesapeake and Ohio Canal 326-7
Chief judge, court of appeals, how designated 252-3
Choses in Action:
taxable if property of resident 35
belonging to non-residents taxable in exceptional cases 35-36
Circuit Courts 233, 258-262
each county to have one 259
jurisdiction of 259
judges of; election and qualifications 259
terms of 259
to adopt rules 259
quorum 259
additional judge for third circuit 259
decisions to be rendered within two months after argument. 261
this provision probably directory 262
salaries of judges 262

Circuit Courts:—(*Continued.*)
not to be diminished during term of office..... 262
increase of 262
clerks of; election, term, removal, vacancies..... 262-3
to appoint deputies..... 263
compensation, duties, fees, etc.....204, 248
failure of, to pay salary of deputy a breach of condition of bond 263
of Baltimore City—(see *Courts*)..... 264
City Council—(see *Baltimore City*).
Citizens of United States only entitled to vote..... 88
Citizenship in State, how acquired..... 93
City solicitor eligible as state senator..... 53
City of Baltimore—(see *Baltimore City*).....313-21
legislative districts of..... 135
subsequent amendments 320
Civil officers:
what is meant by..... 115
when removable by governor..... 117
to be appointed by governor..... 109
nomination and term of office of..... 113
Civil office, vacancy in during recess of senate.....110-112
Clerks of courts—(see *Circuit Courts*).
their charges to be regulated by law.....204, 248
compensation 204, 248
of court of appeals; powers and duties of, election of....257, 292 (see *Court of Appeals*).
Clerks of Circuit Courts..... 262-3
to return account of receipts and expenses..... 337
to make returns of elections to governor..... 249
Code:
how to be amended or added to..... 150
changes to, to be published..... 150
Codification of laws..... 179
Collateral inheritance taxes valid..... 33
Collection of taxes, time for not to be extended by local or special laws 181
Collectors not eligible whilst in default..... 140
Color:
no incompetency as witness by reason of..... 214
no discrimination in school system because of..... 308
Command in chief, when governor to take actual..... 107
Commerce, legislature to encourage..... 63
Commissions, public..... 251
to be issued to sheriffs, judges, etc., by governor..... 249
or fees not to be received by judges, comptroller, treasurer, etc. 52, 238, 298
of State's attorneys..... 294

Commissioner of land office.....306-7, 344
to notify attorney-general of cases, when..... 292
formerly a "court of record"..... 306
Commissioners to revise laws relating to corporations..... 205
Commitment by house of delegates..... 146
Committee of the whole:
doors to be open..... 144
joint standing, to be created by legislature at each session.. 146
duties of 147
no power to act during recess..... 147
Common law:
people entitled to..... 16
adopted "in mass" by Declaration of Rights..... 17
Declaration of Rights does not adopt whole of—of England. 17-18
Common pleas, court of:
for Baltimore City..... 264
clerk of, to issue licenses..... 272
Compensation—(see *Salary*).
of officers generally..... 337
extra, when not to be allowed..... 189
for private property taken for public use..... 192
a question for jury..... 198
(generally, see *Eminent Domain*).
Comptroller of Treasury:
examination of books of..... 122
duties of 213
determines salary of deputies..... 263
may require written opinion of attorney-general..... 290
election, salary, tenure, vacancy..... 298
office of, to be at seat of government..... 298
to be bonded..... 298
oath of 298
not to receive fees or perquisites..... 298
duties of 300
has general charge of fiscal affairs of State..... 302
when to qualify..... 302
these provisions mandatory..... 302
charges against, trial, removal..... 303
member of board of public works..... 326
officers to make reports to, when..... 337
Condemnation—(see *Eminent Domain*).
of land for private purposes void..... 47
Confirmation of appointment relates back to date of nomination 114
Conflict between Declaration of Rights and Constitution..... 12
Congress, member of, ineligible as state senator or delegate.. 140
Consanguinity, what disqualifies judges to sit..... 238
Conservators of the peace:
judges to be..... 238

Conservators of the peace:—(*Continued.*)
justices of the peace and constables to be..... 276
Consolidation of corporations, effect upon irrepealable exemption from taxation..... 208
Constables:
appointment, tenure, compensation, etc.....276, 279
to be conservators of the peace..... 276
removal of 278-9
vacancy in office of..... 279
Constitution:
of 1776, when framed 10
of 1864, represents Union element 10
of 1867, represents Southern element 11
vote on 351
how construed 11
how divided 11
terms of, how taken..... 11
Declaration of Rights and, compose form of government.. 12
of United States, supreme law..... 15
paramount law 20
legislative functions performed in fidelity to..... 20
Article II, Section 16, compared with Article XI, Declaration of Rights..... 23
of Maryland, order of articles..... 85
Article III, Section 3, now obsolete..... 136
provision for causes pending at adoption of..... 270
Constitutional amendments—(see *Amendments*).
Constitutional convention, sense of people in regard to calling of to be taken every twenty years..... 336
Constitutional majority, origin of phrase..... 150
Construction:
of Declaration of Rights..... 19
of laws 177
canons of 11
Contested elections 249
who entitled to office pending contest..... 250-1
Contingent fund of governor..... 180
Contracts, where city a party, mayor or city councilmen not to be interested in..... 318
Convention, constitutional, provision for..... 336
Conviction for infamous crime disqualification to vote..... 93
Coroners 282
Corporations:
non-resident, stock of owned by residents taxable..... 35
even though taxed in State where created..... 35
Maryland, stock of, taxable in hands of non-residents..... 35
how formed 205
not to be created by special act..... 205
exceptions 205, 207

Corporations:—(*Continued.*)
charters of, subject to repeal or alteration..... 205
provision not to apply to banks..... 205
exemption from taxation or modification of charter to be surrendered, when..... 205
exemption from taxation, repeal of, how effected..... 207-8
user of benefits conferred by legislature a conclusive presumption of waiver of exemptions..... 205
amendment of charter, may be by special act..... 206
when charter irrepealable..... 206-7
indemnity for 207
consolidation of, effect upon irrepealable exemption from taxation 208
residence of 213
taxation of property of..... 213
State aid or credit not to be given to, when..... 186
right to exercise power of eminent domain..... 194
taxation upon revenues of foreign..... 217
Corruption of blood:
conviction, not to work..... 50
now obsolete as a punishment..... 50
Counsel:
parties accused to have..... 41
person having been of, not to sit as judge in case..... 238
governor not to employ additional..... 290
Counties:
each of, to have one senator..... 135
not to contract debts in aid of internal improvements when 214
(see *Internal Improvements*).
new, to be formed, how..... 328
local matters may be referred to voters of.....133, 329
each of to have a circuit court..... 259
each of to have an orphans' court..... 274
lines of may be changed by legislature with consent of voters 328
County, six months residence in, required for voter..... 88
County Commissioners.....276, 303
to be elected on general ticket..... 304
power of legislature over..... 304-5
provisions as to, may vary in different counties..... 304-5
Court of Appeals..... 252-8
all laws to be recorded in office of..... 178
composition, jurisdiction and sessions of..... 252
chief judge, how chosen..... 252
original jurisdiction cannot be conferred upon..... 253
cannot be compelled to give opinion upon moot questions.. 254
will not entertain appeal from *pro forma* decree..... 254
general discussion of jurisdiction of..... 254-5
quorum 255
number necessary for decision..... 255

Court of Appeals:—(*Continued.*)
judge who heard case below not to sit..... 255
opinions in writing, when to be filed..... 255
provision merely directory..... 255
does not apply where judges equally divided..... 256
judgment to be final and conclusive..... 255
cannot be disturbed after lapse of term..... 256
cases to stand for hearing at first term..... 255
reports of cases argued before..... 256
clerk of, election, term, removal, vacancies..... 257
to notify attorney-general of cases, when..... 292
judges to adopt rules regarding appeals..... 257
to adopt chancery rules..... 257
these rules to have force of law..... 257-8
effect of, upon previous statute..... 258

Courts—(see *Circuit Courts; Court of Appeals*).
province of 20
legislative interpretation of law not binding on..... 20
non-judicial duties not to be imposed upon..... 21
not to assume legislative or executive powers..... 21
duty of, under Declaration of Rights..... 20
not to inflict cruel and unusual punishment..... 36
must adopt methods of punishment prescribed by law..... 37
cannot declare vacancy in senate..... 138
will not pass on qualification and election of senators or delegates 143
cannot enforce observance of rules adopted by legislature. 144
laws to be certified to..... 178
the judicial powers of the State, in what vested..... 233
history of..... 233
circuit courts 233, 258-262
clerks of 262-3
to have seals for authentication of process..... 233
none other than those mentioned in constitution to be invested with judicial power..... 233
what is an exercise of judicial power..... 234
officers of, to be appointed by judges..... 248
in Baltimore City, by Supreme Bench..... 248
expenses of to be investigated by judges..... 248
clerks of, their duties and compensation..... 248
may not retain interest on deposits of office in addition to constitutional salary..... 338
records of 248
in banc 260
decision conclusive upon party applying for..... 260
right to appeal from decisions..... 260
when motion for, must be made..... 261
to what cases applicable..... 261
of Baltimore City.....264-275

Courts:—(*Continued.*)
number and style of..... 264
jurisdiction of 264-5
Supreme Bench 266-70
election, removal, salary, etc..... 266
number of judges..... 266
assignment of judges..... 267
powers and duties of.....268-70
quorum 268, 270
appellate jurisdiction of.....269-70
attestation of writs and process..... 270
clerks of, salary, election, term, removal, vacancies..... 271
not to receive any perquisites..... 271
meaning of perquisites..... 271-2
special duties of clerk of Superior Court..... 272
special duties of clerk of Court of Common Pleas..... 272
additional judges for, general assembly may provide..... 272
jurisdiction of, may be changed by legislature..... 272
prayer for jury trial, when made..... 273
orphans' 274
registers of wills..... 275
existing at adoption of constitution to continue, how long.... 339
Courts-martial 116
military officer entitled to trial by, before removal..... 117
adjutant-general removable upon sentence of.....310-11
Credit of State when not to be given..... 186
Criminal Court of Baltimore..... 265
Criminal cases:
right of accused to be informed of accusation against him.... 41
mere general accusation not sufficient..... 41
right to be confronted with witnesses..... 41
does not exclude all evidence except oral..... 42
rule as to admissibility of documentary evidence..... 42
right to jury trial in—does not extend to all cases..... 42
applies only to such crimes as have been subjects of jury trial 43
extends to cases of petit larceny..... 44
does not extend to cases of vagrancy..... 42-43
extends to cases of simple assault and battery..... 44
impartial jury, if bias be alleged must be substantial grounds therefor 44
unanimous consent of jury—construed very strictly..... 44
variance between answers of foreman and jury..... 45
accused cannot be compelled to give evidence against himself. 45-46
waiver of privilege by accused by taking stand..... 46
use of books and papers of accused forbidden..... 46
sentence, proposed changes in..... 219
right of state to removal in..... 247
affidavit to be made by state's attorney..... 247

Criminal Cases:—(*Continued.*)
not capital, right of removal not absolute..... 247
motions for new trials in Baltimore City..... 268-9
jury to be judge of law as well as fact..... 340
province of judge in..... 340-3
instructions in, to be advisory only..... 341-2
effect of disregard of, by jury..... 342
effect of error in..... 342
court not obliged to give..... 342
jury bound by opinion of court as to constitutionality of statute 343
Cruel and unusual pains and penalties—(see *Pains and Penalties*).
legislature not to pass laws inflicting..... 36
court not to impose..... 36
whipping for wife-beating is not..... 37
no hard-and-fast rule as to what constitutes..... 37
Cruel punishments not to be inflicted.....36, 49
Curative laws, to promote honesty and fair dealing—valid..... 38-39
validating acknowledgments as against married woman's dower right—void 47

D

Death:
of governor, how vacancy filled..... 106
of senator, how vacancy filled..... 140
of delegate, how vacancy filled..... 140
Debate, words spoken in, no liability for..... 143
freedom of..... 22
Debts:
what not to be contracted by legislature..... 186
payment of to be provided for when contracted..... 186
of husband, wife's property to be protected from..... 203
imprisonment for, prohibited..... 190
meaning of "debt" in this article..... 190-1
of the State..... 300
due State, not to be remitted by governor..... 122
Decisions of governor to be reported to legislature; what and when 122
of court of appeals to be published..... 256
Declaration of intention, by persons moving into State..... 93
Declaration of Rights..... 15-65
illustrations under 66-84
how construed 12
and constitution compose form of government..... 12
announces principles 12
when in conflict with constitution..... 12
preamble 12
no legal force in..... 12
implies that government is Christian..... 12

Declaration of Rights:—(*Continued.*)
articles of, divided into four classes..... 12
Class A, abstract principles..... 12
amount to little more than statement of point of view..... 12
Articles 1, 4, 6, 9, 12, 20, 29, 30, 34, 39, 43, 44, included in.. 12
Class B, exact duplications of provisions in Federal Constitution 13
Articles 2, 3, 17, 18, 19, 23, 24, 42, included in..... 13
Class C, limitations on State power similar to limitations on Federal power 13
of great importance..... 13
Federal Constitutional Law pertinent..... 13
Articles 8, 10, 13, 14, 16, 20, 21, 22, 25, 26, 28, 31, 32, 36, 40, 45 and in part 35 included in..... 13
comparison with amendments to the U. S. Constitution.... 13-14
Class D, concrete rules peculiar to Maryland..... 14
Articles 5, 7, 11, 15, 27, 33, 35, 37, 38, 41, included in..... 14
Article VIII. Separation of departments of government... 19
acts which transcend limits nullities..... 20
acts declared void under, what.....20, 21
importance of article..... 22
Article XV—(see *Taxation, Taxes*).
as contained in Constitution of 1776..... 24
as contained in Constitution of 1851.....24, 25
not simply directory to legislature..... 25
sub-division of 26
part of organic law for more than century..... 27
prohibits unjust discrimination..... 27
distributes burden over every class of property..... 27
upheld by courts and adhered to by people..... 27
limitations on taxing power not expressed in this article.. 34-36
a. public purpose required..... 34
b. notice required 34
c. property must be within jurisdiction..... 34
extent of jurisdiction of state for purposes of taxation.. 34
difficulty of applying rule *mobilia sequuntur personam*..... 34
examples of application of rule.....35, 36
amendment proposed to this article..... 36
Article XVI should be considered with last clause of Article XXV 36
this article binds legislature..... 36
Article XXV binds courts..... 36
Article XIX traceable to Magna Charta.....39, 40
application of 40
provision for payment of costs before new trial not repugnant to 40
does not insure adequacy of remedy..... 40
prevents citizen being remediless as against state officer wrongfully withholding property..... 40

Declaration of Rights:—(*Continued.*)
Article XX wording seems to indicate mere generality..... 41
possible effect of..... 41
Art. XXI—(see *Criminal Cases*).
act allowing justices to commit vagrants to house of correction held valid..... 42
design simply to declare preexisting rights of people.... 43
petit larceny, jurisdiction to try cannot be conferred on justice of peace..... 44
simple assault and battery, jurisdiction to try can be conferred on justice of peace..... 44
impartial jury, if bias be alleged there must be substantial grounds therefor..... 44
unanimous consent of jury, construed very strictly..... 44
variance between answers of foreman and jury..... 45
Art. XXII—(see *Criminal Cases*).
under Constitutions of 1776 and 1851 legislature had power to require a party to give evidence against himself 45
danger of this power and necessity for cautious exercise.. 46
power withdrawn by Convention of 1864..... 46
Article XXIII acts held invalid under this article..... 47
acts sustained 47, 48
this article as much a restraint upon executive and judicial as upon legislative department..... 48
Article XXIV. Existence of last clause an anachronism.... 49
Article XXVI. Intimate connection between this and Article XXII 50
Article XXVII. Penalties provided against now obsolete... 50
Article XXXIII. Justices of the peace apparently included in corresponding article, Constitution of 1851.... 52
emphasizes Article VIII, Declaration of Rights..... 52
Article XXXV. Effect of..... 53
Article XXXVI. Gradual growth of religious liberty noted.. 54
Article XXXVII. Belief in existence of God requisite for officeholder 55
applies to all offices, whether created by legislature or constitution 56
other oaths taken by certain officials..... 56
effect of 56
Article XXXVIII. Most important article in Declaration of Rights except Article XV..... 57
general intention analogous to British Statutes of Mortmain 57
in every constitution of state..... 57
difference in verbiage..... 57
(a) grantees included in, construed strictly as to..... 57
object of article stated..... 57
(b) consent of legislature, reasonable time allowed to

Declaration of Rights:—(*Continued.*)
obtain 58
distinction as to, between deeds and wills..... 58
(c) title to real estate, deed void unless it specifies use as church, etc..... 59
reverter in grantor..... 59
is property 59
legislative sanction may be general or qualified..... 59
effect if qualified 60
effect if general 60
title by adverse possession..... 60
consent of legislature not necessary to..... 60
implied assent of legislature..... 60
Article XLI. Act conferring upon ferry company exclusive use of wharf, not void under..... 62
act prohibiting sale of oleomargarine, not void under... 62
act establishing Board of Medical Examiners, not void under 62
effect of this article..... 63
Article XLIII. Object of..... 63
Article XLV. Effect of..... 64-65
Deeds, invalid, not to be cured by special act..... 181
De facto officers.....151, 278
Defaulters ineligible to legislature..... 140
imprisonment of, not imprisonment for debt..... 191
Defense, of persons accused..... 41
of State, debts may be contracted for..... 186
Deficiencies, temporary, how to be met..... 186
De jure officers.....110, 111, 114
Delay of justice..... 39
Delegated powers, not to be redelegated..... 133
seeming exceptions to rule..... 134
theory of 134
Delegates:
house of; returns of elections for governor to be made to... 105
apportionment of 135-7
how elected, term of office..... 137-8
qualifications of 139
house sole judge of election and qualification of..... 143
ineligibility of congressmen 140
ineligibility of defaulters 140
ineligibility of ministers 140
ineligibility for violating oath of office..... 97
vacancies, how filled..... 140
compensation of 142
disqualified to hold what offices..... 142
not liable for words spoken in debate..... 143
expulsion of 143
attendance of, may be enforced..... 144

Delegates:—(*Continued.*)
powers of house of, as grand inquest..... 146
House of, to keep journal of proceedings..... 145
may commit persons to jail for crime..... 146
cannot pass laws after election of successors..... 138
may pass and examine accounts of state..... 146
may appoint auditors..... 146
may call for public records..... 146
not to adjourn without consent of senate..... 147
to have sole power of impeachment..... 148
Denominations of religion..... 54-60
Departments of government to be separate..... 19
Deputies, in office of clerk of court..... 263
appointment, salary, removal..... 263
payment of salary of, covered by bond of clerk..... 263
in office of attorney-general 290
in office of state's attorney in Baltimore City..... 294
Devise to religious bodies prohibited, when..... 56
Diminution of salaries of judges forbidden.....262, 266
Direct assessment and levy, power of legislature to make.... 28
Directors in railroads and canal companies..... 326
Disabilities, persons under, special laws not to be passed for sale of real estate of..... 181
Disbarment, motions for, in Baltimore City, by whom passed on 270
Disfranchisement:
causes for 94, 209
for violating oath of office..... 97
Disorderly persons, legislature may imprison..... 146
Disqualification:
of churches, ministers, etc., from holding property..... 56
of convicts, lunatics, from voting..... 93
for bribery 93
of senators and delegates..... 140
of governor 106
of duelists from holding office..... 202
of senators and delegates from holding certain offices..... 142
of judges, in general..... 235
in particular cases..... 238
extent of provisions.....239-40
effect of non-compliance with.....239-40
Districts:
legislative in Baltimore.....135-136
judicial 258
for justices of the peace..... 276
Disturbing the peace—under color of religion..... 54
Divine Being, belief in..... 54-60
Divorce proceedings, imprisonment for disobedience of orders of court, valid..... 190-1

Divorces:
not to be granted by legislature..... 181
contra, prior to 1851..... 181
Domicile—distinction between residence and..... 91
Double taxation:
Article XV, Declaration of Rights bar to..... 30-31
not necessarily void..... 31
(generally, see *Declaration of Rights, Art. XV*).
Duelists ineligible to office..... 202
Duties, may be imposed, when..... 24

E

Education 307-9
legislature to provide for.....63, 307
Educational institutions, private, state aid to..... 308
Elections:
to be by ballot..... 86
does not apply to all elections..... 86
no other limitation as to form of..... 87
to be free and frequent..... 18
new, to be held on refusal to take oath..... 97
to be held in case of tie vote..... 339
qualifications of voters, etc..... 86
disqualification of persons convicted of infamous crimes..... 93
bribery 94
illegal voting 94
for governor, when held..... 104
provisions for 105
state and federal, dates of never coincide..... 138
special, to fill vacancies in legislature, when justified..... 141
of members, each house to be judge of..... 143
of judges 235
returns to be made to governor..... 249
of officers
returns to be made to governor..... 249
contested, procedure in..... 249
purity of, legislature to pass laws to preserve..... 202
contested, legislature to provide for..... 204
regulation of, by law..... 208
need not be uniform throughout state..... 208
general, when to be held..... 344
notice of 344
Elective franchise 86-97
Eligibility of governor, how determined..... 105
Elisors 282
Eminent domain, right of..... 192
at common law..... 192-4
may be conferred upon individuals or corporations..... 194
compared with taxing power..... 194

Eminent domain, right of:—(*Continued.*)
meaning of terms "property," "taking of" and "public use" with reference to law of 195-9
exercise of, a question for legislature 196
estate acquired by party condemning 198
additional servitudes 198-9
change of use, not an 199
compensation 199
rule for determining 199-200
where part of lot taken 200
must be *first* paid or tendered 201
exception as to Mayor and City Council of Baltimore 201
to be paid to party *entitled* 202
effect of doctrine of non-suability of state upon subject 202
jury, composition of 200
owner entitled to notice 200
when title passes 201
right of condemning party to abandon proceedings 201
jurisdiction of equity 200
Enactments, style of laws 150
passage of bills 150
Engrossing of bills before third reading 148
Enrollment of bills after passage 149
Entireties, property held by
judgment against husband no lien upon 203
effect of foreclosure of mortgage made by husband upon 203
Equality, rule of, as to taxation 26-32
apparent exceptions to 28
Equity, rules, court of appeals to establish 258
jurisdiction of in condemnation cases 200
no right of removal in 245
jurisdiction in Baltimore City 264, 266
Establishment of new government 18
Execution, of laws:
not to be suspended 22
militia may be called out to enforce 107
to be enforced by governor 108
exemption of property from 203
creates no vested rights 203
Executive department 103-124
Executive powers:
of government held in trust 18
not to be assumed by court 21
to be distinct from legislative and judicial 19
leading case on this subject 19-20
rotation of, in executive department 53
vested in governor 103
Article XXIII, Declaration of Rights a restraint upon 48

Exemption, from taxation:
Article XV, Declaration of Rights, no bar to..... 32
must not be arbitrary discrimination..... 32
foreign, not binding in Maryland..... 35
or repeal of charter, when corporations presumed to have surrendered 205
repeal of, how effected..... 207
cannot now be made irrepealable..... 208
Exemption of property from execution creates no vested rights 203
Exile prohibited 46
Expenditures:
for books, not to be made by general assembly; when..... 142
house of delegates to inquire into..... 146
of public money, how authorized..... 180
statement of to be published..... 180
comptroller, treasurer, duties of, relating to..... 300
Ex post facto laws:
not to be made..... 37
term refers only to criminal laws..... 38
where minimum penalty increased invalid..... 38
law changing penalty to advantage of accused, valid..... 38
Expulsion of senators or delegates..... 143
how vacancy filled..... 140
member may be re-elected after..... 143

F

Facts, where to be tried..... 40
finding of court conclusive, in cases submitted without jury.. 241
Federal Constitution:
15th amendment, never approved by voters of Maryland..... 18
Article III, sec. 6, of Maryland Constitution, compared with similar clause in..... 138
qualifications of legislators under compared with Maryland Constitution 139
10th amendment—Art. III, Maryland Declaration of Rights, exact copy of..... 16
Art. 6, Sec. 2—Art. 2, of Maryland Declaration of Rights repetition of 15
Art. 1, Sec. 6—Art. 10, of Maryland Declaration of Rights corresponds with 22
1st Amendment—Art. 13, of Maryland Declaration of Rights similar to clause in..... 23
no express provision in—similar to Art. 14, Maryland Declaration of Rights..... 24
8th Amendment—corresponds with Art. 16, Maryland Declaration of Rights..... 36
Art. 1, Sec. 10—substantially covers Art. 17, Maryland Declaration of Rights..... 38

Federal Constitution:—(*Continued.*)
Clause of Art. 1—Sec. 10, duplicated in Art. 18, Maryland Declaration of Rights..... 39
14th Amendment—practically covers Art. 19, Maryland Declaration of Rights..... 40
6th Amendment—compared with Art. 20, Maryland Declaration of Rights..... 41
6th Amendment—similar to Art. 21, Maryland Declaration of Rights..... 41
5th Amendment—similar to Art. 22, Maryland Declaration of Rights 45
14th Amendment—practically covers Art. 23, Maryland Declaration of Rights..... 46
13th Amendment to—effect on negro apprentice laws..... 49
8th Amendment to—similar to Art. XXV, Maryland Declaration of Rights..... 49
4th Amendment—similar to Art. XXVI, Maryland Declaration of Rights..... 50
Art. 3, sec. 3, clause 2, similar to Art. XXVII, Maryland Declaration of Rights..... 50
2nd Amendment to—similar to Art. XXVIII, Maryland Declaration of Rights..... 51
3rd Amendment to—similar to Art. XXXI, Maryland Declaration of Rights..... 51
5th Amendment to—similar to Art. XXXII, Maryland Declaration of Rights..... 52
Art. 1, sec. 9, clause 8—similar to Art. XXXV, Maryland Declaration of Rights..... 53
1st Amendment to—similar to Art. XXXVI, Maryland Declaration of Rights..... 54
Art. 6, clause 3—similar to Art. XXXVII, Maryland Declaration of Rights..... 55
1st Amendment to—similar to Art. XL, Maryland Declaration of Rights..... 61
Art. 1, sec. 10—similar to Art. XLII, Maryland Declaration of Rights..... 62
9th Amendment to—similar to Art. XLV, Maryland Declaration of Rights..... 64
15th Amendment to—effect on Art. 1, Sec. 1, Md. Constitution 87
Art. 2, sec. 2, clause 1—compared with Art. II, sec. 8, Maryland Constitution..... 108
Art. 1, sec. 8, clause 15—compared with Art. II, sec. 8, Maryland Constitution..... 108
Art. 2, sec. 3, clause 4—compared with Art. II, sec. 8, Maryland Constitution..... 108
Art. 2, sec. 3, clause 2—compared with Art. II, sec. 16, Maryland Constitution..... 118
Art. 2, sec. 3, clause 1—compared with Art. II, sec. 19, Maryland Constitution..... 122

Federal Constitution:—(*Continued.*)
Art. 2, sec. 2, clause 3—compared with Art. II, sec. 20, Maryland Constitution..... 122
Art. 1, sec. 6, clause 2—compared with Art. III, sec. 17, Maryland Constitution..... 143
Art. 1, sec. 6, clause 2—compared with Art. III, sec. 18, Maryland Constitution..... 143
Art. 1, sec. 5, —compared with Art. III, sec. 19, Maryland Constitution..... 143
Art. 1, sec. 5, clause 1—compared with Art. III, sec. 20, Maryland Constitution..... 144
Art. 1, sec. 5, clause 3—compared with Art. III, sec. 22, Maryland Constitution..... 145
Art. 1, sec. 5, last clause—compared with Art. III, sec. 25, Maryland Constitution..... 147
Art. 1, sec. 2, last clause—compared with Art. III, sec. 26, Maryland Constitution..... 148
Art. 1, sec. 3, clause 6—compared with Art. III, sec. 26, Maryland Constitution..... 148
Art. 1, sec. 9, clause 7—compared with Art. III, sec. 32, Maryland Constitution..... 180
Art. 3, sec. 1—compared with Art. III, sec. 35, Maryland Constitution 189
14th Amendment to—effect upon Art. III, sec. 37, Maryland Constitution 190
5th Amendment to, last clause—compared with Art. III, sec. 40, Maryland Constitution..... 201
14th Amendment to, 1st sec.—effect upon Art. III, sec. 53, Maryland Constitution..... 214
Fees:
not to be levied without the consent of the legislature..... 24
of officers, provision that they be turned over to State, valid.. 189
over three thousand dollars, to be paid over to State Treasurer 337
exceptions 337
scope of this provision.....338-9
not to be received by judges..... 52
what fees referred to by this prohibition..... 52
of clerks and registers of wills.....204, 240
not to be received by attorney-general..... 290
of State's attorney..... 294
not to be received by treasurer or comptroller..... 298
of commissioner of land office..... 306
Felony:
no attainder for..... 39
disfranchisement for conviction of..... 94
Fiduciaries, taxation of property held by.....212-13
Fines:
may be imposed for the benefit of the community..... 24

Fines:—(*Continued.*)
excessive, not to be imposed..... 49
may be remitted by the governor..... 122
imprisonment for non-payment of, valid..... 190-1
Foreign:
powers, presents to officers from, prohibited..... 53
corporations, tax upon revenues of..... 217
Forfeiture of estate:
conviction not to work..... 50
obsolete as a punishment..... 50
Forfeitures, may be remitted by governor..... 122
Form of government, people may alter..... 15
Foundation of government..... 15
Franchise:
elective 86-97
taxes, many times upheld..... 30
theory of 30
Free public schools:
to be established 307
to be open to all..... 308
State aid to private institutions..... 308
Freedom of speech and debate.....22, 61
Freely without sale, meaning of..... 40

G

Garrett County, formation of..... 330
General assembly—(see *Legislature*).
the only law-making body in State..... 133
not to redelegate powers delegated to it..... 133
General elections:
when to be held..... 344
notice of 344
General laws:
no special law for cases provided for by..... 181
provision does not apply to local laws..... 183
conflict between local and..... 184
Gifts:
when prohibited from foreign powers..... 53
to religious bodies prohibited, when..... 56
God:
belief in, requisite for witness, jurors, office..... 54-60
duty of every man to worship—recognized..... 54
Gospel, ministers of; grants, devises, etc., to; when prohibited. 56
Governor:
sole judge of existence of necessity for removal of meeting place of legislature..... 23
effect of Article XXXIV, Declaration of Rights on renomination of 53
oath of 96

Governor:—(*Continued.*)
entitled to immunities in discharge of duties..... 103
free from control of judiciary, when..... 103
powers of, compared with those of president.103, 108, 116, 118, 122
duties of, compared with those of president..... 122
mandamus lies to compel performance of ministerial duty by 103, 236, 250, 334
executive power vested in..... 103
term of office..... 103
qualifications for electors of..... 104
eligibility of, by whom determined..... 105
when person elected ineligible, how chosen..... 105
when chosen by lot..... 105
when to enter office..... 105
mode of election and returns..... 105
case of tie..... 105
qualifications of 106
vacancy, how to be filled..... 106-7
impeachment of 107
to be commander-in-chief of forces..... 107
may call out militia, when..... 107
to execute laws 108
to appoint all officers; proviso..... 109
time of appointments.....110-116
vacancy in office during recess of senate, to be filled by..... 110
cannot make vacancy in office by appointing successor to incumbent 110
ad interim appointments made by..... 112
not to nominate person for office who was rejected at same session 113
effect of, if done..... 113
duty of, where vacancy occurs during session of senate..... 116
may remove officers..... 116
to what officers power extends..... 117
to convene the legislature, when..... 118
may convene senate alone, when..... 118
veto power 118
to return bills not approved..... 118
to examine treasury accounts..... 122
to sign bills.....118, 178
within what time..... 120
messages to the general assembly..... 122
pardoning power 122
to report reasons for pardon to legislature, when required... 122
residence and salary..... 123
to appoint secretary of state..... 123
to arrange representation in house of delegates..... 137
to issue warrants of election for senator or delegate, when... 140
may convene legislature by proclamation..... 141

Governor:—(*Continued.*)
may recommend releasing debts..... 181
contingent fund 180
to remove judges, when..... 236
this provision mandatory..... 236
not necessarily part of general assembly.....236, 334
to appoint judges to fill vacancies.....237, 274
returns of elections to be certified to..... 249
to issue commissions, when..... 249
this duty ministerial..... 249
to order new election in case of tie..... 249
this duty ministerial..... 249
to sign public grants..... 251
to designate chief justice of court of appeals..... 252
to order new election for circuit judge, when..... 259
to fill vacancies in orphans' courts..... 274
to appoint justices of the peace..... 276
to appoint sheriffs to fill vacancies, etc..... 280
power of, to determine contested election of attorney-general. 287
effect of decisions upon this power.....288-90
may require written opinion of attorney-general..... 290
not to employ counsel in addition to attorney-general, unless authorized by legislature..... 290
duty of, regarding election of attorney-general..... 287
to appoint attorney-general to fill vacancy..... 292
to appoint treasurer and comptroller to fill vacancies..... 298
to approve banks in which state deposits made..... 301
to appoint state librarian..... 305
to appoint commissioner of the land office..... 306
to appoint adjutant-general..... 310
to remove mayor of Baltimore City, when..... 318
member of board of public works..... 326
need not sign act submitting constitutional amendment..... 334
cannot veto act submitting constitutional amendment..... 334
to order publication of act submitting constitutional amendment 334
this duty may be enforced by mandamus..... 334
to proclaim adoption of amendment after approval by people 334
to declare office of defaulters vacant..... 337
to order new election in case of tie..... 339
Government:
origin, foundation, etc..... 15
legislative predominant branch of..... 20
right of reform.....15-18
separation of departments..... 19
leading case on this subject.....19-20
seat of 23
support of 24
militia, defence of..... 50

Government—(*Continued.*)
seat of, may be temporarily changed by governor, when..... 118
governor to reside at seat of..... 123
laws to be passed to execute powers of..... 216
Grade, change of, not a taking of property..... 195
limitation upon rule..... 196
Grand inquest 146
Grand jury, if one member an atheist, indictments void..... 54
in Baltimore City, chosen by Supreme Bench..... 269
Grants:
under charter of Charles the First..... 16
of money by the legislature..... 180
of charters for banks..... 191
of land from United States..... 204
form of 251
Gratitude to Almighty God..... 15
Great seal:
acts of assembly, to be sealed with..... 178
this provision mandatory..... 178
laws to be certified to Courts under..... 178-9
Grievances, petition for redress of.....23, 146
Ground rent, condemnation of part of lot, effect of..... 200
Guardianship, person under as lunatic, disfranchised..... 93

H

Habeas corpus:
not to be suspended..... 215
jurisdiction in 215
extent of guarantee..... 215
jurisdiction over, in Baltimore City..... 264
Hereditary honors not to be granted..... 63
Home rule:
amendment adopting proposed..... 135
provisions of proposed amendment..... 322-5
Honors, hereditary, not to be granted..... 63
House of delegates—(see *Delegates, house of;* see *Legislature*).
speaker of, to act as governor, when..... 107
grand inquest of state..... 146
to judge of election and qualification of candidates in contested elections 249
Husband and wife; property of wife to be protected from debts of husband 203

I

Illegal votes, persons giving, disfranchised..... 94
Illegal voters, to be punished..... 95

Illustrations:
Declaration of Rights..... 66-84
Constitution, Article 1 98-102
Constitution, Article II 125-132
Constitution, Article III 220-232
Constitution, Article IV 283-286
Constitution, Article V 297
Constitution, Article VIII 309
Constitution, Article XI 321
Constitution, Article XV 345-7
Impeachment:
governor not to grant pardon in case of..... 122
of governor 107
house of delegates to have sole power of..... 148
to be tried by senate..... 148
of judges 236
Imprisonment:
for debt, prohibited..... 190
meaning of "debt" in this article..... 190-1
prohibited, except by judgment of peers..... 46
of disorderly persons by legislature..... 146
Incompetency:
removal of officers for 116
removal of judges 236
of witnesses 214
Indeterminate sentence in criminal cases..... 219
Indictment:
general accusation not sufficient..... 41
must state facts amounting to violation of law..... 41
must show accused what he is to answer and disprove..... 41
party accused to have copy of..... 41
conclusion of 251
provisions as to, mandatory..... 251
void if grand juror an atheist..... 54
Individuals, credit of state not to be loaned to..... 186
Infamous crime:
party convicted of, disfranchised..... 93
what is 94
Infants, affidavit for removal of case by..... 246
Initiative, amendment adopting, proposed..... 135
Injury to property or person, remedy guaranteed..... 39
Inquest, grand 146
Insolvency cases, jurisdiction over in Baltimore City..... 264
Inspector of tobacco..... 113
Instruction to jury in criminal cases..... 341-2
court not obliged to give..... 342
effect of disregard of, by jury..... 342
effect of error in..... 342

Insurrections militia may be called out to suppress..... 107
Interest:
rate of 216
usurious, recovery of..... 217
legislature must provide same rate for all..... 217
on deposits made by clerks of court, payable to state.... 271-2
Internal improvement companies, proceeds of..... 186
Internal improvements:
State not to be involved in..... 186
history of this provision..... 187-8
does not prevent appropriations for public roads..... 188
counties not to aid in..... 214
exception 214
provision mandatory 215
does not apply to roads and bridges..... 215
in Baltimore City..... 318
sale of State's interest in..... 327
Internal government and police, regulation of; people to have sole right of..... 16
Invasions, militia may be called out to repel..... 107
Investments of state, by whom managed..... 326-8
Involuntary servitude, abolition of..... 10

J

Jail, house of delegates may commit to..... 146
Joint standing committee:
of senate and house of delegates..... 146
duties of 147
no power to act during recess..... 147
Journals:
each house to keep..... 145
yeas and nays to be entered on, when..... 145
office of 145
force of entries in, in determining validity of law.....149, 145-6
amendments to bills not required to be entered in..... 146
proposed constitutional amendments to be entered upon... 334
Judges:
bound by U. S. Constitution..... 15
separation of departments of the government..... 19
oath of 96
independency of; no perquisites.....238, 52
qualifications of 234
term of office.....235, 237
retiring for inability..... 235
removal of 236
impeachment of 236
election and appointment of.....235-237

Judges—(*Continued.*)
vacancies 237
conservators of the peace throughout State 238
power to act as, not to be restricted by the legislature ... 238
disqualifications in particular cases 238
extent of provision 239
trial without jury (see *Jury*) 240-1
removal of cases by (see *Removal of cases*) 240
to appoint officers of courts 248
to investigate expenses of courts 248
duty directory only 248
to make rules for clerks 248
election returns of 249
case of tie, new election 249
of court of appeals 252
quorum 255
judge who decided case below not to sit 255
opinions to be filed within three months 255
this provision merely directory 255
to hear cases at first term 255
to designate cases to be reported 256
to appoint clerk in case of vacancy 257
to make rules as to records, practice, costs, fees and equity cases 257
of circuit courts 258
their jurisdiction 259
election; chief and two associates for each circuit 259
terms of circuit courts 259
one judge may sit 259
to adopt rules 259
additional judge for third circuit 259
points to be heard in banc 260
right of appeal preserved 260
opinions to be filed in two months 261
salaries 262
to appoint clerks to fill vacancies 262
to approve deputy clerks 263
of courts in Baltimore, names of courts 264
jurisdiction of 264-6
supreme bench of Baltimore 266
salaries 266
assignment of, in Baltimore 267
make rules for supreme bench 268
right of appeal preserved 268
chief judge of supreme bench to test writs 270
quorum, three judges 270
cases pending to be proceeded with 270

Judges—(*Continued.*)
of supreme bench to appoint clerks to fill vacancies 271
additional judges in Baltimore..... 272
of orphans' court 274
of orphans' court to appoint register of wills in cases of vacancy 275
of criminal courts, to decide on elections of state's attorneys 293
to fill vacancies in office of state's attorneys..... 296
jury in criminal cases to be judges of law and facts..... 340
province of in criminal cases..... 340-3

Judgment:
of court of appeals to be final..... 255
of his peers, means trial by jury..... 46

Judicial officers, governor has no power to remove..... 117

Judicial power:
assumption of by legislature..... 20
development of late years in establishment of certain agencies of government..... 21
Public Service Commission..... 21
to be forever separate and distinct from legislative and executive 19-22
leading case on this subject..... 19-20
Article XXIII, Declaration of Rights as much a restraint upon as upon legislative department..... 48
of state, in what courts vested..... 233
history of 233
not to be vested in any other official than those enumerated in constitution 233
what is an exercise of..... 234
to be distinguished from police power..... 234

Judicial—system of state..... 258

Judicial—circuits, enumeration of..... 258

Judiciary department 233-282
governor free from control of, when..... 103-4

Jurisdiction:
of court of appeals..... 252
appellate only 253
general discussion of 254-5
of circuit courts 259
of Baltimore City courts..... 264-6
may be changed by legislature..... 272
of orphans' courts 274-5

Juror:
no person disqualified because of religious belief..... 54
proviso 54

Jury—(see *Trial by Jury*) 240, 272
trial by, people to be entitled to 16, 18, 343
reasonable rules and regulations not prohibited 18, 343
extent of right in criminal cases 42
rule requiring prayer for, within limited time 273
right to, may be waived 343
if allowed on appeal, right not infringed 343
unanimous consent of 41
in condemnation cases 200
case without 240, 272
who may submit 241
what cases may be submitted 241
agreement must appear in record 241
appeal lies only as to matters of law 241
parties have same rights as in jury trial 241
in criminal cases, to be judges of law as well as fact 340
instructions to, by court 341-2
bound by opinion of court as to constitutionality of statute 343

Justices of the peace:
effect of Article XXXIII, Declaration of Rights upon 52
eligible as senator or delegate 140
may be required to turn over fees to state 189
authentication of official character of 233
not courts of record 234
appeals from, no right of removal in 245
jurisdiction over in Baltimore City 264
decision of Baltimore City Court final 270
must be allowed 277
appointment, tenure, removal 276
to be conservators of peace 276
history of provisions regarding 276
qualifications of 276-7
extent of legislative control over office of 277-8
provisions for different classes of, valid 277
holding over after expiration of term 278
vacancy in office 279

K

Keeper of the chancery records 306

Kilty's Report of the Statutes:
evidence of statutes found applicable 17
compiled under sanction of state 17
now obsolete 17
place taken by Alexander's' British Statutes 17

L

Labor and agriculture.....312-13
article providing for now obsolete..... 313
Land not to be given to religious uses..... 56
Land force, governor to be commander-in-chief of..... 107
Land records, Baltimore City, clerk of Superior Court to have charge of 272
Land office, commissioner of..... 306-7
Larceny, party convicted of, disfranchised..... 93
Law, three ways in which bill may become..... 121
Laws:
of United States, supreme..... 15
of England, what in force..... 16
suspension of 22
preservation of 23
sanguinary, to be avoided..... 36
retrospective, criminal, unjust..... 37
of attainder, not to be passed..... 39
imprisonment of freemen..... 46
for quartering soldiers..... 51
martial 51
holding two offices, not to be passed for..... 53
oath of office, religious test not to be required..... 55
relating to registration of voters..... 88
against illegal voting..... 93-4
to be enforced by governor..... 108
recommendations of governor..... 122
local option, may be passed..... 134
cannot be passed by house of delegates after election of successors 138
validity of, effect of entries in journal upon..... 145-6
how passed 148, 150
to be passed by original bill..... 149, 150
purpose and effect of provision..... 151
to embrace but one subject..... 150
object of this provision..... 152-4
style of 150
provisions as to, merely directory..... 151
mode of enactment..... 150
title of, to describe subject..... 150
object of this provision..... 152-4
effect of title upon body of act..... 150
these provisions mandatory..... 153
construed liberally 153
importance of 154

Laws—(*Continued.*)
not to be amended by reference to title only..... 150
object of this provision..... 176
does not apply to repeals..... 176
amendments of 150, 177
provisions as to merely directory..... 177
to be enacted in articles and sections.....150, 177
this provision merely directory..... 177
Article 3, Section 29, law may be partly good and partly bad under 154
abstract of those attacked because of insufficiency of title, with decisions 155-176
title not a part of..... 177
construction of 177
to be approved by governor..... 178
mode of attesting and recording..... 178
provisions mandatory 178
when to take effect..... 179
statements about public money to be published with..... 180
special and local..... 181
distinction between local and special..... 183
relating to master and slave..... 189
granting charters to banks..... 191
none to be passed to take private property for public use without compensation 192
to protect wife's property from husband's debts..... 203
relating to exemption from execution..... 203
to regulate clerk's and register's fees..... 204
contested elections 204
relating to corporations..... 205
for regulation of elections..... 208
need not be uniform throughout state..... 208
against bribery of officials..... 209
suspending *habeas corpus* prohibited..... 215
for executing vested powers..... 216
relating to legal rate of interest..... 216
for taxation of foreign corporations..... 217

Lawyers, license fee for, not prohibited by Article XV, Declaration of Rights..... 26

Legislative:
predominant branch of government..... 20
encroachments, check to..... 20
acts declared void under Article VIII, Declaration of Rights 20-21
interpretations of law, not binding on courts..... 20
acts imposing non-judicial duties on courts..... 21
powers not to be assumed by courts..... 21

Legislative—(*Continued.*)
power, to be forever separate and distinct from judicial and executive 19-22
leading case on this subject..... 19-20
levying of taxes an exercise of..... 24
Article XXIII, Declaration of Rights, a check upon..... 48
Legislative department 133-219
Legislative district:
six months' residence in, required for voters..... 88
of Baltimore City.....135-136
may be changed by legislature..... 136
Legislature:
trustees of the public..... 18
right of the people to participate in..... 18
alone to suspend laws..... 22
freedom of speech in..... 22
Annapolis to be the place of meeting..... 23
governor may change place of meeting, when..... 23
to be frequently convened..... 24
right of petition to..... 25
Article XV, Declaration of Rights, not simply directory to.. 25
taxes not to be levied, except by..... 26
power of, to make direct assessment and levy..... 28
power of, to create different taxing districts..... 29
power of, to make special assessments for local improvements 30
power of, to levy franchise taxes..... 30
taxing power of, enlarged by last clause, Article XV, Declaration of Rights..... 32
power of, to lay special taxes with a political view..... 32
limitations on taxing power of..... 34-36
to pass no law inflicting cruel or unusual pains or penalties.. 36
right to pass retrospective laws in civil cases..... 38
not to divest vested rights..... 39
not to pass bills of attainder..... 39
alone to raise standing armies..... 51
what devises void, without leave of..... 56
not to prescribe other oath of office than oath prescribed by constitution 55, 96
no such limitation in earlier constitutions..... 55
historical reason for..... 55
exception 300
effect of 56
general duties of..... 63
not to change qualifications of voters..... 91
to pass laws against illegal voting..... 94-95
to pass registration laws..... 95
oath of members of..... 96

Legislature—(*Continued.*)
to elect governor, when.....105-106
may designate by whom officers to be appointed..... 109
exception 109
may name officers in act creating office..... 109
consent to governor's commanding militia in person necessary 107
may be convened by governor..... 118
extra sessions of..... 118
Article 2, Section 13, does not apply to..... 115
may pass laws over veto of governor..... 118
recommendations from governor to..... 122
governor to report to, reasons for pardon, when required.. 122
cannot delegate powers delegated to it..... 133
exceptions to above rule..... 134
may charter municipal corporations..... 133
may refer local legislation to voters for decision..... 133
theory of 134
to consist of two branches..... 133
election and classification of senators..... 135
apportionment of delegates.....135-137
may change boundaries of legislative districts of Baltimore City 136
election of delegates..... 137-8
classification of senators..... 138
qualification of members..... 139
persons ineligible to..... 140
vacancies, how to be filled.....140-141
special sessions 140
time of meeting 141
time of adjournment 142
compensation of members of..... 142
what books not to be purchased by, for use of members..... 142
members of, disqualified to hold other offices..... 142
freedom of debate..... 143
powers of each house..... 143
quorum 144
sessions to be open..... 144
journals to be published..... 145
imprisonment of disorderly persons..... 146
powers of house, as grand inquest..... 146
special adjournments 147
impeachments 148
either house may originate bills..... 148
passage of bills..... 150
style of laws and mode of enactment..... 150
mode of attesting laws..... 178
when laws to take effect..... 179
appropriations of money to be made by law..... 180
meaning of words "by law"..... 181

Legislature—(*Continued.*)
contingent fund of governor..... 180
statement of use of public money to be published..... 180
divorces not to be granted by..... 181
local and special laws, what not to be passed..... 181
debts, what not to be contracted by..... 186
credit of the state not to be granted, when..... 186
proceeds of internal improvement companies and state tax, to be used to pay public debt..... 186
may borrow fifty thousand dollars without laying tax, when 186
may contract debts for defence of the state..... 186
no extra compensation to be allowed to..... 189
no lottery grant to be authorized by..... 189
payment by, for slaves prohibited..... 189
imprisonment for debt prohibited..... 190
restrictions upon power to grant bank charters..... 191
no law to be passed for the taking of private property without compensation 192
may confer power of eminent domain upon individuals or corporations 194
purity of elections..... 202
wife's property to be protected from husband's debts..... 203
exemption laws 203
uniform system of charges by clerks and registers of wills... 204
may receive land from United States..... 204
contested elections, may provide for..... 204
control over corporations..... 205
cannot grant irrepealable exemptions from taxation..... 208
regulation of elections by law..... 208
bribery of officials, to pass laws relating to..... 209
taxation of personal property..... 210
appropriations for private claims..... 213
witnesses not incompetent on account of race or color.... 214
habeas corpus not to be suspended by..... 215
to pass laws to execute vested powers..... 216
rate of interest may be fixed by..... 216
foreign corporations to be taxed..... 217
not to establish general pension system..... 218
may retire judges..... 235
address of, to remove judges..... 236
to provide compensation of court officers..... 248
judges to report to, on expenses of courts..... 248
may prescribe sessions of court of appeals..... 252
may not confer original jurisdiction on court of appeals.... 253
may not compel court of appeals to give opinions on moot questions 254
may provide additional judges in Baltimore..... 272
may change jurisdiction of courts in Baltimore City..... 272

Legislature—(*Continued.*)
to fix compensation of judges of orphans' courts..... 274
has entire control of jurisdiction of orphans' courts..... 275
has complete control of office of justice of the peace..... 277-8
but no power of removal..... 279
has complete control of powers and duties of sheriffs..... 282
coroners, elisors and notaries appointed, and duties may be regulated by 282
may require written opinion of attorney-general..... 290
to appoint treasurer..... 298
reports of comptroller and treasurer to..... 300-1
to establish and maintain system of free public schools..... 307
may require city or county to erect school buildings..... 308
to provide for organization of militia..... 310
power of, to organize new counties..... 328
to change county lines 329
to change limits of Baltimore City.....329-30
amendments to constitution by, how made..... 333
may not cut down fees which officials entitled to retain to less than three thousand dollars per annum..... 339
Liability of stockholders in banks..... 191
Liberty:
no man to be deprived of, but by judgment of peers..... 46
of press, belongs to everyone..... 61
government not to interfere with..... 61
responsible for abuse of privilege..... 61
newspaper proprietors not entitled to special privileges in this respect..... 61
Librarian, State 305
License fee:
for lawyers, valid..... 26
for restaurant keepers, valid..... 33
for traders, valid 33
for oyster canners, valid..... 33
for chauffeurs, valid 33
Licenses, to be issued by Clerk of Court of Common Pleas.... 272
Lieutenant-governor, no such office in Maryland..... 107
Life, no man to be deprived of, but by judgment of peers..... 46
Limitations upon taxing power of legislature..... 34-36
Loans in Baltimore City, how to be made..... 318
Local improvements:
legislature may make special assessments for..... 30
different theory from ordinary taxes..... 30
not a contribution for support of government..... 30
taxpayer receives equivalent..... 30
Local laws:
distinction between special and..... 183
conflict between general and..... 184
enumeration of some, held valid..... 184-5

Local option laws, may be passed..... 134
Local legislation:
may be referred to voters for decision.....133, 329
when not to be passed..... 181
proposed article providing for..... 322-5
Local option laws may be passed..... 134
"Log-rolling" legislation, prevented by Art. 3, sec. 29..... 153
Loss of residence:
by removal from state..... 92
how to prevent..... 93
Lotteries, prohibited..... 189
Lunatics not to be entitled to vote..... 93

M

Magistrates—(see *Justices of the Peace*).
Majority:
of each house to be a quorum..... 144
of each house required to pass bills..... 150
of house of delegates to concur in impeachments..... 148
Males only entitled to vote..... 88
Mandamus, will lie against governor for performance of ministerial duty..... 103-4
Manufactures to be encouraged..... 63
Marines subject to martial law..... 51
Martial law, who only to be subject to..... 51
Master, no payment to, for emancipated slaves..... 189
Mayor and City Council of Baltimore—(see *Baltimore City*).
to appoint constables..... 276
to fill vacancy in office of surveyor..... 305
Mayor of Baltimore—(see *Baltimore City*)..... 314
Medical examiners, board of, act creating, valid.....62, 108
Members of congress not eligible to legislature..... 140
Members of house of delegates and senate:
how selected..... 137-8
persons ineligible.....139-140
compensation 142
Messages of governor..... 122
Mileage to members of the legislature..... 142
Military:
to be subject to civil power..... 51
offices not to be held by judges..... 52
officers, to be appointed by governor..... 109
may be suspended or arrested by governor..... 116
Militia:
and military affairs.....310-311
proper and natural defense of a free government..... 50
to be organized..... 310
when to be called out by governor..... 107

Milk, act regulating sale of, providing for its destruction when below standard, valid..... 48
Ministers of gospel:
grants and gifts to, prohibited..... 56
gift to—as individual, valid..... 58
ineligible to legislature 140
(see *See Declaration of Rights, Art. XXXVIII*).
Misdemeanor, conviction of, disfranchisement for, when..... 95
Mobilia sequuntur personam..... 34-36
Money:
abuses in expenditure of..... 146
not to be drawn from treasury without appropriation..... 180
publication of receipts and expenditures..... 180
Monies of the State, how to be kept..... 301
Monopolies, odious..... 62
Mortgage interest, tax upon, upheld..... 29
Mortgages:
taxation of.....210-212
need not be taxed..... 211
Motions for new trial and in arrest, etc., in Baltimore City..... 268
Municipal corporations:
how created..... 205
may be given power to pass local legislation..... 133
change of grade of streets by, not a taking of property.... 195
limitation upon rule..... 196
bribery of officers of..... 209

N

Name of person not to be changed by legislature..... 181
Naval force, governor to be commander-in-chief of..... 108
Negro-apprentice laws, effect of 13th Amendment to Federal Constitution upon..... 49
New counties.....328-332
New trial, motions for..... 268-9
Nobility, title of, prohibited..... 63
Nolle prosequi, governor may direct, when..... 122
Nomination of civil officers:
when to be made..... 113
exception to constitutional provision as to..... 115
Non compos, disqualified to vote..... 93
Non-judicial duties, not to be imposed upon courts..... 21
Non-residents; situs of personal property of..... 211
taxable on stock owned in Maryland corporation..... 35
mortgagee taxable if mortgaged property in Maryland..... 35
Non-resistance, doctrine of, absurd..... 18
Non-suability of state, doctrine of, effect of upon constitutional provisions as to eminent domain..... 202
Northern element, constitution of 1864 represents..... 10

Notaries, appointment and powers of..... 282
Notice:
necessary before laying tax..... 34
act levying tax without, void..... 47
officers entitled to before removal..... 117
owner entitled to in condemnation case..... 200
judges entitled to before removal..... 236
of application for pardon..... 122
of election for senator or delegate..... 140

O

Oath:
retrospective, not to be required..... 37
witnesses to be examined on..... 41
of officers 96
of office, no religious test required..... 55
form of 61
no imprecatory words to be added..... 61
none to be imposed by legislature.....55, 96
exception 300
effect of, where done..... 96
effect of refusal to take..... 97
manner of administering..... 60
violation of oath of office..... 97
house of delegates may inquire on, of witnesses..... 146
impeachments; senators to be under oath..... 148
Obstruction of legislative proceedings, imprisonment for..... 146
Office:
disqualification of senator or delegate to hold certain....97, 142
disqualification to hold.....95, 209
judges not to hold any other..... 52
rotation of executive..... 53
no person to hold two offices..... 53
oath, how administered..... 55, 60
religious test not to be required as qualification for..... 55
vacancy in, during recess of senate..... 110
during session of senate..... 116
governor cannot create vacancy in, by appointment of a successor 110
suspension of officer does not create vacancy in..... 111
persons rejected not to be nominated for..... 113
effect of, if done..... 113
term of, civil officers.....113-114
of tobacco inspectors.....113-114
holder of under United States ineligible to legislature..... 140
under state ineligible to legislature..... 140
salary of, who entitled in case of contested election..... 250-1

Officer:
disfranchisement of, for perjury..... 97
bribery of 209
not entitled to salary until oath taken..... 97
may be appointed by legislature..... 109
de jure 110, 111, 114
de facto 115
each house to appoint its own..... 143
form of oath..... 96
civil or military to be appointed by governor..... 109
persons rejected not to be appointed..... 113
effect of, if done..... 113
time of nomination..... 113
term of office..... 113
removals and suspensions of..... 116
to what officers provisions as to removal extend..... 117
no extra compensation to be allowed to..... 189
salary not to be increased or diminished during term of office 189
duelists ineligible as..... 202
suspension of, does not create vacancy in office..... 111
contested elections of..... 204
of courts, to be appointed by judges..... 248
compensation of 248
election returns of..... 249
to be commissioned by governor..... 249
public commission of..... 251
returns of elections..... 249
new elections in cases of a tie..... 249
militia 310
of general staff, to receive no pay except when on service.. 310
compensation of, not to exceed three thousand dollars; exceptions 337
scope of prohibition..... 338
legislature may not reduce this amount..... 339
those holding office at adoption of constitution to continue, how long 339
commencement of their terms..... 344
before whom to qualify..... 344
Official proceedings, record of, to be kept by secretary of state 124
Oleomargarine, act prohibiting sale of valid..... 62
Opinions:
of court of appeals, to be in writing..... 255
when to be filed..... 255-6
when attorney-general required to give..... 290
Ordinances:
power to pass may be conferred upon municipal corporations 133
Baltimore City; jurisdiction over questions arising under 266

Original bill:
all laws to be passed by..... 150
purpose and effect of provision..... 151
Orphans' court:
each county to have..... 274
judges, number of; tenure of..... 274
qualifications 274
powers 274
compensation 274
vacancy in 274
jurisdiction of, entirely within control of legislature..... 275
Outlawry, prohibited 46
Oyster canners, license upon, valid..... 33

P

Pains and penalties:
cruel and unusual prohibited..... 36
whipping for wife beating not cruel..... 37
no hard and fast rule as to what constitutes cruel or unusual 37
circumstances govern 37
must not be disproportionate to offense..... 37
courts must adopt methods of punishment prescribed by law 37
Pardoning power of governor practically unrestricted..... 122
Pardons:
by the governor.....93, 122
none in cases of impeachment..... 122
removes disfranchisement 93
notice before granting..... 122
Parole in criminal cases..... 219
Passage of bills:
over executive veto..... 118
provisions as to, must be strictly followed.....149-50
Paupers not to be assessed..... 24
Penalties:
unusual, not to be inflicted..... 36
(see *Pains and Penalties.*)
for bribery of voters..... 93
for perjury of officers..... 97
for disorderly conduct of members of legislature..... 143
for non-attendance of members of legislature..... 144
Pension:
commissioner abolished 218
system, none to be established in state..... 218
validity of various acts creating..... 218
People's court, act creating valid..... 278
Perjury of officers..... 97
Perquisites:
judges to have none.....52, 238
what within the prohibition..... 52

Perquisities—(*Continued.*)
clerks of courts to have none..... 271
what within the prohibition..... 271-2
attorney-general to have none..... 290
not to be received by treasurer or comptroller..... 298
Personal property:
where taxable 210
of non-residents, situs of..... 211
situs of, generally.....211-12
Petition, right of, to be carefully preserved..... 23
Plumbing, act regulating valid..... 47-8
Police:
internal, state to have exclusive control of..... 16
power, laws passed under may be submitted to voters..... 134
not a delegation of legislative power..... 134
distinguished from judicial power..... 234
Poll tax:
not to be levied..... 24
under Acts of 1702 and 1715..... 26
Power:
military, to be subject to civil..... 51
long continuance in, dangerous..... 53
executive, vested in governor..... 103
veto, of governor..... 118
pardoning 122
judicial, in what courts vested..... 233
of appointment to office, not essentially executive..... 109
not to be exercised until vacancy actually exists..... 110
Powers:
of people reserved..... 16
legislative, executive and judicial to be separate.....19, 133
leading case on this subject..... 19-20
legislative, cannot be redelegated..... 133
of judges of orphans' courts..... 274
Preacher of the Gospel:
gift, sale, devise to, void, when..... 56
ineligible to legislature..... 140
Preamble:
no legal force in..... 12
implies that government is Christian..... 12
Presentation of bills to governor for signature.....121, 178
President:
powers of governor compared with those of.....103, 108, 116, 122
duties of governor compared with those of.....118, 119, 122
President of senate:
to be governor, when..... 107
compensation of..... 142
to issue warrant of election, when..... 140

Press:
freedom of, to be inviolably preserved..... 61
everyone entitled to..... 61
Printing:
public, cost of..... 146
of bills before third reading..... 148
of laws..... 178
effect of provisions as to..... 179
Private claims against state, appropriations for..... 213
Private property:
taking of, for public use..... 192
for private use..... 194
protection of at common law..... 192-4
what is..... 195
what is "taking of"..... 195-6
what is "public use"..... 196-9
Private secretary, office of, abolished..... 123
Private use, distinguished from public..... 196-9
Process:
how to run and be tested..... 251
how attested in Baltimore City..... 270
Proclamation:
of constitutional amendments by governor..... 334
effect of..... 336
Pro forma decree, Court of Appeals will not entertain appeal from 254
Property:
no man to be deprived of, but by judgment of peers..... 46
what is..... 195
Publication:
of journals of legislature..... 145
of statement about public moneys..... 180
of changes to code..... 150
of laws..... 178
effect of provisions as to..... 179
statement of receipts and expenditures to be attached to. 180
laws may take effect before..... 180
of amendments to the constitution..... 333, 334
of decisions of court of appeals..... 256
of treasurer's report..... 301
Public commissions, form of..... 251
Public debt 186, 300-1
Publicity as to pardons insured..... 123
Public monies, holders of, ineligible to legislature until accounting 140
Public officers:
no extra compensation for, when..... 189
salary not to be increased during term of office..... 189
Public purpose, taxes can only be imposed for..... 34

Public roads, appropriations for valid..... 188
Public schools —(see *Schools*)..... 307
Public service commission:
a legislative body.....21, 234
functions partly judicial, administrative and legislative..... 21
Public use:
what is a..... 196-9
a question for courts..... 196
illustrations of..... 197-8
when principal work is, all proper accessories are also..... 197
must be for Maryland public..... 197
relaxation of rule..... 197-8
Public works, board of..... 326-7
meetings 326
duties 326
members of, to receive no additional salary..... 326
powers of..... 327-8
Punishments:
cruel and unusual, not to be inflicted.....36, 49
witnesses' and jurors' belief in future..... 54

Q

Qualifications:
of voters..... 87-88
of governor..... 106
of delegates..... 139
of senators..... 139
of members, each house to be judge of..... 143
of judges, of circuit courts.....234, 259
of orphans' courts..... 274
of justices of the peace..... 276-7
of sheriffs..... 280
of attorney-general..... 292
of state's attorney..... 295
of mayor of Baltimore City..... 315
of members of city council of Baltimore..... 316
of president second branch city council of Baltimore..... 317
of officers, generally..... 344
Quartering of soldiers in time of peace—of war..... 51
Quasi-corporations, counties regarded as..... 133
Quorum:
of senate and house of delegates..... 144
of court of appeals..... 255
of circuit courts..... 259
of supreme bench of Baltimore City..... 270

R

Race or color, no incompetency as witness by reason of..... 214
Race discriminations, in schools, valid..... 63
Racing commission, not required to take oath of office..... 97
Railroads:
State's stock in, how represented..... 326-7
may be given power of eminent domain.....194, 197
counties not give aid to..... 214
Rate of interest..... 216
Reading of bills:
on three different days..... 148
importance of this requirement..... 149
Real estate, belonging to persons under disabilities, special law not to be passed for sale of..... 181
Receipts and expenditures, statement of to be published with laws 180
Recess appointments 110
term of 111, 112
person rejected by senate not to receive..... 113
Recommendations of governor..... 122
Records:
of secretary of state..... 124
of yeas and nays, to be kept.....145, 150
house of delegates may call for..... 146
of laws of the State..... 178
of courts, to be in custody of clerk..... 248
Referendum, amendment adopting, proposed.....135, 348-50
Refund of money in state treasury, not to be made..... 181
Refusal:
of officer to take oath..... 97
of senator or delegate to act..... 140
Registers of wills:
charges of 204
compensation of 204
election, tenure of; vacancy in office of; removal..... 275
election returns of..... 249
may not retain commissions in addition to constitutional salary 338
Registration:
of voters..... 88-95
entitles one to vote..... 88
requirements of 88
where one entitled to..... 88
right of, lost, when..... 94
Rejected nominee, governor not to appoint..... 113
Relics, connected with early history of state, preservation of...307

Religious body:
sale, gift, devise to, void, when..... 56
grant to foreign—not prohibited..... 57
Religion 54-61
Religious belief, not to disqualify witness or juror..... 54
Religious liberty:
growth of noted..... 54
all persons entitled to protection in..... 54
Religious test, not to be required a qualification for office.... 55
Removal:
from state, of governor..... 106
where one entitled to vote, in case of..... 88-89
out of state, how to prevent loss of residence..... 92
of cases 240
at common law..... 242
object of provisions for..... 242
legislature may enlarge but cannot restrict right of.... 242
history of provisions..... 243-3
abuse of right..... 244
court to which cause may be removed..... 244
discretion of court unlimited..... 244
may be made by one of several parties..... 244
effect of 244
party entitled to but one removal..... 244
cases where right does not exist..... 245
requirement as to payment of costs by party making suggestion, invalid 245
a constitutional right..... 245
appeal lies from order granting or refusing..... 245
privilege a personal one..... 245
may be waived 245-6
up to what time right may be exercised..... 246
upon second trial..... 246
after failure of jury to agree..... 246
by whom suggestion and affidavit made..... 246-7
infancy 246
where state removes 247
form of affidavit..... 247
right not absolute in criminal cases, not capital..... 247
court's action reviewable on appeal..... 247
jurisdiction of court after removal order passed..... 247-8
of judges, provision as to.....52, 236
of civil or military officers, by governor..... 116
to whom power of, extends..... 117
causes for 117
of secretary of state..... 124
of clerk of court of appeals..... 257
of clerks of circuit courts 262
of clerks of Baltimore City courts..... 271

Removal—(*Continued.*)
of registers of wills..... 275
of justices of the peace..... 276
of constables 276, 278
of attorney-general 287
of state's attorney..... 293
of comptroller or treasurer..... 303
of adjutant-general 310-11
of president second branch city council of Baltimore..... 317
of mayor of Baltimore City..... 318
Renomination of governor..... 53
Repeal:
of law may be made by reference to title or section..... 176
of taxes, when not to be made..... 186
of charter, when corporations presumed to have surrendered exemption from..... 205
Repeaters—to be punished..... 94-95
Representative capacities, persons in, taxation of property held by 212-13
Representation:
in general assembly.....135-137
to be arranged by governor..... 137
Reprieve by governor..... 122
Residence:
as qualification for voter..... 88
in state one year..... 88
in county or legislative district more than six months.. 88
in ward—no time specified..... 88
in election district—no time specified..... 88
at large—sufficient for registration..... 89
definition of..... 89-91
distinction between domicile and..... 90
evidence of 91-93
legislature may make rules governing..... 92
loss of, in case of removal from state..... 92
how to prevent..... 92
how acquired by persons moving into state..... 93
declaration of intention..... 93
of governor 123
of secretary of state..... 123
in state, a qualification of senator or delegate..... 139
determines situs of personal property for purposes of taxation, when 212
of corporations 213
Resignation:
of governor..... 106
of senator 140
of delegate 140

Resignation—(*Continued.*)
does not remove disqualification of senator or delegate to hold certain offices..... 143
Resolutions, passage of..... 150
Restaurant keepers, license fee upon, valid..... 33
Retirement of judges..... 235
Retrospective:
criminal law not to be made..... 37
laws, valid in civil cases..... 38
not essentially judicial..... 38
divesting vested rights, invalid..... 38
exception 38
oath not to be imposed..... 37
Returns:
in gubernatorial elections..... 104
questions as to, by whom determined..... 105
in elections, to be made to governor..... 249
in contested elections 249
in elections of attorney-general..... 287
in elections of state's attorneys 293
Revenue bills, may originate in either house..... 148
Right to assemble:
secured by 14th Amendment to Federal Constitution..... 23
not secured by Article 13, Maryland Declaration of Rights.. 23
Rotation in executive office..... 53
Roads, public:
appropriations for valid..... 188
not works of internal improvement..... 215
Road-tax levied upon all residents of county, not prohibited.. 26
Rule of equality:
as to ordinary taxation..... 26-32
not applicable to special taxes..... 32
apparent exceptions to..... 28
Rules:
each house may adopt its own..... 143
observance of, not subject to review by courts..... 144
for government of court clerks, to be made by judges.... 248
for taking appeals to be adopted by court of appeals..... 257
for equity proceedings to be adopted by court of appeals.. 257
of court, in Baltimore City..... 269

S

St. Mary's County, appropriations for..... 187
Salary:
where provided by constitution, no appropriation necessary 181, 298
of governor 123
indirectly increased by appropriations..... 123

Salary—(*Continued.*)
inadequacy of 123
of secretary of state..... 123
of delegates and senators..... 142
of public officer, not to be increased or diminished during term of office..... 189
application to fee officers..... 189
who entitled to in case of contested elections..... 250-1
of judges 262, 266
not to be diminished during term..... 262
increase of 262
of deputy clerks of court..... 263
of judges of orphans' courts..... 274
of sheriff 281
of attorney-general 290
of state's attorney 294
of treasurer 298
of comptroller 298
of county commissioners 303
of surveyor 305
of state librarian 305
of commissioner of the land office..... 306
of wreck-master 307
of mayor of Baltimore City..... 315
of members of the city council of Baltimore..... 316
of president second branch city council of Baltimore..... 317
of officers not to exceed three thousand dollars; exceptions 337
scope of prohibition..... 338-9
effect of provision upon power of legislature to cut this amount down 339

Sale to religious bodies prohibited, when..... 56

Sanguinary laws to be avoided..... 36

School commissioners, not required to take oath of office.... 97

School fund:
to be used only for purposes of education..... 309
meaning of 309

Schools, public:
to be established 307
to be free to all..... 308
State aid to private educational institutions..... 308
legislature may require county or city to erect buildings for 308
free books, only lately a part of system..... 308

Seal:
great, to be affixed to laws..... 178
laws to be certified to courts under..... 178-9
courts to have, for authentication of process..... 233
of state, to be affixed to commissions..... 251

Search warrants 50

Seat of government:
to be at Annapolis..... 23
becoming unsafe governor may convene legislature elsewhere 118
residence of governor to be at..... 123
residence of secretary of state to be at..... 123
office of treasurer to be at..... 298
office of comptroller to be at..... 298
adjutant-general to discharge duties at.....310-11
Secret session of legislature, how held..... 144
Secretary of State.....105, 123
to convene legislature, when..... 107
term of office..... 123
salary 123
residence 123
removal of 124
duties of 124
importance of 124
records of, subject to examination..... 124
Sects alike to be protected..... 54-6
Senate:
official of Baltimore City eligible to..... 53
president of, when to act as governor..... 107
consent of, to appointments by governor.....109, 276
nominations of civil officers to be made to..... 113
may be convened alone, when..... 118
election of 135, 138
classification 138
courts cannot declare vacancy in..... 138
qualifications 139
disqualifications 140
vacancy in, how filled.....140-141
ineligibility of members of Congress..... 140
ineligibility of defaulters 140
ineligibility of ministers 140
disqualification of members of to hold other office..... 142
judge of election and qualification of members..... 143
members of, not liable for words in debate..... 143
to keep journal of proceedings..... 145
not to adjourn without consent of house of delegates..... 147
special adjournment 147
all impeachments, to be tried by..... 148
ineligibility of duelists..... 202
consent of, to designation of chief judge of court of appeals 252
Senators:
by whom elected..... 135
term of office.....135-138
number of 135

Senators—(*Continued.*)
classification 138
compensation of 142
expulsion of 143
attendance of, may be enforced..... 144
to be on oath in impeachment cases..... 148
Sentence:
in criminal cases.....219
proposed changes in..... 219
suspension of 219
indeterminate 219
parole 219
Servitude—(See *Eminent Domain*).
Session:
extra, of legislature, may be called by governor.....118, 141
Article II, Section 13, does not apply to..... 115
duration of 142
of legislature, regular..... 141
duration of 142
to be open..... 144
may be held secret after vote..... 144
special adjournment 147
no bill to originate during last ten days of..... 148
of court of appeals..... 252
Seven years absence—administration after..... 47-8
Sheriffs:
tenure; qualifications; vacancies 280
in counties, ineligible for two years after expiration of term 280
in Baltimore City, reeligible..... 280
compensation of 281
history of office of..... 281-2
office of, purely ministerial..... 282
may not be abolished by legislature..... 282
powers and duties of, legislature has absolute control over. 282
retention of various fees by, in addition to constitutional salary, invalid 338
to give notice of elections..... 344
Signing:
of bills by governor.....118, 178
after adjournment of legislature..... 120
not necessary, when..... 121
effect of, where done inadvertently..... 178
act submitting constitutional amendment need not be signed 334
Sinking fund 186, 301
Situs of personal property for taxation.....211-13
Slavery abolished 48
payment for abolition of, prohibited..... 189
Southern element, Constitution of 1867 represents..... 11

Speaker:
of the house of delegates..... 104-5
when to act as governor..... 107
to issue warrant of election, when..... 140
compensation of 142
Special assessments for local improvements, may be made.... 30
(See *Local Improvements.*)
Special laws:
when not to be passed..... 181
distinction between local and..... 183
not to be passed in cases provided for by general law..... 181
this provision important..... 182
construed liberally 183
enumeration of acts attacked as contrary to this provision but held valid..... 184-5
enumeration of acts held invalid under..... 185-6
when corporations may be formed by.....205, 207
amendment to be corporate charters may be made by..... 206
Speech, freedom of... .....22, 61
State:
limitations upon use of credit of..... 186
debts owing to, release of..... 181
debts of, payment provided for..... 186
not to aid works of internal improvement..... 186
history of this provision..... 187-8
exceptions 187
does not prevent appropriations for public roads..... 188
defence of, debts may be contracted for..... 186
State's attorneys 293-7
proper person to make affidavit for removal in criminal cases 247
may require written opinion of attorney-general..... 290
when attorney-general to aid..... 290
election, tenure, removal..... 293
returns of election of..... 293
tie vote, by whom decided..... 293
oath of office..... 293
duties and salary of..... 294
special provisions for Baltimore City..... 294
history of office of..... 295
qualifications of 295
vacancy 296
authority to collect money..... 297
bond 297
State librarian, appointment; salary; duties.....305, 344
State pension commissioner, office of abolished..... 218
State reporter and codifier, to publish decisions of Court of Appeals 256
State Treasurer 298-301

Statutes:
of England, what in force..... 16
"found applicable" Kilty's Report of the Statutes, former guide to 17
Alexander's British Statutes now guide..... 17
Stock, purchase by bank of its own..... 191
Stockholders of banks, liability of..... 191
Street:
change of grade not a taking of property..... 195
limitation upon rule..... 196
interest of abutting owner in bed of..... 198-9
Style:
of legislature 133
of laws 150
provision as to, merely directory..... 151
of commissions, writs, indictments, etc..... 251
of circuit courts 259
Subject:
laws to contain but one..... 150
to be described in title of law..... 150
these requirements mandatory..... 153
object of these requirements..... 152
construed liberally 153
where several sections of law refer to same..... 152
list of laws attacked because containing more than one, and decisions of Court of Appeals.....155-176
laws sustained 155-169
laws declared void 170-176
Submission of proposed constitutional amendments to people... 333
when to be submitted..... 335-6
Suffrage:
right of.....18, 86
disqualifications of 94
Sunday laws:
enforcible 55
not in conflict with Article 36, Declaration of Rights..... 55
Superior Court of Baltimore City.....264, 270
clerk of, to make election returns to governor..... 249
to have charge of land records..... 272
Supreme Bench of Baltimore City (see *Courts of Baltimore City*).....264, 266-270
to appoint officers of courts in Baltimore City..... 248
may authorize appointment of assistants in office of state's attorney 294
Supreme Court, decisions of conclusive upon questions of constitutional law 15
Sureties upon official bonds, release of by legislature, valid..... 188
Surveyors; election, duties, compensation, vacancy..... 305

Suspension:
of laws 22
of military officers, by governor..... 116
causes for 117
does not create vacancy in office..... 111
of sentence in criminal cases, proposed..... 219
Susquehanna and Tidewater Canal..... 327

T

Taking of property, meaning of..... 195
Taxation (see *Taxes, Declaration of Rights, Articles XIV-XV*).
Article XV, Declaration of Rights, prevents abuse of power of 26
Article XV, Declaration of Rights, prevents double taxation... 30-31
double, not necessarily void..... 31
twice on one person for same property, void..... 31
on same property representing distinct values to different persons 31-2
theory of 31
rule of equality..... 26-32
not applicable to special taxes laid with a political view... 32
all tangible property to be valued and assessed..... 28
exemptions from 32
summary of rules, and exceptions as to..... 33
all subjects over which sovereign power of state extends are objects of..... 34
examples of 34-6
when corporations presumed to have surrendered exemption from 205
of personal property and mortgages..... 210
situs of personal property for purposes of.....211-13
policy of, may be changed..... 182
repeal of exemption from, how effected..... 207-8
exemption from, where irrepealable, effect of consolidation of corporations upon..... 208
irrepealable exemption from, cannot be made now..... 208
general rule as to power of..... 210
of trust property 212
of property held by persons in representative capacities....212-13
of corporate property 213
upon revenues of foreign corporations..... 217
Taxes (see *Taxation, Declaration of Rights, Articles XIV-XV.*)
levying of, an exercise of legislative power..... 24
rules as to..... 24
to be levied only by consent of legislature..... 24
imposed in violation of Article XV, Declaration of Rights, void 25
poll tax prohibited..... 26
on one species of property only, void..... 27
exempting real estate of town, void..... 27

Taxes—(*Continued.*)
exempting personal property and improvements, void..... 28
exempting portion of village from, void..... 28
on mortgage interest, upheld..... 29
franchise 30
special, laid with a political view..... 32-36
not to be laid upon property as such..... 34
collateral inheritance, valid..... 33
other examples of valid special taxes..... 33
on owners of billiard tables, valid..... 33
limitations upon power of legislature to lay..... 34-36
on bank stock at a certain rate, valid..... 47
for payment of judicial salaries, valid..... 53
time for payment not to be extended by local or special laws.. 181
to be provided for when debt is contracted..... 186
not to be repealed or diverted until debt paid..... 186
Taxing districts:
power of legislature to create..... 29
each district may have own rate..... 29
rate to be uniform within district..... 29
Term of office:
of governor 103
of civil officers 113, 114
of secretary of state..... 123
of senators 135
of delegates 137
of judges 235, 237
of clerk of Court of Appeals..... 257
of clerks of circuit courts 262
of clerks of Baltimore City courts..... 271
of judges of orphans' court..... 274
of registers of wills..... 275
of justices of the peace..... 276
of constables 276
of sheriff 280
of attorney-general 287
of state's attorney 293
of treasurer 298
of comptroller 298
of county commissioners 303
of surveyor 305
of state librarian 305
of commissioner of the land office..... 306
of wreck-master 307
of adjutant-general 310-11
of mayor of Baltimore City..... 315
of members of the city council of Baltimore..... 316
of officers generally 344
Terms of constitution, how taken..... 11

Test, religious, none to be required..... 55
Testimony:
compulsory in bribery cases..... 209
exemption from prosecution..... 209
Tie:
in election of governor 105
in election of senators and delegates.....140-141
new election, provisions for cases of..... 339
in election of judges, clerks, registers of wills, etc..... 249
in election of attorney-general 287
in election of state's attorney 293
Titles of nobility not to be granted..... 63
Title, when it passes in condemnation proceedings..... 201
Title of laws:
list of laws attacked because of insufficiency of title, and decision of the Court of Appeals.....155-176
laws sustained 155-169
laws declared void 170-176
no amendment to be made by reference only to..... 176
object of 176
to describe subject..... 150
effect of, upon body of act..... 150
object of requirements as to..... 152
need not give abstract of contents of law..... 152
requirement as to mandatory..... 153
construed liberally 153
must apprise reader of contents of act..... 176
no part of law..... 176
Tobacco inspectors 113
Tolls on Chesapeake and Ohio Canal..... 326
supervision of, by State directors..... 326
Traders' license, valid tax..... 33
Treason, no attainder for..... 39
Treasurer:
examination of books of, by governor..... 122
election and duties of.....298-301
appointment, salary, tenure, vacancy..... 298
office to be at seat of government..... 298
to be bonded..... 298
oath of 298
upon reelection, liability of original bond..... 299
not to receive fees or perquisites..... 298
duties of 301
to pay money only on warrants drawn by comptroller..... 301
accounts of, to be published..... 301
to qualify within one month of appointment..... 302
these provisions mandatory..... 302
charges against, trial, removal..... 303
member of board of public works..... 326

Treasury:
money not to be drawn except by law..... 180
meaning of words "by law"..... 181
money in not to be refunded by special act..... 181
temporary deficiencies in, how met..... 186
Treasury department, officers of may recommend release of debts due state 181
Treaties of United States, supreme law..... 15
Trial:
of facts where they arise..... 40
disqualification of judges from affinity or consanguinity..... 238
removals of 240
without jury (see *Jury*)..... 240
in what cases permitted.....241
who may submit case for..... 241
Trial by jury (see *Jury, Trial by*).....16, 41, 340, 343
inhabitants of Maryland, entitled to..... 18
reasonable rules and regulations not prohibited.....18, 343
right of accused to speedy..... 41
drawn from neighborhood in which crime committed..... 41
extent of, in criminal cases..... 42
unanimous consent in, very strictly construed..... 44
rule in Baltimore City.....273-4
right to, may be waived..... 343
if allowed on appeal, right not infringed..... 343
carefully preserved by courts..... 344
Trust property, taxation of..... 212

U

Unanimity in jury..... 41
Union element, Constitution of 1864 represents..... 10
United States:
grants from..... 204
constitution of, supreme law..... 15
powers not delegated to, reserved..... 16
judges not to hold office under..... 52
presents from, to officers, forbidden..... 53
constitution of, applies in war and peace..... 64
citizens of, only, entitled to vote..... 88
officeholders under, ineligible as state senator or delegate..... 140
Unjust discrimination in taxation, Article XV, Declaration of Rights prevents 27
Unusual pains and penalties, not to be inflicted.....36, 49
Usury—(see *Interest*).

V

Vacancy:
in office of governor, how filled.....106-107
in office, when it exists..... 110

Vacancy—(*Continued.*)
how filled during recess of senate..... 110
not created by suspension..... 111
how filled when senate in session..... 116
in senate, cannot be declared by courts..... 138
in office of delegate or senator, when it exists..... 141
in office of delegate or senator, how filled 140
in office of judge, how filled..... 237
in office of clerk of court of appeals, how filled..... 257
in office of clerk of circuit court, how filled..... 262
in office of clerk of court in Baltimore City, how filled..... 271
in office of judge of orphan's court, how filled..... 274
when vacancy exists..... 275
in office of register of wills, how filled..... 275
in office of justice of the peace..... 279
in office of constable 279
in office of sheriff 280
in office of attorney-general 292
in office of treasurer 298
in office of comptroller 298
in office of surveyor 305
in office of wreck-master 307
in office of member of city council of Baltimore..... 317
Validity of laws:
evidence to impeach must be clear.....146
effect of entries in journal upon..... 145-6
Variance between provisions of Declaration of Rights and Constitution 19
Vested powers, legislature to pass laws for carrying into effect. 216
Veto:
power of governor..... 118
compared with that of president.....119-120
of part of appropriation bills..... 119
vote necessary to pass bill over..... 119
time within which it must be exercised..... 119
does not extend to act submitting constitutional amendment.. 334
Volunteer militia organizations, legislature to promote by law.. 310
Vote:
right to, who entitled (see *Residence*) 87-95
illegal, person giving disfranchised..... 94
for governor, when tie, how decided..... 105
for senator or delegate, when tie, how decided..... 140
on constitutional amendments.....333, 335
on constitution of 1867..... 351
Voters:
qualifications of (see *Residence*).....87-94, 104
cannot be changed by legislature..... 91
registration 88-95

Voters—(*Continued.*)
consent of, necessary to change of county lines..... 328
not necessary to change of Baltimore City lines.....329-30
Votes, legality of, by whom determined..... 105
Voting:
elective franchise determined..... 86
bribery prohibited 94
illegal, to be punished..... 94-95
disqualifications 94

W

Warrant of election, to be issued to fill vacancies in legislature. 140-1
Warrants, search 50
Washington Branch Railroad..... 327
Wicomico County, formation of..... 330-2
Wife, property of, to be protected from debts of husband..... 203
Wife-beating, whipping for, not cruel or unusual punishment.. 37
Wills:
registers of, charges of..... 204
election; tenure 275
invalid, not to be cured by special act..... 181
Witnesses:
no incompetency for religious belief..... 54
nor for race or color..... 214
accused to be confronted with, in criminal cases..... 41
Worcester County, wreck-master of..... 307
Words spoken in debate in general assembly, no legal liability for 143
Works of internal improvement:
no State aid to be given to..... 186
counties not to aid in..... 214
provision mandatory 215
does not apply to roads or bridges..... 215
Worship, religious, to be free..... 54
Wreck-master 307
Writs:
how to run and be tested..... 251
in Baltimore City..... 270

Y

Yeas and nays:
when to be taken and recorded in legislature..... 145
on final passage of bills..... 150
indispensable requirement 150