

Constitution of the State of Tennessee

ADOPTED IN CONVENTION AT NASHVILLE,
FEBRUARY 23, A. D. 1870.

This is an exact copy of the constitution of 1870. The language and punctuation of that instrument are given verbatim et literatim, with the exception of words in brackets, which are inserted as explanatory of words used, and with the exception of the heavy faced index line at the beginning of each section.

[Effective May 5, 1870, 4 Baxter 234; 11 Pickle (95 Tenn.) 235. For general rules for construing the constitution, see page 91.]

PREAMBLE AND DECLARATION OF RIGHTS.

WHEREAS, the people of the territory of the United States south of the river Ohio, having the right of admission into the general government as a member state thereof, consistent with the constitution of the United States, and the act of cession of the State of North Carolina, recognizing the ordinance for the government of the territory of the United States northwest of the Ohio river, by their delegates and representatives in convention assembled, did on the sixth day of February, in the year of our Lord one thousand seven hundred and ninety-six, ordain and establish a constitution, or form of government, and mutually agreed with each other to form themselves into a free and independent state by the name of the State of Tennessee, and,

WHEREAS, the general assembly of the said State of Tennessee (pursuant to the third section of the tenth article of the constitution), by an act passed on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and thirty-three, entitled "An act" to provide for the calling of a convention, passed in obedience to the declared will of the voters of the state, as expressed at the general election of August, in the year of our Lord one thousand eight hundred and thirty-three, did authorize and provide for the election by the people of delegates and representatives, to meet at Nashville, in Davidson county, on the third Monday in May, in the year of our Lord one thousand eight hundred and thirty-four, for the purpose of revising and amending, or changing, the constitution, and said convention did accordingly meet and form a constitution, which was submitted to the people, and was ratified by them, on the first Friday in March, in the year of our Lord one thousand eight hundred and thirty-five, and,

WHEREAS, the general assembly of the said State of Tennessee, under and in virtue of the first section of the first article of the Declaration of Rights, contained in and forming a part of the existing constitution of the state, by an act passed on the fifteenth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, did provide for the calling of a convention by the people of the state, to meet at Nashville, on the second Monday in January, in the year of our Lord one thousand eight hundred and seventy, and for the election of delegates for the purpose of amending or revising the present constitution, or forming and making a new constitution; and,

WHEREAS, the people of the state, in the mode provided by said act, have

called said convention, and elected delegates to represent them therein; now, therefore, we, the delegates and representatives of the people of the State of Tennessee, duly elected, and in convention assembled, in pursuance of said act of assembly, have ordained and established the following constitution and form of government for this state, which we recommend to the people of Tennessee for their ratification: that is to say—

Preamble of the constitution of 1796.—[We, the people of the territory of the United States, south of the river Ohio, having the right of admission into the general government as a member state thereof, consistent with the constitution of the United States, and the act of cession of the State of North Carolina, recognizing the ordinance for the government of the territory of the United States northwest of the river Ohio, do ordain and establish the following constitution, or form of government, and do mutually agree with each other to form ourselves into a free and independent state, by the name of the "State of Tennessee."]

Preamble of the constitution of 1834.—[Whereas, the people of the territory of the United States, south of the river Ohio, having the right of admission into the general government as a member state thereof, consistent with the constitution of the United States, and the act of cession of the State of North Carolina, recognizing the ordinance for the government of the territory of the United States northwest of the river Ohio, by their delegates and representatives in convention assembled, did, on the sixth day of February, in the year of our Lord one thousand seven hundred and ninety-six, ordain and establish a constitution, or form of government, and mutually agreed with each other to form themselves into a free and independent state, by the name of the "State of Tennessee;" and whereas, the general assembly of said State of Tennessee (pursuant to the third section of the tenth article of the constitution), by an act passed on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and thirty-three, entitled, "An act to provide for the calling of a convention," did authorize and provide for the election by the people of delegates and representatives, to meet at Nashville, in Davidson county, on the third Monday in May, in the year of our Lord one thousand eight hundred and thirty-four, "for the purpose of revising and amending (or changing) the constitution;" we, therefore, the delegates and representatives of the people of the State of Tennessee, elected and in convention assembled, in pursuance of the said act of assembly, have ordained and established the following amended constitution and form of government for this state, which we recommend to the people of Tennessee for their ratification; that is to say:]

*ARTICLE I.

DECLARATION OF RIGHTS.

Section 1. All power inherent in the people; government under their control.—That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Limitations and restrictions of legislative power. 1 Sneed 637.
See also 3 Cold. 569; 6 Cold. 623.

Sec. 2. Doctrine of nonresistance condemned.—That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of ["to" in const. of 1796] the good and happiness of mankind.

Sec. 3. Right of worship free.—That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights

*The constitution of 1796 and 1834 are the same as this, except where the differences are indicated and pointed out. This article is the eleventh in the constitution of 1796.

of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode ["modes" in const. of 1796] of worship.

Various acts have been passed by the legislature along this line and the courts have consistently construed them very liberally. 5 Sneed 518.

An atheist is not disqualified for jury service because he is such. 1 Yerg. 212.

Sec. 4. No religious or political test.—That no political or religious test, other than an oath to support the constitution of the United States and of this state, shall ever be required as a qualification to any office or public trust under this state.

1. Consts. of 1796, art. 11, sec. 4, and of 1834, art. 1, sec. 4, were: "That no religious test shall ever be required as a qualification to any office or public trust under this state."

2. **Political.**—The act of 1866-7, ch. 26, secs. 3 and 9 (which was repealed by act of 1870, ch. 10, sec. 2), established a test oath to be taken by candidates for office. Hence, probably, the insertion of the word "political" in the above section.

Sec. 5. Elections to be free and equal; right of suffrage declared.—That elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.

1. **Unconstitutional restriction of elective franchise.**—The act of 1867-8, ch. 52, to the extent of authorizing the governor to set aside the registration of voters in any county, "when it shall be made to appear to his satisfaction that frauds and irregularities have intervened in the registration of the voters of such county," is repugnant to that portion of the constitution which is expressly ordained to secure to the people the right to elect the officers of the government. 6 Cold. 233, 253. See art. 4.

2. **Reason for change.**—The acts of 1865, ch. 16; 1865-6, ch. 33; 1866-7, ch. 26; and the acts of 1867-8, chs. 51-2, amendatory thereto (repealed by 1870, ch. 10, sec. 2), gave rise to this change in the constitution.

3. Consts. of 1796, art. 11, sec. 5, and 1834, art. 1, sec. 5, were: "That elections shall be free and equal."

Sec. 6. Trial by jury.—That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.

1. **Right of trial by jury where it was given at common law.**—The original provision was intended to protect the right of trial by jury as it existed at common law at the time of the adoption of the constitution. By "any litigation" is not meant every species of litigation whatsoever, but such as a man had the right to have tried by jury at common law, as it existed when the constitution was adopted. 9 Hum. 50; 6 Cold. 385; 4 Bax. 180.

2. And it is no violation of this right to authorize special and inferior tribunals to try jury causes without a jury, if a trial by a jury may be secured by appeal. 8 Yer. 446; 9 Yer. 417; 2 Tenn. 236; 2 Yer. 600.

3. Many small offenses were triable without a jury at common law, 9 Hum. 52; 6 Cold. 386. Consequently, such offenses may be tried by justices and police judges now. (Ib.)

4. For the same reason, punishments for contempt, summary proceedings against officers and attorneys, and the like, are no violation of this constitutional right, for they are proceedings according to the law of the land. 2 Yer. 99; M. & Y. 171, 174; Peck, 414, 334; 8 Pickle 642.

5. **Right of trial by twelve good and lawful and disinterested jurors.**—The right of trial by jury is the right of every citizen to have the facts involved in any litigation which he may have, tried and determined by twelve good and lawful men. 4 Bax. 180. He has the right to have twelve. 5 Sneed 561.

6. They must be entirely disinterested. Hence, an act taxing their fees to the losing party is void, because, as soon as they are sworn they become interested to that extent. 4 Bax. 183.

7. Consts. of 1796, art. 11, sec. 6, and 1834, art. 1, sec. 6, were: "That the right of trial by jury shall remain inviolate."

8. **Act causing amendment held unconstitutional.**—The amendment to this constitution was caused by the act of 1866-7, ch. 5, which made it a good ground of challenge in all civil and criminal cases that the person offered as juror was not a qualified voter of this state. This act was held unconstitutional in 3 Heis. 76, 77, and was repealed by the acts of 1869-70, chs. 4, 35 and 117.

9. **Demand for jury to be made, or it is waived.**—The statute requiring litigants to demand a jury, if one is desired, in the first pleadings, is valid, because the right of trial by jury is secured to every one who does not waive it in this way. 2 Lea 686; 3 Lea 116. See const., art. 1, secs. 8, 9.

10. A judge cannot dismiss a case or order a nonsuit without consent of plaintiff, for the party is entitled to a trial, and has the right to have the jury pass upon his case. 5 Cold. 288.

Sec. 7. People to be free from searches, seizures and general warrants.—That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offenses are not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

See fourth amendment to constitution of the United States.

1. **Fire marshal, right of to enter buildings adjoining premises where fire occurred.**—A fire marshal has no such right—in conflict with this section. *Rhinehart v. State*, 121 Tenn. 420, 117 S. W. 508.

Sec. 8. No free man to be disturbed but by law.—That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

See sec. 21, and art. 11, sec. 8.

1. **Consts. of 1796, art. 11, sec. 8, and 1834, art. 1, sec. 8.**—"That no free man," etc. As to who could and who could not, claim the privileges of a "free man," see *Meigs*, 331, 341. See constitution of the United States, fifth amendment.

2. **Separation of white and colored persons in street cars.**—The act of April 4, 1905 (acts 1905, ch. 150), requiring separation of white and colored passengers on street cars does not violate this section. *Morrison v. State*, 116 Tenn. 534, 95 S. W. 494.

3. **Remedy must be provided for property taken.**—A statute providing for taking private property for public use without designating by whom the owner's damages shall be paid, and without providing an effectual remedy to enforce the payment thereof, is, to that extent, unconstitutional and void—as, the "road law" of 1889, ch. 71, sec. 8. 5 *Pickle* 157.

4. **Legislature may change rules of evidence.**—The legislature has the constitutional power to enact laws establishing or changing the rules of evidence, and may shift the burden of proof from one party to the other. 7 *Pickle* 497, 498.

5. **Statutes enacted for prevention of fraud.**—Statutes enacted for the prevention of fraud do not contravene the constitutional provisions, relating to the depriving of life, liberty or property. *State v. Co-operative Store Co.*, 123 Tenn. 300, 131 S. W. 867.

6. **Law violating any express or implied provision of constitution is not the "law of the land."**—A law which violates any provision of the constitution, whether the provision be express or implied, cannot be the "law of the land," because an unconstitutional law is, in fact, no law at all; and, though the constitution does not expressly prohibit the taking of private property for private use, yet it has been held to do so by implication, and therefore a statute cannot be the "law of the land" which takes the private property of one person to give it to another for the latter's private use. 5 *Pickle* 535, 536, and cases cited.

7. **Prohibition of setting aside third verdict on facts constitutional.**—A statute forbidding courts to set aside the third verdict of the jury upon the sole ground that the evidence is insufficient to support it, where two former verdicts in the same case have been set aside upon motion of the same party for the same cause alone, but not forbidding such action where there is no evidence to support the verdict—that is, "where the conclusion follows, as a matter of law, that no recovery can be had upon any view which can be properly taken of the facts the evidence tends to establish"—is constitutional. 5 *Pickle* 320-331.

8. **Non-residents prohibited from shell fishing.**—A law prohibiting non-residents from shell fishing for profit without a license does not violate this provision. *State v. Ashman*, 123 Tenn. 654, 135 S. W. 325.

9. **Legislative extension of city limits not a deprivation of liberty or property.**—A special legislative act extending the territorial limits of a municipal corporation does not operate to deprive the owners of the included property either of liberty or property, and

does not therefore violate this section, nor fifth amendment of federal constitution. 5 Pickle 487, 488.

10. "Law of the land" and "due process of law" the same.—The "law of the land" is a general and public law, equally binding, under similar circumstances, upon every member of the community, administered in the due course of recognized and established legal proceedings, and which secures the individual from the arbitrary exercise of governmental power. 6 Cold. 245; 2 Hum. 296; 6 Heis. 189; 12 Heis. 107; 2 Yer. 555. See note 9.

11. "The law of the land" and "due process of law" are one and the same. 9 Bax. 207; 6 Cold. 228, 244.

12. Illustrations: A statute is not the "law of the land," and is, therefore, void.—Which authorizes a change of venue, in certain cases, only upon the affidavits of union men. 4 Heis. 363.

13. Which directs prisoners who have worked out their terms of imprisonment, to be detained thereafter, and forced to pay, in work, for such clothing as may have been supplied them during their imprisonment. 9 Bax. 203.

14. Which empowers the governor to annul a registration of voters which he considers fraudulent. 6 Cold. 233.

15. Which authorizes the guardian of certain children to sell the lands descended to them to pay their father's debts. 10 Yer. 71.

16. Which makes it a crime for the officers of one certain bank to do named acts. 2 Hum. 490.

17. Which imposes a duty, under a penalty, upon one sheriff and not upon the others of the state. 2 Sneed 119.

18. Which empowers the governor to appoint county commissioners with power to levy taxes. 3 Heis. 701.

19. Which permits the sale of liquors in municipal corporations when called incorporated towns, but prohibits the sale in such as are called taxing districts. 12 Lea 368.

20. Which permits cities having a certain population to bring suit without bond. 9 Bax. 239.

21. Which grants to an individual the right to issue bonds bearing interest at a higher rate than the fixed conventional rate (12 Heis. 106); and which directs certain pending suits to be dismissed. 2 Yer. 555.

22. Illustrations: A statute is the "law of the land," and therefore valid.—Which prohibits the purchase of witness fees. 3 Lea 376.

23. Which prohibits the sale of liquor within four miles of incorporated schools, except within the limits of incorporated towns. 1 Lea 97; 12 Lea 368.

24. And which gives an additional remedy against a particular state bank in favor of all holders of its notes of issue. 2 Yer. 260.

25. A turnpike which has organized under a statute cannot complain that it is a partial and invalid law. 8 Hum. 481. See note to const., art. 11, sec. 8.

26. Which prohibits the sale of pistols. 7 Lea 179.

27. Which imposes a penalty for the non-payment of taxes. 8 Heis. 550. City ordinances which prescribe pecuniary penalties for the infraction of same. 6 Cold. 382.

28. "Law of the land," classification.—Said act is not the "law of the land," because the classification upon which it is based is "unnatural, arbitrary, and capricious."

29. It operates to take private property for private use, contrary to an implied prohibition of the constitution, and is therefore invalid. 5 Pickle 541, 542.

30. Imprisonment at hard labor as punishment for misdemeanor constitutional legislation.—Statute authorizing judges of courts of criminal jurisdiction to punish misdemeanor convicts by imprisonment at hard labor in the county workhouse does not violate this section. 5 Pickle 723.

31. Regulation of loss on insurance policy valid.—A statute making void all stipulations in insurance policies which limit liability to less than the full amount of loss, if this does not exceed the amount of insurance, is not a disseizin of privileges or deprivation of property otherwise than by the law of the land or due process of law. 11 Pickle 248, 251-257.

32. "Law of the land" defined.—"Law of the land," correctly defined, means a law "which embraces all persons who are or may come into like situation and circumstances." It may be made to extend to all citizens, or be confined, under proper limitations, to particular classes. If the class be a proper one, it matters not how few the persons are who may be included in it. If all who are or may come into the like situation and circumstances be embraced in the class, the law is general, and not partial. 5 Pickle 521, 522, and cases cited.

33. Statute depriving lunatic of right to transmit his property to his next of kin is unconstitutional.—The act of 1885, ch. 88, providing that a lunatic, or non compos mentis,

shall transmit his personal property derived from an intestate husband or wife to the next of kin of such, and not to his own next of kin, is unconstitutional and void, because it deprives him of that which is recognized as property within this section, namely, the right to transmit his property by inheritance to his own descendants or next of kin. 5 Pickle 518-521.

34. Essentials to validity of statutes based upon classifications.—Whether a statute be public or private, general or special, in form, if it attempts to create distinctions and classifications between the citizens of this state, the basis of such classification must be natural, and not arbitrary. If the classification is made under this section for the purpose of subjecting a class to the burden of some special disability, duty, or obligation, there must be some good and valid reason why that particular class should alone be subject to the burden. 5 Pickle 522-535, and cases cited; 7 Pickle 494-497.

Sec. 9. Right of the accused in criminal prosecutions.—That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county [“county or district,” in const. of 1796 and 1834. 1 Cold., 338, 342] in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

1. Accusation; legislature prescribes what shall constitute and how crime to be charged.—It must be left to the legislature to prescribe what shall constitute the accusation and in what form the crime shall be charged. *State v. Stephens*, 127 Tenn. 282, 154 S. W. 1149.

2. “Right to be heard by himself.”—This is the right to argue his case in person. 3 Heis. 242.

3. This right is waived by not being demanded. 10 Lea 206.

4. The right to be heard in person, together with the right to meet the witnesses against him, require that no steps shall be taken in his absence. In felony cases the verdict must be in open court and in his presence. 4 Hum. 254; 2 Sneed 552; 3 Cold. 97; 7 Pickle 724.

5. The presence of his counsel alone with not suffice. 5 Cold. 15.

6. He may, in extreme cases, and when he is within the control of the court, waive his right to be present, and consent to proceedings which are purely preliminary in his absence. 10 Lea 206.

7. After his case has been given to the jury, the accused cannot waive his presence, or consent that the jury may separate. 10 Lea 206.

8. “Right to be heard by counsel.”—This ordinance was intended to soften the rigor of the common law, which gave to persons accused of crime the right to appear for themselves, but deprived them of the right to be heard through, and represented by, counsel learned in the law. It is very seldom that the accused exercises the right of being heard by himself, still, if he were to demand it, the court would be obliged to allow him to represent himself. 10 Lea 205.

9. Indictment must be returned where offense committed.—Where the place in which the offense was committed is transferred to a new county before indictment had, the indictment must be returned in the new county. *State v. Marshall*, 124 Tenn. 230, 135 S. W. 926, 927; *State v. Robert Donaldson*, 3 Heis. 48; *Speck v. State*, 7 Bax. 46; *Ex parte Moran*, 144 Fed. 594, 75 C. C. A. 396; *Moran v. Territory*, 14 Okla. 544, 78 Pac. 111.

10. Putting defendant under rule while a codefendant testifies, erroneous.—One of several defendants jointly upon trial for crime cannot be put under the rule while a codefendant gives evidence on his own behalf. Such constrained absence of a defendant during his trial upon a criminal charge is in violation of his constitutional “right to be heard by himself and counsel.” 7 Pickle 723.

11. Counsel may read and argue law to jury.—In criminal cases, counsel has the right to read law books to the jury and to argue the law of the case to them, and it is error in the court to refuse to allow the exercise of such right. 11 Lea 201.

12. Number of counsel may be limited.—While the defendant has the right to be heard by counsel, the court may limit the number to be heard, even to one. 3 Hum. 241.

13. Therefore, lawyers cannot be taxed for the privilege.—This provision recognizes the lawyer as an essential agent in judicial proceedings, and hence a privilege tax on lawyers is unconstitutional and void, as tending to burden and interfere with the successful working of the courts, and because it may be exercised, even to the closing of the courts.

The legislative department cannot so interfere with the judicial department. 8 Heis. 636, 637.

14. **A copy of the accusation.**—Section 14 requires the accusation to be in writing, and the accused has the right to have a copy thereof, irrespective of the grade of the offense. 9 Bax. 230; 6 Cold. 298; 3 Head 26.

15. This right is waived by not demanding it. 9 Bax. 230.

16. And if the record does not show a failure to furnish a copy, it will be presumed that it was furnished or waived. The right to a copy of the accusation extends to all criminal cases. 3 Head 28; 6 Cold. 297, 298; 6 Bax. 429; 9 Bax. 229, 230; 11 Lea 712.

17. The nature and cause of the accusation must be set forth. 3 Head 28; 3 Cold. 125; 3 Heis. 257, 258; 3 Hum. 370.

18. **The right to meet the witnesses; qualifications of the rule stated.**—This provision has reference to the witnesses for the state, and not to the witnesses for the accused himself. 4 Lea 328.

19. Nevertheless, the superiority of the evidence of a candid and honorable witness, delivered in person, in the presence of the jury, over his deposition, is so obvious that the accused will not be forced to go to trial when his witness has been summoned, and is absent without his fault or neglect, although the attorney-general is willing to concede that the witness will prove what it is stated he is relied upon to establish, and that it is true. Meigs, 197.

20. But where the witness resided out of the state, and no steps (so far as appears) had been taken to procure his deposition, and the attorney-general agreed that the statements of the facts which the accused made affidavit he could establish by the non-resident witness, might be read as the deposition of such witness, and the court proposed to, and accordingly did, charge the jury to consider such statement as the testimony of a credible witness, the supreme court refused to reverse. 4 Lea 327.

21. He is entitled to meet the accusing witnesses face to face. But where such witness was examined on a former trial or before a committing court, in the presence of the accused, with an opportunity for cross-examination, and the witness has since died, the testimony of such deceased witness may be proved against the accused on a subsequent trial. 10 Hum. 479; 2 Yer. 59; 6 Bax. 525; 7 Bax. 80; Meigs, 108; 3 Hum. 345; 6 Lea 725.

22. In such case the exact words of the deceased witness need not be proved, nor even the substance of all he said. It is sufficient to prove, by persons who heard it, the substance of the witness' testimony on the particular subject which such witness was called to prove. But all the witness said on any one subject must be taken together, and a party should not be allowed to prove a statement made by a deceased witness, unless he can also give the cross-examination upon the same subject. 10 Hum. 479; 2 Heis. 367; 7 Bax. 81.

23. But such evidence is inadmissible if he is alive, although he is out of the state. 6 Bax. 525.

24. The admission of dying declarations is no violation of this clause. Meigs, 277.

25. Authenticated copies of records are admissible, except when the issue is as to forgery or perjury in making the original. 7 Cold. 99. *Triggally v. The Mayor*, 6 Cold. 383, on this point is not the law.

26. **Trial by an impartial jury; examples of competency and incompetency.**—The accused is entitled to a jury which can enter upon the examination of his case, conceding to him the full benefit of that presumption of innocence which the law gives him as a matter of right. 6 Bax. 475.

27. Every juror must be disinterested and impartial in feeling and in opinion. 6 Bax. 476; 8 Pickle 100.

28. If a juror has formed an opinion from conversing with the witnesses (1 Yer. 432); or from reading a statement of the facts in the newspapers (6 Bax. 466); or from a narrative of the facts and circumstances from some one not a witness, who professes to have ascertained the facts, believed by the juror to be true (3 Hum. 377; 9 Yer. 193); or from a personal knowledge of the facts (10 Hum. 458); or if, before the trial, he has expressed decided convictions as to the guilt of the accused (1 Sneed 219), he is not such an impartial juror as the constitution requires. When a juror has expressed a decided adverse opinion before the trial, he ought to be rejected when presented, even though he states that he no longer has any opinion, unless such change is satisfactorily explained. 4 Sneed 344.

29. An opinion not based upon knowledge or upon reliable information of the facts, does not disqualify a juror. 2 Swan 582; 3 Hum. 375; 11 Hum. 232; 12 Lea 436.

30. In a case in which it is not disputed that a person was killed, and that the accused killed him, the opinion of a juror which goes to these facts only does not disqualify him, because there is in such case the absence of an opinion as to the question of guilt or innocence. 12 Lea 436.

31. If an examination of the juror who has formed and expressed an opinion adverse to the accused, leaves it doubtful whether such opinion is based upon knowledge or re-

liable information of the facts, or upon rumor and report, he should be rejected by the trial judge. 10 Hum. 460; 2 Swan 585.

32. Nevertheless, as the question of a juror's competency is one of mixed law and fact, the judgment of the trial judge will not be reversed by a reviewing court unless the error is manifest. 12 Lea 436.

33. When a juror has such an opinion as disqualifies him under the rule as above stated, the belief on his part that he can render a fair and impartial verdict, notwithstanding such opinion, does not render him competent. 6 Bax. 474; 12 Lea 436.

34. The right to object to a juror on the ground of opinion is waived if (when the fact is known) the juror is not excepted to (4 Sneed 343), and all remaining peremptory challenges exhausted by the accused. 3 Heis. 470. See note to sec. 6.

35. Competent jurors are not rendered incompetent by their association with incompetent jurors who have been discharged for their discovered incompetency before sworn, unless they have been contaminated by their such association. 11 Lea 720; 14 Lea 169; 8 Pickle 99, 100.

36. If the jury is made up of citizens of any part of the county, who are otherwise qualified, the requirement of the constitution is complied with. And the provision in a statute establishing a special court for part of a county, requiring jurors, grand and petit, to be selected for that court from that part of the county alone embraced within the jurisdiction of the court, is not in conflict with the constitution. 8 Pickle 97-100.

37. A juror is not incompetent because he said "from what he found out he thought if prisoner didn't hang they would penitentiary him for life," it not appearing that the statement made by him was founded upon what purported to be evidence that had been or would be introduced on the trial, or that any witness, or anyone who had heard a witness, had conversed with him. 11 Lea 47.

38. After verdict, a clear case of incompetency must be proved against a juror to justify the granting of a new trial upon the ground that he has formed or expressed an opinion about the case before he was selected; and such juror is a competent witness upon the trial of such issue, and his denial of incompetency, supported by proof of his good character or by corroborating circumstances, may be sufficient to rebut the evidence of one or more attacking witnesses. 3 Head 373; 5 Lea 610; 11 Lea 47; 15 Lea 547, 548; 7 Pickle 623, 624; 8 Pickle 105.

39. The act of 1870-71, ch. 57, providing that no juror should be disqualified by any opinion which he may have based upon any newspaper publication of an account of the facts of the offense with which the prisoner is charged, is unconstitutional and void, because it violates the right to a trial by an impartial and unprejudiced jury. 6 Bax. 466.

40. **The venue, and change of.**—The county in which the crime was committed is the county as organized and established, regardless of the validity of the proceedings or laws under which it was done. The validity of such proceedings and laws cannot be questioned by the accused, on trial, in that case. 7 Bax. 52.

41. This constitutional right may be waived by the accused. 1 Cold. 350.

42. He can, under some circumstances, change the venue. 8 Yer. 511.

43. But it cannot be changed by the state without his consent, even though authorized by a statute. 1 Cold. 344.

44. When a county is divided, or a new county established out of fractions of old ones, the accused must be tried in that county which includes the place where the crime was committed. 3 Heis. 48; 7 Bax. 52.

45. A statute authorizing a trial in one county for a crime committed within a quarter of a mile of its boundary line, in another county, is void. 1 Cold. 338.

46. Where the fatal blow is given in one county and the death occurs in another, the county in which the blow was given is that in which the offense is committed. 9 Hum. 658.

47. An accessory before the fact to the crime of murder must be tried in the county where the murder was committed. 8 Bax. 96.

48. One accused of bigamy must be tried in the county where the second marriage took place. 3 Head 545.

49. For unlawful cohabitation, he may be tried in any county in which such cohabitation takes place. (Ib.)

50. A prisoner in custody, who knows his destination, may be indicted in the county of his destination for bringing property therein which he stole in another county on the way. 9 Bax. 362.

51. To warrant a conviction, the state must prove the venue, and the record must show that it was proven; and a statute which prohibits the reversal of a judgment because the bill of exceptions omits to state that the venue was proven in the court below, is void under this section. 3 Heis. 480-482.

52. **Trial by jury not abridged.**—The legislature, by statute, may declare that proof of certain enumerated facts shall constitute prima facie evidence of fraudulent intent in the prosecution for an offense created by the statute, and such provision does not abridge the right of trial by jury. 11 Pickle 564-567.

53. **Not compelled to give evidence against himself.**—The defendant cannot be compelled to testify against himself, and the fact that he does not testify as a witness in his own behalf (under the act of 1887, ch. 79) does not justify any inference of guilt, and any adverse comment upon such failure to testify, made by the state's attorney in his argument before the jury, constitutes reversible error, where excepted to, and the court fails to properly instruct the jury and to stop counsel from such argument. 5 Pickle 231; 7 Pickle 643.

54. **Confessions of guilt made by the accused under arrest, through the influence either of the hope that such confession will be to his advantage, or fear that if he does not confess, it will be the worse for him, are inadmissible, when such hopes or fears were excited either by officers or guards, or prosecutors or private persons.** 8 Bax. 526; 6 Bax. 253; 3 Heis. 243, 412; 8 Bax. 376; 1 Sneed 75.

55. **While it has been intimated that this rule is one of mere evidence (8 Bax. 525), yet the true reason is a constitutional one—namely, that the confession under such circumstances is extorted, and therefore is, in effect, compelling the accused to give evidence against himself.** 8 Bax. 377.

56. **Mere fears of the ultimate consequences of his crime, such as commonly work upon a guilty prisoner when confronted by his accuser, are not sufficient to exclude a confession made under their influence.** 8 Bax. 377.

57. **While a confession, extorted as above stated, is inadmissible, yet, if it reveal a knowledge of facts (e. g., where stolen goods are concealed), which are otherwise established, so much of it as shows such knowledge is admissible, and the onus is upon the accused to reconcile his knowledge with his innocence.** 3 Heis. 225, 341; 4 Lea 26.

58. **A prisoner arrested near the place where the crime was committed may be compelled by his captors to walk on the earth where footprints made by the guilty person are found, for the purpose of comparing their tracks. Sam Horton v. The State, Nashville, MSS. But he cannot be compelled to do such a thing in the presence of the jury. He cannot even be requested by the officers of the state, in the presence of the jury, to make his tracks (in a pan of mud brought into court) for the purpose of comparison, although informed by the court that he was not obliged to do it, for the reason that, by the act of declining, he is compelled to make evidence against himself.** 5 Bax. 619.

59. **A witness properly subpoenaed before the grand jury to testify in regard to gaming, who refuses to answer touching his knowledge of gaming, although his answer may show his own guilt, is guilty of contempt, for which he may be fined and imprisoned.** 8 Bax. 89; 13 Lea 52. In the former case, Judges Nicholson and Turney dissented. In the latter case, the dissenting opinion of Judge Freeman, in which Judge Cooper concurred, agreed with the former case, while the principal opinion, delivered by Judge Turney, overruled the former case, but he was alone on this particular point, as Judges Deaderick and Cooke limited their concurrence to other points decisive of the case, and did not express their concurrence as to this point. See Code, sec. 5089 (of 1858), sec. 5914 (M. & V.)

Sec. 10. Not to be put twice in jeopardy.—That no person shall, for the same offense, be twice put in jeopardy of life or limb.

1. **When in jeopardy.**—A man is in jeopardy, in a constitutional sense, as soon as he has been put to trial in a court of competent jurisdiction upon a valid indictment, by a jury sworn upon an issue to make deliverance. 1 Hum. 260; 5 Cold. 313; 4 Bax. 253; 2 Sneed 290; 3 Sneed 687; 3 Heis. 68; 9 Bax. 487; 3 Heis. 254.

2. **When not in jeopardy.**—Although a man may have once been in jeopardy (as above defined), the conditions are numerous under which he may be tried or put in jeopardy again. If a verdict was returned upon the first trial, when the accused was absent, in prison, or as a fugitive (2 Sneed 552; 3 Cold. 97); or absent in custody (2 Lea 156); or if the first jury was discharged with his consent, or discharged without his consent after it became impossible for them to agree; or if a new trial was granted him; or if a juror became too ill to proceed; or if the court was compelled by law to adjourn; or if the accused, by his misconduct, placed it out of the power of the jury to investigate his case correctly; or if he was prevented from attending the trial by the visitation of Providence; or if the judge died during the trial, the accused may be put to trial a second time. 10 Yer. 332; 1 Hum. 103, 259; 3 Hum. 72; 3 Sneed 475; M. & Y. 278; 5 Hum. 603; 5 Cold. 313; 3 Heis. 493; 8 Bax. 571; 4 Lea 363; 97 U. S. 520; 2 Meigs' Dig., p. 903 (2d ed.)

3. **Judgment of justice in small offenses bar to indictment.**—A judgment by a justice of the peace under the small offense laws is a bar to an indictment for the same offense by the state. 9 Hum. 43. See, also, 9 Hum. 677; 10 Hum. 431; 11 Hum. 599; 1 Swan 34; 2 Swan 493; 1 Head 291; 5 Cold. 8.

4. **Offense may be against state, city, and United States.**—The same act may be an offense against the laws of the United States and of Tennessee (3 Head 29; 4 Cold. 159), or against the laws of a city and of the state, and in such case the offender may be tried by both. 6 Bax. 567; 3 Lea 649; 16 Lea 250, 251.

Sec. 11. **No ex post facto laws.**—That laws made for the punishment of acts [“facts” in const. of 1796] committed previous to the existence of such laws, and by them only declared criminal, are contrary to the principles of a free government; wherefore no ex post facto law shall be made.

Ex post facto laws.—Definition and discussion of. 2 Overton 5.

Sec. 12. **No corruption of blood or forfeiture of estates; no deodands.**—That no conviction shall work corruption of blood or forfeiture of estate. The estate of such persons as shall destroy their own lives shall descend or vest as in case of natural death. If any person be killed by casualty, there shall be no forfeiture in consequence thereof.

See 4 Cates 515; 10 Cates 39; also acts 1905, ch. 11.

Sec. 13. **No unnecessary rigor.**—That no person arrested and [“or” in const. of 1796] confined in jail shall be treated with unnecessary rigor.

Sec. 14. **Crimes punished by presentment, etc.**—That no person shall be put to answer any criminal charge but by presentment, indictment [“that no freeman,” etc., in consts. of 1796, art. 11, sec. 14, and 1834, art. 1, sec. 14] or impeachment.

1. **Trial before justice of the peace.**—Trial and punishment of offenders against the game law before a justice of the peace, is not violative of this section. State v. Sexton, 131 Tenn. 35, 114 S. W. 494, 496.

2. A misdemeanor is not a “criminal charge” in the constitutional sense. 9 Hum. 50. See note to sec. 6.

3. This section refers to criminal proceedings only. Peck, 339.

Sec. 15. **What offenses bailable; privileges of habeas corpus.**—That all prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident, or the presumption great. And the privileges of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the general assembly shall declare the public safety requires it.

1. **Order of rearrest of convict discharged on habeas corpus is void.**—Where the judgment of conviction is void, and the convict is, for that reason, released from imprisonment on habeas corpus before another competent court, the judge of the court by which he was so convicted cannot order his rearrest and detention. 8 Pickle 523, 524.

2. **Change from former constitutions.**—“Unless when in case of rebellion or invasion, the public safety may require it.” Consts. of 1796, art. 11, sec. 15, and 1834, art. 1, sec. 15.

3. See also 131 Tenn. 405.

Sec. 16. **Excessive bail, fines, etc.**—That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

1. **Statute holding federal license prima facie evidence of selling liquor—constitutional.**—A statute making the possession of a federal liquor license, prima facie evidence of the selling of intoxicating liquors is not unconstitutional. (Acts 1903, ch. 355.) 125 Tenn. 371.

2. **Cruel and unusual punishments, what are not.**—Fine and imprisonment in the county jail, or in the penitentiary, for crimes and offenses, are not cruel and unusual punishments within the meaning of this provision—as, for instance, under the act of 1869-70, ch. 54. 3 Heis. 164, 165.

3. **Excessive fines and punishments, what are not.**—The forfeiture of five hundred dollars given for turbulent and violent conduct by act of 1875, ch. 130, sec. 2, is not violative of this section as forbidding excessive fines and punishments. 9 Bax. 584; 8 Lea 631.

4. **Courts, power and duty of under this section.**—The courts have never declared void an act of the legislature under this section, but they have such power and in a proper case presenting the question, it would be their undoubted duty to do so. Brinkley v. State, 125 Tenn. 371, 143 S. W. 1120, 1122.

5. **Fines, accumulation of, not allowed under statute prescribing fines for certain offenses.**—It is the duty of a party complaining to sue for the first violation, in order that the company or person attacked may have due notice of the complaint and an opportunity of complying. *Home Tel. Co. v. People's Tel. & Tel. Co.*, 125 Tenn. 270, 141 S. W. 845, 847.

Sec. 17. Courts shall be open; redress of injuries; suits against the state.—That all courts shall be open; and every man, for any injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct.

1. **Constitution of 1796, difference.**—In the constitution of 1796 there were added to this provision the words: "Provided the right of bringing suit be limited to the citizens of this state."

2. **Due course of law.**—Laws which require unjust taxes to be paid, but which allow suit to be brought to recover the money afterward, afford a remedy by due course of law. 8 Heis. 805; 9 Bax. 472; 96 U. S. 69; 92 U. S. 575; 103 U. S. 732. See sec. 8 and notes, ante.

3. When a man in pursuing his remedy by "due course of law"—that is, by a suit pending in one of the courts—an act of the legislature requiring his suit to be stricken from the docket is in violation of this provision, and void. 6 Yer. 119, 132. So is an act requiring that a certain class of cases be dismissed. 2 Yer. 554.

4. **City council not a "court."**—A city council vested with judicial powers is not a court within this section. *Staples v. Brown*, 113 Tenn. 639, 85 S. W. 254.

5. **Courts shall be open.**—A rule of practice that a motion for a new trial shall be made on the Saturday following the trial, violates the provision that the courts shall be open. 7 Yer. 504.

6. See also 82 Tenn. 91; 98 Tenn. 66.

7. **Without delay.**—The issuance of an execution cannot be delayed by an act of the legislature when, under the law, it should have issued immediately. *Peck*, 15.

8. **Without sale.**—A tax on litigation is not a sale of justice. 7 Heis. 35; 3 Lea 525. The expense of a special jury may be taxed to the unsuccessful party (3 Bax. 415), but not that of an ordinary jury. 4 Bax. 174.

9. **Suits against the state.**—The provision as to suits against the state is inoperative until effectuated by legislation. *Cooke*, 218; 9 Bax. 474. See 8 Lea 121.

10. Acts permitting the state to be sued may be repealed, and no suit can be maintained thereafter. 3 Bax. 395; 9 Bax. 479.

Sec. 18. No imprisonment for debt.—The legislature shall pass no law authorizing imprisonment for debt in civil cases.

1. **Constitutions of 1796, art. 11, sec. 18, and 1834, art. 1, sec. 18, were:** "That the person of the debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law."

2. **Imprisonment for debtor's fraud not imprisonment for debt.**—A statute which declares it a misdemeanor to fraudulently obtain hotel accommodations, or to fraudulently remove baggage to defraud the proprietor, inflicts imprisonment for the debtor's fraud, and not for his debt, and, therefore, does not authorize imprisonment for debt, and is constitutional and valid. 11 Pickle 559-563.

3. **Acts of 1887, ch. 209, void under this section.** 92 Tenn. 81; 130 Tenn. 276.

4. **Statute void as authorizing imprisonment for debt.**—A statute which declares it a misdemeanor, punishable by fine, for any person to refuse to cash or redeem in lawful currency his check or scrip when presented within thirty days after its issuance, attempts to create a crime for the nonpayment of such debts, and for such crime provides a penalty, which may be followed by imprisonment, and is, therefore, violative of the spirit, if not the letter, of this section, and is unconstitutional and void. 8 Pickle 81.

5. **Statute abolishing imprisonment for debt.**—Imprisonment for debt was abolished in this state by the act of 1842, ch. 3, which, so far as it operated to release debtors then undergoing imprisonment, was not retrospective in the sense of the constitution (sec. 20 of this article), did not impair the obligation of the contract with the debtor, but only affected the remedy, and was valid, since a substantive remedy was still left. 4 Hum. 12, 21.

6. **This has no reference to criminal cases.**—This section has no reference to fines, penalties, and costs imposed upon defendants convicted of misdemeanors in violation of state laws and municipal ordinances. 10 Lea 497; 78 Tenn. 497; 120 Tenn. 458.

7. **Acts 1913, 1st ex. sess., ch. 29, is void under this section.** 103 Tenn. 604.

8. Acts 1899, ch. 11, providing for the redemption in cash of coupons, script, etc., is constitutional. 103 Tenn. 604.

9. Fraud of debtor in removing property.—See 95 Tenn. 546; 106 Tenn. 430.

10. Execution returned "unsatisfied."—A bill of discovery filed upon an execution returned "unsatisfied" is not within the prohibition. 76 Tenn. 688; 81 Tenn. 200.

11. Exception to above rule—(Acts 1911, ch. 44.). 130 Tenn. 403.

Sec. 19. Printing presses free; freedom of speech, etc., secured.—That the printing presses shall be free to every person ["who undertakes" in const. of 1796 and 1834] to examine the proceedings of the legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof.

The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication ["publications" in const. of 1796] of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other criminal ["criminal" not in const. of 1796] cases.

Defamatory utterances.—Individuals nor the public press are immune from liability for defamatory remarks, regarding character and conduct of officers, or candidates for office. 84 Tenn. 176.

Sec. 20. No retrospective law, etc.—That no retrospective law, or law impairing the obligations of contracts, shall be made.

1. **This provision defined.**—The constitution is to be interpreted as if it read as follows: "No retrospective law impairing the obligation of contracts, nor any other law impairing their obligation, shall be made." Retrospective laws are not forbidden to be passed. Such retrospective laws only are forbidden as impair the obligation of contracts, or divest or impair vested rights. 9 Heis. 847; Peck 17; 2 Swan 409, 410; 10 Pickle 148. For example, laws legitimating children are valid, if they interfere with no vested rights. 3 Heis. 668. Numerous instances of valid retrospective laws are given in Peck, 15-17; 2 Swan, 410-412; 10 Pickle 148.

2. **Existing law part of contract; remedy may be changed.**—All laws in force when a contract is made, which affect its validity, construction, duration, discharge, evidence, and enforcement, constitute its obligation, and are as much a part of it as if expressed in its stipulation. 4 Hum. 24; 16 Wall. 317; 6 Bax. 230; Peck 21; 4 Heis. 390; 11 Lea 130.

3. That obligation cannot be impaired. But a change of the laws for the enforcement of contracts, or such as prescribe the remedy, is not necessarily an impairment of the obligation. The remedy existing at the time a contract is made may be changed, limited, enlarged, or abolished without impairing the obligation of the contract, provided a substantial remedy is left which is not seriously trammelled with conditions and restrictions. 96 U. S. 74; 107 U. S. 775; 9 Bax. 472; 4 Hum. 20; 6 Heis. 102; 9 Heis. 847; 11 Heis. 86, 87; 11 Lea 500; 6 Yer. 138; 10 Yer. 79; 2 Head 283; 16 Wall. 317; 10 Pickle 148.

4. **Contracts not to be impaired; police powers excepted.**—All contracts are subject to the police power of the state. 4 Lea 585; 12 Lea 124; 94 U. S. 114; 101 U. S. 820; 97 U. S. 33; Meigs 425; 3 Lea 474; 10 Pickle 148.

5. Except in the just exercise of that power, no state can pass a law impairing in any degree the obligation of the contracts made either by it or by individuals. Const. U. S., art. 1, sec. 10; 8 Wall. 44; 3 Head 317; 4 Lea 727; 97 U. S. 454; 2 Yer. 534; 10 Pickle 148.

6. And such laws are inoperative as to existing contracts, whether in the form of statutes or constitutions. Const. U. S., art. 1, sec. 10; 9 Yer. 494; 1 Heis. 284; 6 Lea 407; 2 Heis. 483; 6 Heis. 97.

7. **Release of privilege taxes by general law, valid.**—The legislature has the power, by a general law retroactive in its operation, to release privilege taxes due the state and counties. 3 Pickle 214.

8. **Convicts' "good time" law, so far as retrospective, is unconstitutional.**—A statute allowing convicts certain credits on their terms of imprisonment, in consideration of good conduct, is unconstitutional so far as it is retrospective or applies to sentences in force at the time of its passage, because to that extent it is an attempted exercise of the pardoning power, which is vested alone in the governor, under the constitution. 3 Pickle 52. See 4 Pickle 335 (syl. 6 and 7).

9. **Examples of laws impairing contracts and laws not impairing contracts.**—An act depriving the holders of notes issued by an insolvent state bank of its assets, impairs the obligation of contracts. 5 Bax. 1.

10. And an act exempting property from legal seizure for the satisfaction of debts contracted before its passage is invalid for the same reason. 7 Bax. 384; 6 Bax. 225; 1 Bax. 220; 2 Bax. 148; 9 Bax. 592.

11. So, also, is an act extending the time for which the issuance of execution upon judgments (based upon existing contracts) may be stayed. 6 Heis. 93; 4 Bax. 520.

12. An act ordering a pending suit, which cannot be renewed elsewhere, to be dismissed, is void. 6 Yer. 138. Upon the other hand, acts restricting the remedy designed to protect the state in receiving tax receivable bank notes and coupons are valid. 107 U. S. 769; 9 Bax. 472; 96 U. S. 69; 8 Lea 715; 97 U. S. 454.

13. An act abolishing imprisonment for debt is valid as to existing contracts. 4 Hum. 13. An act which gives an additional remedy, or advances the existing one, is valid. 2 Yer. 123, 260; 10 Yer. 78; 9 Heis. 847, 848; 10 Pickle 148.

14. An act *malum in se*, committed before the passage of a statute, may be made a ground for divorce thereby. 2 Tenn. 2. See note to sec. 17.

15. **Charter exemption from taxation before this constitution, valid.**—Charter exemption from taxation, granted and accepted prior to the adoption of this constitution, constitutes an inviolable contract binding upon the state, which cannot be impaired by subsequent legislation. 7 Pickle 549 (citing 8 Bax. 541; 13 Lea 408; 9 Yer. 490; 2 Pickle 614; 4 Wheaton 519; 95 U. S. 684); 7 Pickle 560, 561 (citing, in addition, 5 Cold. 600; 6 Bax. 527).

16. **Charter rights of turnpike company not violated by creation of new roads and bridges, when.**—Charter rights of turnpike companies are not violated by creation of new roads and bridges, when not, in intent and effect, mere shun pikes, but reasonably essential to the public convenience, and not located within the territorial limits exclusively devoted to the turnpike company by a reasonable and valid provision of its charter. 7 Pickle 291.

17. **Acquirement of homestead by marriage of debtor does not impair obligation of contract.**—A debtor who has acquired the right to homestead by reason of his marriage, can assert that right against antecedent debts in lands owned by him at the time such debts were contracted, if his creditors had fixed no lien upon the lands at the date of the marriage; and the obligation of contract between debtor and creditor is not impaired by allowance of homestead to debtor in such case. 4 Pickle 275.

18. **Statute curing void charter, constitutional.**—A statute curing defective acknowledgements that rendered corporate charters void, and thereby destroying an existing personal liability of the corporators under the contract of the company does not impair any obligation of the other parties to the contract. 10 Pickle (94 Tenn.) 146-153, and cases cited.

19. **Sale of school lands held by state.**—An act authorizing sale of such lands held under an act of congress, to be sold in violation of the contract is unconstitutional. 8 Lea (76 Tenn.) 285, dissenting; 2 Cates (110 Tenn.) 73.

Sec. 21. **No man's services or property taken without consent or compensation.**—That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor.

1. See notes under secs. 1844-1880. See fifth amendment to constitution of the United States.

2. **Lien on property of guests of hotels not a violation of this section.**—A statute giving hotels and boarding housekeepers a lien on baggage and other personal property of the guest or patron, does not violate this section. *Nance v. O. K. Houck Piano Co.*, 128 Tenn. 1, 155 S. W. 1172.

3. **Compensation; private property not taken for private use.**—Private property may be taken for public use upon making just compensation, but it cannot be taken for a private use at all. 3 Yer. 41; 2 Swan 549; 4 Cold. 419.

4. **What constitutes "just compensation."**—The just compensation for land, required by the constitution and laws, is the fair market cash value of the land taken, if the owner were willing to sell and the taker desired to buy that particular quantity, at that place, and in that form, with incidental damages and interest. 2 Swan. 437; 9 Heis. 509; 12 Heis. 5; 4 Pickle 513, 514, 530.

5. **Provision for payment sufficient; prepayment not necessary.**—It is not required that payment shall precede the taking. It is sufficient when property is taken by the state or by a municipal corporation by authority of the state, if provision is made by the law for the owner to obtain compensation, and an impartial jury is provided for assessing it. 7 Heis. 622; 6 Cold. 161; 12 Heis. 623; 3 Head 600.

5a. The constitution does not require "incidental" damages to be paid. 12 Heis. 5. For a definition of such damages, see sec. 1857 and notes.

6. **Services of jurors and lawyers without compensation, when.**—A man may be required to serve as a juror without compensation. 4 Bax. 179. A lawyer may be required to defend the causes of poor persons, in both civil and criminal cases, without compensation. 3 Heis. 256; 5 Bax. 692.

7. **Compensation must be secured beyond all contingency when property taken by railroads; statute of limitations applicable.**—When it is taken for such a public use as a railroad, the compensation must be secured beyond all contingency. 7 Heis. 541. When thus secured, and the company has gone into possession, the owner can be required to institute proceedings to have his damages assessed, within a limited time, or be barred, as in other cases. 12 Heis. 623.

8. **Law for taking property without remedy for payment void.**—A law providing for the taking of private property for public use, without designating by whom the owner's damages shall be paid, and without providing an effectual remedy to enforce payment thereof (as the act of 1889, ch. 71, sec. 8), is, to that extent, unconstitutional and void. 5 Pickle 157.

9. **No application to police powers.**—This inhibition has no application as a limitation of the exercise of those police powers which are necessary to the safety and tranquillity of every well-ordered community, nor of that general power over private property which is necessary for the orderly existence of all governments. 14 Lea 626.

10. **Extension of corporate limits does not deprive owners of property included.**—The extension of the territorial limits of a municipality by a special statute does not operate to deprive the owners of the included property of their property, and does not violate this section. 5 Pickle 487, 488.

11. **Compensation for damage done property in improvement of city.**—A person who has occupied and improved property outside of a city has a right to compensation where the city extended its limits, and, in grading a street made necessary by such extension, has knocked down his fences, and caused surface water to overflow his property and injure his cellars, walls, and shrubbery. 1 Pickle 100; 3 Bax. 340.

12. **Impairment of franchise not taking property when lawful.**—The impairment of a turnpike company's franchises and revenue by the lawful creation of new public roads and bridges, as stated in note 16 under the preceding section, does not constitute such taking of its property for public uses as will render the county liable for damages thus inflicted. 7 Pickle 291.

13. **Unhealthy houses as nuisances.**—Such places may be abated under acts 1879, ch. 11, 14 Lea (82 Tenn.) 622.

Sec. 22. No perpetuities or monopolies.—That perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed.

1. **Sections exchanged in constitution of 1796.**—This section and the next were exchanged in place or number in the constitution of 1796.

2. **Perpetuities and monopolies.**—A perpetuity is defined in 2 Sneed 354, 355.

3. A monopoly is defined in 5 Heis. 529.

4. A bequest to perpetually maintain a particular graveyard or garden is void. 12 Heis. 635; 12 Lea 328.

5. The exclusive right of a company to furnish a city water for thirty years is not a monopoly. 5 Heis. 529.

6. A charity may be created without limit of time. 2 Sneed 351-355.

7. **Legislature cannot confer on municipalities.**—The legislature cannot confer upon a city power to grant an exclusive franchise to conduct a business which is of common right. *Noe et al. v. Mayor and Aldermen of town of Morristown*, 128 Tenn. 350, 161 S. W. 485, 487.

Sec. 23. People may assemble and instruct.—That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by addresses or remonstrance.

See 7 Cates (115 Tenn.) 445, and 14 Cates (122 Tenn.) 193.

Sec. 24. Militia; military subordinate to civil authority.—That the sure and certain defense of a free people, is a well-regulated militia; and, as standing armies in time of peace are dangerous to freedom, they ought to be avoided as far as the circumstances and safety of the community will admit; and that

in all cases the military shall be kept in strict subordination to the civil authority.

Carrying weapons.—The legislature may prohibit carrying all weapons. 3 Heisk. (50 Tenn.) 165, 200.

Sec. 25. Punishment under martial and military law.—That no citizen of [“in” in const. of 1796] this state, except such as are employed in the army of the United States, or militia in actual service, shall be subjected to punishment under the martial or military [“or military” not in const. of 1796 and 1834] law. [The remainder of this section was not in the const. of 1796 and 1834.] That martial law, in the sense of the unrestricted power of military officers, or others, to dispose of the persons, liberties or property of the citizen, is inconsistent with the principles of free government, and is not confided to any department of the government of this state.

Applies to citizens in military service only.—This section applies only to citizens in military service. 3 Heisk. (50 Tenn.) 176.

Sec. 26. Right to bear arms; legislature to regulate wearing of arms.—That the citizens [“freemen” in const. of 1796, and “free white men” in const. of 1834] of this state have a right to keep and to bear arms for their common defense [the remainder of this section was not in the const. of 1796 and 1834]; but the legislature shall have the power, by law, to regulate the wearing of arms with a view to prevent crime.

1. **Arms, and the right to bear them, defined.**—Arms are the weapons which soldiers use. They are swords, muskets, rifles of all kinds, shotguns, and army and navy pistols. 3 Heisk. 179; 2 Hum. 161; 7 Bax. 108.

2. And that the citizens may familiarize themselves with their use, it is the constitutional right of every citizen to keep such weapons in times of peace, to purchase them, to provide himself with ammunition, to keep his arms in order and repair, to practice with them, and to use them for all ordinary purposes, and in all the ordinary modes usual in the country, and to which such arms are adapted, limited by the duties of good citizens in *times of peace*. 3 Heisk. 178.

3. The legislature has power to regulate the wearing of arms, or the manner in which they may be carried. 7 Bax. 105, 107; 3 Heisk. 165; 2 Hum. 154, 158.

4. The legislature has the power also to prohibit, absolutely, the wearing or carrying of weapons which are not arms in the constitutional sense. *Ib.* It is not a violation of the laws against going armed unless the weapon is carried with the intent or purpose of being or going armed. 3 Heisk. 201; 5 Lea 348; Cameron v. State, MS. It is, therefore, not unlawful to hunt a bear with a pistol, or to carry one to the smith for repairs. *Ib.*

5. Carrying Bowie knives prohibited. 1 Lea (69 Tenn.) 716.

6. Intent to go armed must appear. Code 6641; 10 Cates (118 Tenn.) 156.

Sec. 27. Quartering soldiers.—That no soldier shall, in time of peace, be quartered in any house without the [“the” not in const. of 1796] consent of the owner; nor in time of war, but in a manner prescribed by law.

Sec. 28. No one compelled to bear arms.—That no citizen of this state shall be compelled to bear arms, provided he will pay an equivalent, to be ascertained by law.

Sec. 29. Navigation of the Mississippi.—That an equal participation in [“of” in const. of 1796 and 1834] the free navigation of the Mississippi is one of the inherent rights of the citizens of this state; it cannot, therefore, be conceded to any prince, potentate, power, person or persons whatever.

See 11 Cates (119 Tenn.) 47.

Sec. 30. No hereditary honors.—That no hereditary emoluments, privileges or honors, shall ever be granted or conferred in this state.

Section 31 of article 11 of constitution of 1796, and section 32 of article 1 of the constitution of 1834, omitted from this constitution, was as follows: “That the people residing south of French Broad and Holston, between the rivers Tennessee and the Big Pigeon, are entitled to the right of pre-emption and occupancy in that tract.”

See following cases: 2 Ov. 170; 3 Hay 102; 5 Pick. (89 Tenn.) 535.

Sec. 31. **Boundaries of the state.**—That the limits and boundaries of this state be ascertained, it is declared they are as hereafter mentioned, that is to say: Beginning on the extreme height of the Stone mountain, at the place where the line of Virginia intersects it, in latitude thirty-six degrees and thirty minutes north; running thence along the extreme height of the said mountain, to the place where Watauga river breaks through it; thence a direct course to the top of the Yellow mountain, where Bright's road crosses the same; thence along the ridge of said mountain, between the waters of the Doe river and the waters of Rock creek, to the place where the road crosses the Iron mountain; from thence along the extreme height of said mountain, to the place where Nolichucky river runs through the same; thence to the top of the Bald mountain; thence along the extreme height of said mountain to the Painted Rock, on French Broad river; thence along the highest ridge of said mountain, to the place where it is called the Great Iron or Smoky mountain; thence along the extreme height of said mountain to the place where it is called Unicoi or Unaka mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of the said mountain to the southern boundary of this state, as described in the act of cession of North Carolina to the United States of America; and that all the territory, lands and waters lying west of said line, as before mentioned, and contained within the chartered limits of the State of North Carolina, are within the boundaries and limits of this state, over which the people have the right of exercising sovereignty, and the right of soil, so far as is consistent with the constitution of the United States, recognizing the articles of confederation, the bill of rights and constitution of North Carolina, the cession act of the said state, and the ordinance of ["the late" in const. of 1796] congress for the government of the territory north-west of the Ohio; Provided, nothing herein contained shall extend to affect the claim or claims of individuals to any part of the soil which is recognized to them by the aforesaid cession act [the remainder of this section is not in the constitution of 1796]; And Provided also, That the limits and jurisdiction of this state shall extend to any other land and territory now acquired, or that may hereafter be acquired, by compact or agreement with other states, or otherwise, although such land and territory are not included within the boundaries hereinbefore designated.

Criminal jurisdiction.—Extends to Island No. 21 in Mississippi river. 18 Cates (126 Tenn.) 302.

Sec. 32. **Prisons.**—That the erection of safe and comfortable prisons, the inspection of prisons, and the humane treatment of prisoners, shall be provided for.

Sec. 33. **Slavery prohibited.**—That slavery and involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, are forever prohibited in this state.

Sec. 34. **Right of property in man.**—The general assembly shall make no law recognizing the right of property in man.

When slavery abolished.—Slavery was not abolished in Tennessee by President Lincoln's emancipation proclamation of January 1, 1863. 4 Cold. 587; 11 Heisk. 598. It was abolished by the amendments to the state constitution of February 22, 1865. 2 Cold. 201; 3 Cold. 8; 4 Cold. 587. Said amendments were substantially the same as the two preceding sections. See acts 1865, pp. iv., x.

See, also, 1 Heisk. 330; 7 Heisk. 28; 12 Pickle (96 Tenn.) 371.

*ARTICLE II.

DISTRIBUTION OF POWERS.

Section 1. Division of powers.—The powers of the government shall be divided into three distinct departments: the legislative, executive, and judicial.

Sec. 2. No person to exercise powers of more than one department.—No person or persons belong to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

See 14 Cates (122 Tenn.) 490.

This and the preceding section were not in the constitution of 1796.

1. Attempt by legislature to exercise judicial power.—An act directing the venue to be changed upon the affidavits of unconditional union men (4 Heis. 363); or directing the venue to be changed, as to some defendants, upon certain affidavits of severance (11 Heis. 689); or directing judgments in favor of parties since dead to be revived in the name of a third party (4 Yer. 202); or directing a suit to be revived in the name of a person without his taking out letters of administration (5 Yer. 320); or directing what construction shall be placed on certain statutes (5 Hum. 165); or ordering a nolle prosequi to be entered in certain cases (7 Hum. 152), is an attempt by the legislature to exercise judicial power. See 5 Hum. 241.

2. Attempt to delegate legislative power.—An act authorizing trustees of insolvent banks to fix the time in which creditors shall file their claims (1 Bax. 437); or authorizing a certain school to levy taxes (9 Bax. 398); or authorizing school districts to levy taxes (1 Lea 546); or authorizing the court to call a witness to testify who is incompetent (9 Bax. 430), is an attempt to delegate the legislative power.

3. Attempt to confer on governor judicial power.—An act authorizing the governor to set aside the registration of voters (in any county), which he considers fraudulent, is an attempt to confer upon him judicial power. 6 Cold. 254. See art. 11, sec. 8, note.

4. Compensation of judiciary.—It must be fixed by law. 2 Cates (110 Tenn.) 384.

5. Statutes abolishing circuits.—Such statutes are constitutional. 6 Cates (114 Tenn.) 365.

6. Attempt to confer on judge legislative power.—A statute (act of 1887, ch. 158) providing that, in certain class of cases of criminal trials, "it shall not be necessary for the presiding judge to place the jury in charge of an officer, but the jury may, in the discretion of the court, disperse, as in other cases, is unconstitutional, because it substitutes the judge's uncontrolled discretion for the rule of law, and thereby attempts to confer upon him legislative power. 3 Pickle 304.

7. Statute forbidding third verdict to be set aside upon the facts.—A statute that deprives the trial judge of the power to set aside the third verdict of a jury upon the sole ground that the evidence is insufficient to support it, where two former verdicts in the same case have been set aside upon motion of the same party for that cause alone, is constitutional; but a statute depriving the trial judge of such power when there was no evidence to support the verdict would be unconstitutional. 5 Pickle 320-331, and the cases cited.

8. Judiciary has no jurisdiction over executive.—The departments of the state government are independent of each other, and the judiciary may not invade the province of the executive, by mandamus or injunction against the governor of the state, designed to coerce or restrain him in the discharge of his official duties, according to his own notions of the law, for the courts have no jurisdiction of such proceedings. 8 Bax. 490; 3 Pickle 319.

9. Indeterminate sentence law.—This law (acts 1913, ch. 8), is constitutional. 130 Tenn. 100.

10. Redistricting act (1903, ch. 424).—This act not invalid. 9 Cates (117 Tenn.) 381.

LEGISLATIVE DEPARTMENT.

Sec. 3. Legislative authority; term of office.—The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives, both dependent on the people [the remainder of

*This article corresponds with article 1 of constitution of 1796.

this section originated with this constitution]; who shall hold their offices for two years from the day of the general election. (Art. 1, sec. 1, of const. of 1796.)

1. **Limit of legislative authority.**—The legislative authority of the general assembly is limited only by the constitutions of the United States and Tennessee. 1 Lea 599; 3 Lea 377; 9 Bax. 446; Peck 269; 8 Yer. 1; 3 Pickle 220; 5 Pickle 497.

2. **Fraud does not invalidate law.**—An act of the general assembly cannot be invalidated for fraud. 8 Lea 121.

3. **Legislative authority and power.**—All legislative authority is vested in the legislature; its power is limited by the federal and state constitutions. 19 Cates (127 Tenn.) 449.

4. **Traffic in non-transferable signature passenger tickets.**—The act of 1905, ch. 410, is constitutional. 8 Cates (116 Tenn.) 470.

Sec. 4. **Census.**—An enumeration of the qualified voters, and an apportionment of the representatives in the general assembly, shall be made in the year one thousand eight hundred and seventy-one [“1841” in const. of 1834], and within every subsequent term of ten years.

Sec. 5. **Apportionment of representatives.**—The number of representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each; and shall not exceed seventy-five, until the population of the state shall be one million and a half, and shall never [“thereafter” in const. of 1834] exceed ninety-nine; Provided, That any county having two-thirds of the ratio shall be entitled to one member.

Constitution of 1796, art. 1, sec. 2, corresponding with this and the preceding section, was as follows: “Within three years after the first meeting of the general assembly and and within every subsequent term of seven years, an enumeration of the taxable inhabitants shall be made, in such manner as shall be directed by law, the number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the several counties according to the number of taxable inhabitants in each; and shall never be less than twenty-two, and greater than twenty-six, until the number of taxable inhabitants shall be forty thousand; and after that event, at such ratio that the whole number of representatives shall never exceed forty.”

Sec. 6. **Apportionment of senators.**—The number of senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified voters in each, and shall not exceed one-third the number of representatives. In apportioning the senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the house of representatives, shall be made up to such county or counties in the senate, as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining; and no county shall be divided in forming a district.

That part of constitution of 1796, art. 1, secs. 3 and 4, corresponding with this section, was as follows: “III. The number of senators shall, at the several periods of making the enumeration before mentioned; be fixed by the legislature, and apportioned among the districts, formed as hereinafter directed, according to the number of taxable inhabitants in each; and shall never be less than one-third, nor more than one-half of the number of representatives. “IV. The senators shall be chosen by districts, to be formed by the legislature, each district containing such a number of taxable inhabitants as shall be composed of two or more counties; they shall be adjoining, and no county shall be divided in forming a district.”

Sec. 7. **Time of elections.**—The first election for senators and representatives shall be held on the second Tuesday in November, one thousand eight hundred and seventy; and forever thereafter, elections for members of the general assembly shall be held once in two years, on the first Tuesday after the first Monday in November. Said elections shall terminate the same day.

1. **This section of constitution of 1834 was as follows:** “The first election for senators and representatives shall be held on the first Thursday in August, one thousand eight hun-

dred and thirty-five; and forever thereafter, elections for members of the general assembly shall be held once in two years, on the first Thursday in August; said elections shall terminate the same day."

2. Constitution of 1796, art. 1, sec. 5, corresponding with this section, was as follows: "The first election for senators and representatives shall commence on the second Thursday of March next (1796), and shall continue for that and the succeeding day; and the next election shall commence on the first Thursday of August, one thousand seven hundred and ninety-seven, and shall continue on that and the succeeding day; and forever after, elections shall be held once in two years, commencing on the first Thursday in August, and terminating the succeeding day."

Sec. 8. When legislature to meet; when governor to be inaugurated.—The first session of the general assembly shall commence on the first Monday in October, one thousand eight hundred and seventy-one, at which time the term of service of the members shall commence, and expire on the first Tuesday of November, one thousand eight hundred and seventy-two; at which session the governor elected on the second Tuesday in November, one thousand eight hundred and seventy, shall be inaugurated; and, forever thereafter, the general assembly shall meet on the first Monday in January, next ensuing the election, at which session thereof the governor shall be inaugurated.

1. Constitution of 1834, art. 2, sec. 8, was as follows: "The first session of the general assembly shall commence on the first Monday in October, one thousand eight hundred and thirty-five; and forever thereafter, the general assembly shall meet on the first Monday in October next ensuing the election."

2. Constitution of 1796, art. 1, sec. 6, corresponding with this section, was as follows: "The first session of the general assembly shall commence on the last Monday of March next; the second on the third Monday of September, one thousand seven hundred and ninety-seven. And forever after, the general assembly shall meet on the third Monday of September next ensuing the then election, and at no other period, unless as provided for by this constitution."

3. Legislature may meet elsewhere than capital, when.—The general assembly may convene temporarily at another place in the state than the seat of government, in cases of controlling emergency, as war. 7 Heis. 693.

Sec. 9. Qualifications of representatives.—No person shall be a representative unless he shall be a citizen of the United States, of the age of twenty-one years, and shall have been a citizen of this state for three years, and a resident in the county he represents one year, immediately preceding the election.

Sec. 10. Of senators; ineligible to office.—No person shall be a senator unless he shall be a citizen of the United States, of the age of thirty years, and shall have resided three years in this state, and one year in the county or district, immediately preceding the election. No senator or representative shall, during the time for which he was elected, be eligible to any office or place of trust, the appointment to which is vested in the executive or the general assembly, except to the office of trustee of a literary institution.

Constitution of 1796, art. 1, sec. 7, corresponding with this and the preceding section, was as follows: "That no person shall be eligible to a seat in the general assembly unless he shall have resided three years in the state, and one year in the county, immediately preceding the election, and shall possess in his own right, in the county which he represents, not less than two hundred acres of land, and shall have attained the age of twenty-one years."

Sec. 11. Powers of each house; quorum; adjournments from day to day.—The senate and house of representatives, when assembled, shall each choose a speaker and its other officers; be judges of the qualifications and elections of its members, and sit upon its own adjournments from day to day. Not less than two-thirds of all the members to which each house shall be entitled ["two-thirds of each house" in const. of 1796 and 1834] shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized, by law, to compel the attendance of absent members. (Art. 1, sec. 8, of const. of 1796.)

Sec. 12. Each house to make its own rules.—Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of [“a branch of” not in const. of 1796] the legislature of a free state. (Art. 1, sec. 9, const. of 1796.)

As to power to punish disorderly members, see 103 U. S. 189.

Sec. 13. Privilege of members.—Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and [“or” in const. of 1796] returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. (Const. of 1796, art. 1, sec. 10.)

Sec. 14. Power to punish other than members.—Each house may punish, by imprisonment, during its session, any person not a member, who shall be guilty of disrespect to the house, by any disorderly or any [“any” not in const. of 1796 and 1834] contemptuous behavior in its presence. (Const. of 1796, art. 1, sec. 11.)

Sec. 15. Vacancies.—When vacancies happen in either house, the governor for the time being, shall issue writs of election to fill such vacancies. (Const. of 1796, art. 1, sec. 12.)

Sec. 16. Limitation upon power of adjournment.—Neither house shall, during its [“their” in const. of 1796] session, adjourn without the [“the” not in const. of 1796] consent of the other for more than three days, nor to any other place than that in which the two houses shall be sitting. (Const. of 1796, art. 1, sec. 13.)

Sec. 17. Origin and frame of bills.—Bills may originate in either house; but may be amended, altered or rejected by the other. [The remainder of this section originated with this constitution.] No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended. (Const. of 1796, art. 1, sec. 14.)

1. **Object of this section, and generality of the bill.**—The object of this section is to prevent other provisions, upon wholly different subjects, from being tacked on to bills. 9 Bax. 586; 4 Lea 649; 13 Lea 166, 167, 312. It was not intended that the title should express fully everything contained in an act. 9 Bax. 586; Garvin v. State, MS. Therefore the generality of the title is no objection, so long as it is not made a cover for legislation incongruous in itself. 8 Heis. 519; 2 Lea 429; 8 Lea 596; 12 Lea 253; 13 Lea 165, 312; 6 Pickle 468; 15 Lea 711; 4 Pickle 140, 141; 7 Pickle 494; 6 Pickle 167; 11 Pickle 553, 554.

2. **Acts which repeal, revive, or amend.**—This provision of the constitution applies only to statutes which expressly purport to repeal, revive, and amend. 4 Lea 650. It has no reference to statutes which repeal by implication. Therefore, a direct and positive act, which lays down definitely a new rule, however much it may modify or conflict with existing laws, is valid without reciting them. 4 Lea 650, 353; 12 Lea 181; Garvin v. State, Jackson, MS., 1884; 15 Lea 633; 1 Pickle 449, 495; 7 Pickle 506, 507; 11 Pickle 558.

3. An act expressly purport to repeal or amend an existing law, it must recite in its caption or body the substance of the law amended or repealed. 4 Lea 650, 353; 12 Lea 181; Garvin v. State, Jackson, MS., 1884; 1 Lea 736.

4. If it purport to repeal or amend an existing law in part only, it is sufficient to recite the substance of that part only. 1 Lea 736.

5. The act of 1878 defined the duties and fixed the salary of the adjutant-general. In 1877 an act was passed reducing his salary, which provided, in general terms, that all laws fixing salaries were thereby so modified as to conform to it, and it was sustained. 1 Lea 736. An act which detached a designated county from one named judicial circuit and attached it to another, sufficiently recited the law amended. 3 Lea 340.

6. **More than one subject renders whole act void.**—An act which embraces more than one subject is void in toto. 4 Lea 1; 8 Lea 594; 8 Heis. 518; 9 Lea 379; 12 Lea 182; 2 Pickle 272; 11 Pickle 552.

7. **Caption of amendatory act.**—An amendatory act whose caption merely recites the title of the original act, without enlarging its scope, is constitutional and valid, provided its purview is germane to the title of the original act. 3 Pickle 109, 163; 7 Pickle 25 (syl. 4); 8 Pickle 320.

8. An act which expressly purports to amend a certain law must recite in its caption, or otherwise, the substance or title of the act amended. It is not sufficient to say a certain section of the "Revised Code." 3 Pickle 124.

9. The recital of the subject of the statute amended in the body of the amendatory statute, without more, is sufficient. 7 Pickle 719. In an amendatory statute, the code of 1858 may be recited as "An act to revise the statutes of the State of Tennessee," or as the "Code of Tennessee." 8 Pickle 320.

10. **"Etc." and "such" defined.**—The abbreviation "etc." in a title enumerating several games, at the end, means "and others," "and so forth," and has the same effect as if the additional games referred to were set out in the title in full. "Such" refers to something which has preceded, and means "of that particular character specified." *Garvin v. State*, Jackson, MS., 1884; 13 Lea 162.

11. **The following acts are void:** "An act to provide more just and equitable laws for the assessment and collection of revenue for state and county purposes," which provides for the assessment of municipal taxes also. 12 Lea 180. "An act to regulate and equalize the salaries of certain public officers," which gives the comptroller (he not being one of those officers) an additional clerk and an additional sum as his salary. 4 Lea 1. "An act prescribing a mode by which municipal corporations may surrender or abolish their charters," which also contains provisions for amending charters. 9 Lea 374. "An act to prevent the willful and wanton killing the stock of another," which also contains a provision against maiming stock. *State v. Bethel*, MS., March 5, 1881; 13 Lea 167. "An act to define the rights and duties and regulate the liabilities of warehousemen and factors," which, for the first time, makes certain acts of warehousemen felonies. *Gossett v. State*, 3 Leg. Rep. 281.

12. **The following acts are valid:** "An act to define the rights, duties, and liabilities of innkeepers, common carriers, and proprietors of places of public amusement," which makes it a misdemeanor to be guilty of turbulent conduct about the same. 9 Bax. 586. "An act to fix the state tax on property," which fixes it on privileges also. 8 Heis. 519; 13 Lea 165, 166. "An act to establish a chancery and law court at Bristol." 3 Lea 79. "An act for the more rigid collection of the revenue," which provides, among other things, that the collectors may assess property omitted by the assessors. 11 Lea 51. "An act to provide revenue for the State of Tennessee and the counties thereof," which provides the manner and all necessary means for the collection of any tax properly levied by the act. 4 Pickle 547, 548. "An act to protect hotel, inn and boarding house keepers," which makes it a misdemeanor to defraud them. 11 Pickle 552-554.

13. **Provision relating to subject in title.**—Any provision which directly or indirectly relates to the subject expressed in the title, and which is not foreign thereto, may be properly included in a bill. 8 Heis. 523; 2 Lea 428; 3 Lea 332; 8 Lea 326, 594; 12 Lea 253; 13 Lea 166; 11 Pickle 555-557.

14. **Statute void in severable part good in other parts.**—Although a statute be void in part, because beyond the competency of the legislature, it will be valid in other respects which are severable. 9 Bax. 429; 12 Lea 254; 11 Pickle 260, 261.

15. **Repeals by implication not favored.**—Repeals of statutes by implication are not favored. The repugnancy between the two statutes must be plain and unavoidable before one will be held to have repealed the other by implication. 4 Pickle 140; 5 Pickle 723, 724.

16. **"Caption" and "otherwise" defined.**—The word "caption" is synonymous with "title," and the word "otherwise" refers to the body of the repealing, reviving, or amending act. 11 Pickle 557.

17. **General repealing clause will not affect repeal by implication.**—Where a statute repeals a former law by implication, the addition of an express general repealing clause will not bring it within the constitutional requirement that the title or substance of the repealed act shall be recited in the caption, or otherwise, by the repealing statute. 11 Pickle 558, 559.

18. **True rule of construction.**—The true rule of construction is that any provision of the act directly or indirectly related to the subject expressed in the title and having a natural connection thereto and not foreign thereto, should be held to be embraced in it. *Memphis St. Ry. Co. v. Byrne*, 119 Tenn. 278, 104 S. W. 460, 462.

Sec. 18. Of passage of bills.—Every bill shall be read once, on three different days, and be passed each time in the house where it originated, before

transmission to the other. No bill shall become a law until it shall have been read and passed, on three different days in each house, and shall have received, on its final passage in each house, the assent of a majority of all the members to which that house shall be entitled under this constitution; and shall have been signed by the respective speakers in open session, the fact of such signing to be noted on the journal; and shall have received the approval of the governor, or shall have been otherwise passed under the provisions of this constitution.

1. Constitution of 1796, art. 1, sec. 15, corresponding with this section, was as follows: "Every bill shall be read three times, on three different days, in each house, and be signed by the respective speakers, before it becomes a law."

2. Constitution of 1834, art. 2, sec. 18, was as follows: "Every bill shall be read once on three different days, and be passed each time in the house where it originated, before transmission to the other. No bill shall become a law, until it shall be read and passed on three different days, in each house, and be signed by the respective speakers."

3. Bill passed one house amended and passed in the other, the first house may concur in amendments without reading and passing bill on three different days.—When a bill which has regularly passed three readings in one house is amended and passed in the other, it is not necessary for the house in which it originated to read and pass the amended bill, upon its return thereto, three times again. It is sufficient to concur in the amendment. 6 Lea 549.

4. Where a bill, having been passed regularly by both houses, was referred, upon a difference between the two houses as to certain proposed amendments, to a joint committee of conference, which reported an accompanying bill in lieu of said bill and amendments, in which was embraced substantially all the provisions of both houses, the report of the committee was concurred in by the two houses, and the bill signed, and it became a law. It was not necessary to pass the bill upon three readings, after the report of the committee. 7 Pickle 596, 597 (syl. 4).

5. Bills amended before final passage.—An act prohibiting Sunday baseball games, where after two readings, it was amended, was not enacted as prescribed by this section. *State v. Nashville Baseball Club*, 127 Tenn. 292, 154 S. W. 1151, 1153.

6. Journals; presumption of regularity of passage of statutes.—Although the constitution requires each house to keep a journal of its proceedings, the only fact required to affirmatively appear upon it is that bills were signed by the speakers in open session. 6 Lea 553.

7. It is not required that the ayes and noes shall appear upon the journal, or that it shall affirmatively appear that any bill received the constitutional majority. 6 Lea 553.

8. The journals may be looked to by the courts to see if it appears from them that the constitution was violated in passing an act. 4 Lea 611; 6 Lea 553.

9. Silence of the journals (with the single exception already stated) will not suffice. 6 Lea 553.

10. Evidence aliunde is inadmissible to contradict the journals, or to show that the constitution was not complied with in some particular as to which the journals are silent, when the act was, in fact, signed by the speakers, and the journals show it to have been done in open session. 3 Lea 334, 341; 4 Lea 611; 8 Lea 121; 7 Pickle 596.

11. Where it appears affirmatively, by entries on the journals, that an act was rejected in either house before its final passage, it is void, although it may also appear, by proper journal entries, that it was "signed by the respective speakers in open session," and that it was approved by the governor. 2 Pickle 732.

12. While the courts inculge every fair and reasonable presumption in favor of the regularity and valid passage of statutes, and will apply this rule in the construction of journal entries, and in aiding their defects or supplying their omissions, still this rule is subject to the limitation that no presumption will be indulged which necessarily contradicts the affirmative showing of the journals. 7 Pickle 603, 604.

13. Where an act of the legislature has been signed by the respective speakers of both houses, in open session, and that fact noted on the journals, and has been approved by the governor, every reasonable presumption and inference will be made in favor of the regularity of its passage, and it will be upheld, unless the journals affirmatively show that it was defeated. 3 Pickle 163.

14. It is not essential to the validity of a statute that it should be described in the journal entries recording its passage, by setting out its title in *ipsisssimis verbis*. Discrepancies between such journal entries and the title of the act are treated as mere abbreviations or omissions, which are supplied by presumption or disregarded as immaterial. 7 Pickle 604-606.

15. **Amendments.**—Every amendment, be it great or small, must harmonize with the title, must be germane to it, must fall within its scope. *Erwin v. State*, 116 Tenn. 71, 93 S. W. 73, 76.

16. **Amendment striking out all but enacting clause, and substituting a bill concurred in by a majority of the quorum only, valid.**—In 1883 the supreme judges, when they came to appoint the commission of referees (under chapter 257 of the acts of 1883), considered this clause of the constitution. An act to create an intermediate court passed three readings in the house, and was transmitted to the senate. There it was amended by striking out all but the enacting clause, and substituting the present bill creating the commission of referees. It was then returned to the house, and the amendment concurred in by a majority of a quorum, but not a majority of all the members. The judges differed in opinion, and written opinions were prepared by some. Four were of opinion that a bill which had passed one house could be amended in the other by striking out all but the enacting clause, and inserting new provisions in the place of those stricken out. One of those four was of the opinion that, in such case, to be valid, the amendment ought to be germane to the original bill. Four judges were also of opinion that, in such case, it was sufficient for the house to which its bill was returned amended, to simply concur therein, and that a majority of a quorum only was required. The act referred to was sustained by a vote of three to two of the judges, and the referees thereupon appointed.

17. **Signature of speakers; approval of governor.**—Acts bearing signatures of the speakers and approved by governor will be treated as properly passed. Public policy suggests that this provision of the constitution should be held to be merely directing and not mandatory. *Home Telegraph Co. v. Mayor, etc.*, 118 Tenn. 1, 101 S. W. 770, 773.

18. **When an act is passed, and when it takes effect.**—A legislative act is not passed or enacted into a law until the same is approved and signed by the governor, or until he has failed to return a bill, with his objections, within five days (Sundays excepted) after it shall have been presented to him (art. 3, sec. 18), or until it is passed by a majority of all the members of each house, notwithstanding his objections, where he has vetoed the bill (art. 3, sec. 18). An act cannot, with propriety, be said to have passed, or been enacted into a law, until it has received all the constitutional sanctions required to give it effect as such. And an act does not take effect until forty days from its such passage, unless it is made to take effect sooner under section 20 of this article. Under the two former constitutions, the signature of the governor was not required. 3 Heis. 442-445.

19. See also *Nelson v. Haywood Co.*, 7 Pickle (91 Tenn.) 599; *Erwin v. State*, 8 Cates (116 Tenn.) 79.

Sec. 19. **When rejected.**—After a bill has been rejected, no bill containing the same substance shall be passed into a law during the same session. (Const. of 1796, art. 1, sec. 16.)

1. **The rejected bill, and the record evidence of its rejection, must be before court.**—The court will not declare an act unconstitutional on the ground that it contains the same substance as a bill previously rejected at the same session, without having before it the bill which had been previously introduced, and record evidence of the action taken on it. It is also suggested that this provision may be merely directory to the legislature. 1 Lea 119, 120; 2 Pickle 735, 736.

2. **Passage of laws at extra session previously rejected at regular session.**—The rejection of a bill at its regular session does not debar the legislature from passing one substantially the same at a subsequent extra session of the same body, authorized by the governor's call to legislate upon that particular subject. The word "session," used in this section, means "the space of time between the first meeting and the final adjournment of each particular sitting or term." 5 Pickle 488.

Sec. 20. **Style of laws; when to take effect.**—The style of the laws of this state shall be, "Be it enacted by the general assembly of the State of Tennessee." [The remainder of this section originated with this constitution.] No law of a general nature shall take effect until forty days after its passage unless the same or the caption shall state that the public welfare requires that it should take effect sooner. (Const. of 1796, art. 1, sec. 17.)

1. **Time computed from what date.**—The forty days are computed from the date of the governor's approval, or, upon his refusal, from the date when it was "otherwise passed," as provided in art. 3, sec. 18, of this constitution. 3 Heis. 444.

2. **When statutes took effect previous to constitution.**—Before the present constitution, a statute took effect when it was signed by the speakers, not from that time, but, by relation, from the time it was passed. Meigs, 237; 7 Pickle 610.

3. See also *Wright v. Cunningham*, 7 Cates (115 Tenn.) 457.

Sec. 21. Journal of proceedings; ayes and noes.—Each house shall keep a journal of its proceedings, and publish it, except such parts as the welfare of the state may require to be kept secret; the ayes and noes shall be taken in each house upon the final passage of every bill of a general character, and bills making appropriations of public moneys; and the ayes and noes of the members on any question, shall, at the request of any five of them, be entered on the journal.

1. Constitution of 1796, art. 1, sec. 18, corresponding with this section, was as follows: "Each house shall keep a journal of its proceedings, and publish them, except such parts as the welfare of the state may require to be kept secret. And the yeas and nays of the members, on any question, shall, at the request of any two of them, be entered on the journals." See notes to sec. 18, ante. Cited as to the journals in 2 Pickle 735.

2. "Bill of general character" does not include local laws.—This requirement that "the ayes and noes shall be taken in each house upon the final passage of every bill of a general character," has no application to local laws, such as change counties from one judicial circuit to another, and fix the time of holding courts therein, and in one other county. 3 Pickle 170, 171.

3. Journals, courts will take judicial notice of all entries in.—The journals of the general assembly showing the various steps taken in the enactment of statutes are not required to be especially pleaded or proven, when a statute is attacked for want of the formalities in its enactment required by this section to keep such journals and publish them, except such parts as the welfare of the state may require to be kept secret, and courts will take judicial notice of all entries relating to legislation. *State v. Swiggart*, 118 Tenn. 556, 102 S. W. 75-76.

Sec. 22. Business open, unless, etc.—The doors of each house and of ["of" not in const. of 1796] committees of the whole shall be kept open, unless when the business shall be such as ought to be kept secret. (Const. of 1796, art. 1, sec. 19.)

Sec. 23. Compensation of members; number of days to be paid for; senators; court of impeachment; per diem.—The sum of four dollars per day, and four dollars for every twenty-five miles traveling to and from the seat of government, shall be allowed to the members of each general assembly elected after the ratification of this constitution, as a compensation for their services. But no member shall be paid for more than seventy-five days of a regular session, or for more than twenty days of any extra or called session, or for any day when absent from his seat in the legislature, unless physically unable to attend. The senators, when sitting as a court of impeachment, shall each receive four dollars per day of actual attendance.

1. Constitution of 1796, art. 1, sec. 20, corresponding with this section, was as follows: "The legislature of this state shall not allow the following officers of government greater annual salaries than as follows, until the year one thousand eight hundred and four, to-wit: The governor not more than seven hundred and fifty dollars; the judges of the superior courts not more than six hundred dollars each; the secretary not more than four hundred dollars; the treasurer or treasurers not more than four per cent. for receiving and paying out all moneys; the attorney or attorneys for the state shall receive a compensation for their services not exceeding fifty dollars for each superior court which he or they shall attend; no member of the legislature shall receive more than one dollar and seventy-five cents per day, nor more for every twenty-five miles he shall travel in going to and returning from the general assembly."

2. Constitution of 1834 was as follows: "The sum of four dollars per day, and four dollars for every twenty-five miles traveling to and from the seat of government, shall be allowed to the members of the first general assembly, as a compensation for their services. The compensation of the members of the succeeding legislatures shall be ascertained by law; but no law increasing the compensation of the members shall take effect until the commencement of the next regular session after such law shall have been enacted."

3. See also, *Lynn v. Polk*, 8 Lea (76 Tenn.) 192; *Williams v. Nashville*, 5 Pickle (89 Tenn.) 495.

Sec. 24. Public money.—No money shall be drawn from the treasury but in consequence of appropriations made by law [the remainder of this section

was not in the const. of 1796]; and an accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at the rise of each stated session of the general assembly. (Const. of 1796, art. 1, sec. 21.)

1. One general assembly cannot make an appropriation beyond the term of its existence. 8 Lea 121.

2. See also, *Lynn v. Polk*, 8 Lea (76 Tenn.) 331; *Henley v. State*, 14 Pickle (98 Tenn.) 690; *State ex. rel. v. King*, 24 Pickle (108 Tenn.) 273.

Sec. 25. Defaulters ineligible.—No person who heretofore hath been, or may hereafter be, a collector or holder of public moneys, shall have a seat in either house of the general assembly, or hold any other office under the state government, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable or liable. (Const. of 1796, art. 1, sec. 23.)

1. The clause, "or hold any other office under the state government," originated with the present constitution.

2. "Office" defined.—The word "office" held to imply the right to exercise the functions of a public trust or employment, and to receive the fees and emoluments belonging to it, and to hold the place for the term prescribed by law. *State v. Rose*, 74 Kan. 262, 86 Pac. 296, 6 L. R. A. (N. S.) 843, 10 Ann. Cas. 927, writ of error dismissed 203 U. S. 580, 27 Sup. Ct. 779, 51 L. Ed. 326; 128 Tenn. 340, 161 S. W. 994, 996. "Office" implies not merely place but term or tenure.

3. See also, *Puckett v. Bean*, 11 Heiskell (58 Tenn.) 603; *Lewis v. Watkins*, 3 Lea (71 Tenn.) 180.

Sec. 26. Certain officers, ineligible; no one to hold two lucrative offices.—No judge of any court of law or equity, secretary of state, attorney-general, register, clerk of any court of record, or person holding any office under the authority of the United States, shall have a seat in the general assembly; nor shall any person in this state hold more than one lucrative office at the same time; Provided, That no appointment in the militia, or to the office of justice of the peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either house of the general assembly.

1. Constitution of 1796, art. 1, sec. 24, corresponding with this section, was as follows: "No member of the general assembly shall be eligible to any office or place of trust, except to the office of a justice of the peace, or trustee of any literary institution, where the power of appointment to such office or place of trust, is vested in their own body."

2. See also, *State ex. rel. v. Slagle*, 7 Cates (115 Tenn.) 338; *Duff, Inre*, 3 Shannon's Cases, 722.

Sec. 27. Right of protest.—Any member of either house of the general assembly shall have liberty to dissent from and protest against, any act or resolve which he may think injurious to the public or to any individual, and to have the reasons for ["of" in const. of 1796] his dissent entered on the journals. (Const. of 1796, art. 1, sec. 25.)

See *Cocke v. Gooch*, 5 Heiskell (52 Tenn.) 311.

Sec. 28. Taxation, merchant's and privileges.—All property real, personal or mixed, shall be taxed, but the legislature may except such as may be held by the state, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except one thousand dollars' worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer, and his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state. No one species of property from which a tax may be collected, shall be taxed higher than any other species of

property of the same value, but the legislature shall have power to tax merchants, peddlers and privileges, in such manner as they may from time to time direct. The portion of a merchant's capital used in the purchase of merchandize sold by him to nonresidents and sent beyond the state, shall not be taxed at a rate higher than the ad valorem tax on property. The legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem. All male citizens of this state over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity shall be liable to a poll tax of not less than fifty cents nor more than one dollar per annum. Nor shall any county or corporation levy a poll tax exceeding the amount levied by the state.

Constitution of 1796, art. 1, sec. 26, corresponding with this section, was as follows: "All lands liable to taxation in this state, held by deed, grant or entry, shall be taxed equal and uniform, in such manner that no one hundred acres shall be taxed higher than another, except town lots, which shall not be taxed higher than two hundred acres of land each; no free man shall be taxed higher than one hundred acres, and no slave higher than two hundred acres, on each poll."

Constitution of 1834 was as follows: "All lands liable to taxation, held by deed, grant, or entry, town lots, bank stock, slaves between the ages of twelve and fifty years, and such other property as the legislature may from time to time deem expedient, shall be taxable. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that the same shall be equal and uniform throughout the state. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value. But the legislature shall have power to tax merchants, pedlars [peddlers], and privileges, in such manner as they may, from time to time, direct. A tax on white polls shall be laid, in such manner and of such an amount as may be prescribed by law."

1. "Purely," meaning of, as used in this section.—The terms "purely" as used in the constitution, and "exclusively" as used in the statute are synonymous; and mean that the property must be used wholly and entirely for charitable and religious purposes. *Cumberland Lodge No. 8 F. & A. M. v. Mayor*, 127 Tenn. 248, 154 S. W. 1141, 1145.

2. Railroad taxes.—As to the taxation of railroads, see 7 Lea 579; 8 Heis. 805; 3 Tenn. Chy. 478. The State Railroad Tax Cases, 92 U. S. 575; 12 Lea 521, 573.

3. Merchant's tax; "merchant" and "peddler" defined.—The "merchant's" tax is distinct from the privilege tax. 7 Lea 182; 8 Heis. 473. A "merchant" is one engaged in the business of buying and selling for a living. 5 Hum. 396; 9 Bax. 610. A "peddler" is one who travels about the country on foot or in some kind of vehicle, or in any other manner, and sells goods or small commodities by retail. 2 Swan 353.

4. "Privileges" defined.—A "privilege" is an occupation or business which requires a license from some proper authority, designated by a general law, and not open to all or anyone without such license. 8 Hum. 475, 547; 1 Hum. 94; 3 Heis. 283; 3 Lea 277. The term "privileges" embraces any and all occupations that the legislature may, in its discretion, choose to declare privileges, and tax as such. 2 Pickle 136; 3 Head 414; 8 Heis. 456 (544); 8 Pickle 369.

5. Exemption of educational property.—All property held and used for purposes purely educational, either by private persons or corporations, may be exempted from taxation by the legislature. 16 Lea 29, 34; 3 Pickle 233.

6. Exemption from taxation for religious or charitable purposes.—The property of an incorporated publishing house, engaged in the publication and distribution of religious literature, and doing some secular printing, the proceeds of which business are set apart entirely and exclusively for the benefit of traveling, supernumerary, superannuated, and worn-out preachers, their wives, widows, and orphans, which is a devotion of it to religious or charitable purposes, may be exempted from taxation. 8 Pickle 188.

7. Legislature cannot add any exemptions to those permitted by constitution.—The legislature cannot, under the present constitution, exempt from taxation any property other than such as is expressly permitted by the same. The rule was otherwise under the previous constitutions, and charter exemptions made under them constitute contracts that the state cannot impair by legislation or otherwise. 5 Pickle 597, 608; 7 Pickle 583-589, 578, 546, 558; 11 Pickle 226, 227. See art. 11, sec. 8, which must be construed with this section. 7 Pickle 587, 589. County courts cannot release tax on proposed railroads to be built. 5 Pickle 597.

8. Exemptions strictly construed.—Exemptions from taxation are never allowed unless they are granted in "clear and unmistakable words." Every doubt and presumption prevails against exemptions. 7 Pickle 546, 550; 8 Pickle 369; 11 Pickle 227, 228.

9. **Exemption of \$1,000 of personalty to each citizen.**—Each citizen, whether a married woman or other person, owning taxable personal property, is entitled to exemption out of same to the extent of \$1,000 from state, county, and municipal taxation. 9 Pickle 208.

10. **Succession or inheritance taxes constitutional.**—A succession or inheritance tax imposed on collateral kindred and strangers, but exempting direct descendants and the near kin of the decedent, and exempting all estates of less value than \$250, is valid. 10 Pickle 674.

11. **State and county privileges released.**—The legislature has the power, by a general law retroactive in its operation, to release privilege taxes due the state and counties. 3 Pickle 214.

12. **Corporate property and shares of stock may be taxed.**—A statute neither imposes double taxation nor violate the constitutional mandate that "all property shall be taxed according to value," which requires corporations to pay tax upon the value of their property, and their stockholders also upon the value of their shares. 3 Pickle 406.

13. **Capital stock and shares of stock of corporations may both be taxed.**—The capital stock of a corporation, and its shares of stock in the hands of its stockholders, are separate and distinct property interests, and separate and distinct subjects of taxation, and the taxation of both is not double taxation, nor is the exemption of one necessarily an exemption of the other. 7 Pickle 549, 550, 561-563, 578; 11 Pickle 226, 227.

14. **Manufactures of products of soil, sale of, taxable as a privilege.**—Articles manufactured out of the products of the soil by the producer, are not themselves taxable, but a privilege tax may be levied on the sale of them. 2 Pickle 134.

15. **Municipal poll tax cannot exceed state poll tax.**—A municipal corporation can levy only one poll tax equal to the state poll tax, which shall not exceed one dollar, although an amendment to the charter may authorize an additional poll tax for school purposes. 15 Lea 633, 634 (syl. 5.)

16. **Merchant's capital invested in goods to sell to nonresidents, how taxed.**—No privilege tax upon merchants shall be levied upon that part of their capital used in buying goods to sell to nonresidents, but it is subject to the ad valorem tax uniformly with the general property tax. 9 Bax. 91, 92.

17. **Exemptions withdrawn by this constitution.**—The adoption of this section of the constitution had the effect to withdraw all offers of charter exemptions from taxation which had not been previously accepted. 11 Pickle 208.

18. **Exemption attaches to increased capital stock.**—The mere failure of a corporate charter to fix a maximum for capital stock, does not necessarily render it void, as opposed to public policy; and an exemption from taxation in a charter granted previous to this constitution does not prevent the exemption from taxation of a valid increase of the capital stock of a corporation, made after the constitution. 11 Pickle 235-237.

19. See also, *Bank v. Memphis*, 8 Cates (116 Tenn.) 648; *Oil Co. v. Crain*, 9 Cates (117 Tenn.) 87; *University v. Cheney*, 8 Cates (116 Tenn.) 262; *Darnoll v. Memphis*, 8 Cates (116 Tenn.) 427.

20. **Cemeteries—lands of exempt.**—Lands of cemetery corporations, because of their public character, are lands hold for charitable purposes within meaning of this section. *Forest Hill Cemetery Co. v. Creath*, 127 Tenn. 686, 157 S. W. 412, 413.

21. **Uniformity in rate.**—The uniformity required by this section is limited to uniformity in rate, assessment, and valuation of the particular tax involved. *King v. Sullivan County*, 128 Tenn. 393, 160 S. W. 847, 848.

22. **Special assessments are not taxes.**—Under these sections. *Arnold v. Mayor of City of Knoxville*, 115 Tenn. 195, 90 S. W. 469.

Sec. 29. Legislature may authorize counties and towns to tax; loan of credit of county, etc., restricted; exceptions.—The general assembly shall have power to authorize the several counties and incorporated towns in this state, to impose taxes for county and corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to state taxation.

But the credit of no county, city or town shall be given or loaned to or in aid of any person, company, association or corporation, except upon an election to be first held by the qualified voters of such county, city or town, and the assent of three-fourths of the votes cast at said election. Nor shall any county, city or town become a stockholder with others in any company, association or corporation except upon a like election, and the assent of a like majority. But the counties of Grainger, Hawkins, Hancock, Union, Campbell, Scott,

Morgan, Grundy, Sumner, Smith, Fentress, VanBuren, and the new county herein authorized to be established out of fractions of Sumner, Macon and Smith counties, White, Putnam, Overton, Jackson, Cumberland, Anderson, Henderson, Wayne, Cocke, Coffee, Macon, Marshall, and Roane shall be excepted out of the provisions of this section so far that the assent of a majority of the qualified voters of either of said counties voting on the question shall be sufficient when the credit of such county is given or loaned to any person, association or corporation; Provided, That the exception of the counties above named shall not be in force beyond the year one thousand eight hundred and eighty, and after that period they shall be subject to the three-fourths majority applicable to the other counties of the state.

1. **Difference in previous constitutions.**—None of the provisions of this section were in the constitution of 1796, and only the first sentence closing with the first period was in the constitution of 1834.

2. **County's imposition of tax; corporation purpose.**—A county can only impose a tax when authorized by the legislature. 8 Heis. 269; 1 Bax. 60. A library or a school is a corporation purpose. 9 Bax. 401. So, also, is a railroad. 9 Hum. 252. See sec. 28. See 8 Heis. 663.

3. **County's authority to issue negotiable bonds.**—County court has not authority, in the absence of statute expressly conferring it, to issue negotiable bonds of the county for any purpose whatever. 10 Pickle 49-53.

4. **Loan of credit of county, etc., not made, except.**—The county cannot loan its credit, nor become a stockholder, nor a joint owner with any company, association, or corporation in any enterprise or improvement, in any manner except that provided in this section, although it may be one in which the county may be otherwise authorized to enter. 10 Pickle 53.

5. See also, *Stern v. Lewis*, 2 Shannon's Cases 53; *Pulaski v. Gilmore*, 3 Shannon's Cases 117; *Shelby Co. v. Jarnagin*, 3 Shannon's Cases 184; *Shelby Co. v. Judges*, 3 Shannon's Cases 512; *Wallace v. Tipton Co.*, 3 Shannon's Cases 551; *Darnell v. Memphis*, 8 Cates (116 Tenn.) 428.

6. **Produce of other states not exempt.**—Logs cut in other states and brought into Tennessee, and lumber manufactured from such logs are taxable and such assessment is not violative of the fourteenth amendment to the constitution of the United States, nor exempt under this section. *I. M. Darnell & Son Co. v. City of Memphis*, 116 Tenn. 424, 95 S. W. 816.

Sec. 30. Manufactured produce of state not taxed.—No article manufactured of the produce of this state, shall be taxed otherwise than to pay inspection fees. (Const. of 1796, art. 1, sec. 27.) 9 Bax. 518.

1. **Articles exempt, but privilege may be laid for selling.**—This section operates to protect articles manufactured of the produce of the state from taxation while it remains in the manufacturer's hands, but does not inhibit the laying of a privilege tax upon the occupation of selling such articles, when pursued even by the manufacturer. 2 Pickle 134.

2. **Articles of growth and manufacture of this state.**—Unless the article is both of the growth and manufacture of this state, it is not exempt by this section. 2 Swan 353.

3. See also, *Benedict v. Davidson Co.*, 2 Cates (110 Tenn.) 185; *Darnell v. Memphis*, 8 Cates (116 Tenn.) 428.

Sec. 31. State aid forbidden.—The credit of this state shall not be hereafter loaned or given to or in aid of any person association, company, corporation or municipality: nor shall the state become the owner in whole or in part of any bank or a stockholder with others in any association, company, corporation or municipality.

Difference in constitutions.—Not in the constitutions of 1796 and 1834. Section 31 of article 2 of the constitution of 1834 was as follows: "The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owner or owners."

Sec. 32. Amendments to constitution of United States.—No convention or general assembly of this state shall act upon any amendment of the constitution of the United States proposed by congress to the several states; unless

such convention or general assembly shall have been elected after such amendment is submitted.

This section originated with this constitution.

Sec. 33. State bonds to defaulting railroads, none.—No bonds of the state shall be issued to any railroad company which at the time of its application for the same shall be in default in paying the interest upon the state bonds previously loaned to it or that shall hereafter and before such application sell or absolutely dispose of any state bonds loaned to it for less than par.

This section originated with this constitution.

*ARTICLE III.

EXECUTIVE DEPARTMENT.

Section 1. Governor.—The supreme executive power of this state shall be vested in a governor.

See *Sharp v. State*, 18 Pickle (102 Tenn.) 11.

Sec. 2. How and when elected.—The governor shall be chosen by the electors of the members of the general assembly, at the time and places where they shall respectively vote for the members thereof. The returns of every election for governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of each house of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote ["ballot" in const. of 1796] of both houses of the general assembly. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

Sec. 3. Qualifications.—He shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a citizen of this state seven years next before his election.

Constitution of 1796, art. 2, sec. 3, was as follows: "He shall be at least twenty-five years of age, and possess a freehold estate of five hundred acres of land, and have been a citizen or inhabitant of this state four years next before his election, unless he shall have been absent on the public business of the United States or of this state."

Sec. 4. Term of service.—The governor shall hold his office for two years, and until his successor shall be elected and qualified. He shall not be eligible more than six years in any term of eight.

Constitution of 1796, art. 2, sec. 4, was as follows: "The first governor shall hold his office until the fourth Tuesday of September, one thousand seven hundred and ninety-seven, and until another governor shall be elected and qualified to office; and forever after, the governor shall hold his office for the term of two years, and until another governor shall be elected and qualified; but shall not be eligible more than six years in any term of eight."

Sec. 5. Commander in chief; militia not to be called out except, etc.—He shall be commander in chief of the army and navy of this state, and of the militia, except when they shall be called into the service of the United States [the remainder of this section originated with this constitution]: but the militia shall not be called into service except in case of rebellion or invasion, and then only when the general assembly shall declare, by law, that the public safety requires it.

*Article 2 of the constitution of 1796 corresponds with this article.

Statute empowering governor to call out militia unconstitutional.—A statute which empowers the governor to call out the militia when he deems it necessary, to suppress mobs, riots, etc., is in conflict with this section, and therefore, to that extent, unconstitutional. 15 Lea 711.

Sec. 6. May grant pardons.—He shall have power to grant reprieves and pardons, after conviction, except in cases of impeachment.

1. **Statute pardoning convict to any extent is unconstitutional as to all then under sentence.**—A statute allowing to convicts certain credits on their terms of imprisonment, in consideration of good conduct, is unconstitutional as to all sentences in force at time of its passage, as an unauthorized exercise of the pardoning power. 3 Pickle 52.

2. **Pardoning power solely and exclusively the governors.**—The vestiture of the power to grant reprieves and pardons in the chief executive is exclusive of all other departments of the state, and the legislature cannot directly or indirectly, take it from his control, and vest it in others, or authorize or require it to be exercised by any other officer or authority. *Fite v. State*, 114 Tenn. 646, 88 S. W. 941, 942, 1 L. R. A. (N. S.) 520 n.

3. **Application for pardon.**—The court may suspend judgment to give the defendant an opportunity to exercise his constitutional right to apply to the governor for a pardon. *M. & Y.* 294; 2 Sneed 232; 6 Lea 249; 9 Lea 652.

4. **The pardoning of a justice of the peace by the governor, after conviction of official oppression, carrying with the sentence removal from office, is not effective so as to restore the office.** *State ex. rel Webb v. Parks*, 122 Tenn. 230, 122 S. W. 977, 978, 979. See also, *State v. Dalton*, 1 Cates (109 Tenn.) 547; *Fite v. State, ex. rel.*, 6 Cates (114 Tenn.) 651.

Sec. 7. Compensation.—He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the period for which he shall have been elected.

See *Lynn v. Polk*, 8 Lea (76 Tenn.) 192.

Sec. 8. May require information from officers.—He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Sec. 9. May convene the legislature.—He may, on extraordinary occasions, convene the general assembly by proclamation, in which he shall state specifically the purposes for which they are to convene; but they shall enter on no legislative business except that for which they were specifically called together.

1. Under the constitution of 1834, see 3 Hum. 456; 2 Heis. 575.

2. **Constitutions of 1796 and 1834 were as follows:** "He may, on extraordinary occasions, convene the general assembly, by proclamation; and shall state to them, when assembled, the purposes for which they shall have been convened [the const. of 1796 stopped here, but the const. of 1834 continued as follows], but they shall enter on no legislative business except that for which they were specially called together."

3. **Governor may limit the subject but cannot dictate the legislation.**—While the governor may limit the subjects of legislation, he cannot dictate to the legislature the special legislation which they shall enact on those subjects. *State v. Nat. Conservation Exposition Co. v. Woollen*, 128 Tenn. 456, 161 S. W. 1006, 1014.

4. See also, *Williams v. Nashville*, 5 Pickle (89 Tenn.) 494; *State v. Wilbur*, 17 Pickle (101 Tenn.) 217.

Sec. 10. Execute laws.—He shall take care that the laws ["shall" inserted in const. of 1796] be faithfully executed.

Sec. 11. Give information to the legislature.—He shall, from time to time, give to the general assembly information of the state of the government, and recommend for ["to" in const. of 1796] their consideration such measures as he shall judge expedient.

Sec. 12. Vacancies.—In case of the removal of the governor from office, or of his death, or resignation, the powers and duties of the office shall devolve on the speaker of the senate; and in case of the death, removal from office, or resignation of the speaker of the senate, the powers and duties of the office shall devolve on the speaker of the house of representatives.

Constitution of 1796 was as follows: "In case of his death, or resignation, or removal from office, the speaker of the senate shall exercise the office of governor until another governor shall be duly qualified."

Sec. 13. Ineligibility.—No member of congress, or person holding any office under the United States, or this state, shall execute the office of governor.

Sec. 14. Temporary appointments.—When any officer, the right of whose appointment is by this constitution vested in the general assembly, shall, during the recess, die, or the ["his" in const. of 1796] office, by the expiration of the term, or [the words, "by the expiration of the term, or," were not in the const. of 1796] by other means, become vacant, the governor shall have the power to fill such vacancy by granting a temporary commission, which shall expire at the end of the next session of the legislature.

Sec. 15. Great seal.—There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called the GREAT SEAL OF THE STATE OF TENNESSEE.

Sec. 16. Grants and commissions.—All grants and commissions shall be in the name and by the authority of the State of Tennessee, be sealed with the state seal, and signed by the governor.

See *Bank v. Cooper*, 2 Yerger (10 Tenn.) 616.

Sec. 17. Secretary of state.—A secretary of ["this" inserted in const. of 1796] state shall be appointed by joint vote of the general assembly [the last seven words not in the const. of 1796], and commissioned during the term of four years; he shall keep a fair register of all the official acts and proceedings of the governor; and shall, when required lay the same, and all papers, minutes and vouchers relative thereto, before the general assembly; and shall perform such other duties as shall be enjoined by law.

Sec. 18. Bills to be approved by the governor; governor's veto; joint resolutions.—Every bill which may pass both houses of the general assembly, shall before it becomes a law, be presented to the governor for his signature. If he approve it, he shall sign it, and the same shall become a law; but if he refuse to sign it, he shall return it with his objections thereto, in writing, to the house in which it originated; and said house shall cause said objections to be entered at large upon its journal, and proceed to reconsider the bill. If after such reconsideration a majority of all the members elected to that house shall agree to pass the bill, notwithstanding the objections of the executive, it shall be sent, with said objections, to the other house, by which it shall be likewise reconsidered. If approved by a majority of the whole number elected to that house, it shall become a law. The votes of both houses shall be determined by yeas and nays, and the names of all the members voting for or against the bill shall be entered upon the journals of their respective houses. If the governor shall fail to return any bill, with his objections within five days (Sundays excepted) after it shall have been presented to him, the same shall become a law without his signature, unless the general assembly, by its adjournment, prevents its return, in which case it shall not become a law. Every joint resolution or order (except on questions of adjournment), shall likewise be presented to the governor for his signature, and before it shall take effect shall receive his signature; and on being disapproved by him shall, in like manner, be returned with his objections; and the same, before it shall take effect, shall be repassed by a majority of all the members elected to both houses, in the manner and according to the rules prescribed in case of a bill.

See art. 2, sec. 18. This section originated with this constitution.

See *Hill v. State*, 5 Lea (73 Tenn.) 729.

*ARTICLE IV.

ELECTIONS.

Section 1. **Right of suffrage; poll tax; military duty; voting, where.**—Every male person of the age of twenty-one years, being a citizen of the United States, and a resident of this state for twelve months, and of the county where-in he may offer his vote for six months, next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers for the county or district in which he resides; and there shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him, for such preceding period as the legislature shall prescribe, and at such time as may be prescribed by law; without which his vote cannot be received. And all male citizens of the state shall be subject to the payment of poll taxes and to the performance of military duty, within such ages as may be prescribed by law. The general assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.

1. Constitution of 1796 was as follows: "Every freeman of the age of twenty-one years and upwards, possessing a freehold in the county wherein he may vote, and being an inhabitant of this state, and every freeman being an inhabitant of any one county in the state six months immediately preceding the day of election, shall be entitled to vote for members of the general assembly, for the county in which he shall reside."

2. Constitution of 1834 was as follows: "Every free white man, of the age of twenty-one years, being a citizen of the United States, and a citizen of the county wherein he may offer his vote, six months next preceding the day of election, shall be entitled to vote for members of the general assembly, and other civil officers, for the county or district in which he resides: Provided, That no person shall be disqualified from voting in any election on account of color, who is now by the laws of this state a competent witness in a court of justice against a white man. All free men of color shall be exempt from military duty in time of peace, and also from paying a free poll tax."

3. Residence of naturalized foreigner.—A naturalized foreigner must have resided in the county six months after his naturalization before he can vote. 5 Sneed 482.

4. "Dortch law" constitutional; educational qualification not objectionable.—A statute making it a misdemeanor to aid a voter in the selection or marking of his ticket, and requiring all voters, including illiterates, to select and mark their own tickets, with such assistance only as the election officers may lawfully afford, is valid and constitutional. Such statute is not obnoxious to the constitution as requiring an educational qualification. 6 Pickle 407.

5. Actual payment of poll tax does not protect voter failing to produce the statutory proof of payment.—Though a voter has actually paid his poll tax, but fails to give the judges of election that satisfactory evidence of such payment which is prescribed by the statutes passed for this purpose affording just and plain rules, convenient and easy of observance, and well calculated to promote uniformity, and to prevent fraud and oppression in the conduct of elections, he is indictable for so voting, and his ballot is illegal and cannot be received, or, if received, cannot be counted. 11 Pickle 723.

See also, State v. Old, 11 Pickle (95 Tenn.) 725; State ex. rel. v. Willett, 9 Cates (117 Tenn.) 346.

Sec. 2. **Right of suffrage may be restricted for crime.**—Laws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes. [This provision was not in the const. of 1796.]

Sec. 3. **Privileges of voters.**—Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest or summons [the words "or summons" not in const. of 1796], during their attendance at elections, and in going to and returning from them. (Art. 3, sec. 2, of const. of 1796.)

*Article 3 of the constitution of 1796 corresponds with this article.

Breach of the peace.—A breach of the peace is a violation of public order—the offense of disturbing the public peace. An act of public indecorum is also a breach of the peace. 6 Cold. 283, 294.

Sec. 4. Mode of voting.—In all elections to be made by the general assembly, the members thereof shall vote viva voce, and their votes shall be entered on the journal. All other elections shall be by ballot.

Constitution of 1796, art. 3, sec. 3, was as follows: "All elections shall be by ballot." See also, Judges' Cases, 18 Pickle (102 Tenn.) 616.

*ARTICLE V.

IMPEACHMENTS.

Section 1. Impeachment.—The house of representatives shall have the sole power of impeachment.

See *Miller v. Conlee*, 5 Sneed (37 Tenn.) 433.

Sec. 2. Tried by the senate.—All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation, and the chief justice of the supreme court, or if he be on trial, the senior associate judge, shall preside over them. No person shall be convicted without the concurrence of two-thirds of the senators sworn to try the officer impeached.

1. Constitution of 1796, art. 4, secs. 2 and 3, corresponding with this section, was as follows: "II. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation.

"III. No person shall be convicted without the concurrence of two-thirds of the whole house."

2. Constitution of 1834 was as follows: "All impeachments shall be tried by the senate; when sitting for that purpose, the senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the senators sworn to try the officer impeached."

3. See also, *Freight Co. v. Memphis*, 3 Cold. (43 Tenn.) 251.

Sec. 3. How prosecuted.—The house of representatives shall elect from their own body three members, whose duty it shall be to prosecute impeachments. No impeachment shall be tried until the legislature shall have adjourned sine die, when the senate shall proceed to try such impeachment.

This provision is not in the constitution of 1796.

Sec. 4. Who may be impeached.—The governor, judges of the supreme court, judges of the inferior courts, chancellors, attorneys for the state, treasurer, comptroller and secretary of state, shall be liable to impeachment, whenever they may, in the opinion of the house of representatives, commit any crime in their official capacity which may require disqualification; but judgment shall only extend to removal from office, and disqualification to fill any office thereafter. The party shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law. The legislature now has, and shall continue to have, power to relieve from the penalties imposed, any person disqualified from holding office by the judgment of a court of impeachment.

1. Constitution of 1796, art. 4, sec. 4, was as follows: "The governor and all civil officers under the state, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under this state. The party shall, nevertheless, in all cases, be liable to indictment, trial, judgment and punishment, according to law."

2. Difference in constitution of 1834.—The constitution of 1834 was the same as the present, except it did not include "treasurer" and "comptroller," and did not contain the last sentence in this.

*Article 4 of constitution of 1796 corresponds with this article.

3. **Conviction of oppression in office is an impeachment.**—The conviction of a justice of the peace, the judgment carrying with it, removal from office, is an impeachment. *State v. Webb v. Parks*, 122 Tenn. 230, 122 S. W. 977.

4. See also, *Judges' Cases*, 18 Pickle (102 Tenn.) 512.

Sec. 5. Officers liable to indictment.—Justices of the peace, and other civil officers, not hereinbefore mentioned, for crimes or misdemeanors in office, shall be liable to indictment in such courts as the legislature may direct; and upon conviction, shall be removed from office by said court, as if found guilty on impeachment; and shall be subject to such other punishment as may be prescribed by law.

This section was not in the constitution of 1796. Cited in 16 Lea 490. See also, *Williams v. Boughner*, 6 Cold. (46 Tenn.) 496.

*ARTICLE VI.

JUDICIAL DEPARTMENT.

Section 1. Judicial power.—The judicial power of this state shall be vested in one supreme court, and in such circuit, chancery and other inferior courts as the legislature shall from time to time, ordain and establish; in the judges thereof, and in justices of the peace. The legislature may also vest such jurisdiction in corporation courts as may be deemed necessary. Courts to be holden by justices of the peace may also be established.

1. **Constitution of 1796 was as follows:** "The judicial power of the state shall be vested in such superior and inferior courts of law and equity, as the legislature shall, from time to time, direct and establish."

2. **Constitution of 1834 was as follows:** "The judicial power of this state shall be vested in one supreme court; in such inferior courts as the legislature shall, from time to time, ordain and establish, and the judges thereof; and in justices of the peace. The legislature may also vest such jurisdiction as may be deemed necessary in corporation courts."

3. **Legislature cannot exercise judicial power; attempts.**—The judicial power, being vested in the courts, cannot be exercised by the legislature. 10 Yer. 59.

4. An act directing the sale of real estate of certain minors, and the application of the proceeds to payment of the ancestor's debt, was an attempted exercise of judicial power by the legislature. (Ib.)

5. So, where an act prescribing the construction of an existing statute (5 Hum. 165); an act directing a person held for crime to be discharged (7 Hum. 152); an act giving parties sued jointly, in pending cases, the right to sever, etc. (11 Heis. 682); an act providing that, upon an equal division of the supreme court as to the constitutionality of an act, the act should be upheld, but that in other cases the judgment below should be affirmed (1 Leg. Rep. 15); an act requiring, in certain cases in which the venue had been changed, that it should be changed back upon certain affidavits (4 Heis. 357); an act directing the revivor in the name of certain parties of a judgment in favor of a deceased party (4 Yer. 202); an act reviving a suit in which the plaintiff had died, in the name of a third person, without his taking out letters of administration (5 Yer. 320). See, also, art. 2, sec. 2.

6. **Jurisdiction and powers of county court purely statutory; but it cannot be abolished by statute.**—The county court, while recognized by the constitution of 1796 as one of the institutions of the state then existing, is, nevertheless, a creature of statute merely, possessed alone of statutory jurisdiction, and wholly wanting in common law powers. 5 Pickle 600; 3 Heis. 682.

7. The constitution recognizes the county court as an institution of the state, and its functions cannot be transferred to other agencies, e. g., county commissioners. 3 Heis. 683.

8. **Act removing county judge unconstitutional.**—An act abolishing the office of county judge and removing the incumbent elected by the people before the expiration of his term of office, and transferring its powers, duties, and jurisdiction without diminution or change, to the chairman of the county court, to be elected by that body, is unconstitutional. 2 Pickle 485.

9. **Abolition of court destroys official character of judge.**—The language, "in such circuit, chancery, and other inferior courts," etc., exacts the preservation of the system of circuit and chancery courts, but a particular circuit or chancery court may be abol-

*Article 5 of the constitution of 1796 corresponds with this article.

ished, and the effect of this will be to destroy the official character of the judge, although his term may not have expired. 2 Lea 320.

10. **Jurisdiction of these courts may be increased or diminished.**—Section 5043 (M. & V. Code), extending the jurisdiction of the chancery court to "all civil causes of action now triable in the circuit court, except for injuries to person, property, or character involving unliquidated damages," is constitutional. 3 Lea 597. See notes under that section.

11. **Creation of special courts.**—The act of 1870, chapter 115, "To establish a criminal court for the county of Montgomery," is constitutional. 3 Heis. 110. See, as to special courts, also, 5 Sneed 512, 513. The legislature has power to create and establish special courts. 8 Pickle 85. The act of 1829, chapter 95, creating a special court for the trial of suits by the Bank of Tennessee against the officers and others, defaulters thereto, was unconstitutional, being retrospective, partial in its operation, and not the "law of the land." 2 Yer. 599.

12. **Act passed by bribery.**—Judicial power does not extend to pronouncing an act of the legislature void on account of bribery. 8 Lea 121.

13. See also, *Fite ex. rel.*, 6 Cates (114 Tenn.) 651; *Chattanooga v. Keith*, 7 Cates (113 Tenn.) 593. *Redistricting Cases*, 3 Cates (111 Tenn.) 257; *Judges' Salary Cases*, 2 Cates (110 Tenn.) 383.

Sec. 2. **Supreme court.**—The supreme court shall consist of five judges, of whom not more than two shall reside in any one of the grand divisions of the state. The judges shall designate one of their own number who shall preside as chief justice. The concurrence of three of the judges shall in every case be necessary to a decision. The jurisdiction of this court shall be appellate only, under such restrictions and regulations as may from time to time be prescribed by law; but it may possess such other jurisdiction as is now conferred by law on the present supreme court. Said court shall be held at Knoxville, Nashville and Jackson.

1. **Constitution of 1796, art. 5, sec. 4, most nearly corresponding with this section, was as follows:** "The judges of the superior courts, shall be justices of oyer and terminer and general jail delivery, throughout the state."

2. **Constitution of 1834 was as follows:** "The supreme court shall be composed of three judges, one of whom shall reside in each of the three grand divisions of the state; the concurrence of two of said judges shall, in every case, be necessary to a decision. The jurisdiction of this court shall be appellate only, under such restrictions and regulations as may, from time to time, be prescribed by law; but it may possess such other jurisdiction as is now conferred by law on the present supreme court. Said courts shall be held at one place, and at one place only, in each of the three grand divisions in the state."

3. **Jurisdiction of supreme court appellate only, and not original.**—The provision of the constitution of 1834, as to the jurisdiction of the supreme court, was identical with the above, and deprived the supreme court of all original jurisdiction. Under this provision the jurisdiction is appellate only, with such additional powers as, though not of themselves appellate, yet are necessary to carry out and complete the appellate jurisdiction—such as the power to render judgments upon forfeited recognizances; to entertain motions for non-return, or false return, of process; to grant a mandamus to compel an inferior judge to sign a bill of exceptions—this in aid of the appellate jurisdiction, etc. 5 Sneed 434, 575; 2 Cold. 565; 12 Heis. 210.

4. The legislature cannot confer any original jurisdiction upon the supreme court. 5 Sneed 575; 2 Cold. 565; 16 Lea 129.

5. The court cannot entertain a motion by sureties against cosureties for contribution, no against their principal. 9 Yer. 15; 2 Cold. 565.

6. Under the act of 1822, providing that the supreme court "shall not possess original jurisdiction in causes either in law or equity," etc., it was held that a bill of review would not lie upon a decree of that court, such a bill being in the nature of an original bill. 2 Yer. 499. The same decision was made, under the constitution of 1834, in *Wilson v. Wilson*, 10 Yer. 200. See also, 10 Yer. 48; 1 Cold. 389.

7. The court cannot grant a mandamus to compel a circuit judge to hear and determine whether a party is entitled to bail. 6 Cold. 528.

8. But it may issue a mandamus in aid of its appellate jurisdiction—as, to compel a circuit judge to sign a bill of exceptions—without which the appellate jurisdiction might be defeated. 3 Cold. 255.

9. A statute (1885, ch. 27) empowering the supreme court to dispauper an appellant is unconstitutional, as an attempt to confer original jurisdiction upon that court. 16 Lea 128-130; 1 Lea 81, 134.

10. **Majority opinion of court of chancery appeals prevails.**—A decree may be founded on an opinion concurred in by a majority of the court of chancery appeals, and it is not necessary that the three shall all concur in the same opinion. 11 Pickle 598. See, also, notes under sec. 377.

11. **Powers of.**—Has power to adopt such proceedings, issue such processes, and try such facts as might become necessary to carry out and perfect its own judgments and decrees, in cases before it by appeal or writ of error. *Railroad v. Byrne*, 119 Tenn. 278, 320, 104 S. W. 460. But this construction is too narrow. The power exists in every case that reaches the court through the exercise of its appellate power, as, for example, by the writ of certiorari (*Staples v. Brown*, 113 Tenn. 639, 85 S. W. 254; *T. C. R. R. Co. v. Campbell*, 109 Tenn. 640, 75 S. W. 1012), as well as by writ of error or appeal, or appeal in the nature of a writ of error; also to proceedings originating in the court in aid and enforcement of its appellate power at every stage, from their inception in any given controversy to their completion in the full execution of its final judgments and decrees. *State v. Hebert*, 127 Tenn. 220, 154 S. W. 957, 963.

Sec. 3. Election of judges; qualifications.—The judges of the supreme court shall be elected by the qualified voters of the state. The legislature shall have power to prescribe such rules as may be necessary to carry out the provisions of section two of this article. Every judge of the supreme court shall be thirty-five years of age, and shall before his election have been a resident of the state for five years. His term of service shall be eight years.

1. **Constitution of 1796, art. 5, sec. 2, corresponding with this and the next succeeding two sections, was as follows:** "The general assembly shall by joint ballot of both houses appoint judges of the several courts of law and equity, also an attorney or attorneys for the state, who shall hold their respective offices during their good behavior."

2. **Constitution of 1834 was as follows:** "The judges of the supreme court shall be elected by the qualified voters of the state at large, and the judges of such inferior courts as the legislature may establish shall be elected by the qualified voters residing within the bounds of any district or circuit to which such inferior judge or judges, either of law or equity, may be assigned by ballot, in the same manner that members of the general assembly are elected. Courts may be established to be holden by justices of the peace. Judges of the supreme court shall be thirty-five years of age, and shall be elected for the term of eight years."

3. **Vacancy in judgeship filled only for unexpired term; so of a newly created judgeship.**—The judicial term is uniform, the first term under the constitution beginning the first of September, 1870, and ending the first of September, 1878, and a new term beginning at the latter date, and at the expiration of each succeeding term of eight years thereafter. Vacancies occurring during a judicial term are filled not for a full term of eight years from the date of occurrence, but for the unexpired judicial term. A judgeship created during a judicial term is, in legal contemplation, a vacancy, and filled as such. 8 Pickle 62, 63; 5 Cold. 590.

4. See also, *State ex. rel. v. Maloney*, 8 Pickle (92 Tenn.) 67; *Judges' Cases*, 18 Pickle (126 Tenn.) 620.

Sec. 4. Judges of inferior courts.—The judges of the circuit and chancery courts, and of other inferior courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned. Every judge of such courts shall be thirty years of age, and shall before his election, have been a resident of the state for five years, and of the circuit or district one year. His term of service shall be eight years.

1. For constitution of 1796, see last section.

2. **Constitution of 1834 was as follows:** "The judges of such inferior courts as the legislature may establish shall be thirty years of age, and shall be elected for the term of eight years.

3. **Constitutional qualifications, judge de facto without.**—The want of constitutional qualifications exposes a judge to removal, but his acts will be binding as those of an officer de facto. 3 Head 690, 1 Heis. 764.

4. A judge under the constitutional age is an officer de facto, and his acts are binding. 3 Head 690. The acts of a judge acting under a commission are valid, as acts of an officer de facto; and this applies to proceedings ex parte and at chambers. 1 Heis. 764.

5. **Abolition of court, abolition of judgeship, when.**—A judge whose courts have been abolished by the legislature ceases to be a judge of the state, and is not thereafter entitled to his salary for the balance of his term of office so abolished. 2 Lea 316; 16 Lea 489, 490.

6. It is not in the power of the legislature to take from a judge the powers and emoluments of office, during his term, by devolving these intact upon another, or otherwise. 2 Pickle 490.

7. County judge judicial officer of the state.—In *Moore v. State*, 5 Sneed 510, it was held that the county judge of Knox county, although vested with certain criminal jurisdiction, was a county officer, and not one of the judges of the state. See, also, 3 Cold. 1. But in *State v. Glenn*, 7 Heis. 472, it was held that the county judge of Davidson county (without any criminal jurisdiction) was not a mere county officer, but was essentially a judicial officer of the state. See, also, *State ex. rel. v. Lindsay*, 19 Pickle (103 Tenn.) 634; *Judges' Cases*, 18 Pickle (102 Tenn.) 545.

Sec. 5. Attorney-general and reporter.—An attorney-general and reporter for the state, shall be appointed by the judges of the supreme court and shall hold his office for a term of eight years. An attorney for the state for any circuit or district, for which a judge having criminal jurisdiction shall be provided by law, shall be elected by the qualified voters of such circuit or district, and shall hold his office for a term of eight years, and shall have been a resident of the state five years, and of the circuit or district one year. In all cases where the attorney for any district fails or refuses to attend and prosecute according to law, the court shall have power to appoint an attorney pro tempore.

1. For constitution of 1796, see section before the last.

2. Constitution of 1834 was as follows: "An attorney-general for the state shall be elected by the qualified voters of the state at large, and the attorney for the state for any circuit or district to which a judge of an inferior court may be assigned, shall be elected by the qualified voters within the bounds of such district or circuit, in the same manner that members to the general assembly are elected; all said attorneys, both for the state and circuit or district, shall hold their offices for the term of six years. In all cases where the attorney for any district fails or refuses to attend and prosecute according to law, the court shall have power to appoint an attorney pro tempore."

3. Equivalent of failure "to attend and prosecute."—The appointment of an attorney-general pro tempore by an order reciting that it was made "on account of the sickness" of the regular attorney-general, is valid. To state in the order a sufficient cause for the failure of the regular attorney-general to attend, or for his failure to prosecute if present, is the same thing, in legal effect, as to state that he failed "to attend and prosecute." 5 Pickle 555-558.

4. Requisites of order of appointment.—The power of appointment pro tempore is special, and the facts upon which its validity depends must appear. A statement merely that the regular attorney-general, having been of counsel for the accused, was incompetent to perform his office, does not assume the existence of facts authorizing the special appointment. 2 Sneed 43.

Sec. 6. Judges and attorneys, how removed.—Judges and attorneys for the state may be removed from office by a concurrent vote of both houses of the general assembly, each house voting separately; but two-thirds of the members to which each house may be entitled ["two-thirds of all the members elected to each house" in const. of 1834] must concur in such vote. The vote shall be determined by ayes and noes, and the names of the members voting for or against the judge or attorney for the state together with the cause or causes of removal, shall be entered on the journals of each house respectively. The judge or attorney for the state, against whom the legislature may be about to proceed, shall receive notice thereof accompanied with a copy of the causes alleged for his removal, at least ten days before the day on which either house of the general assembly shall act thereupon.

This provision was not in the constitution of 1796.

See also, *Judges' Cases*, 15 Pickle (99 Tenn.) 512; *State ex. rel. v. Lindsay*, 19 Pickle (103 Tenn.) 646.

Sec. 7. Compensation of judges.—The judges of the supreme or inferior courts, shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished during the time

for which they are elected. They shall not be allowed any fees or perquisites of office nor hold any office of trust or profit under this state or the United States.

1. Constitution of 1796, art. 5, sec. 3, was as follows: "The judges of the superior court, shall, at stated times, receive a compensation for their services, to be ascertained by law; but shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust or profit under this state, or the United States."

2. Salary to pay special judge cannot be deducted from regular judge's salary.—The act of July 8, 1870, requiring the compensation of a special judge elected by the bar to preside in the absence, incompetency, etc., of the regular judge, to be deducted from the salary of the regular judge, was in conflict with this section and void. 12 Heis. 601.

3. Where a judge dies after the salary is reduced, the judge appointed to fill the vacancy is entitled only to the reduced salary. 4 Lea 608.

4. See also, Judge's Cases, 18 Pickle (102 Tenn.) 533; Judge's Salary Cases, 2 Cates (110 Tenn.) 378.

Sec. 8. **Jurisdiction of inferior courts.**—The jurisdiction of the circuit, chancery and other inferior courts, shall be as now established by law, until changed by the legislature.

1. See 3 Lea 597. No corresponding provision in the constitution of 1796.

2. Constitution of 1834 was as follows: "The jurisdiction of such inferior courts as the legislature may, from time to time, establish, shall be regulated by law."

3. See Jackson v. Mimmo, 3 Lea (71 Tenn.) 600.

Sec. 9. **Judge's charge.**—Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

1. Constitution of 1796, art. 5, sec. 5, was as follows: "The judges of the superior and inferior courts shall not charge juries with respect to matters of fact, but may state the testimony and declare the law."

2. Judge may state what the witnesses said, but must not state what is thereby proven; nor whether the witnesses are to be believed; nor how the proof preponderates.—This was leveled at "summing up," as practiced in Great Britain, which consisted in telling the jury what had been proved in the case, not merely what had been testified to. This was regarded as a dangerous invasion of the province of the jury, and forbidden in express words: "Judges shall not charge juries with respect to matters of fact." That is, the judge shall not state to the jury what facts have been proved. To do so is error, for which there must always be a reversal. But the intention is not to withhold from the jury any proper aid which the judge may be able to render to them in their investigation. It is provided that he may "state the testimony." That is, he may, in order to refresh the recollection of the jury, repeat to them what facts the different witnesses have deposed to, leaving them to judge of their truth, and to draw the deductions therefrom. To state the testimony is within the legal discretion of the judge, according to the circumstances of the case. 4 Hum. 155.

3. The judge must not pronounce upon the credibility of witnesses, or intimate in which scale is the preponderance of evidence, or what conclusion of fact should be drawn from testimony. But he may say, for instance, "The witness, Jones, has said so and so, and, if you believe him, then the law is so and so." 2 Hum. 181; 14 Lea 158, 203; 9 Pickle 219.

4. It is error for the judge to charge as to the sufficiency of evidence, or as to what deduction is to be drawn therefrom. 2 Hum. 311; 1 Swan 452; 5 Cold. 154; 2 Hum. 284; 4 Cold. 130; 9 Pickle 219.

5. The judge must not assume any fact as established, however clear the proof. 7 Heis. 253. But if the fact assumed was not controverted, there will be no reversal. 5 Hum. 502; 14 Lea 158, 159; 2 Lea 594; 6 Lea 211.

6. "To declare the law," meaning of.—The judge is to "declare the law." That is he is to charge the law as applicable to the facts in evidence. He is not to deal in abstractions. He is not to charge principles of law insisted on by counsel, however correct, unless applicable to the case. It is as important that irrelevant questions of law should be kept out of the view of the jury as that they should not be permitted to hear irrelevant facts. In either case, to incumber their minds with a mass of irrelevant matter would tend to obscure the true inquiry, and lead them astray in the investigation of questions not before them. 4 Yer. 141.

7. Judge must not charge that certain facts "strongly indicate" defendant's guilt.—The judge's statement to the jury, in his charge in a criminal case, that certain enumerated facts shown in proof "strongly indicate" the defendant's guilt, is an erroneous invasion of the province of the jury. 9 Pickle 216.

8. **Judge not to direct a particular verdict.**—The judge has no right to direct the jury to return a verdict in favor of either party, where there is any conflict in the evidence, and such direction is an invasion of the province of the jury by the judge, for which the case will be reversed. 6 Pickle 643, 644.

9. **Direction of verdict not forbidden where no controversy as to facts.**—This section does not forbid the direction of a verdict where there is no controversy as to facts. Tynes v. K. C. Ft. S. & M. R. Co., 114 Tenn. 579, 86 S. W. 1074, 1076.

10. See also, Tyrus v. R. R., 6 Cates (114 Tenn.) 584; Hopkins v. R. R., 12 Pickle (96 Tenn.) 419.

Sec. 10. Certiorari.—The judges or justices of inferior courts of law and equity, shall have power in all civil cases [cases], to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation.

1. Constitution of 1796, art. 5, secs. 6 and 7, corresponding with this section, was as follows: "VI. The judges of the superior courts shall have power, in all civil cases, to issue writs of certiorari, to remove any cause, or a transcript thereof, from any inferior court of record into the superior, on sufficient cause, supported by oath or affirmation.

"VII. The judges or justices of the inferior courts of law, shall have power, in all civil cases, to issue writs of certiorari, to remove any cause, or a transcript thereof, from any inferior jurisdiction into their court, on sufficient cause, supported by oath or affirmation."

2. Constitution of 1834 was as follows: "The judges or justices of such inferior courts of law as the legislature may establish, shall have power in all civil cases to issue writs of certiorari to remove any cause or transcript thereof, from any inferior jurisdiction, into said court, on sufficient cause, supported by oath or affirmation."

3. **Power not limited, and may be conferred on others.**—The constitution intends to secure the power to issue the writ to the judges and justices mentioned; not to limit the power to them. It was constitutional for the legislature to authorize the granting of the writ by two justices of the peace. 7 Yer. 21.

4. **Writ cannot be used to stay collection of taxes.**—The constitutional provision has no reference to litigation growing out of the taxing power of the state. The act of 1873, chapter 44, prohibiting the use of the writs of certiorari and supersedeas to stay the collection of any tax, is constitutional. 8 Heis. 664.

5. **Opposition to writ.**—The use of the writ of certiorari for the purposes to which it is now applied met with violent opposition at first, on which account its use in civil cases is noticed in our constitution. 4 Hay. 69, 147.

6. **Candidate unsuccessfully contesting before city council entitled to writ of.**—One who has unsuccessfully contested an election before a city council is entitled to a trial de novo before a circuit court on writ of certiorari. Staples v. Brown, 113 Tenn. 639, 85 S. W. 254.

7. See also, R. R. v. Campbell, 1 Cates (109 Tenn.) 645; Staples v. Brown, 5 Cates (113 Tenn.) 645.

Sec. 11. Incompetency of judges; special judges.—No judge of the supreme or inferior court shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or in which he may have presided in any inferior court, except by consent of all the parties. In case all or any of the judges of the supreme court shall thus be disqualified from presiding on the trial of any cause or causes, the court, or the judges thereof, shall certify the same to the governor of the state, and he shall forthwith specially commission the requisite number of men, of law knowledge, for the trial and determination thereof. The legislature may by general laws make provision that special judges may be appointed, to hold any courts the judge of which shall be unable or fail to attend or sit; or to hear any cause in which the judge may be incompetent.

1. Constitution of 1796, art. 5, sec. 8, was as follows: "No judge shall sit on the trial of any cause where the parties shall be connected with him, by affinity or consanguinity, except by consent of parties. In case all the judges of the superior court shall be interested in the event of any cause or related to all or either of the parties, the governor of the state

shall in such case specially commission three men, of law knowledge, for the determination thereof."

2. **Constitution of 1834 same as present, except last sentence, which was as follows:** "In case of sickness of any of the judges of the supreme or inferior courts, so that they or any of them are unable to attend, the legislature shall be authorized to make provision, by general laws, that special judges may be appointed to attend said courts."

3. **Special judges.**—The act of 1858, ch. 90, authorizing the selection of a special judge by the parties, is constitutional. 5 Sneed 690. And the selection may be made by the attorneys. *Ib.* But it applies only to civil cases. 9 Bax. 486. Where the constitution contained no provision for the appointment of special judges, it was held that an act authorizing the governor to appoint a special circuit judge in case of the sickness of the regular judge, was unconstitutional. 5 Yer. 271. The act of 1870, ch. 78 authorizing an election of special judges in certain cases, by members of the bar, is constitutional. 3 Heis. 159; 5 Heis. 702; 7 Bax. 318.

4. **Connection by affinity.**—There is no connection by affinity between a party and the judge, whose son's wife is the party's aunt. Peck 374. Nor where the husband of the judge's wife sister is a party. 10 Lea 1. A connection by affinity is dissolved by the death of the party by marriage with whom the affinity was created. 1 Head 209.

5. **Incompetency waived, unless objection, when.**—A chancellor who, as counsel in the case, conducted the proceedings until after the master's report of sale, is incompetent to render judgment by motion against the purchaser on the sale notes. 5 Cold. 219.

6. The incompetency of a justice, not excepted to at the time, cannot be set up by plea in abatement in the circuit court on appeal. 1 Swan 172. In this case it was broadly remarked that if the incompetency of the justice were not objected to before a trial on the merits, it would be waived. But, as pointed out in 6 Bax. 72, there was then no statute prescribing how the incompetency must be waived.

7. In 5 Cold. 220, and 5 Bax. 72, it was held that, under section 4873 (M. & V.), adding to the requirement of the constitution, the waiver, in the case of a justice, must be in writing, and in the case of a judge or chancellor, must be by matter of record. In the former case the judgment, without such waiver, was said to be a mere nullity; and in 8 Bax. 353, it was said that it could be attacked even collaterally. In 1 Lea 126, the case in 1 Swan 172, was approved as to the point decided—viz., that the incompetency of the lower court, unobjected to at the time, cannot be made available in the higher court on appeal.

8. A confession of judgment in writing, before an incompetent justice, is a substantial waiver in writing of the incompetency. 5 Lea 395.

9. A judge who, as attorney-general, signed the indictment, is incompetent to try the prisoner. 3 Heis. 128.

10. But it will not affect the case that an incompetent judge was presiding when the indictment was found and spread upon the minutes, and when the plea of not guilty was filed, such acts being merely ministerial. 9 Bax. 486.

11. A judgment is valid, though rendered by a judge who was disqualified by interest, unless objection was taken on account of such disqualification. 10 Pickle 325, 326.

12. See also, Grundy Coal Co., 10 Pickle (94 Tenn.) 301; Judges' Cases, 18 Pickle (102 Tenn.) 569.

Sec. 12. Process; conclusion of indictments.—All writs and other process shall run in the name of the State of Tennessee and bear teste and be signed by the respective clerks. Indictments shall conclude, "against the peace and dignity of the state."

1. Constitution of 1796, art. 5, sec. 9, and the constitution of 1834, were the same as this.

2. **Writ not in name of state, void.**—A writ or other process that does not run in the name of the state is void upon its face. This requirement applies to all process, civil or criminal, issued by any court or tribunal established by law, having authority to issue process. A writ running in the name of the corporation of Nashville, is void. 11 Hum. 250; 8 Pickle 525, 526.

3. **Judges may issue attachments and orders for jurors.**—This does not prevent judges from being authorized to issue writs of attachment signed by them. 6 Bax. 286. The court here seemed in doubt as to what writs or process this provision had reference. A *venire facias juratores* is not such process, and may be issued and signed by the judge of a court authorized to appoint jurors and "cause them to be summoned." 3 Heis. 338.

4. **Indictment must conclude:** "Against the peace and dignity of the state," for these words are necessary to the validity of an indictment. 3 Heis. 215.

5. See also, McLendon v. State, 8 Pickle (92 Tenn.) 525; Webb v. State, 11 Lea (79 Tenn.) 666.

Sec. 13. Clerks of court.—Judges of the supreme court shall appoint their clerks who shall hold their offices for six years. Chancellors shall appoint their clerks and masters, who shall hold their offices for six years. Clerks of inferior courts, holden in the respective counties or districts, shall be elected by the qualified voters thereof for the term of four years. Any clerk may be removed from office for malfeasance, incompetency or neglect of duty, in such manner as may be prescribed by law.

1. Constitution of 1796, art. 5, sec. 10, was as follows: "Each court shall appoint its own clerk, who may hold his office during good behavior."

2. Constitution of 1834 was as follows: "Judges of the supreme court shall appoint their clerks, who shall hold their offices for the period of six years. Chancellors (if courts of chancery shall be established) shall appoint their clerks and masters, who shall hold their office for a period of six years. Clerks of such inferior courts as may be hereafter established, which shall be required to be holden in the respective counties of this state, shall be elected by the qualified voters thereof, for the term of four years; they shall be removed from office for malfeasance, incompetency, or neglect of duty, in such manner as may be prescribed by law."

3. Appointment of clerk by a de facto judge, good.—A chancellor appointed by the governor to fill a vacancy may appoint a clerk and master for the full term of six years. 2 Bax. 238. And the appointment made by a chancellor de facto will be valid. 2 Bax. 235. See also, *Bowen v. Evans*, 1 Lea (69 Tenn.) 109; *Northern v. Barnes*, 2 Lea (70 Tenn.) 606.

Sec. 14. Fines.—No fine shall be laid on any citizen of this state that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should [for "should" "ought to" is used in the const. of 1796, art. 5, sec. II] be more than fifty dollars.

1. Jury to be instructed.—The jury should be properly charged and instructed as to the fine. 7 Pickle 443.

2. This applies only where fine is discretionary.—This section applies only where there is discretion as to the amount of the fine. Where the law imposed a fine of five hundred dollars absolutely, and the jury simply found the party guilty, the court properly imposed the fine, this being fixed by the law, as a consequence of the verdict. 6 Bax. 479.

3. No power whatever to assess fines over fifty dollars.—Defendant waiving jury trial, does not confer on the judge power or right to inflict fine exceeding fifty dollars. *Metzner v. State*, 128 Tenn. 45, 157 S. W. 69, 70.

4. See also, *State ex. rel. v. Brewing Co.*, 20 Pickle (104 Tenn.) 738; *Shoun v. State*, 3 Cates (111 Tenn.) 173.

Sec. 15. Civil districts.—The different counties of this state shall be laid off, as the general assembly may direct, into districts of convenient size, so that the whole number in each county shall not be more than twenty-five, or four for every one hundred square miles. There shall be two justices of the peace and one constable elected in each district by the qualified voters therein, except districts including county towns, which shall elect three justices and two constables. The jurisdiction of said officers shall be coextensive with the county. Justices of the peace shall be elected for the term of six, and constables for the term of two years. Upon removal of either of said officers from the district in which he was elected, his office shall become vacant from the time of such removal. Justices of the peace shall be commissioned by the governor. The legislature shall have power to provide for the appointment of an additional number of justices of the peace in incorporated towns.

1. Constitution of 1796, art. 5, sec. 12, was as follows: "There shall be justices of the peace appointed for each county, not exceeding two for each captain's company, except for the company which includes the county town, which shall not exceed three, who shall hold their offices during good behavior."

2. Repeal of charter does not deprive a justice of his office.—Justices elected in incorporated towns, under a statute in pursuance of this constitutional provision, are justices of the county, and the repeal of the charter of incorporation of the town does not deprive the justice of his office until the expiration of his term. 16 Lea 491.

3. Legislature may allow towns a definite number of justices, but cannot leave it to town to fix the number.—Under this section it is undoubtedly competent for the legislature to confer, by special act, the power upon any incorporated town to elect a definite number of additional justices; but an act conferring upon an existing municipal corporation, or upon each of a class of such corporations, the power to elect a certain number of justices of the peace in each ward into which such city may be subdivided, is unconstitutional, because it constitutes an illegal delegation of legislative power to incorporated towns. 6 Pickle 722.

4. Action of legislature in creating cannot be challenged.—From whatever source the power derived for creating civil districts, the exercise of which is intrusted solely to the judgment and discretion of the general assembly, when it has exercised this discretion its action is final, and its correctness cannot be challenged by other departments of the government. *Maxey v. Powers, et al*, 117 Tenn. 381, 101 S. W. 181, 185.

5. Legislature may increase the number for any district.—This provision means that there must be at least the prescribed number of justices and constables; it does not prevent the legislature from providing for more than that number in any district. 5 Cold. 15.

6. Justice may keep office anywhere in his county, when.—A justice may open an office, and do business there, in any civil district of the county, so he keeps his residence in the district in which he was elected, and an office to do business there when required. The question was reserved as to whether a practical abandonment of the office he is required to keep in his own district, for the office that he opens in another district, does not vacate his office. 10 Pickle 668.

7. See also, *Maxey v. Powers*, 9 Cates (117 Tenn.) 389; *Redistricting Cases*, 3 Cates (111 Tenn.) 257.

*ARTICLE VII.

STATE AND COUNTY OFFICERS.

Section 1. **Justices and constables, numbers of; removal of county officers.**—There shall be elected in each county, by the qualified voters therein, one sheriff, one trustee [“and” inserted in const. of 1834], one register; the sheriff and trustee for two years, and the register for four years. But [instead of “but” the words “provided that” are used in constitution of 1834] no person shall be eligible to the office of sheriff more than six years in any term of eight years. There shall be elected for each county by the justices of the peace, one coroner, and one ranger who shall hold their offices for two years; said officers shall be removed for malfeasance, or neglect of duty, in such manner as may be prescribed by law.

1. Constitution of 1796, art. 6, sec. 1, was as follows: “There shall be appointed in each county, by the county court, one sheriff, one coroner, one trustee, and a sufficient number of constables, who shall hold their offices for two years. They shall also have power to appoint one register and ranger for the county, who shall hold their offices during good behavior. The sheriff and coroner shall be commissioned by the governor.”

2. See *Sheafer v. Mitchell*, 1 Cates (109 Tenn.) 206; *Judges’ Salary Cases*, 2 Cates (110 Tenn.) 384.

Sec. 2. **Vacancies, how filled.**—Should a vacancy occur, subsequent to an election, in the office of sheriff, trustee or register, it shall be filled by the justices; if in that of the clerks to be elected by the people, it shall be filled by the courts; and the person so appointed shall continue in office until his successor shall be elected and qualified; and such office shall be filled by the qualified voters at the first election for any of the county officers.

1. There is no provision in the constitution of 1796 corresponding with this section.

2. **Vacancy in clerk of county court, how filled.**—The power to fill a vacancy in the office of county court clerk belongs to the justices of the county, and not to the county judge. 8 Lea 74.

3. See also, *State ex. rel. v. Cummins*, 15 Pickle (99 Tenn.) 680; *Redistricting Cases*, 3 Cates (111 Tenn.) 258.

*Article 6 of the constitution of 1796 corresponds with this article.

Sec. 3. Treasurer and comptroller.—There shall be a treasurer or treasurers and a comptroller of the treasury appointed for the state, by the joint vote of both houses of the general assembly, who shall hold their offices for two years.

1. Constitution of 1796, art. 6, sec. 2, was as follows: "There shall be a treasurer or treasurers appointed for the state, who shall hold his or their offices for two years."

2. Constitution of 1834 was as follows: "There shall be a treasurer or treasurers appointed for the state, by the joint vote of both houses of the general assembly, who shall hold his or their offices for two years."

3. **Comptroller, when office of, first created.**—The office of comptroller of the treasury was first created by the act of 1835, ch. 12.

4. See also, *Shelby Co. v. Judges*, 3 Shannon's Cases, 516.

Sec. 4. Other elections and vacancies.—The election of all officers, and the filling of all vacancies [the words, "that may happen by death, resignation, or removal," were inserted here in the const. of 1834] not otherwise directed or provided by this constitution, shall be made in such manner as the legislature shall direct.

Constitution of 1796, art. 6, sec. 3, was as follows: "The appointment of all officers not otherwise directed by this constitution, shall be vested in the legislature."

Sec. 5. Time of election of civil officers; terms; temporary appointments.—Elections for judicial and other civil officers shall be held on the first Thursday in August, one thousand eight hundred and seventy, and forever thereafter on the first Thursday in August next preceding the expiration of their respective terms of service.

The term of each officer so elected shall be computed from the first day of September next succeeding his election. The term of office of the governor and of other executive officers shall be computed from the fifteenth of January next after the election of the governor. No appointment or election to fill a vacancy shall be made for a period extending beyond the unexpired term. Every officer shall hold his office until his successor is elected or appointed, and qualified. No special election shall be held to fill a vacancy in the office of judge or district attorney, but at the time herein fixed for the biennial election of civil officers; and such vacancy shall be filled at the next biennial election occurring more than thirty days after the vacancy occurs.

1. **Constitutions of 1796 and 1834.**—There was no provision in the constitution of 1796 corresponding with this section, but the section of the constitution of 1834 corresponding with this one, was as follows: "The legislature shall provide that the election of the county and other officers, by the people, shall not take place at the same time that the general elections are held for members of congress, members of the legislature, and governor. The elections shall commence and terminate on the same day." This section was amended by an amendment adopted in the year 1853, as follows: "The legislature shall appoint a day for holding the election of judges and attorney-general, separate and apart from the days already prescribed, or hereafter to be prescribed by the legislature, for holding the elections for state and county officers."

2. **Temporary appointment, how limited.**—This was meant to alter the provision of the previous constitution, as construed in 2 Hum. 24; 9 Hum. 208, and 3 Sneed 6, whereby officers elected to fill vacancies held for the full constitutional terms of their respective offices. The judicial term, under the constitution, began on the first day of September, 1870, and every eight years thereafter a new term began, and will continue to do so. Vacancies are filled for the remainder of the term. A judgeship created during such judicial term is, in legal contemplation, a vacancy, and must be filled as such. 8 Pickle 62.

3. See *State ex rel. v. Trehwitt*, 5 Cates (113 Tenn.) 568; *Morrison v. State*, 8 Cates (116 Tenn.) 552; *Maxey v. Powers*, 9 Cates (117 Tenn.) 400.

*ARTICLE VIII.

MILITIA.

Section 1. Militia officers.—All militia officers shall be elected by persons

*Article 7 of constitution of 1796 corresponds with this article.

subject to military duty, within the bounds of their several companies, battalions, regiments, brigades and divisions, under such rules and regulations as the legislature may from time to time direct and establish.

Constitution of 1796, art. 7, secs. 1, 2, 3, and 4, corresponding with this section, was as follows: "I. Captains, subalterns and noncommissioned officers shall be elected by those citizens in their respective districts who are subject to military duty. II. All field officers of the militia shall be elected by those citizens in their respective counties who are subject to military duty. III. Brigadiers general shall be elected by the field officers of their respective brigades. IV. Majors general shall be elected by the brigadiers and field officers of the respective divisions."

Sec. 2. Staff officers.—The governor shall appoint the adjutant general and his other staff officers; the major generals, brigadier generals, and commanding officers of regiments, shall respectively appoint their staff officers.

Sec. 3. Exemptions.—The legislature shall pass laws exempting citizens belonging to any sect or denomination of religion, the tenets of which are known to be opposed to the bearing of arms, from attending private and general musters. (Constitution of 1796, art. 7, sec. 7, same as this.)

Constitution of 1796, art. 7, secs. 5 and 6, corresponding with this section, was as follows: "V. The governor shall appoint the adjutant general; the majors general shall appoint their aids; the brigadiers general shall appoint their brigade majors, and the commanding officers of regiments, their adjutants and quartermasters. VI. The captains and the subalterns of the cavalry shall be appointed by the troops enrolled in their respective companies, and the field officers of the districts shall be appointed by the said captains and subalterns; provided, that whenever any new county is laid off, the field officers of the said cavalry shall appoint the captain and other officers therein, pro tempore, until the company is filled up and completed, at which time the election of the captain and subalterns shall take place as aforesaid."

*ARTICLE IX.

DISQUALIFICATIONS.

Section 1. Ineligibility of ministers and priests.—Whereas ministers of the gospel are by their profession, dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions, therefore, no minister of the gospel, or priest of any denomination whatever, shall be eligible to a seat in either house of the legislature.

Sec. 2. Of belief.—No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.

Sec. 3. Of duelists.—Any person who shall, after the adoption of this constitution, fight a duel, or knowingly be the bearer of a challenge to fight a duel, or send, or accept a challenge for that purpose, or be an aider or abettor in fighting a duel, shall be deprived of the right to hold any office of honor or profit in this state, and shall be punished otherwise, in such manner as the legislature may prescribe.

1. This section originated with the constitution of 1834.

2. **Aiding in duel outside of state no disqualification for office.**—A citizen of this state, aiding and abetting in another state in a duel there fought, is not thereby disqualified to hold a judicial office in this state. 4 Pickle 753.

3. See State ex rel. v. DuBoise, 4 Pickle (88 Tenn.) 753.

†ARTICLE X.

OATHS, BRIBERY OF ELECTORS, NEW COUNTIES.

Section 1. Oath of office.—Every person who shall be chosen or appointed to any office of trust or profit under this constitution, or any law made in pur-

*Article 8 of constitution of 1796 corresponds with this article.

†Article 9 of the constitution of 1796 corresponds with this article.

suance thereof, shall, before entering upon the duties thereof, take an oath to support the constitution of this state, and of the United States, and an oath of office.

1. Constitution of 1796, art. 9, sec. 1, corresponding with this section, was as follows: "That every person who shall be chosen or appointed to any office of trust or profit, shall, before entering on the execution thereof, take an oath to support the constitution of this state, and also an oath of office."

2. See Leonard v. Haynes, 14 Lea (82 Tenn.) 454; State ex rel. v. Slagel, 7 Cates (115 Tenn.) 339.

Sec. 2. Of members of the general assembly.—Each member of the senate and house of representatives, shall before they proceed to business take an oath or affirmation to support the constitution of this state, and of the United States and also the following oath: "I —— do solemnly swear [or affirm] that as a member of this general assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the constitution of this state."

1. Difference in the constitutions.—"That" is the first word of this section in constitution of 1796, and "A. B." in the blank; otherwise this section is the same in the three constitutions.

2. See Wright v. Cunningham, 7 Cates (115 Tenn.) 464.

Sec. 3. Punishment of electors for bribery.—Any elector who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the laws shall direct. And any person who shall directly or indirectly give, promise or bestow any such reward to be elected, shall thereby be rendered incapable, for six ["two" in const. of 1796] years, to serve in the office for which he was elected, and be subject to such further punishment as the legislature shall direct.

Sec. 4. New counties; county lines; exceptions; vote necessary to establish new counties or remove county seat; liability for existing debt.—New counties may be established by the legislature to consist of not less than two hundred and seventy-five square miles, and which shall contain a population of seven hundred qualified voters; no line of such county shall approach the courthouse of any old county from which it may be taken nearer than eleven miles, nor shall such old county be reduced to less than five hundred square miles. But the following exceptions are made to the foregoing provisions viz: New counties may be established by the present or any succeeding legislature out of the following territory, to wit: Out of that portion of Obion county which lies west of low water mark of Reel Foot lake: out of fractions of Sumner, Macon and Smith counties; but no line of such new county shall approach the courthouse of Sumner or of Smith counties nearer than ten miles, nor include any part of Macon county lying within nine and a half miles of the courthouse of said county nor shall more than twenty square miles of Macon county nor any part of Sumner county lying due west of the western boundary of Macon county, be taken in the formation of said new county: out of fractions of Grainger and Jefferson counties, but no line of such new county shall include any part of Grainger county north of the Holston river; nor shall any line thereof approach the courthouse of Jefferson county nearer than eleven miles. Such new county may include any other territory which is not excluded by any general provision of this constitution: out of fractions of Jackson and Overton counties but no line of such new county shall approach the

courthouse of Jackson or Overton counties nearer than ten miles, nor shall such county contain less than four hundred qualified voters, nor shall the area of either of the old counties be reduced below four hundred and fifty square miles: out of fractions of Roane, Monroe, and Blount counties, around the town of Loudon; but no line of such new county shall ever approach the towns of Maryville, Kingston, or Madisonville nearer than eleven miles, except that on the south side of the Tennessee river, said lines may approach as near as ten miles to the courthouse of Roane county.

The counties of Lewis, Cheatham, and Sequatchie, as now established by legislative enactments are hereby declared to be constitutional counties. No part of Bledsoe county shall be taken to form a new county or a part thereof or be attached to any adjoining county.

That portion of Marion county included within the following boundaries, beginning on the Grundy and Marion county line at the Nick-a-Jack Trace and running about six hundred yards west of Ben. Posey's, to where the Tennessee Coal Railroad crosses the line, running thence southeast through the Pocket near William Summar's crossing the Battle creek gulf at the corner of Thomas Wooten's field, thence running across the Little Gizzard gulf at Raven point, thence in a direct line to the bridge crossing the Big Fiery Gizzard, thence in a direct line to the mouth of Holy Water creek, thence up said creek to the Grundy county line, and thence with said line to the beginning; is hereby detached from Marion county, and attached to the county of Grundy.

No part of a county shall be taken off to form a new county or a part thereof without the consent of two-thirds of the qualified voters in such part taken off; and where an old county is reduced for the purpose of forming a new one, the seat of justice in said old county shall not be removed without the concurrence of two-thirds of both branches of the legislature, nor shall the seat of justice of any county be removed without the concurrence of two-thirds of the qualified voters of the county. But the foregoing provision requiring a two-thirds majority of the voters of a county to remove its county seat shall not apply to the counties of Obion and Cocke.

The fractions taken from old counties to form new counties, or taken from one county and added to another shall continue liable for their pro rata of all debts contracted by their respective counties prior to the separation, and be entitled to their proportion of any stocks or credits belonging to such old counties.

1. Constitution of 1796, art. 9, sec. 4. was as follows: "No new county shall be established by the general assembly which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than six hundred and twenty-five square miles. Nor shall any new county be laid off of less contents. All new counties, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which they were taken, until entitled by numbers to the right of representation. No bill shall be passed into a law, for the establishment of a new county, except upon a petition to the general assembly, for that purpose, signed by two hundred of the free male inhabitants within the limits or bounds of such new county, prayed to be laid off."

2. Constitution of 1834 was as follows: "New counties may be established by the legislature, to consist of not less than three hundred and fifty square miles, and which shall contain a population of four hundred and fifty qualified voters. No line of such county shall approach the courthouse of any old county from which it may be taken, nearer than twelve miles. No part of a county shall be taken off to form a new county or a part thereof, without the consent of a majority of the qualified voters in such part taken off. And in all cases where an old county may be reduced for the purpose of forming a new one, the seat of justice in said old county shall not be removed without the concurrence of two-thirds of both branches of the legislature, nor shall said old county be reduced to less than six hundred and twenty-five square miles; provided, however, that the county of Bedford may be reduced to four hundred and seventy-five square miles; and there shall not be laid

off more than one new county on the west, and one on the east, adjoining the county of Bedford; and no new county line shall run nearer than eleven and a half miles of the seat of justice of said county. The line of a new county may run within eleven miles of the seat of justice of Franklin county; provided, it does not reduce said county to less contents than six hundred and twenty-five square miles. The counties of Carter, Rhea, Tipton, Dyer, and Sullivan are excepted out of the provisions of this section. The county of Humphreys may be divided at such time as may be prescribed by the legislature, making the Tennessee river the dividing line, a majority of the qualified voters of said county voting in favor of said division; the counties of Carter, Rhea, and Humphreys, shall not be divided into more than two counties each; nor shall more than one new county be taken out of the territory now composing the counties of Tipton and Dyer, nor shall the seats of justice in the counties of Rhea, Carter, Tipton, and Dyer, be removed, without the concurrence of two-thirds of both branches of the legislature. The county of Sullivan may be reduced below the contents of six hundred and twenty-five square miles, but the line of any new county which may hereafter be laid off shall not approach the county seat of said county, nearer than ten miles. The counties of Marion and Bledsoe shall not be reduced below one thousand qualified voters each, in forming a new county or counties."

3. **Establishment of county in violation of constitution enjoined.**—The chancery court, at the instance of anyone aggrieved, will enjoin the establishment of a new county of less than the constitutional dimensions. 2 Hum. 428.

4. **County of unconstitutional dimensions.**—If a county of unconstitutional dimensions has actually been organized, the court cannot disorganize it, or restrain its officers from exercising their functions (9 Hum. 152; 4 Bax. 598), though an old county unconstitutionally reduced is not estopped from relief because the act has been carried out. 1 Swan 286; 9 Hum. 585; 4 Bax. 599; 5 Sneed 490. But the detached territory belongs to the county to which it is transferred until the old county asserts its rights. The unconstitutionality of the transfer cannot be set up by a party indicted in the new county for an act done within the transferred territory. 7 Bax. 47.

5. **Restriction applies to changes in county lines as well as to formation of new counties.**—The constitutional restrictions apply not only to formation of new counties, but also to changes in the lines of existing counties, and transfers of territory from one such county to another. 5 Sneed 490; 9 Hum. 585; 1 Swan 236; 4 Bax. 593; 5 Pickle 259; 6 Pickle 541.

6. The constitutional requirement that the line of a new county shall not approach the courthouse of any old county, from which it may be taken, nearer than eleven miles, applies to changes of lines between existing counties; and the line of an existing county shall not be made to approach nearer its courthouse than eleven miles, or, if it is already within that distance, it shall not be made any nearer, either by the formation of a new county or a change of line between existing counties. 6 Pickle 541.

7. **Parts of old counties put in a new county remain liable for pro rata of debts.**—When fractions of old counties are taken to form new ones, the fractions remain liable for their pro rata of the existing debts of the old counties respectively, and the old counties are, for the enforcement of this liability, to levy and collect the proper taxes within the fractions as if no separation had occurred. 8 Heis. 854; 3 Lea 120.

8. **Two-thirds of all qualified voters must actually vote.**—The two-thirds of the qualified voters who must consent to the taking off a part of a county to form a new county, means not two-thirds of those voting, but two-thirds of all the qualified voters of the given part of the county. 5 Heis. 294; 16 Lea 581.

9. The requirement of a "concurrence of two-thirds of the qualified voters of the county" for the removal of the county seat, means that there must be an active concurrence, and not a passive acquiescence, and therefore two-thirds of the qualified voters must actually vote in favor of the removal. 16 Lea 581.

10. **Establishment of special court to be held at a place other than county seat, not a removal of same.**—An act establishing a special court, for a certain part of a county, to be held at a place other than the county seat of such county, is not a removal of "the seat of justice" of the county, and, therefore, does not violate the constitutional prohibition of the removal of "the seat of justice of any county * * * without the concurrence of two-thirds of the qualified voters of the county." 8 Pickle 89-97.

11. **Reduction below minimum not allowed except.**—The area of an old county cannot be reduced below the constitutional limit of five hundred square miles, either by act of the legislature or, a fortiori, by the county court, unless it be in the restoration of a part which rightfully belongs to another county. 5 Pickle 259.

12. **Air line measurement.**—In the establishment of new counties or changing county lines, the distances must be measured by an air or straight horizontal line. 2 Bax. 1.

13. **County seat removal, not by legislature, but by two-thirds of voters.**—The legislature cannot, directly or indirectly, compass the removal of a county seat. It requires a vote of two-thirds of the qualified voters. 8 Bax. 141; 16 Lea 581.

14. An act providing for the removal, if two-thirds of the votes cast in the next preceding governor's election should favor it, was unconstitutional. It required two-thirds of all the actual qualified votes. 1 Lea 195; 3 Bax. 276.

15. An act providing that if two-thirds of the voters shall favor a removal, then a majority, at another election, shall determine the new site, is unconstitutional. Two-thirds of the voters must pronounce in favor of the new site. 11 Lea 29.

16. **Remedy to prevent unconstitutional removal.**—Private citizens and taxpayers may maintain a bill to enjoin the unconstitutional removal of a county seat. 8 Bax. 141; 16 Lea 581.

Sec. 5. To vote with old county.—The citizens who may be included in any new county shall vote with the county or counties from which they may have been stricken off, for members of congress, for governor and for members of the general assembly until the next apportionment of members to the general assembly after the establishment of such new county.

For provision in constitution of 1796, see same under last section.

*ARTICLE XI.

MISCELLANEOUS PROVISIONS.

Section 1. Existing laws not affected by this constitution.—All laws and ordinances now in force and use in this state, not inconsistent with this constitution, shall continue in force and use until they shall expire or be altered, or repealed by the legislature; but ordinances contained in any former constitution or schedule thereto are hereby abrogated.

1. Constitution of 1796, art. 10, sec. 1, was as follows: "Knoxville shall be the seat of government until the year one thousand eight hundred and two."

2. Same, sec. 2, corresponding with this section, was as follows: "All laws and ordinances now in force and use in this territory, not inconsistent with this constitution, shall continue to be in force and use in this state, until they shall expire, be altered or repealed by the legislature."

3. Constitution of 1834 was as follows: "All laws and ordinances now in force and use in this state, not inconsistent with this constitution, shall continue in force and use, until they shall expire, be altered, or repealed by the legislature."

4. See *Henley v. State*, 14 Pickle (98 Tenn.) 706; *Warner v. State*, 13 Lea (81 Tenn.) 67.

Sec. 2. Nor rights, contracts, actions, etc.—Nothing contained in this constitution shall impair the validity of any debts or contracts, or affect any rights of property or any suits, actions, rights of action or other proceedings in courts of justice.

See *Creath v. Creath*, 2 Pickle (86 Tenn.) 661; *Parker v. Savage*, 6 Lea (74 Tenn.) 407; *White v. Fulghum*, 3 Pickle (87 Tenn.) 285.

Sec. 3 Amendments of the constitution, etc., not oftener than once in six years; but legislature may at any time submit question of calling convention.—Any amendment or amendments to this constitution may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays thereon, and referred to the general assembly then next to be chosen; and shall be published six months previous to the time of making such choice; and if in the general assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as the general assembly shall prescribe. And if the people

*Article 10 of constitution of 1796 corresponds with this article.

shall approve and ratify such amendment or amendments by a majority of all the citizens of the state voting for representatives, voting in their favor, such amendment or amendments shall become part of this constitution. When any amendment or amendments to the constitution shall be proposed in pursuance of the foregoing provisions the same shall at each of said sessions be read three times on three several days in each house. The legislature shall not propose amendments to the constitution oftener than once in six years. [The remainder of this section originated with this constitution.] The legislature shall have the right, at any time by law, to submit to the people the question of calling a convention to alter, reform or abolish this constitution, and when upon such submission, a majority of all the votes cast shall be in favor of said proposition, then delegates shall be chosen, and the convention shall assemble in such mode and manner as shall be prescribed.

1. Constitution of 1796, art. 10, sec. 3, was as follows: "That whenever two-thirds of the general assembly shall think it necessary to amend or change this constitution, they shall recommend to the electors, at the next election for members of the general assembly, to vote for or against a convention; and if it shall appear that a majority of all the citizens of the state voting for representatives, have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there may be in the general assembly, to be chosen in the same manner, at the same place and by the same electors, that choose the general assembly, who shall meet within three months after the said election, for the purpose of revising and amending or changing the constitution."

2. See Judges' Cases, 18 Pickle (102 Tenn.) 550; Wright v. Cunningham, 7 Cates (115 Tenn.) 465.

Sec. 4. Divorces.—The legislature shall have no power to grant divorces, but may authorize the courts of justice to grant them for such causes as may be specified by law, but such laws shall be general and uniform in their operation throughout the state.

1. This section originated with the constitution of 1834.

2. See Luelwman v. Taxing District, 2 Lea (70 Tenn.) 455; Hurt v. Hurt, 2 Lea (70 Tenn.) 178.

Sec. 5. Lotteries.—The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state.

1. This section originated with the constitution of 1834.

2. In Meigs 426, it was said that this section was itself a prohibition of lotteries.

3. See Daly v. State, 13 Lea (81 Tenn.) 233.

Sec. 6. Changing name, legitimation, etc.—The legislature shall have no power to change the names of persons, or to pass acts adopting or legitimatizing [legitimating or legitimizing] persons; but shall, by general laws, confer this power on the courts.

1. This section originated with this constitution.

2. See Perkins v. Watson, 2 Baxter (61 Tenn.) 177; McKinney v. Hotel Co., 12 Heis. 105.

Sec. 7. Interest, conventional rate.—The legislature shall fix the rate of interest, and the rate so established shall be equal and uniform throughout the state; but the legislature may provide for a conventional rate of interest, not to exceed ten per centum per annum.

1. This was section 6 in the constitution of 1834, and it originated with that constitution, except the last clause, which originated with this constitution.

2. Interest law, not equal and uniform, unconstitutional.—An act authorizing a particular corporation to issue ten per centum bonds was unconstitutional, because not equal and uniform throughout this state. 12 Heis. 104.

3. A county may be authorized by legislative act to issue bonds bearing a lawful rate of interest where made payable and above our legal rate. This is nothing more than any person may contract to do. 3 Pickle 809, 810.

4. **Conventional interest law was valid under constitution of 1834.**—A conventional interest law enacted under the constitution of 1834, allowing ten per cent., by special contract, for the loan of money, was held constitutional. 2 Cold. 378; 1 Heis. 453.

5. See also, *Memphis v. Bank*, 7 Pickle (91 Tenn.) 583; *Redistricting Cases*, 3 Cates (111 Tenn.) 277; *Memphis v. Insurance Co.*, 7 Pickle (91 Tenn.).

Sec. 8. General laws only to be passed; corporations only to be provided for by general laws.—The legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the general assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested.

1. **Difference in constitutions.**—The first sentence of this section is the same as in section 7 of this article in constitution of 1834, but the last sentence is new, and takes the place of the following provision in that constitution. "Provided always, The legislature shall have power to grant such charters of incorporation as they may deem expedient for the public good." None of this section was in the constitution of 1796.

2. **Reference.**—An act in violation of this provision could hardly fail to violate sec. 8, art. 1, as not being "the law of the land." See note to that article.

3. **"Class legislation," what is and what is not.**—If a law may be extended to any member of the community who may be able to bring himself within its provisions, it is constitutional under this section. 12 Heis. 633; 3 Lea 380; 14 Lea 520; 16 Lea 71; 2 Pickle 272; 3 Pickle 214; 6 Pickle 482.

4. If a law confers benefits upon a limited class, and imposes burdens upon a limited class, where the classes are natural and not arbitrary, it is not unconstitutional as vicious "class legislation." 7 Pickle 494-497; 3 Pickle 214; 5 Pickle 522-535 (syl. 12).

5. There must be some good and valid reason why the benefit of some special right, privilege, immunity, or exemption is conferred upon some particular class, or why the burden of some special disability, duty, or obligation is imposed upon a particular class. 5 Pickle 522-535.

6. **Power of legislature to grant charters taken away by present constitution.**—The legislature would have had the power to have granted charters of incorporation without the express grant in the constitution of 1834. 8 Hum. 1; 9 Hum. 263; 6 Cold. 382. Hence, such power is prohibited in the present constitution. The grant did not authorize the legislature to enact a charter exempting, as expedient for the public good, the corporation thereby created from restrictions imposed by other provisions of the constitution. 12 Heis. 104.

7. **Corporations chartered under general laws, powers increased by general laws.**—Charters of incorporation issued under the general laws may be amended by general laws adding to the powers therein originally granted. 8 Pickle 172, 173; 7 Pickle 589, 590.

8. **Municipal, but not private, corporations created by special laws.**—The provision that "no corporation shall be created, or its powers increased or diminished by special laws," applies alone and exclusively to private corporations, and has no application to municipal corporations. 2 Lea 431; 12 Lea 254-261; 15 Lea 633; 5 Pickle 487.

9. **Provision applies to corporations in existence.**—That no corporation shall have its powers increased or diminished by special laws, etc., applies to corporations in existence when this constitution was adopted as well as to corporations subsequently created. 12 Lea 254-261.

10. **Rights, privileges, immunities, or exemptions.**—The use of all these terms relied on to show that "exemptions" are not included in "rights and privileges." Giving to one company the "rights and privileges" of another, held not to include an exemption from taxation belonging to the latter. 9 Bax. 550.

11. **Capital stock exempted, increased stock exempt.**—Where the capital stock of a corporation was exempted from taxation in a charter granted before this constitution, with the right conferred to increase the capital stock, and the same was increased after this constitution went into effect, such increase is also exempt from taxation. 11 Pickle 235-237.

12. **Privileges.**—The constitution adopted the judicial construction of this term, established before its adoption. 3 Heis. 281.

13. **Separation of white and colored on street cars.**—Act of April 4, 1905 (acts 1905, ch. 150), requiring separation of white and colored persons on street cars, is not violative of this section, although it does not apply to nurses attending children and helpless persons. *Morrison v. State*, 116 Tenn. 534, 95 S. W. 494.

14. **The following have been held not to violate the provision:** An act authorizing certain counties traversed by a railroad to subscribe to its stock. 7 Lea 153.

15. An act giving cotton brokers a special lien for a certain time on cotton sold by them. 12 Heis. 633.

16. An act taxing a privilege for state and county purposes, according to the size of the town wherein it is exercised. 3 Heis. 281.

17. An act providing for converting into taxing districts such municipalities as might be abolished, or might surrender their charter, in a given way, although mainly intended for a particular city, where, at the same session, thirty-seven municipalities were abolished, all of which, therefore, fell within the act. 2 Lea 425.

18. An act punishing the sale of liquors within four miles of an institution of learning, but excepting from its provisions the limits of incorporated towns. 1 Lea 96; 12 Lea 368.

19. An act exempting from its operation existing suits. Meigs 131. An act creating the office of county judge for certain counties. 5 Sneed 510.

20. An act giving the owner a remedy by motion on the bond of a contractor. 6 Pickle 480-482. An act changing the name of a corporation. 2 Pickle 630; 7 Pickle 583.

21. **The following acts have been held to violate the provision:** An act authorizing cities with a given population to sue without giving security for costs. 9 Bax. 239.

22. An act providing for a given settlement by the administrator of a deceased tax collector. 6 Heis. 186.

23. An act, in 1856, barring suits as to slaves sold under defective judicial proceedings under the act of 1827, unless brought within six months after the passage of the former act. 2 Head 276.

24. A provision in the charter of a corporation exempting its officers and employees from service as jurors or road hands. 4 Lea 316.

25. An act making it a misdemeanor "for anyone engaged in the business of a barber * * * to keep open his bathrooms on Sunday," but not prohibiting other persons to do so. Such is "class legislation." 2 Pickle 275-277.

26. An act applying the "four-mile law" to corporations known as taxing districts of the second class. 12 Lea 368.

27. An act providing that it shall apply "only to counties that had a population, by the census of 1870, of not less than forty thousand," because it is impossible for other counties subsequently acquiring the same population to bring themselves within the terms of the statute, there being but two counties in the state having that population then. 14 Lea 520. To same effect, 16 Lea 71. See also, 6 Pickle 724-726.

28. But where the act provides that the law shall apply only to counties or cities of a given population, according to the federal census of a certain year, or by any subsequent federal census, it is constitutional, because all counties and cities in the state may, when the required conditions occur, have the benefit of the act. 6 Pickle 413.

29. **Class legislation—statutes regarding animals running at large.**—A statute prohibiting the running at large of hogs, sheep and goats, in counties having a population of not less than 25,000 or more than 25,100, is not class legislation. It is well settled that statutes of this character are not arbitrary and vicious class legislation. *Murphy v. State*, 114 Tenn. 531, 86 S. W. 711.

30. **Partial law unconstitutional.**—An act creating a privilege, and limiting the exercise of that privilege to certain corporations, is a partial law, and unconstitutional. 13 Lea 228.

31. **Taxing districts, corporations.**—The so-called taxing districts created by the act of 1879, are municipal corporations. 2 Lea 425. The legislature may itself directly impose the taxation for the uses of a municipal corporation. 2 Lea 425.

32. See also, *Duff in re*, 3 Shannon's Cases 722; *Railroad v. Hamblen Co.*, 2 Shannon's Cases, 393; *Phillips v. Lewis*, 3 Shannon's Cases, 249; *Maxey v. Powers*, 9 Cates (117 Tenn.) 389; *Morrison v. State*, 8 Cates (116 Tenn.) 540.

Sec. 9. Power over private and local affairs.—The legislature shall have the rights to vest such powers in the courts of justice, with regard to private and local affairs, as may be expedient.

1. This section originated with the constitution of 1834, art. 11, sec. 8.

2. **Power of legislature not unlimited.**—This provision did not authorize the legislature to vest in the circuit courts the power to grant charters of incorporation. 3 Sneed 634. The legislature has not unlimited power to authorize the county courts to exempt or release railway property from taxation for county purposes. 5 Pickle 598.

3. See also, *Wright v. Cunningham*, 7 Cates (115 Tenn.) 467; *Redistricting Cases*, 3 Cates (111 Tenn.) 256.

Sec. 10. Internal improvements to be encouraged.—A well regulated system of internal improvement is calculated to develop the resources of the state, and promote the happiness and prosperity of her citizens; therefore, it ought to be encouraged by the general assembly.

1. This section originated with constitution of 1834, art. 11, sec. 9.

2. See *Colburn v. Railroad*, 10 Pickle (94 Tenn.) 49; *Railroad v. Wilson Co.*, 5 Pickle (89 Tenn.) 606.

Sec. 11. Homestead exemption.—A homestead in the possession of each head of a family and the improvements thereon, to the value, in all of one thousand dollars shall be exempt from sale under legal process during the life of such head of a family, to inure to the benefit of the widow, and shall be exempt during the minority of their children occupying the same. Nor shall said property be alienated without the joint consent of husband and wife, when that relation exists. This exemption shall not operate against public taxes, nor debts contracted for the purchase money of such homestead, or improvements thereon.

1. This section originated with this constitution.

2. **Homestead continues in husband after wife's death.**—Where homestead is once acquired and vested in the husband by reason of his marriage, it continues in him, though his wife dies, and leaves him without any family at all; and such homestead will inure, upon his death, to the benefit of a widow and minor child or children of a subsequent marriage. 3 Pickle 393; 5 Lea 722.

3. **Reversionary interest.**—What is protected is the homestead right or right of use and occupation. The reversionary interest may be mortgaged and sold to pay debts. 1 Lea 543; 1 Leg. Rep. 22; 2 Lea 579; 3 Lea 203.

4. For the decisions upon the subject of the homestead, see the notes to secs. 2935-2946 (M. & V.). See also, 2 Pickle 451, 659; 3 Pickle 78, 143, 334, 393; 5 Pickle 82, 337; 10 Pickle 241.

5. **Husband cannot deprive widow of by deed.**—The husband cannot by will deprive his widow of her homestead right. *Chamness v. Parrish*, 118 Tenn. 739, 103 S. W. 822.

6. See also, *Moore v. Duncan*, 2 Shannon's Cases 155; *Neam v. Campbell*, 1 Shannon's Cases 673; *Caldwell v. Bowman*, 1 Shannon's Cases 602; *Carter v. Hatton*, 1 Shannon's Cases 433; *Lovelace v. Lovelace*, 1 Shannon's Cases 429; *Ryther v. Blackwell*, 5 Cates (113 Tenn.) 187; *Broom v. Whitefield*, 24 Pickle (108 Tenn.) 426.

Sec. 12. Education to be cherished; common school fund; poll tax; whites and negroes; colleges, etc., rights of.—Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the state, being highly conducive to the promotion of this end, it shall be the duty of the general assembly in all future periods of this government, to cherish literature and science. And the fund called the common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the general assembly of this state for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriations; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the state, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be diverted to any other use than the support and encourage-

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ment of common schools. The state taxes, derived hereafter from polls shall be appropriated to educational purposes, in such manner as the general assembly shall from time to time direct by law. No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. The above provisions shall not prevent the legislature from carrying into effect any laws that have been passed in favor of the college, universities or academies, or from authorizing heirs or distributees to receive and enjoy escheated property under such laws as shall be passed from time to time.

1. The remainder of this section, in the constitution of 1834, art. 11, sec. 10, read as follows: "And it shall be the duty of the general assembly to appoint a board of commissioners, for such term of time as they may think proper, who shall have the general superintendence of said fund, and who shall make a report of the condition of the same from time to time, under such rules, regulations, and restrictions, as may be required by law: Provided, That if at any time hereafter a division of the public lands of the United States, or of the money arising from the sales of such lands, shall be made among the individual states, the part of such lands or money coming to this state shall be devoted to the purposes of education and internal improvement; and shall never be applied to any other purpose."

2. By constitution of 1834, art. 11, sec. 11, this subject was continued as follows: "The above provisions shall not be construed to prevent the legislature from carrying into effect any laws that have been passed in favor of the colleges, universities, or academies, or from authorizing heirs or distributees to receive and enjoy escheated property, under such rules and regulations as from time to time may be prescribed by law."

3. None of this matter was in the constitution of 1796.

4. **Power of the legislature over the school fund.**—The legislature could compromise a suit instituted in behalf of the school fund, and could appoint commissioners for that purpose. 5 Hum. 279. When the school fund was made a part of the capital of the Bank of Tennessee, it became a part of the assets of the bank, subject to the claims of its creditors. The act of February 16, 1866, appropriating the assets of the bank for the benefit of the school fund was, therefore, an act impairing the obligation of contracts. 5 Bax. 1.

5. See also, *State v. Knoxville*, 7 Cates (115 Tenn.) 186; *Edmonson v. Board*, 24 Pickle (108 Tenn.) 563; *State v. University*, 3 Pickle (87 Tenn.) 239.

Sec. 13. Game, fish, etc.—The general assembly shall have power to enact laws for the protection and preservation of game and fish, within the state, and such laws may be enacted for and applied and enforced in particular counties or geographical districts, designated by the general assembly.

1. This section originated with this constitution.

2. See *Sibley v. State*, 2 Pickle (107 Tenn.) 518; *Maney v. State*, 6 Lea (74 Tenn.) 220; *Peters v. State*, 12 Pickle (96 Tenn.) 687.

Sec. 14. Intermarriage between whites and negroes.—The intermarriage of white persons with negroes, mulattoes, or persons of mixed blood, descended from a negro to the third generation inclusive or their living together as man and wife in this state is prohibited. The legislature shall enforce this section by appropriate legislation.

1. This section originated with this constitution.

2. **This provision and acts enforcing it, valid.**—This provision is not in conflict with the constitution of the United States, the civil rights bill, or the enforcement act. 3 Heis 287. A state act punishing whites and negroes for living together in adultery or fornication more severely than persons of the same color, is not constitutionally objectionable. 106 U. S. 583.

3. See *Lonas v. State*, 3 Heis. (50 Tenn.) 300.

Sec. 15. Religious holidays.—No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest.

This section originated with this constitution.

Sec. 16. Bill of rights to remain inviolate.—The declaration of rights hereto prefixed is declared to be a part of the constitution of this state, and

shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate.

1. Constitution of 1834, art. 11, sec. 12, was same as this.

2. **Constitution of 1796, art. 10, sec. 4, was as follows:** "The declaration of rights hereto annexed, is declared to be a part of the constitution of this state, and shall never be violated on any pretence whatever. And to guard against transgression of the high powers which we have delegated, we declare, that every thing in the bill of rights contained and every other right not hereby delegated, is excepted out of the general powers of government, and shall forever remain inviolate."

3. See *Harrison v. Willis*, 7 Heis. (54 Tenn.) 36; *State v. Denton*, 6 Cold. (46 Tenn.) 541.

Sec. 17. County offices.—No county office created by the legislature shall be filled otherwise than by the people of the county court.

1. This section originated with this constitution.

2. **Election commissioners not county officers.**—The commissioners and registrars in the election laws are not county officers in such sense that the governor cannot appoint them under the power conferred upon him. 6 Pickle 414. A county judge is not such a county officer, but what the governor may fill a vacancy by appointment, when no other provision is made to fill the same. 7 Heis. 472. See section 386.

3. See also, *Morrison v. State*, 8 Cates (116 Tenn.) 552; *State ex. rel. v. Trehwhitt*, 5 Cates (113 Tenn.) 566; 'Judges' Cases, 18 Pickle (102 Tenn.) 547; *Condon v. Maloney*, 24 Pickle (108 Tenn.) 100.

SCHEDULE.

Section 1. Public officers, to hold from what time; appointments; officers to vacate, when; exceptions.—That no inconvenience may arise from a change of the constitution, it is declared that the governor of the state, the members of the general assembly and all officers elected at or after the general election of March, one thousand eight hundred and seventy, shall hold their offices for the terms prescribed in this constitution.

Officers appointed by the courts shall be filled by appointment, to be made and to take effect during the first term of the court held by judges elected under this constitution.

All other officers shall vacate their places thirty days after the day fixed for the election of their successors under this constitution.

The secretary of state, comptroller and treasurer shall hold their offices until the first session of the present general assembly occurring after the ratification of this constitution and until their successors are elected and qualified.

The officers then elected shall hold their offices until the fifteenth day of January, one thousand eight hundred and seventy-three.

Sec. 2. Judges of supreme court; vacancy to remain unfilled; court may sit in two sections; two judges must concur; attorney-general and reporter.—At the first election of judges under this constitution there shall be elected six judges of the supreme court, two from each grand division of the state who shall hold their offices for the term herein prescribed.

In the event any vacancy shall occur in the office of either of said judges at any time after the first day of January, one thousand eight hundred and seventy-three, it shall remain unfilled and the court shall from time to time be constituted of five judges.

While the court may consist of six judges they may sit in two sections,

and may hear and determine causes in each at the same time, but not in different grand divisions at the same time.

When so sitting the concurrence of two judges shall be necessary to a decision.

The attorney-general and reporter for the state shall be appointed after the election and qualification of the judges of the supreme court herein provided for.

Sec. 3. Officers to take oath to support this constitution, or vacate.—Every judge and every officer of the executive department of this state and every sheriff holding over under this constitution, shall, within twenty days after the ratification of this constitution is proclaimed, take an oath to support the same, and the failure of any officer to take such oath shall vacate his office.

Sec. 4. Statute of limitations.—The time which has elapsed since the sixth day of May, one thousand eight hundred and sixty-one, until the first day of January, one thousand eight hundred and sixty-seven, shall not be computed, in any cases affected by the statutes of limitations, nor shall any writ of error be affected by such lapse of time.

Constitution cannot unbar a barred action.—In 1 Heis. 280, and 5 Heis. 353, it was held that not even the constitution making power of the state could unbar a barred action; and to give a writ of error where the time therefor has expired, would seem to be at least as objectionable. In 7 Cold. 15, it was held that an act undertaking to do this was void, as an invasion of vested rights.

Done in convention at Nashville the twenty-third day of February in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States, the ninety-fourth. In testimony whereof we have hereunto set our names.

JOHN C. BROWN, *President.*

JOHN ALLEN,
JESSE ARLEDGE,
HUMPHREY R. BATE,
JNO. BAXTER,
A. BLIZARD,
NATHAN BRANDON,
R. P. BROOKS,
JAMES BRITTON,
NEILL S. BROWN,
JAMES S. BROWN,
T. M. BURKETT,
JOHN W. BURTON,
WM. BYRNE,
ALEX. W. CAMPBELL,
WM. BLOUNT CARTER,
Z. R. CHOWNING,
JAMES A. COFFIN,
WARREN CUMMINGS,
ROBERT P. CYPERT,
W. V. DEADERICK,
THOS. D. DAVENPORT,
G. G. DIBRELL,
W. F. DOHERTY,
J. E. DROMGOOLE,
JAMES FENTRESS,
A. T. FIELDER,
P. G. FULKERSON,
JOHN A. GARDNER,

JOHN E. GARNER,
S. P. GAUT,
CHARLES N. GIBBS,
B. GORDON,
J. B. HEISKELL,
R. HENDERSON,
H. L. W. HILL,
SP'L. HILL,
SAM'L S. HOUSE,
JNO. F. HOUSE,
T. B. IVIE,
THOMAS M. JONES,
DAVID N. KENNEDY,
D. M. KEY,
SAM J. KIRKPATRICK,
A. A. KYLE,
JOS. A. MABRY,
A. G. MCDUGAL,
MALCOLM MCNABB,
MATT. MARTIN,
JOHN H. MEEKS,
THOS. C. MORRIS,
J. NETHERLAND,
A. O. P. NICHOLSON,
GEO. C. PORTER,
JAS. D. PORTER, JR.,
GEO. E. SEAY,
SAMUEL G. SHEPARD,

E. H. SHELTON,
 WM. H. STEPHENS,
 JOHN M. TAYLOR,
 J. C. THOMPSON,
 W. VANCE THOMPSON,

JAMES J. TURNER,
 GEO. W. WALTERS,
 RICHARD WARNER, JR.,
 WM. H. WILLIAMSON,
 W. M. WRIGHT.

Attest:

T. E. S. RUSSWURM, *Secretary.*
 THOS. W. JONES, *Assistant Secretary.*
 W. S. KYLE, *Second Assistant Secretary.*

NOTES ON CONSTRUCTION OF THE CONSTITUTION.

1. **General rules for construing the constitution.**—In construing the constitution, the whole instrument must be taken into consideration, and no part so construed as to impair or destroy any other part. Legislative powers enumerated in one clause must be defined and exercised with reference to limitations and requirements made in other clauses. 7 Pickle 586, 587.

2. Every presumption should be made in favor of the validity of laws. If an act is subject to two reasonable constructions, it should be construed so as to give it effect rather than to defeat it. 3 Lea 81.

3. If a statute admits of two constructions, one of which would render it constitutional and the other unconstitutional, the former should be adopted. And a doubt in relation to its constitutionality should be resolved in favor of the act. 13 Lea 162.

4. Courts indulge every reasonable intendment favorable to the constitutionality of a statute passed with the required formalities. If susceptible of two constructions, the one that renders the statute constitutional will be preferred to the other, though more natural, that renders it unconstitutional. Statutes upon trial for unconstitutionality are entitled to the benefit of every reasonable doubt. 6 Pickle 469; 11 Pickle 560.

5. Where a statute is of doubtful meaning, it should receive that construction which is in harmony with the constitution. 7 Pickle 506.

6. The constitutional doctrine of this state is that the legislative power of the general assembly of this state extends to every subject, except in so far as it is prohibited either by the delegated powers of the federal government or by the restrictions of our own constitution. He who would show the unconstitutionality of an act of the legislature must be able to put his finger upon the provision of the constitution violated. 5 Pickle 511, 512, and cases cited.

7. Where a statute is free from other exceptions, the courts cannot annul it, because, in their opinion, it is opposed to "natural equity," or to "the eternal principles of justice," or to "the inherent rights of freemen," or to some vague and general spirit that is supposed to pervade the constitution, but not expressed in words, or to any general and vague interpretation of a provision of the constitution beyond its plain and obvious import. 5 Pickle 512.

8. In considering our state constitution, we must not commit the mistake of supposing that, because individual rights are guarded and protected by it, they must also be considered as owing their origin to it. This instrument measures the powers of the rulers, but they do not measure the rights of the governed. A constitution is not the beginning of a community nor the origin of private rights; it is not the foundation of law nor the incipient state of government; it is not the cause, but the consequence, of personal and political freedom; it grants no rights to the people, but is the creature of their power, the instrument of their convenience, designed for their protection in the enjoyment of the rights and powers which they possessed before the constitution was made; it is but the framework of the political government, and necessarily based upon the pre-existing condition of laws, rights, habits, and modes of thought. 5 Pickle 512, 513.

9. The journals of the convention may be looked to in construing the constitution. 1 Lea 552; 2 Lea 431; 5 Sneed 486. Words used in the constitution which had a meaning established by judicial construction, are to be taken in that sense. 8 Heis. 455, 456, 476, 544.

ORDINANCE.

Section 1. **Election ordered.**—Be it ordained by the convention, That it shall be the duty of the several officers of the state, authorized by law to hold elections for members of the general assembly and other officers, to open and hold an election at the place of holding said elections in their respective

counties, on the fourth Saturday in March, 1870, for the purpose of receiving the votes of such qualified voters as may desire to vote for the ratification or rejection of the constitution recommended by this convention. And the qualification of voters in said election be the same as that required in the election of delegates to this convention.

Sec. 2. Duty of returning officers; manner of voting.—It shall be the duty of said returning officers, in each county in this state, to enroll the name of each voter on the poll books prepared for said election, and shall deposit each ballot in the ballot boxes respectively. Each voter who wishes to ratify the new constitution shall have written or printed on his ticket, the words "New Constitution," or words of like import; and each voter who wishes to vote against the ratification of the new constitution, shall have written or printed on his ticket, the words, "Old Constitution," or words of like import.

Sec. 3. Election, how held; votes, etc.—The election shall be held, and the judges and clerks shall be appointed, as in the case of the election of the members of the general assembly; and the returning officers, in presence of the judges or inspectors, shall count the votes given for the "New Constitution," and of those given for the "Old Constitution," of which they shall keep a correct estimate in said poll books. They shall deposite the original poll books of said election with the clerks of the county courts in the respective counties, and shall, within five days after the election, make out accurate statements of the number of votes in their respective counties, for or against the "New Constitution," and immediately forward by mail, one copy of said certificates to the governor, and one to the speaker of the senate. So soon as the poll books are deposited with the county court clerks, they shall certify to the president of the convention, an accurate statement of the number of votes cast for or against the "New Constitution," as appears on said poll books. And, if any of said returning officers shall fail to make the returns herein provided for, within the time required, the governor shall be authorized to send special messengers for the result of the vote in those counties whose officers have so failed to make returns.

Sec. 4. Returns, who to compare; certificate of result; governor's proclamation.—Upon the receipt of said returns, it shall be the duty of the governor, speaker of the senate, and the president of this convention, or any two of them, to compare the votes cast in said election; and if it shall appear that a majority of all the votes cast for and against the new constitution were for "New Constitution," it shall be the duty of the governor, speaker of the senate, and president of this convention, or any two of them, to append to this constitution a certificate of the results of the votes, from which time the constitution shall be established as the constitution of Tennessee, and the governor shall make proclamation of the result.

Sec. 5. When proclamation to be issued.—The governor of the state is required to issue his proclamation as to the election on the fourth Saturday in March, 1870, hereto provided for. JOHN C. BROWN, *President*.

Attest:

[L. S.]

T. E. S. RUSSWURM, *Secretary*.

CERTIFICATE.

STATE OF TENNESSEE.

In pursuance of the fourth ordinance of the late constitutional convention

of the State of Tennessee, adopted on the twenty-third of February, one thousand eight hundred and seventy, in the city of Nashville, we, D. W. C. Senter, governor of said state; Dorsey B. Thomas, speaker of the senate, and John C. Brown, president of said convention, do hereby certify that we have carefully compared the votes cast for and against the new constitution in the election on the fourth Saturday of March, one thousand eight hundred and seventy, and we certify that the vote cast in the entire state, leaving out the counties of Knox, Grainger, Roane, and Overton (from which there are no official returns) was one hundred and thirty-two thousand. Of these, ninety-eight thousand one hundred and twenty-eight votes were for the new constitution, and thirty-three thousand eight hundred and seventy-two were for the old constitution, and that the majority for the new constitution is sixty-four thousand two hundred and fifty-six; and we certify accordingly the ratification of the new constitution.

Done at the executive department, in the city of Nashville, this fifth day of May, A. D. one thousand eight hundred and seventy, and of the American independence the ninety-fourth.

D. W. C. SENTER, *Governor*,
JOHN C. BROWN, *President, etc.*,
D. B. THOMAS, *Speaker of the Senate*.

PROCLAMATION.

STATE OF TENNESSEE, EXECUTIVE DEPARTMENT,
NASHVILLE, May 5, 1870.

In pursuance of the fourth ordinance of the late constitutional convention, I have carefully examined the official returns of the election held on the twenty-sixth day of March last, for the ratification or rejection of the proposed constitution of the State of Tennessee (except the counties of Knox, Grainger, Roane and Overton, which returns have not been received), and find the number of votes cast for the "New Constitution" to be (98,128) ninety-eight thousand one hundred and twenty-eight, and for the "Old Constitution" (33,872) thirty-three thousand eight hundred and seventy two, being a majority of (64,256) sixty-four thousand two hundred and fifty-six for the new constitution.

Now, therefore, I, D. W. C. Senter, governor of the State of Tennessee, by virtue of the power and authority in me vested, do hereby declare and proclaim that the new constitution, as submitted to the people, was ratified by them at the ballot box, on the twenty-sixth day of March last, by said majority of (64,256) sixty-four thousand two hundred and fifty-six votes.

In testimony whereof, I have hereunto subscribed my official signature, and ordered the great seal of the state to be affixed.

Done at the department in the city of Nashville, this fifth day of May, in the year of our Lord, one thousand eight hundred and seventy, and of the American independence the ninety-fourth.

D. W. C. SENTER.

By the governor:

[L. s.] A. J. FLETCHER,
Secretary of State.

Schedule of constitution of 1796:

I. That no inconvenience may arise from a change of the temporary to a permanent state government, it is declared, that all rights, actions, prosecutions, claims and contracts,

as well of individuals as of bodies corporate, shall continue, as if no change had taken place in the administration of government.

II. All fines, penalties, and forfeitures, due and owing to the territory of the United States of America south of the river Ohio, shall enure to the use of the state. All bonds for performance, executed to the governor of the said territory shall be, and pass over to the governor of this state, and his successors in office, for the use of the state, or by him or them respectively to be assigned over to the use of those concerned, as the case may be.

III. The governor, secretary, judges and brigadiers generals have a right, by virtue of their appointments, under the authority of the United States, to continue in the exercise of the duties of their respective offices, in their several departments, until the said officers are superseded under the authority of this constitution.

IV. All officers, civil and military, who have been appointed by the governor, shall continue to exercise their respective offices until the second Monday in June, and until successors in office shall be appointed under the authority of this constitution, and duly qualified.

V. The governor shall make use of his private seal, until a state seal shall be provided.

VI. Until the first enumeration shall be made, as directed in the second section of the first article of this constitution, the several counties shall be respectively entitled to elect one senator and two representatives; Provided, That no new county shall be entitled to separate representation previous to taking the enumeration.

VII. That the next election for representatives and other officers, to be held for the county of Tennessee, shall be held at the house of William Miles.

VIII. Until a land office shall be opened, so as to enable the citizens south of French Broad and Holston, between the rivers Tennessee and Big Pigeon, to obtain titles upon their claims of occupancy and pre-emption, those who hold land by virtue of such claims, shall be eligible to serve in all capacities, where a feehold is by this constitution made a requisite qualification.

Done in convention, at Knoxville, by unanimous consent, on the sixth day of February, in the year of our Lord one thousand seven hundred and ninety-six, and of the independence of the United States of America, the twentieth. In testimony whereof, we have hereunto subscribed our names.

WILLIAM BLOUNT, President.

Blount County.

David Craig,
James Greenaway,
Joseph Black,
James Houston,
Samuel Glass.

Davidson County.

John M'Nairy,
Andrew Jackson,
James Robertson,
Thomas Hardiman,
Joel Lewis.

Sullivan County.

George Rutledge,
William C. C. Claiborne,
Richard Gammon,
John Shelby, Jr.,
John Rhea.

Greene County.

Samuel Frazier,
Stephen Brooks,
William Rankin,

Elisha Baker,
John Galbreath.

Jefferson County.

Alexander Outlaw,
Joseph Anderson,
George Doherty,
James Roddye,
Archibald Roane.

Sevier County.

Peter Bryan,
Samuel Wier,
Spencer Clack,
John Clack,
Thomas Buckenham.

Hawkins County.

James Berry,
Joseph M'Minn,
Thomas Henderson,
William Cocke,
Richard Mitchell.

Sumner County.

David Shelby,

Isaac Walton,

W. Douglass,
Edward Douglass,
Daniel Smith.

Tennessee County.

Thomas Johnston,
James Ford,
William Fort,
William Prince,
Robert Prince.

Washington County.

John Tipton,
Samuel Handly,
Leeroy Taylor,
Landon Carter,
James Stewart.

Knox County.

James White,
Charles M'Clung,
John Crawford,
John Adair.

Attest: WILLIAM MACLIN, Secretary.

Schedule of constitution of 1834:

Section 1. That no inconvenience may arise from a change of the constitution, it is declared, that all officers, civil and military, shall continue to hold their offices; and all the functions appertaining to the same shall be exercised and performed according to the existing laws and constitution, until the end of the first session of the general assembly which shall sit under this constitution, and until the government can be reorganized and put into operation under this constitution, in such manner as the first general assembly aforesaid shall prescribe, and no longer.

Sec. 2. The general assembly which shall sit after the first apportionment of representation under the new constitution, to wit: in the year one thousand eight hundred and forty-three, shall, within the first week after the commencement of the session, designate and fix the seat of government; and when so fixed, it shall not be removed, except by the consent of two-thirds of the members of both houses of the general assembly. The first

and second sessions of the general assembly, under this constitution, shall be held in Nashville.

Sec. 3. Until a land office shall be opened, so as to enable the citizens south and west of the congressional reservation line to obtain titles upon their claims of occupancy, those who hold lands by virtue of such claims shall be eligible to serve in all capacities where a freehold is, by the laws of the state, made a requisite qualification.

Done in convention at Nashville, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and thirty-four, and of the independence of the United States of America, the fifty-ninth.

In testimony whereof, we have hereunto subscribed our names:

WILLIAM B. CARTER, President.

Adam R. Alexander,
Robert Allen,
H. C. Armstrong,
Willie Blount,
Richard Bradshaw,
Robt. M. Burton,
Terry H. Cahal,
Newton Cannon,
Richard Cheatham,
W. G. Childress,
R. L. Cobbs,
Maclin Cross,
Burchett Douglass,
Francis B. Fogg,
Gray Garrett,
James Gillespy,
B. Gordon,
James Gray,
Callaway Hodges,

Isaac Hill,
Adam Huntsman,
W. H. Humphreys,
Nelson I. Hess,
John Kelly,
Peter Kendall,
Bradley Kimbrough,
Joseph Kincaid,
Andrew A. Kincannon,
Robt. J. McKinney,
Wm. Ledbetter,
William H. Loving,
J. A. Mabry,
Abraham McClellan,
John McGaughy,
G. W. L. Marr,
John Montgomery,
John Neil,
Richard Nelson,

Thomas C. Porter,
Jno. Purdy,
Wm. C. Roadman,
George W. Richardson,
Henry Ridley,
Julius C. N. Robertson,
William T. Senter,
James Scott,
Henry Sharp,
W. C. Smartt,
James W. Smith,
Matthew Stephenson,
Ennis Ury,
Isaac Walton,
R. Weakley,
Jonathan Webster,
John J. White,
John Whitson.

Attest: WM. K. HILL, Secretary.

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