

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

CONSTITUTION  
OF  
THE STATE OF MAINE,

FORMED IN

CONVENTION AT PORTLAND, OCTOBER TWENTY-NINTH, AND  
ADOPTED BY THE PEOPLE IN TOWN MEETINGS, ON  
THE SIXTH DAY OF DECEMBER, A. D. 1819, AND  
OF THE INDEPENDENCE OF THE UNITED  
STATES THE FORTY-FOURTH.

TOGETHER WITH

AMENDMENTS SUBSEQUENTLY MADE THERETO,

AND ARRANGED, AS AMENDED, IN PURSUANCE OF A RESOLVE OF THE LEGISLATURE  
APPROVED FEBRUARY TWENTY-FOURTH, A. D. 1875, WITH AMENDMENTS  
ADOPTED SINCE THE LAST NAMED DATE WITH NOTES ON  
THE DECLARATION OF RIGHTS.

BY

L. D. CARVER.



AUGUSTA  
KENNEBEC JOURNAL PRINT  
1902



CONSTITUTION  
OF  
THE STATE OF MAINE,

FORMED IN

CONVENTION AT PORTLAND, OCTOBER TWENTY-NINTH, AND  
ADOPTED BY THE PEOPLE IN TOWN MEETINGS, ON  
THE SIXTH DAY OF DECEMBER, A. D. 1819, AND  
OF THE INDEPENDENCE OF THE UNITED  
STATES THE FORTY-FOURTH.

TOGETHER WITH

AMENDMENTS SUBSEQUENTLY MADE THERETO,

AND ARRANGED, AS AMENDED, IN PURSUANCE OF A RESOLVE OF THE LEGISLATURE  
APPROVED FEBRUARY TWENTY-FOURTH, A. D. 1875, WITH AMENDMENTS  
ADOPTED SINCE THE LAST NAMED DATE WITH NOTES ON  
THE DECLARATION OF RIGHTS.

BY  
L. D. CARVER.



AUGUSTA  
KENNEBEC JOURNAL PRINT  
1902

"The objects of government are almost as varied as the wants of man and they constantly increase with the progressive steps of civilization. Our whole governmental history shows that the education of those who must ultimately assume the direction of the affairs of government, constitutes one of the most important objects of legislation."

L. D. CARVER.

AUGUSTA, MAINE, November 6, 1902.

CONSTITUTION  
OF  
THE STATE OF MAINE,

FORMED IN

CONVENTION AT PORTLAND, OCTOBER 29, AND ADOPTED BY  
THE PEOPLE IN TOWN MEETINGS, DECEMBER 6, A. D.  
1819, AND OF THE INDEPENDENCE OF THE UNITED  
STATES THE FORTY-FOURTH,

TOGETHER WITH THE

XXI AMENDMENTS SUBSEQUENTLY MADE THERETO, ARRANGED, AS AMENDED,  
IN PURSUANCE OF A LEGISLATIVE RESOLVE OF FEBRUARY 24, 1875, BY THE  
CHIEF JUSTICE OF THE SUPREME JUDICIAL COURT, THE HONORABLE JOHN  
APPLETON, WHOSE DRAFT AND ARRANGEMENT WAS, BY A RESOLVE OF FEB-  
RUARY 23, 1876, APPROVED BY THE LEGISLATURE, AND ORDERED TO BE  
ENROLLED ON PARCHMENT AND TO BE DEPOSITED IN THE OFFICE OF THE SEC-  
RETARY OF STATE AS

“THE SUPREME LAW OF THE STATE.”

[NOTE.—By Resolve of January 12, 1875, Governor Dingley was authorized to appoint a Commission of ten persons, “to consider and frame such amendments to the Constitution of Maine as may seem necessary, to be reported to the Legislature;” and Edward Kent, William P. Haines, George F. Talbot, William M. Rust, Henry E. Robins, Washington Gilbert, James C. Madigan, Artemas Libbey, Frederick A. Pike and William K. Kimball, were appointed.

Nine of the amendments reported by the Commission, viz. :—in relation to

- (XIII) Election of Senators by Plurality vote;
- (XIV) Special Legislation and Corporations;
- (XV) Power of Governor to pardon;
- (XVI) Appointment of Judges of Municipal and Police Courts;
- (XVII) Taxation;
- (XVIII) Abolishing the Land Agency;
- (XIX) Constitutional Conventions;
- (XX) Bribery at Elections;
- (XXI) Codification of the Amended Constitution;

were submitted to the people by a Resolve of February 24, 1875, and adopted at the annual election, September 13, 1875.]

PREAMBLE.

Objects of government.

## ARTICLE I.

## DECLARATION OF RIGHTS.

- SEC. 1. Natural rights.  
 2. All power inherent in the people.  
 3. Religious freedom. Proviso. All sects equal. Religious test prohibited. Right to elect religious teachers.  
 4. Freedom of speech and publication. Truth may be given in evidence.  
 5. Unreasonable searches.  
 6. Rights of persons accused.  
 7. No person to answer to a capital or infamous crime but on indictment. Exceptions. Juries.  
 8. Not to be put in jeopardy twice for the same offense.  
 9. Sanguinary laws prohibited.  
 10. Bailable offenses. Habeas corpus.  
 11. Bills of attainder, &c., prohibited.  
 12. Treason.  
 13. Suspension of laws.  
 14. Corporal punishment under military law.  
 15. Right of petition.  
 16. Right to keep and bear arms.  
 17. Standing armies not to be kept.  
 18. No soldiers to be quartered on citizens in time of peace.  
 19. Right of redress for injuries.  
 20. Trial by jury.  
 21. Private property not to be taken without just compensation.  
 22. Taxes.  
 23. Titles of nobility prohibited. Tenure of office limited.  
 24. Other rights not impaired.

## ARTICLE II.

## ELECTORS.

- SEC. 1. Qualifications of electors. Written ballot. Soldiers or seamen in U. S. service. Students at colleges and academies. Residence not lost by reason of absence, in the military service of Maine or of the United States.  
 2. Electors exempt from arrest on election days:—  
 3. And from military duty.  
 4. Time of State election. Citizens absent in temporary military service of the U. S. or of Maine may vote. Polls, where opened. Vote, how taken. Who shall act as supervisors. Supervisors shall be sworn. Their duties. Proviso. Where certain officers may vote. Supervisors shall prepare ballot boxes. Ballots, how prepared. Qualification of voters. Supervisors shall keep correct poll lists:—Check names of voters:—Sort, count and declare votes:—And make return to secretary of state's office.

## ARTICLE III.

## DISTRIBUTION OF POWERS.

- SEC. 1. Powers distributed.  
 2. To be kept separate.

## ARTICLE IV.

## LEGISLATIVE POWER.

## PART FIRST,—HOUSE OF REPRESENTATIVES.

- SEC. 1. Legislative department. Style of acts.
2. Number of representatives fixed at one hundred and fifty-one.
3. Apportionment among towns.
4. Qualifications of a representative.
5. Meetings for choice of representatives. Meetings of classed towns. Lists of votes shall be examined by governor and council:—And they shall summon persons who appear to be elected. Lists to be laid before the House of Representatives. Manner of electing representatives and other civil officers in cities.
6. Vacancies, how to be filled.
7. House shall choose its own officers.
8. Power of impeachment.

## ARTICLE IV.

## PART SECOND,—SENATE.

- SEC. 1. Senate shall consist of *not less than twenty, nor more than thirty-one*.
2. State shall be districted once in ten years. Districts, how formed.
3. Meetings for choice of senators. Electors in unincorporated places.
4. Votes shall be examined by the governor and council.
5. Senate shall decide as to the election of its members
6. Qualifications of senators.
7. Senate shall try impeachments. Limitation of senate's judgment. Party is further liable to be tried and punished by the courts.
8. Senate shall choose its officers.

## ARTICLE IV.

## PART THIRD,—LEGISLATIVE POWER.

- SEC. 1. Legislature shall meet *annually*. Its powers.
2. Bills shall be signed by the governor. Proceedings, in case he disapproves. Unsigned bills shall be returned by him within five days.
3. Each house shall judge of the election of its members. Majority, a quorum.
4. May punish and expel members.
5. Shall keep a journal. Yeas and nays, when to be entered.
6. May punish for contempt. Proviso.
7. Compensation of members. Traveling expenses.
8. Members are exempt from civil arrest. Freedom of debate.
9. Either house may originate bills. Revenue bills. Proviso.
10. Members shall not be appointed to certain offices. Proviso.
11. Persons disqualified to be members.
12. Adjournments.
13. Special legislation.
14. Corporations, except for municipal purposes, shall, when practicable, be formed under general laws.
15. Constitutional conventions.



## ARTICLE V.

## EXECUTIVE POWERS.

## PART FIRST,—GOVERNOR.

- SEC. 1. Governor.
2. Elected for *one* year.
3. Meetings for choice of governor. Votes shall be returned to secretary of state. Provision, in case there is no choice.
4. Qualifications of governor.
5. Disqualifications.
6. Compensation.
7. Commander-in-chief of militia. Shall not march militia out of state.
8. With advice of council, shall appoint officers.
9. Shall give information and recommend measures.
10. May require information of any officer.
11. Power of governor, with consent of council, to reprieve, commute or pardon, except in cases of impeachment, and to remit penalties. Conditional pardons. Shall report to the legislature.
12. Shall enforce the laws.
13. Governor shall convene the legislature on extraordinary occasions, and adjourn it, if houses disagree. May change their place of meeting.
14. Vacancy, how supplied.

## ARTICLE V.

## PART SECOND,—COUNCIL.

- SEC. 1. Council shall consist of seven.
2. Councilors, how chosen. Privileged from arrest.
3. Journal of their proceedings shall be kept.
4. Persons disqualified to be councilors. Councilors shall not be appointed to any office.

## ARTICLE V.

## PART THIRD,—SECRETARY.

- SEC. 1. Secretary, how to be chosen.
2. Shall keep the records of the state. May appoint deputies.
3. Shall attend the governor and council.
4. Shall preserve the records of the executive and legislative departments.

## ARTICLE V.

## PART FOURTH,—TREASURER.

- SEC. 1. Treasurer, how chosen. Ineligible, for more than *five* successive years.
2. Shall give bonds.
3. Shall not engage in trade.
4. No money shall be drawn but by warrant. Accounts of receipts and expenditures shall be published.

## ARTICLE VI.

## JUDICIAL POWER.

- SEC. 1. Supreme judicial, and other courts.
2. Compensation of the supreme justices shall not be diminished.
3. They shall give opinion, when required by either branch of government.
4. Tenure of judicial offices.
5. Justices of the peace and notaries public.
6. Justices of the supreme judicial court shall hold no other office.
7. Judges and registers of probate, their election and tenure of office. Vacancies, how filled.
8. Judges of municipal and police courts, shall be appointed.

## ARTICLE VII.

## MILITARY.

- SEC. 1. Military officers, how to be elected.
2. Manner of conducting elections.
3. Major generals and adjutant generals, how elected. Staff officers, how appointed.
4. Organization of the militia.
5. Who may be exempted from military duty.

## ARTICLE VIII.

## LITERATURE.

- SEC. 1. Legislature shall require towns to support public schools. Shall endow colleges and academies. Proviso.

## ARTICLE IX.

## GENERAL PROVISIONS.

- SEC. 1. Oath and subscriptions. Before whom to be taken. Proviso.
2. Offices that are incompatible with each other.
3. Commissions.
4. Elections on the first Wednesday of January may be adjourned from day to day. Order of filling vacancies.
5. Every civil officer may be removed by impeachment or address.
6. Tenure of office.
7. Valuation.
8. Real and personal estate shall be taxed according to its value.
9. Taxation.
10. Sheriffs, how elected, and tenure of office.
11. Attorney general, how to be elected. Vacancy, how filled.
12. Soldiers, who may be allowed to vote for county officers.
13. Bribery at elections.
14. Credit of state shall not be loaned. Creation of state debt, limited. Exceptions.
15. *State may issue bonds in payment of municipal war debt. Basis of payment. Commission shall be appointed to determine the amount due to municipalities. Loan limited to \$3,500,000.*
16. Towns having four thousand inhabitants, and towns having inhabited islands, may be divided into voting districts.

## ARTICLE X.

## SCHEDULE.

- SEC. 1. Laws now in force, continue until repealed.  
 2. Constitution, how amended.  
 3. *Constitution shall be arranged by chief justice of supreme judicial court. Shall be submitted to the legislature. Amended constitution shall be enrolled on parchment, and printed copies shall be bound with the laws. Shall be the supreme law of the state.*  
 4. Sections one, two and five of article ten, shall be omitted from printed copies. Section five remains in force.

## AMENDMENTS.

- ARTICLE XXII. Limitation of Municipal Indebtedness.  
 ARTICLE XXIII. Biennial Elections and Biennial Sessions.  
 ARTICLE XXIV. Election of Governor by Plurality Vote.  
 ARTICLE XXV. Biennial Legislative Terms.  
 ARTICLE XXVI. Prohibition of the Manufacture and Sale of Intoxicating Liquors.  
 ARTICLE XXVII. Eligibility of the Treasurer of State.  
 ARTICLE XXVIII. Appointment of Adjutant General.  
 ARTICLE XXIX. Educational Qualification of Voters.  
 ARTICLE XXX. Vacancies in the Senate.

# CONSTITUTION

OF

## THE STATE OF MAINE.

---

### PREAMBLE.

We, the people of Maine, in order to establish justice, insure tranquillity, provide for our mutual defence, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and, imploring His aid and direction in its accomplishment, do agree to form ourselves into a free and independent State, by the style and title of The State of Maine, and do ordain and establish the following Constitution for the government of the same.

### NOTES.

*A State is a body politic, or society of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.* Cooley's Constitutional Limitations, P. 1.

The State means the whole people in one body politic; and the State and the people of a State are equivalent expressions. 2 Dall. 425. 1 Story on Constitution, sects, 208, 209. 7 Wall. 720.

*Government* in a political sense, signifies that form of fundamental rules by which the members of a body politic regulate their social action and the administration of public affairs according to established constitutions, laws, and usages. Young's Science of Government, P. 13.

*The objects of government* are almost as varied as the wants of man and they constantly increase with the progressive steps of civilization. Our whole governmental history shows that the education of those who must ultimately assume the direction of the affairs of government, constitutes one of the most important objects of legislation, 37 Iowa 542. See also 33 Me., 283. 58 Me., 607, 612.

### ARTICLE I.

#### DECLARATION OF RIGHTS.

SECTION I. All men are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. (a)

(a) 2 Me., 275; 6 Me., 412; 27 Me., 212; 33 Me., 283, 558; 58 Me., 594, 598, 613; 59 Me., 318, 545, 549, 553; 60 Me., 122, 133; 66 Me., 73; 86 Me., 498; 94 Me., 110.

## RIGHT TO LIFE.

Whether this right may be forfeited by the commission of crime. In 1820 treason, murder, rape, arson, burglary and robbery were punished with death by hanging; see Laws of Maine 1820-21. Changes in law, see Public Laws 1829, 1837, 1844, 1869, 1875, 1876, 1883. Death penalty abolished, see Public Laws of Maine, 1887, chapter 133; Abolition of Capital punishment, M. H. Bovee, N. J., 1869; Capital Punishment, G. B. Cheever, Bost., 1843; House and Senate report of Legislative Committee of Maine, 1836; Senate Doc. No. 37; Governor's Messages, 1867, 1870, 1874, 1885; Manual of Peace by Prof. Thomas C. Upham, Brunswick, 1836; 18 Am. Jurist 334; 5 Law Journal 421; 66 Ecl. Mag. 677; 13 Law Journal 187; 8 Law Rept. 481; 91 Westm. Rev. 429; 116 Am. Rev. 138; 17 Am. Jurist 236; Results of Abolition, Rept. Soc. Science Ass'n 1865; Opinions of distinguished men of all countries 41 Law Times 368, 391, 596.

By virtue of the mutual compact under which the people of the United States established this government, the life of every citizen is pledged in defence of its institutions and laws; see concluding sentence of Declaration of Independence; Constitution of U. S. sec. 8, par. 11-16; Constitution of Maine Art. 7, sec. 6; when right to take life, titles Self Defence, War, Insurrection, Mobs.

## RIGHT TO LIBERTY. MEANING OF.

Liberty of person, or freedom from bodily restraint, 2 Kent 26. Liberty of action is the counterpart of legal and self restraint; "Liberty of the Subject" by James Patterson, v. 1, p. 77; see also "Liberty" by Francis Lieber; John Locke on Government, v. 2; Blackstone, v. 1, p. 140; Austin's Jurisprudence, v. 1; John Stuart Mill's Essay on Liberty; "Liberty and Fraternity" and "Equality" by Sir James F. Stephens; see also 77 N. Am. Rev. 106; 38 Dem. Rev. 42; 113 Westm. Rev. 91; 14 N. Eng. 329; 16 Nation 402; Liberty protected by law, Law Times v. 26, p. 98; "Guaranties of" 4th report of Ill. Bar Ass'n.

Slavery existed in Massachusetts and in the District of Maine until after 1780; see Moore's Hist. of Slavery in Mass.; McMaster's Hist. of U. S., v. 1; Mass. Hist. Coll., v. 4, p. 201; Wilson's Rise and Fall of Slave Power in U. S., v. 1, p. 20; Bradford's Hist. N. Eng., v. 2, p. 124; Williamson's Hist. Me., v. 2, p. 375, 536; see also 1 Me. Rep. 93; Quincy's Mass. Rep., p. 29 and 94; 4 Mass. 123; 4 Pick. 128; 9 Am. Jurist 490; 2 Pick. 11.

Slavery was abolished in Massachusetts and in the District of Maine by judicial interpretation of the Bill of Rights and not by any legislative act. See Bill of Rights Mass., 1780; Bill of Rights Maine, 1820; 18 Pick. 193; 3 Met. 72; 7 Cush. 285.

Liberty may be forfeited by the commission of crimes. See Criminal Law of Maine, Rev. Stat. 1883; 17 Chic. Legal News 85; 8 Jour. Jur. 26; paupers, Indians, minors and persons afflicted with dangerous diseases are under legal restraint, 11 Me. 422; 88 Me. 379; 42 Me. 120; 75 Me. 241; 66 Me. 71; 83 Me. 422.

## DEFINITION OF PROPERTY.

Property is every valuable right, privilege, possession or interest in real estate, personal estates, easements, franchises, contracts and in corporeal hereditaments. 135 N. Am. Rev. 253; 14 Gray 155; 113 U. S. 179; 72 Me. 116.

Labor is property; 16 Wallace (U. S.) 127; 3 Cranch (C. C.) 206; right to an action is property; 106 U. S. 571; right of appeal is property; 57 Cal. 464. Money is property; 12 Colo. 152.

A business, occupation or profession or its good will is property; 27 Ark. 625; the profession of a priest is property and a prohibition of exercising that profession without accusation or hearing is unlawful; 90 Penn.

St. 477; see 2 Black 388; 2 Kent 347. Reputation is property slowly acquired.

Distinction between general and special property in a thing; 2 Black 388; Anderson L. Dict.; 2 Kent.

Property in dogs, cats, etc., see 75 Me. 562 and Judge Appleton's dissenting opinion; Public Laws of Maine, 1893, chapter 287, section 11.

Property in wild animals, fish and game is in the State in trust for all citizens, see *Gur. vs. Conn.*, 161 U. S. 519; 2 Black 391, 410; 2 Kent 347; 128 Mass. 410; 94 U. S. 395; 139 U. S. 24; 58 Minn. 393; Am. and Eng. Ency., v. 1, title Animals.

#### RIGHT TO ACQUIRE PROPERTY.

Property may not be acquired by immoral methods; see Rev. Stat. titles "Larceny," "Robbery," "Frauds," "Cheating by false pretenses," "Gambling," "Contracts," "Usury," etc., nor by methods detrimental to the public health or to the general welfare; Rev. Stat. titles; intoxicating liquors, obscene literature, unwholesome food, nuisances, trusts, contracts in restraint of trade, etc., 6 Me. 412, 11 Me. 208; 12 Me. 403; 33 Me. 558; 37 Me. 156; 42 Me. 299; 45 Me. 560; 47 Me. 187; 58 Me. 590; 65 Me. 122; 66 Me. 71; 83 Me. 422; police power of State in regulating, restraining or prohibiting certain trades and business; 79 Me. 386; 86 Me. 102; 87 Me. 145; 6 Southern L. Rep. 59; 6 Am. L. Mag. 97; Rep. Soc. Sci. Ass'n, 1861, p. 382; 20 Cent. L. Jr. 382; 25 Am. L. Rev. 170; 2 Kent 340, note 2. Cooley's Const'tl. Limitations 472-596. Police power of Boards of Health; 6 L. J. 35; 3 Am. Soc. Sci. J. 97; 15 Fed. Rep. 524; 12 West. Jr. 461; 3 Kan. L. J. 368; 14 Chic. L. N. 256; 18 Chic. Leg. News 339; Black on Prohibition; 4 Blackstone 170.

#### RIGHT TO POSSESS AND PROTECT PROPERTY.

Citizen cannot be deprived of his property by retrospective laws; see Const. Me. Art. 1, Sec. 11; 2 Me. 275; 14 Me. 344; 24 Me. 520; 26 Me. 191; 50 Me. 11; 65 Me. 128; 77 Me. 482.

Limiting or taking away legal remedies for recovery of property; 18 Me. 409; 23 Me. 318; 24 Me. 299; 42 Me. 429; 45 Me. 507; 60 Me. 172.

Property cannot be taken without just compensation, 10 Me. 447; 12 Me. 222; law must provide means of compensation; 34 Me. 247; 40 Me. 548; 47 Me. 189; may be taken before compensation is made; 34 Me. 247; 40 Me. 317-548; 43 Me. 356; 75 Me. 91; 47 Me. 189, 345.

Public use necessary to legal taking; 60 Me. 124; 75 Me. 91; 78 Me. 532; 83 Me. 42; 83 Me. 440; what is a just compensation; 60 Me. 290; 71 Me. 106; 79 Me. 363; 82 Me. 17; 83 Me. 42; 85 Me. 109; must be taken for public use only; 78 Me. 532; 7 Me. 273; 8 Me. 365; see titles—Eminent domain, Damages, Const. Law in Savage's Index Digest; 4 Am. L. Reg. 641; Compensation; 530 L. Rev. 1; 14 Am. L. Rev. 129; 3 Cent. L. J. 17; 13 Alb. L. J. 246; 15 Am. L. Reg. (N. S.) 193; 20 L. Rep. 481; 139 Blkw. 635.

#### PROTECTION OF PROPERTY BY GOVERNMENT AND LAWS.

Compensation for injury or loss of property by riots, mobs, war, etc.; See Conn. Art. 1 Sec. 5; Rev. Stat. Chap. 123, sec. 15; Pump Court (Eng.) 3, 121; Leonard Brightman, et als, 63 Me. 46; 65 Me. 426; 25 Vroom (N. J.) Rev. Stat. (N. Y. 1896), p. 589; Rev. Stat. Mass., 1882, Chap. 206, Sec. 8.

Compensation for property taken, used or destroyed for the protection of public safety, health, etc.; see R. S., Chap. 14, Contagious Diseases; 17 Me. 221; 28 Me. 225; 52 Me. 118; 55 Me. 135; 60 Me. 408; 64 Me. 120; 65 Me. 405; 66 Me. 309; 67 Me. 370.

Fines, see R. S., Chap. 26; 18 Me. 32; 40 Me. 289, 391; 51 Me. 264; 53 Me. 526; 54 Me. 256; 63 Me. 47.

Towns are not liable for property used or destroyed unless compensation therefor is specially provided for by statute. 3 Me. 369; 46 Me. 127; 52 Me. 118.

Damage or destruction of property without compensation. 23 N. J. L. 9; 3 Calif. 69; 2 Denio 461; 39 Iowa 575; 61 Penn. St. 233; 8 Gray 409; 43 Me. 322; Cooley Const. Limt. 384; 2 N. H. 532; 1 Sutherland Damages 4; 62 Me. 175; 18 Pick. 117; Am. and Eng. Ency. Law, vol. 5, title Damages; 9 Irish Law Times 219; 66 L. T. 184; 18 Sol. J. and Rep. 79; 2 Am. L. Reg. 641; 11 West Jurist 689; Irish L. T. 219.

Property may be destroyed by law without compensation when wrongfully used. See *State vs. Intoxicating Liquors* 50 Me. 506; 2 Casey 414; 3 H. and J. R. 231; 125 Mass. 232; 135 Mass. 508.

Government does not insure property against loss or damage by act of God. See Angell on Watercourses, Sec. 336.

Property may be taken in the form of taxes legally assessed without other return than public benefits. See Legislative power to tax, taxes, etc.

Protection of personal property by the owner thereof. *Crim. Law Mag.* 9-266. 331, 720, 970, 986. May protect his household, wife and children even to the use of force in their defence; see title *Self Defence* *Crim. Law Magazine* 9, 986, 11, 659, 721, 287, 426, 564, 735, 868. Individuals may combine for purposes of defence of persons and personal property. *Crim. Law Mag.* 11-716. See *Right of Self Defence*; see 16 *Crim. Law Mag.* 675, 8 *Crim. Law Mag.* 828, 699, 98. See *Homicide, trespass, trover, replevin, Savage's Digest*.

## DECLARATION OF RIGHTS.

### ARTICLE I.

Real property being for the most part tangible and immovable is protected by title and by laws and may not be defended by force to the extent of homicide. See *Crim. Law Mag.* vols. 1-18.

SECTION 2. All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it.

All power is inherent in the people. See Preamble Constitution U. S. A. Lincoln's Gettysburg speech. "The government of the Union is a government of the people. In form and substance it emanates from them. Its powers are granted by them, and are to be exercised directly by them and for their benefit." 4 *Wheat.* 316; 1 *Wheat.* 304; 2 *Dall.* 419; 12 *Wheat.* 455; 19 *How.* 393; 7 *Peters* 243; 6 *Peters* 515; 3 *Dall.* 199; 6 *Wheat.* 264; 12 *Peters* 657; 9 *Wheat.* 187; 5 *Wheat.* 420; 12 *Wall.* 457; 44 *N. Eng.* 552; 46 *Compt. Rev.* 24; 125 *Westm. R.* 355; 63 *Atlantic* 433; 3 *Forum* 364; 7 *Educa. Rev.* 456; 3 *Lend a Hand* 551; 3 *Jour. Jur.* 57; 127 *N. Am.* 359.

*State and Citizen*; 4 *Lend a Hand* 3; 6 *Sat. Rev.* 182; 174 *Educa. E.* 271; 8 *Educa.* 447; 110 *Ecl. M.* 317; 2 *Arena* 229; 2 *Cosmopl.* 39; 64 *Atlantic* 557; 1 *Scrib. M.* 661; 146 *Blkw. M.* 276; 7 *Forum* 235; 60 *Contemp. R.* 788; 7 *And. R.* 391.

*Citizenship and its Value*; 136 *N. Am. R.* 541.

*Obligations of*; 2 *Kansas R.* 525.

*Who, citizen*; 18 *Am. L. R.* 83.

*People and citizens, synonymous terms*; see *Dred Scott vs. Sandford* 19 *How.* 393.

*People*; 22 *Scrib. M.* 353, 570, 723; *State vs. Man*; 47 *Contemp. R.* 485; 27 *Pop. Sci. M.* 165; 2 *Johns Hopk. Univ. Stud.* 347.

*Functions of Government*; 6 *Wheat.* 264; *So. Sci. Ass'n* 260 (1868.)

*General references*; 77 *N. Am. R.* 106; 38 *Dem. R.* 42; 16 *Am. Presb. E.* 459; 20 *Princet. R.* 380; 113 *Westm. R.* 91; 58 *McMillan* 421; 43 *N.*

Eng. 487; 24 Good Words 561; 7 Am. Cath. Q. 577; 8 Am. Cath. Q. 716; 38 Pop. Sci. M. 622; 8 Educa. 428; 45 Nation 453; 150 N. Am. R. 205; 13 South. Hist. Pap. 342; 3 DeBow (n. s.) 146; 58 Sat. R. 593; 60 Sat. R. 798; 61 Sat. R. 39, 214; 38 Fortn. R. 485; 19 Nineteenth Cent. 177; 137 Black. 577; 34 Nation 297; 137 N. Am. R. 317; 104 Ecl. M. 609.

Representative Government; 12 N. Am. R. 346; 24 Fortn. R. 102; 3 L. T. R. 410; 54 N. Am. R. 228; 9 Dem. R. 434; 28 Niles Register 193; 12 N. Am. R. 340; 7 Am. Whig R. 280; 68 Westm. R. 454; 42 Law Times 301—360; 101 N. Am. R. 612; 136 Ed. R. 83.

Right of people to alter or amend form of government. The people may alter or amend their form of government in a legal and orderly manner. See Constitution of Maine, Art. 4, Part 3, Sec. 15 (Const. Conventions), and Art. 10, Sec. 2 (Legislative Amendments); see also Constitution of U. S., Art. 5 (Amendments); 3 Dallas 378; Amendments to Constitution of Maine in accordance with resolves and a vote of the people. Amendments numbered, Art. 1, Resolves of March 7, 1834; Art. 2, Resolves March 30, 1837; Art. 3, Resolves March 14, 1839; Art. 4, Resolves April 16, 1841; Art. 5, Resolves March 19, 1844; Art. 6, Resolves July 19, 1847; Art. 7, Resolves August 12, 1847; Art. 8, Resolves August 21, 1850; Art. 9, Resolves March 17, 1855; Art. 10, Resolves March 24, 1864; Art. 11, Resolves March 7, 1868; Art. 12, Resolves March 13, 1869; Arts. 13, 14, 15, 16, 17, 18, 19, 20, 21, Resolves February 24, 1875; see also Resolves January 12, 1875; Art. 22, Resolves February 9, 1877; Art. 23, Resolves March 4, 1879; Art. 24, Resolves January 27, 1880; Art. 25, Resolves March 18, 1880; Art. 26, Resolves February 21, 1883; Art. 27, Resolves March 10, 1887; Art. 28, Resolves March 31, 1891; Art. 29, Resolves April 2, 1891; Art. 30, proposed by Resolves March 27, 1897.

Changes in government are also effected by changes in law, through legislative action, by decisions of the courts, and by reforms effected in different departments of the government through the power of the ballot. See Ballot in America, 1 Mo. L. Mag. 153; 53 Law Times 388; 48 Law Times 2; 53 Law Times 212; 1 Am. Jour. Soc. Sci. 91; 56 Law Times 265; Elections, 17 Am. L. Reg. (n. s.) 104; Sources of Law, 29 Dem. Judge made Law, 5 Irish L. Times 14; 5 Law Mag. and Rev. 1; 6 Law Mag. and Rev. 1; 7 Law Mag. and Rev. 1; Law mutable, justice immutable, 2 Jour. Jur. 1; Basis and bond of society, 41 Leg. Inst. 396; 7 N. J. Law Jour. 377; 1 L. Mag. and Rev. 107, 391; 15 L. Rev. 365; 7 L. J. 832; 12 L. Rev. 150; 45 L. Mag. 90; Reform in government, 11 Albany L. J. 265; 9 Forum 47; 52 N. Eng. 107; 44 Nation 422; 6 Forum 54, 600; 4 Victorian Rev. 1; 13 Albany L. J. 266; 11 Pittsburg Leg. J. 194; 45 N. Eng. 303, 599, 851; 39 Fortn. Rev. 691; Oliver Cromwell's reforms, 44 L. Times 38.

Right of the people to abolish the government by force or otherwise. See Declaration of Independence. This right is recognized in the Constitution and Declaration of Rights of nearly every state in the Union. See Constitutions. See also 58 N. Am. Rev. 371; 13 Dem. Rev. 372; 22 Dem. Rev. 122; 1 Dem. Rev. 532; 36 Dem. Rev. 281; Inherent in people, 15 Southern Rev. (n. s.) 385; Revolution 1776 and 1861 contrasted, 1 Forum 405; 50 Contemp. R. 413; 107 Ecl. Mag. 626; Revolution and reform, 32 Am. Church Rev. 346; 88 Edbg. Rev. 360; 37 Nation 137; 5 New Rev. 57; 137 Edbg. Rev. 348; 7 Forum 165; 6 People's Jour. 107; Revolution vs. Rebellion, 3 People's Jour. 135; What is Revolution? 14 Pamphleteer 47. English Revolutions, 110 Ecl. Mag. 217; 118 Edbg. R. 530.

The Union cannot be dissolved by action of the States. 6 Wheat. 264, 381.

Secession did not sever the union of the States. Texas vs. White, 7 Wall. 700.

Union indissoluble. See Webster's Speeches; Jackson's proclamation to South Carolina; Const. U. S., Art. 4, Sec. 2; 4 Wheat. 316; 9 Wheat.



1; 22 How. 227; 2 Black. 620; 100 U. S. Rep. 257; 135 U. S. Rep. 2, 61; 13 Wallace 397; 16 Peters 435; 94 U. S. Rep. 527.

Right of secession. 15 Law Mag. and Rev. 318; 16 Law Mag. and Rev. 81, 212, 241; 26 Law Rept. 70; 93 N. Am. Rev. 212. Disunion, 12 Law Mag. and Rev. 359. American war for independence was waged in defence of established rights and was not a revolution. Hare's Am. Const. Law, P. 9.

## DECLARATION OF RIGHTS.

### RELIGIOUS FREEDOM.

SECTION 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship;—and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

There is no provision in the Constitution of the United States protecting the citizens of the respective states in their religious liberties. 3 How. 589; 4 Wall. 398.

By the first amendment to the Constitution of the United States the national government is prohibited from making any law respecting religion or the free exercise thereof. The United States cannot limit the powers of the state governments over their citizens in regard to this subject. This is one of the powers reserved to each state or to the people thereof. 5 How. 410; 92 U. S. 542. Polygamy not protected; 98 U. S. 145; 133 U. S. 333. By the Declaration of Rights in the Constitution of Massachusetts of 1780 it was not only declared to be the right of all persons to worship God, but it was also declared to be their duty to worship Him. The Legislature of that Commonwealth was invested with power to require that all persons should attend public religious worship and contribute to the support of the same and with the authority to provide for the support and maintenance of Protestant teachers of religion and piety. See Declaration of Rights, Sec. 2, Const. of Massachusetts, 1780; see also Debates on Constitution of Maine, 1819, p. 71-87. Petition of Catholics there referred to.

Copy of a petition sent by the Committee of the Roman Catholics of Newcastle to the Convention chosen to form a constitution for the new

### STATE OF MAINE.

To the Hon. Convention to be convened at Portland on the second Monday in October, A. D. 1819, for the purpose of forming a constitution or frame of government for the State of Maine.

We the subscribers, inhabitants of Maine and members of the Catholic Church, being a committee appointed specially for this purpose, by a branch of the same Church at Damariscotta, beg leave humbly and respectfully to address your Hon. Body in behalf of the Catholics of Maine.

Nearly three centuries have elapsed since the Catholic religion has been proscribed by the laws of the country from which our pious ancestors came. Our ancestors unfortunately imbibing the spirit which dictated those proscriptive laws, established the same system of exclusion in this

happy country. From the first settlements of Massachusetts by Europeans to our revolutionary war the Catholic had been deprived of the rights of a citizen; and since the adoption of the Constitution of this state no Catholic could hold any office of honor or trust because he would not betray his conscience or his religion. The oath of abjuration in that sacred instrument, so far as it relates to the spiritual primacy of the Bishop of Rome, no Catholic can take or subscribe, while he is obliged by law to fight for national rights; while he cheerfully takes up arms in the defense of his native country; while he pays his just proportion of the public taxes, he lives an alien on the very inheritance of his father; and what had he done to be thus deprived of the natural and inalienable rights of a citizen? Nothing, but he is a Catholic. Whatever necessity there might have been in a political point of view for proscribing Catholics throughout the British Empire in the sixteenth century, that necessity has certainly ceased in this Country. The laws, therefore, ought to cease also. If to effect a mighty revolution in the religion of a large and respectable portion of the christian world, penal laws against Catholics were necessary, now since that revolution has resulted in the quiet and permanent establishment of the protestant religion, there no longer exists the least necessity for those laws. In Great Britain and Ireland, where those laws were the most severe and of the longest continuance to wit: from the reign of Henry VIII down to George III inclusive, the Catholic is now raised to an equality with his fellow citizens, and shall it be said that the enlightened State of Maine is less wise, less just, less human than an old and corrupt monarchy? Forbid it Heaven. Were there any known public and acknowledged dogmata of the Catholic Church hostile to government in general, or to republican institutions in particular, the undersigned would be silent: they would be ashamed to approach your Hon. Body and ask for the enjoyment of those immunities, those rights which were given by our Creator to every citizen. But whatever party writers, in party times and for party purposes may have said or whatever religious bigots may have written, to establish upon a permanent foundation the Reformation, it is now universally acknowledged by all candid and learned Protestants of all sects, that there is nothing in the acknowledged doctrine or discipline of the Catholic Church, which is in the remotest degree unfriendly to republican institutions: on the contrary, it is an admitted fact that the Catholics of the British Empire as well as those of this country, always have been strenuous asserters and heroic defenders of the equal rights of man. A reference to Protestant English historians will prove this important fact incontestably. It is painful to the undersigned, who duly appreciate the blessings of freedom, to be obliged to defend the religion of their ancestors from charges which never had existence except in the brains of designing men, who propagated them for the purposes of ambition and self aggrandizement. The God of nature designed that all men should enjoy equal rights and privileges without any regard to their religious dogmata. That religion is a matter between the Creator and the creature, and that the creature is amenable for his religious belief to no being but his God are principles which it cannot be necessary to prove in the enlightened nineteenth century. If the Catholic demean himself as a peaceable citizen, if he in his religious worship do not disturb the public peace or introduce indecencies or immoralities, tending to the subversion of civil society; if he takes up arms and march to the field of battle in defence of the sepulchres of our forefathers and in maintenance of the rights, the honor, the liberties and independence of his country: the undersigned are utterly unable to see why he should not enjoy equal privileges and immunities with his fellow citizens. The excuse for disfranchising Catholics in Great Britain and Ireland, as well as in this country, is that they are obliged by the principles of their religion to bear true faith and allegiance to a foreign power, that is to say the Bishop of Rome, commonly called the Pope, and it is admitted that

were it not for this the Catholic religion, however erroneous and full of superstition ought nevertheless to be tolerated in a protestant state. The undersigned beg leave respectfully to state in few words, to Your Hon. Body the real doctrine of the Catholic Church upon this subject. She believes and teaches that St. Peter was constituted by Jesus Christ the head, speaker or prolocutor of the Apostles. That as St. Peter made Rome his diocese, every succeeding Bishop in that diocese, is also by divine right Head, Speaker, Prolocutor of Christ's Church upon earth. That this primacy is purely spiritual, and that no Catholic on earth, living out of Italy, is any more bound by the principles of his religion to bear Faith and allegiance to the Bishop of Rome, as a temporal Prince, than he is to bear true faith and allegiance to the Emperor of Morocco. We acknowledge the Bishop of Rome to be merely the Prolocutor of the Church, simply first among equals. This is all the faith and allegiance Catholics owe him or acknowledge. This doctrine is proved beyond the power of contradiction in the history of Charles V, Emperor of Germany, a zealous catholic; and also the conduct of the English and the Irish Catholics under the reigns of Henry VIII and succeeding sovereigns. So that, were the United States at war with the Pope, as in the above and other innumerable circumstances, the undersigned, as well as all Catholics, except those who live in Italy—the Pope's dominions—would feel it their bounden duty, by the principles of their religion, to take up arms and fight and conquer him by all the means of civilized warfare. Where then is their faith and allegiance to the Pope? It never had existence except in the illusions of bigotry. As an ecclesiastical personage all Catholics acknowledge the Pope as the visible head of Christ's Church on earth. In this sense they can never abjure his power. In all other respects the Catholic Church always has and always will readily abjure his authority. They therefore humbly pray your Honorable Body to place the Catholics of Maine upon an equality with their Protestant fellow citizens (an equality they enjoy in every other state of the Union), and that the Constitution which you are about to frame as the fundamental law of this State may contain no clause or provision requiring any man to renounce his religion or become proscribed: to either betray his conscience or be debarred of the privileges and immunities of the citizen and as in duty bound will ever pray.

(Signed)

James Kavanagh,  
Matthew Cottrill,  
Wm. Moony.

NEWCASTLE, Oct. 12, 1819.

Religious teaching in public schools not a denial of religious freedom. Bible in Schools. See Donahue vs. Richards, 38 Maine 376; 12 Allen 127; 7 Am. L. Reg. 417; 95 Ill. 263; 64 Iowa 367. Contra see 23 Ohio St. 211; 76 Wis. 177; 24 Am. L. Reg. (n. s.) 252; 30 L. Mag. and Rev. 48; 13 Bib. Sacra 725; 7 Penn. Co. Ct. R. 609; 16 Penn. Co. Ct. R. 186; 25 Pittsburg. Leg. Jr. 381; 1 Ohio N. P. 140. General references; Bible in Public Schools; 1 Am. Inst. Instruction; 48 Mo. Rel. M. 261; 1 Old and New 317; 6 N. Eng. 230, 299; 23 Fortn. R. 308; 29 N. Eng. 496; 2 Univ. Q. 92; 7 Forum 52; 6 Our Day 115; 9 Nation 430; 10 Nation 219; 31 Univ. Q. 261; 45 Mo. Rel. M. 113; 48 Mo. Rel. M. 261; 11 South. R. (n. s.) 371; 1 Congr. 562; 11<sup>th</sup> Cath. World 91; 36 Cath. World 713; 11 And. R. 582; 2 Educa. R. 105.

Right to Equal Protection in Religion. 13 Miscellaneous Rep. (N. Y.) 587; 42 Ill. App. 594. The more recent decisions of the courts indicate a tendency toward the doctrine that the use of the Protestant Bible in the public schools or any religious exercises therein during school hours is unconstitutional and an interference with religious freedom and equality of the individual before the law. See 76 Wis. 177; 17 Penn. Co. Ct. Rept. 609; 16 Penn. Co. Ct. Rep. 186; Pittsburg. Leg. Jour. 381; 1 Ohio N. P.

140; 49 Century 943; 144 Westm. Rev. 203; 145 Westm. Rev. 197. See also fourteenth amendment of Constitution of U. S., which protects the equality of religious and civil rights of the individual against state aggression; U. S. Dept. 109, 3 16 Wall. 36; 113 U. S. 27, 703; 129 U. S. 114; 116 U. S. 252; 100 U. S. 339; 94 U. S. 113; 3 How. 588; 60 Me. 508; 62 Me. 36; 65 Me. 121; 69 Me. 280; 74 Me. 141; 76 Me. 326; 77 Me. 216; 86 Me. 498; 90 Me. 105; 94 Me. 200; 95 Me. 185.

Law prohibiting work or business on Sunday is not interference with religious freedom and equality. See 161 Ill. 296; 13 Miscellaneous Rep. (N. Y.) 587; 34 Fla. 440; Sunday Law a public regulation; 24 W. Va. 783; Does not violate Bill of Rights; 56 Md. 227; 78 Md. 510; 42 Ill. App. 594. A civil regulation, 122 Mass. 40; and does not impose any religious duty, 8 Penn. St. 312; 18 Cal. 678. Seventh Day Sabbatarians; 101 Mass. 30. Sunday Laws; 18 Am. L. Rev. 778; 15 L. T. 315; 2 Forum 182; 24 Jour. Jur. 212; 14 Am. L. Rev. 585. Civil Legislation of a religious character, 14 W. L. Bul. 379; Recent decisions under, 8 Albany L. J. 161. What they mean; 13 West. Jur. 486; 12 Chic. Leg. N. 21; 4 Va. L. J. 141; 15 Leg. Observer 337; 33 Alb. 104; 51 L. T. 172; 2 New Prin. Rev. 37; General reference; 20 Forum 733. Civil Right, 8 Canada M. 165; 145 Westm. 485; 146 Westm. R. 255, 357; 4 McClure 370; 62 Cath. World 250. As a civil institution; 4 Prin. Rev. 496; 31 Am. Ch. Rev. 462; 114 Ed. Rev. 535; 6 Penny's Mthly. 14; 31 Prin. Rev. 733; 2 Am. L. Rev. 226; 1 Granite Mthly. 378; 30 Pop. Sc. Mthly. 11; 2 Forum 182; 2 Presby. (Cath.) 87. Sunday Opening of Libraries; 9 Library Jour. 85; 53 Sat. Rev. 655; 15 Nineteenth Cent. 416.

## DECLARATION OF RIGHTS.

### FREEDOM OF SPEECH AND PUBLICATION.

SECTION 4. Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; and in prosecutions for any publication respecting the official conduct of men in public capacity, or the qualifications of those who are candidates for the suffrages of the people, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels, the Jury, after having received the direction of the Court, shall have a right to determine, at their discretion, the law and the fact. 62 Maine 510.

Right of free speech. See Bill of Rights, N. H., Sec. 22, 30; Vt., Sec. 13; Mass., Sec. 16, 21; R. I., Sec. 20; Conn., Sec. 5; N. Y., Sec. 8; N. J., Sec. 5; Penn., Art. 10, Sec. 7; Del., Art. 1, Sec. 5; Md., Sec. 8; Va., Sec. 12; Fla., Art. 1, Sec. 5; Ala., Art. 1, Sec. 8; Miss., Art. 1, Sec. 6 and 7; La., Title 6, Sec. 106; Tenn., Art. 1, Sec. 19; Ky., Art. 13, Sec. 9 and 10; Ohio, Art. 1, Sec. 11; Ind., Art. 1, Sec. 9; Ill., Art. 13, Sec. 23; Mo., Art. 13, Sec. 16; Ark., Art. 2, Sec. 7 and 8; Texas, Art. 1, Sec. 5 and 6; Iowa, Art. 1, Sec. 7; Wis., Art. 1, Sec. 3; Cal., Art. 1, Sec. 9; Oregon, Art. 1, Sec. 8; Art. 1 Amendment Const. U. S.; 9 Am. Bible Repos. 368; 2 Congreg. 675.

Liberty of Speech in Legislative Assemblies. In U. S. Congress, see Const. U. S., Art. 1, Sec. 6. Development of this right in English Parliament. Since 1541 it has been the custom of the speaker of the House of Commons at the opening of every new Parliament, to demand freedom of speech for its members of the King. See Rudolph Gneist's Hist. Parl. 241; 1 Blackstone Com. 164; 7 Car. and Payne 737; 9 Ad. and Ellis 1; 11 Ad. and Ellis 253; Stat. 3 and 4 Vict. 9; 1 Sand. 133; 1 M. and S. 273; 1 Esp. R. 226. Contest for free speech in Parliament; 1 Brodie's Const. Hist. 506. Reason why there should be free speech in Parliament. Case of John Elliott tried (in 1629) for seditious speeches; 3 Howells St.

Trials 294; and a list of similar cases prior to that time. Privilege secured by 1 Wm. & M., Stat. 2, Chap. 2; 13 Howells St. Trials 1422; 6 Howells St. Tri. 1291; 8 Howells St. Tri. 313; 6 Howells St. Tri. 1121 and note. Powers and privileges of Parliament enumerated, 14 Howells St. Tri. 695; 19 Howells St. Tri. 1150; 8 Howells St. Tri. 1 and note; 8 Howells St. Tri. 8, 14, 61.

Right to comment and speak freely concerning public officers, see Const. U. S. and of the several states.

Under Stat. Westmr. 1 Edward 1 and Stat. 2 and 12 Richard 2d, words spoken in derogation of a peer, judge or other great officer of the realm were considered "Scandalum Magnatum," and were punished as high crimes. See Crabbe's Hist. Eng. Law 554. Enumeration of the persons included in the statutes respecting Scandalum Magnatum, 3 Howells St. Tri. 770, case of Bisop of Lincoln; 10 Howells St. Tri. 1329, 125; 13 Howells St. Tri. 1437; Cases of this kind under (Title Libel) John Udall on Stst. 23 Elizabeth c. 2.

Cruel sentence Star Chamber in 1630 for libel of King and Church of England; Dr. Leighton's case, 3 Howells St. Tri. 385; Mr. Prynne's Summary of Hist. Law of Libel, 3 Howells St. Tri. 714; 7 Howells St. Tri. 962; 10 Howells St. Tri. 125, note seditious libel breach of peace, 17 Howells St. Tri. 225; John Wilkes case, 19 Howells St. Tri. 990; Truth of statements charged not admitted to justify libel, 17 Howells St. Tri. 658. In Peter Zenger's case in 1735 in New York, Mr. Hamilton argued that truth of statement should be admitted, 17 Howells St. Tri. 700. House of Lords decided in 1792 that truth of libelous matter was immaterial, 22 Howells St. Tri. 298; see Finnerty's case in 1797, 26 Howells St. Tri. 1008; Woodfall's case, whether matter libelous a question of law for court, 20 Howells St. Tri. 913. In our Declaration of Rights this is a question for jury. Ridiculing government is libel, 29 Howells St. Tri. 49.

#### SLANDER.

In ancient and modern times governments have always made private reputations one of the objects of their protection. While one may speak freely upon every subject, he must have due regard not only for the rights and reputations of others, but also a decent respect for public rights and the social and religious institutions of civilized life. See 2 Kent 16, and cases there cited; Ogdens on slander, p. 18-20. Distinction between slander and libel, Townshend on Slander, p. 19-40; see also titles Slander, Defamation, Persecution, Heresy, Sedition, Blasphemy, Profanity, Calumny, Brawling, Scolding, Menaces, Deceit, Perjury, Treason, etc.; See Constitutional Debates of Maine 1819, p. 115; Cooley on Torts, title Slander; Savage's Index Digest Const. Amd. 1st U. S.; 6 Am. Law Rev. 593; 7 Nation 365; 46 Chambers J. 300; 54 Calhoun's 312; 68 Calhoun's 310. On evil speaking; Slander of a person in his calling, 15 Am. Law Rev. 573; Precepts for slanders, 15 Scribner 214; Limits of individual liberty, 136 N. Am. Rev. 40.

#### LIBERTY OF THE PRESS.

Const. Debates Maine 1819, p. ; Constitution of U. S., Art. 1 Amendments. "Freedom of the Press is one of the great bulwarks of Liberty and can never be restrained but by despotic governments," Virginia Declaration of Rights 1776; see Henning's Stat. at Large, vol. 1, p. 49; Const. Va.; Liberty of the Press was the key-stone to the arch of Human Liberty; 2 DeLolme's Const. Hist. 529. See Bill of Rights of different states and laws thereunder.

History of development of this right. In 1680 Chief Justice Scroggs announced that it was the unanimous opinion of the Court, that no paper could legally publish any news of the day except by authority of the government, see 7 Howell's St. Tri. 1127. See comments in Sir Philip

York case, 17 Howell's St. Tri. 670, 707; Lord Mansfield's charge in Woodfall's case, 20 Howell's St. Tri. 903; Trial of Peter Zenger of New York in 1735, indicted for libelling the governor of that province by publishing criticisms of one of the officers of the province, 17 Howell's St. Tri. 626, 1797.

Government restrictions upon the press removed in 1695 by Parliament's refusal to longer continue restrictions upon newspapers, McCauley Hist. Eng., vol. 3, p. 656. For a concise and clear history of the growth of the liberty and power of the press in England, see 2 May's Const. Hist. Eng. 102; J. B. Darley in the Radical 95; 9 Gent. Mag. (N. S.) 2; P. Bayne's Essays 322; R. Hall's Miscel. 157; 2 Disraeli's Curiosities of Lit. 2-399; Influence of Press, 49 Contemp. Rev. 653; 41 Cath. World 395; 16 Leisure Hour 277; Censorship of Press, 1 Forum 529; In Germany, 62 Spectator 422; 4 Eng. Hist. Rev. 1; 40 Tinsley's Mag. 120; 1 Templar 306; In France, 13 Sol. J. and Rep. 51; 1 Jurist 74; 117 Quarterly R. 519; Prosecutions of the Press, 4 Taite's (N. S.) 257; 35 Blackwood Mag. 295; 48 Nation 173; 65 Sat. Rev. 642; 66 Sat. Rev. 103; 60 Spec. 1701 Libel.

Abuse of freedom by press. Libel, D. D. Field Speeches 547; 4 Taite's 257; 13 Chic. Legal News 162; 2 Sol. J. and Rep. 657; 20 Irish L. T. 425; 81 L. T. 308; 3 Law Mag. and R. (N. S.) 679; 56 L. T. 85; 81 L. T. 308; 3 Westm. Rev. 285; 68 L. T. 28; 50 L. T. 131. Licentious press, 16 Brownson's R. 133; 1 Republic 188; 3 International Rev. 479; 22 Ed. Rev. 72; 117 Quarterly Rev. 519; 1 Ed. Mo. R. 558; 3 South. R. 450; 3 Westm. Rev. 285; 18 Ed. Rev. 98; 25 Ed. R. 112; 35 Quart. Rev. 566; 5 Am. Q. 71; 6 Pamphleteer 205; 6 Brownson's R. 517; 22 Ed. R. 72; 27 Ed. R. 102; 52 L. T. 171; 18 Westm. R. 474; 7 Chic. L. News 137; 64 L. T. 95; 23 Sol. J. and Rep. 169; 2 Jurist 592; 26 N. West. Rept. 671; 25 Am. L. Reg. 509.

## DECLARATION OF RIGHTS.

### UNREASONABLE SEARCHES.

SECTION 5. The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause, supported by oath or affirmation. (b.)

Right to security from unreasonable searches and seizures of person or property. History of this right in England, see *Entic vs. Carrington*, 19 Howells State Trials 1030; *Wilkes vs. Woods*, 19 Howells State Trials 1154.

The King of England cannot take up or detain his meanest subject at his mere will or pleasure. (1) It is one of the privileges confined by Magna Charta, (2) that no man shall be restrained of his liberty but by the law of the land; (3) that is, says Lord Coke, by indictment or presentment of good and lawful men or by the King's writs out of his ordinary courts of justice, (4) or by lawful warrant. Every lawful warrant (5) must be grounded upon oath, must plainly and specially express the cause of commitment; (6) must be under the hand and seal of one, who is authorized to do it, expressing him office, place and authority (7) whereby he committeth and must conclude "until he be delivered by due course of law" and not "until further ordered," or with such like conclusions. See Emlyn's Preface to Howells State Trials, vol. 1, p. 26.

(1) 2 Coke Inst. 186; (2) Magna Charta, Ch. 29; (3) 3 Coke Inst. 46; (4) 2 Coke Inst. 187; (5) 2 Coke Inst. 52; (6) 2 Coke Inst. 616; (7) 2 Coke Inst. 591.

(b) 13 Mass., 286; 33 Me., 564; 34 Me., 126, 210; 42 Me., 299; 47 Me., 388; 62 Me., 421; 70 Me., 466; 72 Me., 435; 78 Me., 488; 79 Me., 103; 86 Me., 146; 90 Me., 451; 94 Me., 132.

Every man's house his castle; Broom's Maxims 321; Lieber on Civil Liberty, Ch. 6; Chatham's speech on General Warrants; May's Constitutional History of England, Chap. 2; Hansard's Debates, vol. 15, p. 1393. American History of these rights; see Cooley Constitutional Limitations 299; Story on the Constitution, Sec. 1901; Quincy Mass. Rep. 51; John Adams' Works 523; 4 Bancroft Hist. U. S. 414; 5 Metcalf, Mass. 98; 41 Me. 74, 254; 10 Allen 403; 116 U. S. 616; See 14th Amendment Const. U. S.; 2 Hare's Const. Law 830; 2 Kent 1; 1 Hazard Papers 408; 2 Hutchinson's Hist. Mass. 64; Revised Laws Mass. 1675; Bayle's Hist. Memoirs 229; (Charters) Va. 1609; Mass. Bay Colony 1626; Province of Maine 1639; Conn. 1662; R. I. 1663; Md. 1632; Carolinas 1639; Georgia 1732; Young's Chronicles of the Pilgrim Fathers 95; 1st Gen. Court. Mass. 1634; Winthrop's Hist. N. Eng. 128; Plymouth Colony Laws 1836, p. 36; Statutes 1671, p. 258; New York Assembly 1691; Trumbull's Hist. Conn. 98; Laws Conn. 1672.

The Constitution of the United States, 4th Amendment is a limitation upon the national government but places no limitation upon the state government; 4 Cranch 75; 96 U. S. 727; 5 How. 110; 116 U. S. 616; 7 How. 1, 66; 1 Abb. U. S. 317; 18 How. 271; 3 Cranch 448; 4 Wall. 119. But see 14th amendment U. S.; 115 U. S. 620.

Search of the person of a criminal; 17 Central L. J. 121; 54 L. T. 202, 473; 55 L. T. 292; 56 L. T. 3, 375; 57 L. T. 134; 58 L. T. 299; 59 L. T. 259; 24 Albany Law J. 405, 440.

Security of private property; 1 Am. L. Mag. 318.

Seizure during war; 13 Albany L. J. 427; 8 Law J. 72. Confiscation of property used in aid of rebellion; 106 U. S. 315; 11 Wall. 308; War Right; 1 Kent 153. Searches; see cases in Maine under title Intoxicating Liquors, Savage's Digest.

## DECLARATION OF RIGHTS.

### CRIMINAL PROSECUTIONS.

SECTION 6. In all criminal prosecutions, the accused shall have a right to be heard by himself and his counsel, or either, at his election;

To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against him;

To have compulsory process for obtaining witnesses in his favor;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. He shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers, or by the law of the land. (a)

### RIGHTS IN CRIMINAL CASES.

1st. Right to be heard by himself and counsel, or either at his election.

History and development of this right. See Howell's St. Tri. 1, p. 28 Emlyn's preface; 3 Coke Inst. 79; 2 Howell's St. Tri. 1200; vol. 4, p. 126; vol. 5, p. 63, 466; vol. 6, p. 516, 797; vol. 7, p. 149, 1523; vol. 8, p. 570, 726; vol. 9, p. 724; vol. 10, p. 267; vol. 11, p. 525; vol. 12, p. 1382; vol. 15, p.

(a) Rights of persons accused. 58 Me., 580. 59 Me., 140. Confronted by witnesses. 69 Me., 401, 403. 39 Me., 54. Right to be heard by counsel. 11 Me., 210; 47 Me., 426; 58 Me., 572; 1 Me., 230; 11 Me., 210; 37 Me., 156, 165; 39 Me., 258; 47 Me., 432; 55 Me., 200; 58 Me., 573, 594, 598; 59 Me., 318, 549, 553; 60 Me., 122, 138, 509-12; 62 Me., 37; 65 Me., 121, 242; 66 Me., 73; 70 Me., 157; 71 Me., 241; 77 Me., 215; 78 Me., 492; 80 Me., 60; 86 Me., 501; 90 Me., 105; 76 Me., 326.

814; vol. 17, p. 430; Stat. 7, Will. 3, ch. 3; Stat. Geo. 2d, ch. 30; 3 Black. Com. 26; Stat. Westmr. 3, ch. 10; 3 Black. Com. 165; 4 Black. Com. 355; 3 Black. Com. 27, 29; 1 Bish. Crim. Proced., sec. 11; Foster 231; Camp. Lives Chief Justices 59; 9 Tex. Civ. App. 57; 35 Am. Rpts. 719; 51 Wis. 615; 37 Am. Rpts. 845. Right to waive service of counsel and other rights discussed; Eng. Crim. Procedure, 35 Westmr. Rev. 1; 11 Law J. 26; Eng. and Am. Crim. Proced. 92; 92 N. Am. Rev. 297; French and German Crim. Proced., N. Am. Rev. 75; 24 L. R. 581; 6 Crim. Law Mag. 182; 18 N. Y. 136; Cooley Const. Limit. 182; 3 Black. Com. 2. Duty of Court to assign counsel, 1 Bish. Crim. Proced. 1014; Cooley Const. Limit. 330; 51 Georgia. Generally, see also, Art. 6 Amendments to Const. U. S.; 14 Amendment same; Const. Debates Maine 1819, p. 897; Mass. Stat. 1785, ch. 23; Mass. Stat. 1789, ch. 58; 6 Johns. 34; 3 Pick. 213; 3 Taunt. 261; 2 Sand. 333; 5 Pick. 431. See titles Attorney and client, Privileged communications, Savage's Digest, Eng. and Am. Cyclopædia of Law; 86 Me. 368; 76 Me. 324. Prisoner's rights generally, 17 Irish L. T. 656. Status during trial, 14 Irish L. T. 405. Duty of counsel, 9 Sol. J. and Rep. 160. Right to be present at every stage of the trial, 13 Cent. L. J. 467; 16 Am. L. Reg. (N. S.) 734; 72 L. T. 62. Right to counsel, 16 Irish L. T. 616. Untried right of prisoner, 2 Leg. Jour. 295. Statement of prisoner, 76 L. T. 187; 1 Magistrate 18, 98. Statements of his counsel, 17 Irish L. T. 644, 671; 76 L. T. 172; 16 Chic. L. N. 132. Declarations of prisoner, 27 Jour. Juri. 518; 5 Scottish L. M. 65. Prisoner as a witness, 19 Albany L. J. 388, 428. To his own identity, 22 Albany L. J. 144; 14 Irish L. T. 405; 30 Jour. Jur. 638; 20 19th Century 453; 20 Irish L. T. 578; 22 Canada L. T. 176; 23 Cent. L. J. 433, 553; 8 Crim. L. Mag. 704; 10 Irish L. T. 444; 18 Irish L. T. 304.

2d. Right to know the nature and cause of the accusation, and have a copy thereof.

History of this right. In Roswell's case, Jeffries refused copy of indictment, 10 Howell St. Tri. 266. C. Justice North in case of five Popish Lords gave his opinion that no prisoner indicted for capital offense was entitled to copy, 7 Howell St. Tri. 1243, except by leave of Court. In Fitzharris case copy refused, 8 Howell St. Tri. 262; Stat. 7 Anne, ch. 21, sec. 11. Allowed a copy of indictment for treason or misprision of, see 10 Howell St. Tri. 268 note. Justice Holt said at common law no prisoner for treason or felony was entitled to copy of indictment or to counsel for his defence, 12 Howell St. Tri. 660, 1382. By Stat. 7 Will. 3, ch. 3, party indicted for high treason or felony could have copy ten days before his arraignment, 21 Howell St. Tri. 648, see also Howell St. Tri. 1381. By Stat. 7 Anne ch. 21, sec. 11, copy of jury panel and list of witnesses for the prosecution were to be delivered to respondent in indictment for high crimes, 10 Howell St. Tri. 268 note; 13 Howell St. Tri. 152. See 1 Bishop Crim. Proc., sec. 733; 2 Hawk. P. C., ch. 28, sec. 2; 1 Bur. 642. Copy of indictment, see 43 Ark. 391. See titles Indictment, Complaint, Criminal law in Savage's Digest. Compare constitutional provisions different states in this respect. Nature of accusation, U. S. vs. Cruikshank, 92 U. S. 542; 15 Blatch. 1; 6 Amend. U. S. Const.; 1 Bishop Crim. Proc. 728, 732; 6 Crim. L. Mag. 182.

3d. Right to be confronted with witnesses against him.

By 10 Act. II. Parl. King James 6, witnesses must be confronted by the accused whose presence is actually necessary to his lawful trial, 10 Howell St. Tri. 779; McKensie, Part 2, Title 26, sec. 16. Formerly in criminal trials, on reasonable proof that witness had been kept out of the way by procurement of the prisoner, the deposition of the witness before a coroner could be given in evidence; Hanison's case, 12 Howell St. Tri. 851; 13 Howell St. Tri. 591; 7 Term Rept. 707; 1 Leo. 180; Kel. 55; Peake Law of Evidence, ch. 2, sec. 2; Hawkin's Pl. of the Crown Book 2, ch. 46. By Stat. 7 Anne, ch. 21, sec. 11, prisoner was entitled to a list of witnesses against him, 10 Howell St. Tri. 268 note. Under old common



law the witnesses against accused must meet him face to face and testify in his presence so that the court and jury could observe them and the accused have opportunity to cross examine them; 1 Bishop Crim. Proc., ch. 74, and cases there cited. If a witness could not be produced at trial, his testimony could not be admitted without consent of respondent. This law has been somewhat relaxed. See Bishop Crim. Proc., sec. 1091; Rev. Stat. Maine, ch. 134, sec. 19. As to presence of accused at trial, see Rev. Stat. Me., ch. 134, sec. 22. See Evidence, Dying declarations and Criminal Law in Savage's Digest.

4. Right to have compulsory process for obtaining witnesses in his favor.

History of law respecting examination, etc., of witnesses for respondents, 6 Howell St. Tri. 777 and note: 10 Howell St. Tri. 1281, 1304. Refusal of court to administer oath to witness for defence, 8 Howell St. Tri. 373. Refusal of court to order attendance of witnesses for prisoner in case of felony, 6 Howell St. Tri. 570. By statutes of 7 Will. 3 Sec. 8 Ch. 3 and 1 Am. St. 2 Ch. 9, in case of felony prisoner was entitled to receive compulsory process to compel attendance of his witnesses for his defence, Crabbe Hist. Eng. Law 571. See Art. 6, Amendment Const. U. S. Rev. Stat. Maine Ch. 132, Sec. 8. (Summary Jurisdiction) 2 Mayo Const. Hist. Eng. 562.

5. Right to speedy trial.

Under the old Scottish law, if a murderer was taken with blood of murdered person on his clothes or "red handed," he should be prosecuted in the sheriff's court and executed within three days of the commission of the crime, see Hunter's case 1 Newgate Calendar 3. Punishment should succeed crime as immediately as possible, 1 Newgate Calendar, Preface p. 4.

In order to abolish unjust and long continued imprisonment before trial or sentence on conviction the Art. 31, Charles II, Chap. 2, Sec. 1, provides that a person accused of a crime must be tried within six months of the date of the indictment and be admitted to bail if not indicted at the first term after his apprehension.

The principle of this act has been adopted as common law in this country, Cooly Const. Limit. 311: See Fitzpatrick case 1 Salked 103: Wyndham vs. Rex 1 Strange 2: Crosby's case 12 Mod. 66: 3 B (s. c.) 64: 20 Cent. L. J. 493: 32 Minn. 144: Although in some states no time is fixed by statute within which after indictment the accused must be tried, the State is entitled to a reasonable time and no more in which to prepare to prosecute, Jefferson vs. State 62 Miss. 223: 8 Crim. L. Mag. 123: 8 Atlantic Rptr. 305: Cline vs. State 74 Cal. 575: Fox vs. U. S. 3 District Montana Rep. 512. Neglect to try prisoner the second term after indictment court held accused was entitled to discharge and release, see title Gaol Delivery Bouvier's Dict: 4 Black. Com. 270. Meaning of speedy trial, see 4 Nev. 116: Klock vs. People 2 Parker Crim. R. (N. Y.) 676: Olive vs. State 11 Neb. 1: Hale vs. Commonwealth 13 Phila. 452: Thorne vs. U. S. 15 Fed. Rept. 739: Johnson vs. State 12 Am. L. Rec. 538: Jones vs. U. S. 3 Wash. 224: 20 Ala. 89: 8 Ala. 424: 6 Crim. L. Mag. 23: 1 Martin (La.) 216: 18 Ala. 464: Absolute discharge of prisoner on account government delay to prosecute. 1 Salk. 101: 12 Modwell 66: 4 Brewster (Pa.) 320: 97 Pa. St. 211: 5 Parker Civ. Rep. (N. Y.) 518: 58 Miss. 358: 11 Pick. 277: 54 Cal. 100: 14 N. H. 364: 109 Mass. 340: 19 Ala. 561. Formerly accused was not compelled to go to trial at same term of indictment. Archibold Crim. Prac. 110: by Stat. 1 George IV Ch. 4 and 14 and 15 Vict. Ch. 100, Sec. 26, respondent not entitled to continuance except at discretion of court, 1 Chit. Crim. L. 494.

General. See 36 Me. 317: Rev. Stat. Me., Ch. 133, Sec. 10, Sec. 6: 48 Me. 576: Hardy's case 24 Howell St. Tri. 414: Horne Tooke's case 25 Howell St. Tri. 125, 1259. On application of prisoner Lord Delamere's

case Howell St. Tri. 560. See titles Trial, Continuance, Bail, Gaol Delivery, Habeas Corpus, etc.

6. Right to a public trial.

"Publicity is the soul of justice. It is the keenest spur to exertion and the surest guard against improbity. It keeps the judge himself, while trying, under trial. Under the auspices of publicity, the cause in the court of law, and the appeal to public opinion are going on at the same time. It is through publicity alone that justice becomes the mother of security. Apprehension in all its forms aspires to cover itself with secrecy; it dreads nothing so much as full daylight." Works of Jeremy Bentham, Vol. 4, p. 316. Publicity of criminal trials 40 Edbg. Rev. 169, 195.

It is the immemorial usage of the common law, not only in England, but in every part of this country, since its earliest settlement, to try all prisoners in open court, to which spectators are admitted. 1 Bish. Crim. Proc. 957: 28 Am. St. Rep. 294: 16 Crim. L. Mag. 6666. There was one court in England in which criminal trials were conducted in secret. This court was known as the Star Chamber. The persons brought before it were tried without jury, counsel or witnesses in their own behalf. It was established in 1500 and abolished in 1641. Hist. of the Court of Star Chamber, 12 Am. Law Rev. 21: 2 Hallam Mid. Ages 172: 1 Hallam Const. Hist. 50: 4 Coke Inst. 60: Carr's Eng. Liberties 198: 4 Black Com. 266; note: 1 Hargraves State Trials 418: 6 Humes Hist. Eng. 234: 1 Steph. Hist. Crim. Law Eng. 168: Greene's Hist. Eng. People 115. Abolished by Stat. 16 Charles I C. 10.

The requirement that the trial shall be public is for the benefit of the accused; that the public may see that he is fairly dealt with and not unjustly condemned, Cooley Const. Limit. Sec. 379: Rapalje's Crim. Prof. Sec. 213: The denial of this right to the accused is sufficient ground for setting aside a verdict against him and granting a new trial. People vs. Hartman 103 Cal. 242: People vs. Murray 89 Mich. 376, see also 99 Cal. 526: 28 Am. St. Rep. 294: 37 Am. St. Rep. 78: 65 Cal. 223: 92 Mo. 542: U. S. vs. Buck 4 Phila. 161: 22 Tex. App. 36. Court may exclude from court room during trial, minors, disorderly persons, etc., Cooley Const. Limit. 379: 22 Tex. App. 36. By Chap. 55, Public Laws of Maine 1887, minors may be excluded from court room during trials.

7. Right to an impartial trial.

In criminal prosecutions the rights of the accused to a fair and impartial trial are carefully guarded at every stage of the proceedings. More than one hundred causes have been assigned as just grounds for the granting of a new trial in the criminal practice in this country. See title "New Trials" in Index Digest to Crim. Law Mag. Titles Exceptions, Change of Venue, Mistrial, Jurors, Constitutional Law, Due process of law, Law of the land, Indictment, Demurrer, Writ of error, Appeal, Pardons, etc.; Savage's Index Digest: and Eng. and Am. Ency. of Law.

JURY MUST COME FROM VICINAGE.

Originally jury were witnesses of the facts in the case to be tried by them, and were acquainted with the parties to the suit. They rendered their verdict from personal knowledge of the matters in controversy, 3 Black. Com. 359. For this reason they were chosen from the immediate neighborhood where controversy arose, Am. Juror (H. B. Wilson) 26: Thompson & Marrison on jurors: 2 Reeves Hist. Eng. Law. When a juror appeared who was not a resident of the neighborhood, his right to sit in the cause was challenged, 1 Chitty Crim. Laws 177, 501. Hence arose the custom of challenging jurors. The right to challenge for this cause existed until Stat. 27 Elizabeth Ch. 6, which provided that only two jurors should be taken from the immediate neighborhood. By Stat. 4 and 5 Anne Ch. 6, in civil cases and by State. 24 Geo. 2nd. Ch. 18 in criminal,

this cause of challenge was abolished. By Stat. 6 Geo. 4th Ch. 50 it was enacted that jurors must be good and lawful men of the county. This is now the law in England and in the United States Am. Juror 27: Thompson & Merri. on Juries 3: 2 Reeves Hist. of Eng. Law 271: 1 Palgraves Rise & Progress of Eng. Commonw'th. 108: Forsyth Hist. Trial by Jury in Scotland: 5 Howell St. Tri. 999, 1011: Curtis Const. Hist. 23: Cooley Const. Limit. 230: Proffatt on Jury Trial, Sec. 80. At the present time, the wisdom of choosing the jury from the county where the crime is committed, is seriously questioned. In Virginia and some other states the law provides for the selection of jurors from an adjoining county, when it is evident that an impartial jury cannot be obtained in the county of the crime by reason of prejudice or popular excitement. Many states allow a change of venue on motion of the defendant and affidavit that he has reason to believe and does believe that he cannot secure a fair and impartial trial in his own county. Code of Virginia 1887, Sec. 4024: see 7 Gratt 673: 9 Gratt. 736: 10 Gratt. 672: 21 Gratt. 833: 24 Gratt. 603: 83 Va. Rept. 51.

#### "BY HIS PEERS," MEANING OF.

Peers in Feudal Law. The vassals of a lord, who sat in his court as judges of their co-Vassals; were called "Peers," as being equal to each other, or all of the same condition or station. Black Law Dict. 882: Bouvier Dict. 789: 28 Liv. Esprit des Loix C. 27. In English law, the nobility, though of different rank, are all equals in respect to their nobility; and in case of treason, felony, etc., were tried by their peers. In 1322 it was assigned as error in the proceedings against Thomas, Earl of Lancaster, that he was not tried by his peers; 1 St. Tri. 46, see 4 St. Tri. 744. In Lord Castlehaven's case it was decided that he could not waive his right to be tried by his peers and be tried by a jury composed of men of less rank than nobles; 3 St. Tri. 402. In the modern sense, the term is used in the United States to designate a trial of the accused by a jury composed of twelve of his own countrymen, chosen and proceeding according to due process of law; 2 Kent 13: 2 Parker Crim. Rep. 312: 4 Ohio 177: 62 Barber N. Y. 16.

In Wyoming and perhaps some other states where women have all the civil and political rights and privileges accorded to men, females serve on the Grand and Petit jury; see McKinney vs. State 3 Wyoming 719. In Shander vs. W. Virginia 100 U. S. 303, Justice Strong says "The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine that is his neighbors, fellows, associates, *persons having the same legal status in society as that which he holds.*" See Jurors, Disqualifications for women. Minors, Aliens, Wards, etc.

#### "LAW OF THE LAND," MEANING OF.

When first used in the Magna Charta meant the established laws of the kingdom. It means the *due process* of the law warranted by the Constitution, the common law adopted under the Constitution and statutes passed in pursuance of the Constitution; 2 Tex. 251: 2 Yerger 270: 6 Heisk. 186: 6 Pa. St. 87: See Law Dict. title Law of the land, Due process of law: See Saco vs. Wentworth 37 Me. 165: State vs. Knight 43 Me. 11: State vs. Learned 47 Me. 426: See Ch. 29 Magna Charta: 2 Coke Inst. 4: 1 Black. Com. 44: 2 Kent. 9: 3 Story Const. Sec. 1783: See titles Process of law, Due process of law, Common law, Constitutional limitations, etc.

#### DECLARATION OF RIGHTS.

SEC. 7. No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, or in such cases of offenses as are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or

in the militia when in actual service in time of war or public danger. The legislature shall provide by law a suitable and impartial mode of selecting juries and their usual number and unanimity, in indictments and convictions, shall be held indispensable.

No person to answer to a capital or infamous crime but on indictment. 110 U. S., 567; 4 Me., 439; 60 Me., 508, 509; 67 Me., 336; 84 Me., 28, 272.

1. Capital crimes are such as are punishable with death; see Anderson, Wharton, Bouvier and Black Law Dictionary, title "Capital." Crimes formerly punished in this State by hanging are now punished by imprisonment for life or for a term of years; see Chap. 133, Sec. 1, Public Laws 1887.

2. Infamous crimes, meaning of.

A crime punishable by imprisonment in the State Prison for one or more years is an infamous crime. *Butler vs. Wentworth* 84 Me. 25: *State vs. Cram*, 84 Me. 271. A crime punishable by imprisonment in a State Prison or penitentiary is an infamous crime. See *Mackin vs. U. S.* 117 U. S. 348: 128 U. S. 393: 140 U. S. 200: 20 Barber 189: 8 Gray 329: *Const. Debates of Maine*, p. 118.

An indictment is a written accusation of one or more persons of high treason, felony or misdemeanor preferred before and presented by twelve or more not exceeding twenty-three good and lawful men of the county, duly sworn, who are called the Grand Jury. Forsyth, *Trial by Jury*, p. 215.

The Grand Jury never consists of more than twenty-three and never less than thirteen good and lawful men, summoned from the body of the county. 2 Hale C. P. 161: 36 Me. 128. For history of Grand Jury, see *Am. Juror*, p. 175: Forsyth, *Trial by Jury*, p. 215: Thompson and Merriam on Juries: *Modern Jury Trials*, (Donovan). A majority of twenty-three, viz, twelve Grand Jurors must agree to present an indictment. *Stat. 13 Edw. I Chap. 13*: Forsyth, *Trials by Jury*, p. 216.

#### IMPEACHMENT.

The House of Representatives have the sole power of impeachment, see *Const. of Maine Art. 4 Pt. 1 Sec. 8*.

The Senate has sole power to try impeachments but their power shall not extend beyond removal from office and disqualification to hold any office of profit, trust or honor under the State. See *Const. of Maine Art. 4, Pt. 2, Sec. 8*. Impeachable offenses, 16 *Am. L. Rev.* 798. Trial by impeachment, 6 *Am. Law Reg. (N. S.)* 257. Presidential impeachment, 19 *Atlantic* 88: 3 *Cent. L. J.* 300: Memorable impeachments, 30 *Leisure Hour* 661: 45 *Chambers J.* 213. Causes for impeachment of a President, 6 *Am. L. Reg.* 641. Trial by, 6 *Am. L. Reg.* 257.

Of Judge Barnard, 5 *Alb. L. J.* 316. Pres. Johnson, 2 *Am. L. Rev.* 546. Articles of, in Warren Hastings, 1 *Templar* 22, 284: 20 *State Trials* 1077, 22 *State Trials* 237.

Cases arising in the army, navy or in the militia in times of war or great public danger are cognizable in Courts Martial or military Courts. 1 *Winthrop, Military Law* 104, title Jurisdiction. Prior to the adoption of the Constitution of the United States, military law had become firmly established in this country, see *Articles of confederation*; *Military Code* adopted by Continental Congress June 14, 1775: 1 *Journal of Congress* 82, 83, 90. *Am. Archives*, 4th Series Vol. 1, p. 1350: 1 *Journal of Congress* 365: 3 *John Adams Works* 83. Amendments to in 1786, 4 *Journal of Congress* 649. Constitutional power to establish a military Code and make rules and regulations vested in Congress and in the President, *Art. 1, Sec. 8 and Art. 2, Sec. 1, 2 and 3, Const. U. S.*, see 4 *Wallace* 137. In

times of public danger, meaning of, *Johnson vs. Sayre* 158 U. S. 109. Applicable not to army or navy, but to militia when in actual service. Military law, 37 All the year 227: 43 Chambers J. 6: During the Am. Revolution 1 Mag. Am. Hist. 538, 705: 5 U. S. Service Mag. 121, 516: 15 Cornhill Mag. 484. Courts Martial, 72 Law Rep. 385: 47 Law T. 219, and Cat o' nine Tails, 13 Frazier Mag. 539: 10 Temple Bar 412: 10 Law Rev. 374: 67 Blakw. 269. Court Martial, Mrs. Surratt's trial, 10 Sol. J. and Rep. 250. Origin of Court Martial, 7 Law Times 514. Reform of 20 Law Mag. and Rev. 234. Militia Law 1 Kan. J. 261. In times of riot, 18 Alb. L. J. 85: 102 N. Am. Rev. 334: 5 U. S. Service Mag. 121, 516. Military offenses, extent of civil remedies for, 3 Juridical Soc. Pap. 1. Courts Martial in Maine, see Militia Law 1821, Ch. 10, Rev. Stat. 1857, p. 164: Chap. 266, Pub. Laws 1893.

#### THE COMMON JURY MUST CONSIST OF TWELVE MEN.

From the most ancient times until the present day it has been the rule, to which there are rare exceptions, to require a jury to consist of twelve men for the legal determination of any cause: Proffatt on Jury Trial, Sec. 9: Thompson & Merriman on Juries, Sec. 5: This is the common law; 2 Hale P. C. 161: Bac. Abridg. A. Juries: 1 Chit. Crim. L. 505: 4 N. J. Law 69: 2 Hay. (N. C.) 113: 6 Exch. 447: 38 Tex. 504: Stephen Hist. Crim. L. Eng. V. 1, p. 251, 300. Trial by jury as used in our bill of rights means a trial by twelve men, no more, no less. And the legislature has no power, in the absence of constitutional authorization, to pass an act fixing the number at more or less than twelve in any court of record; Thompson & Merriam on Juries, Sec. 10: 2 Wisc. 23: 2 Ohio St. 296: 30 Mo. 600: 51 Ga. 264: 41 N. H. 550. Opinions of judges Supreme Court of that State. Nor can the legislature provide that less than twelve can render a legal verdict; 41 N. H. 550: 38 Tex. 504: 18 N. Y. 128: 3 Wisc. 219: 8 Ark. 436: 44 Ala. 387: 6 Metcl. 224: 4 Ohio St. 167: 2 Park Crim. R. 312: 4 Smead & M. 579: 11 Nev. 39: 16 Fla. 291: 13 N. Y. 198: Record must show trial by twelve jurors; 18 N. Y. 128: 54 Ind. 461: 16 Mich. 351: 7 Am. Law Reg. 289: 49 Mo. 268: 8 Ark. 372: 1 Stew. (Ala.) 483. In cases of felony this right to full and lawful jury cannot be waived; 41 Mo. 470: 44 Ala. 393: 51 Ia. 578: 18 N. Y. 128, 137: See Savage's Digest, Crim. Law Mag., Bish. Crim. Proc., title "Waiver:" 9 Cent. L. J. 313: Thompson & Marriam Juries, Sec. 5-15: Proffatt on Jury Trial, Sec. 9, 11 and notes: Forsyth Trial by Jury, p. 46. But a plea of guilty in effect waives the right; see Trial, Plea, Arraignment, Sentence, etc. In many states, inferior courts are constituted with less than twelve jurors; 2 Ohio St. 296: 30 Mo. 600: 6 Ia. 349: 62 Barb. 16: 30 Mich. 116: 15 La. An. 190. But in these courts the right of appeal to courts of record is preserved and allowed; see titles Appeal, Thompson & Merriam on Juries, Sec. 5, 11. In civil cases the right to a full jury can be waived by the justices thereto, and a verdict by a less number will be binding under the constitutional provisions of several states; Const. Cal. Art. 1, Sec. 7: Colo. Const. Art. 2, Sec. 23: Fla. Const. Art. 1, Sec. 4: Ill. Const. Art. 2, Sec. 5: Md. Const. Art. 4, Sec. 8: Mich. Const. Art. 6, Sec. 27: Minn. Const. Art. 1, Sec. 3: Mo. Const. Art. 2, Sec. 28: Nev. Const. Art. 1, Sec. 3: N. J. Art. 1, Sec. 7: N. Y. Const. Art. 1, Sec. 2: Penn. Const. Art. 5, Sec. 27: Also in Tex. West. Va. and Wisc. In some states where the constitution does not so provide, cases are found where the court has held a verdict by less than twelve, binding upon the parties when they have expressly waived this constitutional right; *Durham vs. Hudson* 4 Ind. 501. This rule has also been extended to misdemeanor; 12 Cush. 80: 11 Nev. 119: 8 Ark. 436: 28 Ga. 576: 49 Mo. 268; see 51 Iowa 578: 9 Cent. L. J. 313: The soundness of these decisions is doubted; *Murphy vs. Com.* 1 Metc. (Ky.) 365: *State vs. Mansfield* 41 Mo. 470.

## HISTORY OF TRIAL BY JURY IN U. S.

12 So. M. 506: 98 Ecl. R. 174: 52 Christ. Obs. 331: Origin of; 13 Niles Reg. 139: 119 N. Am. Rev. 219: 26 Chambers Jr. 355: 23 Am. J. Soc. Sci. 85: 22 Am. L. Rev. 853: Thompson & Merriam on Juries: American Juror (H. B. Wilson): Modern Jury trials, J. W. Donovan: Jury Trial by John Proffatt. In Texas; 54 Black. M. 777. In Scotland; 4 Tait 351 (N. S.) English and Irish 7 All the Year 421: 4 Victoria 418: 32 Dublin Univ. 717: 17 L. J. 500, 671: 105 Ecl. M. 11: In Spain; 4 Law Mag. and Rev. (N. S.) 11. Origin of trial by, 11 Am. L. Rev. 24: 7 Leg. Adv. 247: In Germany, 3 Am. L. Rec. 129: Hist. of 98 Ecl. M. 174. In England, 5 MacMillan 412. In Germany 119 N. Am. Rev. 219. In Ireland, 50 L. T. 473: 70 L. T. 363: 7 L. J. 238. In Russia 1 Leg. News 168. In Scandinavia, 1 Ed. L. J. 610. In Scotland 2 Crim. L. M. 94: 7 Jour. Jur. 1220: 57 Ed. Rev. 96: 4 Tait (N. S.) 351: 11 L. T. 523. In United States Courts 11 Fed. Rept. 475. Origin and history, 14 Alb. L. J. 213. Ancient modes of trial 32 Arch. 263: At Guildhall, 5 Law and Mag. 226. At Old Bailey, 1 Law and Mag. 375. General citations. Trial by jury, 5 McMillan M. 412: 27 Blkw. 736: 92 N. Am. Rev. 297: 11 Law Rev. 24: 7 Temple Bar 550: 90 Ecl. Rev. 749: 15 Putnam M. 175: 16 Nation 428: 15 Canadian M. 217: 5 Dem. Rev. 463: 15 Knic. M. 478: 36 Dem. Rev. 91: 4 Penn. Mo. 700: 7 St. Paul's 88: 1 West. Rept. 101: 97 Westmr. R. 289: 23 Am. J. Soc. Sci. 85: 21 Am. Law Rev. 859: 22 Am. L. R. 853: 17 Am. Law R. 397: 134 N. Am. Rev. 244: 14 Internat. R. 158: 57 Brit. Q. 374: 142 Mo. R. 285: Tweed Verdict, 17 Nation 351: 3 Scrib. 609: 50 Cham. J. 785.

## CONDUCT OF JURY AND THEIR RIGHTS AND DUTIES.

In criminal cases instances of acquittal were very rare, in ancient times 1 Howell St. Tr. 407: Emlyn's Preface, p. 30. The jury were questioned concerning their verdict by the judge and were often fined or imprisoned when the verdict did not meet with his approval, 1 Howell St. Tri. 961: 6 Howell St. Tri. 967: 5 Howell St. Tri. 445: Remarks of Lord Hale and Blackstone on this practice 18 Howell St. Tri. 313 note. Resolutions of the House of Commons in 1867 against the practice of fining juries for their verdicts, 6 Howell St. Tri. 995: 2 Kelyn's R. 50: 4 Hatsell 113: 3 Keble 322: Freeman's R. 1: 2 Jones R. 13: Volverton R. 23: 1 Coke 778: 2 Keble 185: 1 Modern 119. This custom declared arbitrary and illegal 4 Black. Com. 361: Smith's Commonwealth V. 3, C. 1: 2 Hale C. P. 313: 20 Howell St. Tri. 895: Proffatt on Jury Trials, Sec. 37-40. This practice overthrown by Fox's Libel Act in 1792, Stat. Geo. 3d Ch. 6.

Jurors are not at liberty to act arbitrarily in finding a verdict, but are bound by their consciences, informed by reasonable proofs, 13 Howell St. Tri. 455: 4 Blac. Com. 361 note. Power and duty of jurors in England, Forsyth on Jury Trial 259. Province and duty of the jury in the United States, Proffatt on Trial by Jury, Sec. 358-440: 2 Househ'd Words 100: 3 Crim. L. Mag. 481: 1 Jour. L. 73: 1 Pa. L. J. 335: 9 Irish L. T. 396: 2 Cent. L. J. 572: 5 Crim. L. M. 524: 20 Law Rev. 6: 2 Law R. 187: 1 Crim. L. M. 47: 3 N. J. Law J. 32: 5 South Law Rev. 352 (N. S.): 11 Wash. L. R. 601. Ten rules regarding jury, 18 Irish Law Times 89: 13 Am. L. Rev. (N. S.) 355: 7 Crim. L. Mag. 652: 21 Howell St. Tri. 925: Howell St. Tri. Vol. 7, p. 1207: Howell St. Tri. Vol. 13, p. 455: 23 Howell St. Tri. 114: 4 Howell St. Tri. 1284: 22 Howell St. Tri. 294: 10 Howell St. Tri. 1344. At the present time jurors are liable to punishment for misconduct, corrupt verdict and illegal practices in a trial. Misconduct, 15 Cent. L. J. 201. By use of intoxicating drinks, 16 Irish L. T. 588: 11 Wash. L. Rep. 705: 10 Wash. 115. Improper communications from court, 10 Fed. Rept. 273. Impeachment of verdicts for misconduct

of jury, 13 Cent. L. J. 61: Ecl. Mag. V. 105, p. 11: 13 Cent. L. J. 242. See titles New Trials, Exceptions, Writ of error, Quo Warranto, Habeas Corpus, etc., Jurors, Crim. Law. Non Partizan, 34 Nation 223: 139 N. Am. Rev. 1: 37 Nation 90: Rights and powers, 8 Westm. Rev. 431: 2 Housh'd, words 100: 13 Blackw. 673.

#### RULE REQUIRING A UNANIMOUS VERDICT.

In the Assize instituted in the rights of Henry 2nd it was necessary that twelve jurors agree in order to determine the question; Forsyth on trial by jury, 238. In time of Edward III verdict of less than twelve a nullity and the court said the judges ought to carry the jury around with them in a cart; 41 Assize 11; see Proffatt on Jury trial, Sec. 77: 2 Hale C. P. 297: 3 Black. Com. 376: 1 Vent. 26: 31 Geo. 625. Reasonableness of rule; 6 Am. L. Reg. 709: 2 Albany L. J. 341.

The rule has been criticised for centuries; see Emlyn's preface to St. Tri., p. 29: Baron Maseres observations on same subject, 14 St. Tri. 617 note: Hallam's Middle Ages Suppl. 262 notes: 3 Black. Com. 375 Christian's notes: Proff. Jury Trial, Sec. 79: Forsyth Trial by Jury 246: Eng. Q. L. Rev. for 1837: Jeremy Bentham's works, Vol. 2, p. 122: 3 U. S. L. J. 96: 8 Law J. 143: 64 Law Times 293: 1 Leg. News 146: 10 Chic. Leg. News 207: 10 Albany L. J. 305: 6 Leg. News 217: 8 Chic. Leg. News 311: 7 Am. Law. Reg. 314: 2 Cent. L. J. 715: Jeremy Bentham Vol. 6, p. 273: same Vol. 5, p. 84, 174: 1 Amer. 314. Majority verdict, 9 Forum 309. Report of English Commissioners 1837, Forsyth Tri. by Jury 338, see Am. Juror 234.

#### COMPELLING THE JURY TO AGREE TO A VERDICT.

In the days of Henry III (1260) it was the practice to add to the number of the jury when the twelve could not agree to a verdict until out of the whole number, twelve men could be found who could agree to bring in a verdict; 14 Howell St. Tri. 617. This practice was continued through the next reign; Bracton DeLegibus Angliae Book 4 Ch. 19: 8 Howell St. Tri. 730: 12 Howell St. Tri. 474: Paley's Mor. and Political Phil. Book 6 Ch. 8. When the practice of adding to the number of the jury was discontinued, the judges instituted the custom or rule of requiring the jury of twelve to agree to a verdict before they could separate; Barrington's observations on Magna Charta Ch. 29: 14 Howell St. Tri. 816 note. The jury were kept confined without food, drink, fire or light until such time as they could agree upon a verdict; 12 Howell St. Tri. 474 note: Smith's Commonwealth Book 3 Ch. 18: 7 Howell St. Tri. 497: Coke's Inst. 110: 3 Black. Com. 375. It has been said that the jury were sometimes carted around the country on attendance of the judges, going from place to place upon the circuit, but in the leading case Winsor vs. Queen 6 Best & Smith 141-171: 118 Common Law Rep. 143, Chief Justice referring to the matter denies that any such custom ever existed in England. See remarks of Jeremy Bentham against this abuse in his time book 5, p. 462.

In Lord Hale's time, the judges fell into the habit of discharging the jury before verdict from other causes than inability to agree; 2 Hale P. C. 295. Usually when a government witness was absent, a juror died because sick or insane; 7 Howell St. Tri. 120, 311, 497 note: But. see Irish case 28 Howell St. Tri. 446: Kimlock's case 18 Howell St. Tri. 402, 1200. Owing to the abuse of this power to put off and delay a trial of the accused, the ancient rule was again established; see Lord Delamere's case 11 Howell St. Tri. 561: 19 Howell St. Tri. 671 note. That the court must hold the jury until they agree to a verdict but may adjourn the trial when great necessity requires it; Hardy's case 24 Howell St. Tri. 414: Horne Tooke's case 25 Howell St. Tri. 129, 1295. This rule continued in Eng-

lish courts until 1866, when on a review of the whole subject the court of the Queen's Bench established the rule that "in case of felony, capital or otherwise, the judge has discretionary power to discharge the jury without consent of either party, where after sufficient time for deliberation they are unable to agree"; 6 Best & Smith Q. B. 141; Winsor vs. Queen—see also Queen vs. John Barff Charlesworth, 1 Best & Smith Q. B. 459; Lynch vs. Queen 7 Irish Law Rep. 149: See Proffatt on Jury Trial 475; Carth. 465: 16 Foster Common Law 22: 4 Black. Com. 360: 3 Burns Inst. 974: 2 F. & F. 251.

In the earlier days of this republic there was a difference of opinion as to the right of the court in a case of felony, to discharge the jury on the ground that they could not agree to a verdict; Proffatt on Jury Trial, sec. 484: 3 Rawle 498: 2 Dev. & Batt. 162: 2 Gratt. 567: 26 Ala. 135. The rule in the United States now is that the judge in his discretion may discharge the jury when after a reasonable time for deliberation they are unable to agree, or when from any other cause it becomes necessary for the purpose of justice; U. S. vs. Watson 3 Ben. 1: 9 Wheaton 579: 27 Ind. 131: U. S. vs. Coolidge 2 Gall. 364: People vs. Goodwin 18 Johns 188: 13 Wind. 55: 9 Mass. 494: 2 Pick. 521: 4 Stew. & P. 72: 4 Wash. C. C. 402: 35 Ala. 406: 26 Ark. 260. Arbitrary discharge without necessity is a bar to a new trial; Cooley Const. Limit. 326, or Nolle Prosequi against will of accused, Whart. Crim. L., sec. 3128: 1 Bish. Crim. L., sec. 874: 1 Bailey 651: 9 Bush 333: 15 Ohio (N. S.) 155. General citations, 2 Mo. 166: 13 Wind. 351: 6 Hump. 249: 1 Am. L. Reg. (N. S.) 524: Mart & Yorger 278: 48 Cal. 323: 41 Cal. 211: 63 N. C. 570: 9 Leigh 613. Discharging jury, 15 Leg. Not. 270: 3 Leg. News 305, 320: 4 Leg. News 17: 1 Crim. Law. Mag. 766. Discharging jury before verdict without consent of prisoner, Review of Eng. and Am. cases, 4 Western Law Journal 97: 9 Sol. J. and Rep. 943-954: 13 Cent. L. J. 21: 59 L. T. 386.

#### CRITICISMS OF TRIAL BY JURY AND OF THE JURY SYSTEM.

Shall it be abolished? 17 Law Jr. 523: 42 Law M. 155: 25 Co. Ct. Chi. 376: 20 Am. L. Rev. 661: 20 Iri. L. T. 500: 7 Jurist 467: So. Sci. Ass'n 1882: 74 Law T. 3, 42: 139 N. Am. Rev. 348: 43 Law Rev. (N. S.) 521: 26 Century M. 299: 31 Alb. L. J. 246: 68 All the Year 60: 60 Spec. 487: 24 Pop. Sci. M. 676: 3 Forum 102. Trial by Judge or Jury; 6 Westm. Jur. 349: 6 Alb. L. J. 39: 28 Sol. J. and Rep. 493: 3 Am. L. Reg. 321: 48 Law T. 228. In civil suits; 13 Cent. L. J. 21: 8 Ill. St. Bar Ass'n 35: 20 Am. L. R. 661: 68 All the Year 60: 60 Spec. 487: 3 Green Bag 449: 105 Ecl. M. 11: 48 Atl. M. 9: 3 Forum 102. Abuses and faults of; 20 Alb. L. J. 45: 8 Sol. J. and Rep. 833: 77 Westm. Rev. 289: 50 Law T. 394: 11 Am. L. R. 577: 26 Jour. Jur. 477: 16 Iri. L. T. 446. Is it a failure? 25 Scrib. 124: 26 Alb. L. J. 404: 22 Am. L. Reg. (N. S.) 22: 17 Iri. L. T. 164: 8 Cent. L. J. 35: 40 Law M. 84: 8 N. Brit. Rev. 82: 57 Brit. Q. 324: 142 Mo. Rev. 385: 43 Dub. R. 471: 27 Brit. Q. 377. British system; 52 Brit. Q. 57. Delusions; 37 Nation 90. Is it a failure? 3 Cent. L. J. 124: 4 Cent. L. J. 290. Reform of; 31 Alb. L. J. 504: 50 Cham. J. 785: 3 Jour. Jur. 463. New view of; 50 L. T. 234: 43 Dub. Rev. 471. Reform of; 2 Iri. L. T. 471: 65 Law T. 430: 44 Nation 546: 67 Spec. 917. Right to trial by jury; 1 Cent. L. J. 296. Preservation of; 23 Law Mag. and Rev. 291. Advantages of; 35 N. Am. Rev. 447: 45 L. T. 440: 43 L. T. 137. Trial with closed doors; 30 Jour. Jur. 291. Jeremiah Black defence of the right of trial by jury in Supreme Court of U. S., Dec. term 1866, 4 Wall. 2: De Tocqueville Democracy in Am. 307: Story on Const. 633. Federalist reform paper No. 83. Declaration of Independence, one cause assigned for it was refusal of trial by jury.

#### DECLARATION OF RIGHTS.

SECTION 8. No person, for the same offense, shall be twice put in jeopardy of life or limb.



. Not to be put in jeopardy twice for same offense. 37 Me., 165; 59 Me., 141; 70 Me., 457.

#### TWICE IN JEOPARDY.

Former acquittal or conviction may be pleaded in bar to an indictment or on appeal. This principle is founded on the well-known maxim of the Common Law "That a man shall not be brought into danger of his life or liberty for one and the same offense more than once." It is held in all books of common law that where a man has been found not guilty, or guilty, on an indictment or appeal free from error, well commenced before any court having jurisdiction of the person and cause, he may at common law in all cases whatsoever, plead such former acquittal or conviction in bar to a second trial for the very same offense; 4 Coke 40-45: 4 Black. 335: 2 Hawkins P. C. Ch. 35.

This principle is found in the constitutions of all the states; see also, Art. 5 U. S. Const.: 18 Wall. 163: 131 U. S. 179: 120 U. S. 274. Adjudications under this section. Discharge of jury after arraignment; 2 McLean 114. Effect of Nolle Prosequi after trial commenced. Added punishments, 18 Wall. 153. Former jeopardy, 4 Crim. L. Mag. 487. Annotated cases, 6 Crim. L. Mag. 61: 26 Alb. L. J. 324: 18 Cent. L. H. 43: 1 Am. L. J. 49: 4 Crim. L. Mag. 27: Proff. on Jury Trial, sec. 490: 1 Bishop Crim. Law., sec. 873. Improper adjournment of trial, 48 Cal. 323.

SECTION 9. Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offense; excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

Sanguinary laws prohibited. 39 Me., 258; 93 Me., 420; 94 Me., 132.

#### SANGUINARY LAWS.

In the time of Blackstone one hundred and sixty crimes were by act of Parliament punishable with death, 4 Black. Com. 18: Ruffhead's Index title Felony: 4 Black. 17. A century ago ten crimes in Massachusetts and twenty in Delaware were punishable with death, And. Law. Dict. title "Punishment": 1 McMaster Hist. People of U. S. 100: 1 Stephen Hist. Crim. Law. Eng. 457-476. In 1821 Maine Legislature declared treason, murder, arson, rape and robbery punishable with death, see laws of Maine 1828. The saying that "whosoever shall keep the whole law, and yet offend in one point is guilty of all," was fully exemplified in the punishments administered to the murderer and to the petty thief, 4 Black. Com. 18: 1 Stephen Hist Crim. Law Eng. 466-482. Gradations of punishments to fit the crime, see Roman Civil Law: 1 Stephen Hist. Eng. Crim. Law 9. Excessive punishment of petty misdemeanors under the Four Georges, see (1822) Black Act 9 Geo. 1 ch. 27: Act. Geo. 2d ch. 6: Act. 7 & 8 Geo. 4th ch. 28: see Stephen Hist. Eng. Law 469. In 1827 was developed the English criminal code recognizing in the nature of the punishment, the degree or heinousness of the crime. At the time of our national independence the abuses of cruel and unusual punishments had not wholly disappeared from the English criminal code and excessive bail was often required by colonial courts, see Declaration of Independence: Schouler Const. Studies 33. The court of the U. S. and of the several states contain this section of our Declaration of Rights copied from Magna Charta, sec. 45.

General citations. Punishment, ends of, 29 Rep. Q. 251. Inequality of, 14 Nineteenth Cent. 517. Mediæval and modern, 54 Atl. 302. Old Eng. modes of, 13 Leisure Hours. Bentham's theory of, Edbg. R. 32: 43 Princ. R. 61. Law of, 5 Old and New 745: 47 N. Am. Rev. 452: 10 N. Am. Rev. 235: 60 Black. Mag. 721. In the Army, 15 Black. 309.

Equivalent to the crime, 46 Gents. Mag. (N. S.) 360: 20 Amer. 427. Ethics of, 52 Fortnightly 112: 182 Living Age 387. Mediæval, 3 Green Bag 481. Ancient and singular, 65 All the Year 132. Failure of, 7 Green Bag 454. Improvement in, 17 Andover Rev. 393. Rationale of, 1 Open Court 134. Retributive, 73 Spec. 173. Theory of, 2 Ethics 232. In Ancient Massachusetts, 15 Nat'l M. 67. Military, 6 U. S. Serv. Mag. 196.

## PUNISHMENT.

Old fashioned, 14 Irish L. T. 514: 9 Am. L. Rev. 437. Obsolete, 6 Penny Mag. 338: 17 Cornhill Mag. 559. By hard labor, 6 Jour. Jur. 458. Inequality of, 17 Irish L. T. 505. Of accomplices, 3 Cent. L. J. 381. Of convicts, 6 L. Rep. 193: 17 Westm. 52: 3 Jurist 122. Penal servitude, 44 Contemp. 169: 23 Galaxy 355. Object of punishment, 22 Am. Jur. 359: 5 Law J. 213: 1 Jurist 354: 4 Law Mag. 129. Reason of, 19 Dem. Rev. 90. Certainty of, 11 Alb. L. J. 282. Capital, 9 Law Rep. 331: 27 Law T. 149: 35 Law Mag. 223. By whipping post, 9 Am. Bar Ass'n 286. Before conviction, 24 Law Times 193. Reformation of, Soc. Sci. Ass'n. Addresses 1857, 1858, 1859, 1860, 1862, 1863. Electrocution, not cruel and unusual punishment, 142 U. S. Rep. 155. Punishment of witches, Quakers and Baptists in New England Colonies, McMaster Hist. People of U. S.: Salem Witchcraft, Hist. of, etc.

SECTION 10. No person before conviction shall be bailable for any of the crimes, which now are, or have been dominated capital offenses since the adoption of the Constitution, where the proof is evident or the presumption great, whatever the punishment of the crimes may be. And the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Bailable offenses. (Resolve of Mar. 30, 1837: Amendment 11.)—habeas corpus. 66 Me., 74. Bills of attainder, etc.

## BAIL.

SEC. 10. A person charged with any of the following crimes, where the proof is evident and the presumption great, cannot be admitted to bail under this section before conviction, viz:—

Treason, see ch. 1 Pub. Laws 1821.

Murder, see ch. 3 Pub. Laws 1821.

Rape, see ch. 4 Pub. Laws 1821.

Burglary, armed with dangerous weapon, see ch. 6 Pub. Laws 1821.

Robbery, when armed with a dangerous weapon, see ch. 7 Pub. Laws 1821.

Bail. 4 Jurid. Rev. 341: 1 Westm. Rev. 292. Anomalies of, 26 Jour. Jur. 248: 6 Am. Jurist 66: 10 Wash. L. Rep. 673. In misdemeanors, 1 Magistr. 140. In capital cases, 20 Cent. L. J. 103: 6 Crim. L. Mag. 1: 16 Chic. Leg. News 80. Power of courts in, 15 Am. L. Reg. 1: 10 Irish L. T. 543. Limits of, 8 U. C. L. J. 141: 20 Cent. L. J. 264.

## HABEAS CORPUS.

The writ of Habeas Corpus was framed by the courts as a means of carrying out and enforcing the provisions of ch. 29 Magna Charta which is substantially embodied in section 6 of our Declaration of Rights. Hurd on Habeas Corpus 75. It is the keystone to civil liberty, Ferguson's essay on civil liberty 302. It is applicable to every person of every rank in life, 3 Bentham 435. From the time of Magna Charta, this writ has been the one instrument against oppression and wrong which every Englishman could demand as his right, Hurd Habeas Corpus 77: 2 Hallam Const. Hist. 177. It exists today in its original form, Stephen Const.

Hist. England. Abuses arose to such an extent under this writ in reference to the delay of its issue and service (see English Bill of Rights, Discussion) that by the Habeas Corpus Act, 31 Chas. II and Act 56 Geo. III it was enacted that this Writ of Right should be granted at once on application to the courts, and should be served forthwith and hearing thereon had within three court days of the return thereof. Contests concerning this right, see Mr. Emlyn's remarks 1 State Trials 27 preface; see also p. 16, 30, 51, 241, 248: 5 State Trials 373. Habeas Corpus declared a writ of right, 18 State Trials 19. Writ of Error does not lie upon Habeas Corpus, 14 State Trials 848. Wilkes case, 19 State Trials 983. Discussion of the judge respecting the issue of this writ in vacation, 20 State Trials 1374. Argument in case of seven Bishops, 12 State Trials 202. The suspension of this writ, even in times of great public danger, has always been the occasion of earnest and vehement protests from the people, both in England and the United States. See Habeas Corpus vs. Martial Law, 93 No. Am. R. 471. Suspension during the Rebellion, 3 Pol. Sci. Q. 454. Opinion of Atty. Gen. of U. S. on suspension of, 24 Law Rep. 129: 23 Leg. Inst. 396. Abuses of the writ, 1 Ga. Bar Ass'n 119: 6 Am. Bar Ass'n 243: 18 Am. L. Rev. 1: 7 Am. Bar Ass'n 13. Case of Dennis Kearney 5 Pacif. Coast Law Jr. 549. Defects in the law of, 22 Law Rev. 149.

General citations: 54 Law Mag. 278: 4 Am. L. Reg. 257: 1 Am. L. Reg. 513. In case of fugitive slaves, 7 U. C. L. J. 171, 198: 1 Am. L. Mag. 348: 17 Leg. Obs. 225-264: 23 Law Rep. 7. Custody of child, 1 Chic. L. N. 37: 15 Cent. L. J. 281: 6 Crim. L. Mag. Annotated cases 500: 47 Law Times 22. Deserters from Army, Annotated cases, 22 Cent. L. J. 370: 7 Crim. L. M. 1: Extradition Cases, 7 Crim. L. M. 289: 18 Fed. Rep. 70: 2 Kan. L. J. 225: 12 Alb. L. J. 228: 18 Cent. L. J. 368: 9 Am. L. Reg. 705.

SECTION 11. The Legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate.

U. S. Const. Art. 1, Sec. 10; 1, 2 Me., 275; 5 Me., 66; 6 Me., 112, 355; 7 Me., 474; 11 Me., 109, 118, 284; 14 Me., 344; 15 Me., 135; 18 Me., 109; 21 Me., 53; 23 Me., 360; 24 Me., 520; 27 Me., 212; 42 Me., 429; 45 Me., 507; 47 Me., 91; 48 Me., 34; 49 Me., 507; 50 Me., 114; 51 Me., 480; 57 Me., 394; 63 Me., 269, 285, 333; 65 Me., 129; 71 Me., 383; 74 Me., 139; 80 Me., 469, 561.

#### BILL OF ATTAINDER.

Attainder, meaning of. Pollution of blood, extinguishment of inheritable quality of blood, Anderson's Dict., title Attainder. Party attainted in ancient times could neither receive, convey or inherit property nor could his descendants. Bill of Attainder is a legislative act convicting or attainting particular persons of particular offenses, see "Const. Debates of Maine" 1819 p. 120, was a law which declared certain persons attainted, their blood corrupted, so that it lost its heritable quality, 4 Wallace U. S. 387. In these cases the legislature exercised *judicial functions*, pronouncing persons guilty without the formality of a hearing or trial, *Ibid.* See Black. Com. 380: Const. U. S. Art. 1 Sec. 9 Cl. 3: Art. 3 Sec. 3 Cl. 2: Art. 1 Sec. 10. In England, see 92 U. S. R. 210: 2 Black. Com. 256: 2 Story Const. Sec. 1344. Law of Attainder, 16 Leg. Obs. 305: 1 Leg. Exam. 137. History of, in time of Henry VIII, 1 State Trial 481. Opinions concerning bills of, 16 State Trials 651: 13 State Trials 726. Act of Attainder in rebellion 1745, see 18 State Trials 640. Summary of the effect of, 19 State Trials 979. By Stat. 7 Anne C. 21 disherison from attaint was limited to the life of the offender, see Emlyn's remarks Preface vol. 1 State Trials p. 28.

## BILLS OF ATTAINDER, HISTORY OF. MEANING OF IN ENGLAND.

Bill of Attainder is an act putting a man to death or otherwise punishing him without trial, 1 Stephen Hist. Crim. Law of Eng. 160. In 1478 Bill of Attainder was passed against George, Duke of Clarence, brother of the King, by act 18 Edward IV, 1 State Trials 275. He was drowned in a butt of wine. Bills of Attainder were very frequent in the reign of Henry VIII instead of impeachments. See cases Thomas Wolsey, Archbishop of York (1529) 1 State Trials 367, 384: Bill against Queen Catherine Howard (1541) 1 State Trials 446: Against Thomas Howard, Duke of Norfolk (1446) Act. 38 Henry VIII, 1 State Trials 451: The Earl of Surry, *Ibid*: In 1670 against Sir Wm. Stafford, Act. 1 James II 7 State Trials 1217, 1564: Against Duke of Monmouth (1685) 11 State Trials 259, 1023, 1048: Against Sir John Fenwick (1696) by Act 8 Will. III, see State Trials, vol. 13, p. 537, 542, 758: Against Bishop of (Attesburg Frances) Rochester (1723) Act. 9 Geo. I, 1 State Trials 323, 425, 693. The Bill of Attainder against Queen Caroline, wife of George IV, June 6, 1620, was the last instance of such legislation in England, Stephen, Hist. Crim. Law of Eng.

## EX POST FACTO LAW. MEANING OF.

A law whose penal provision is not established until after the act is done. Of a sentence beyond the law, where the judge of his own authority appoints a punishment which the legislature has not appointed, Jeremy Bentham 84. Any law which is enacted after the offense was committed and which in relation to that crime or its consequences, alters the situation of the accused to his disadvantage, 152 U. S. 377: 107 U. S. 221: Schouler Const. Studies 150: 3 Dallas 386: 6 Cranch 87: 4 Wallace 172, 333. Does not apply to civil proceedings, 8 Peters 88: 17 How. 456: 134 U. S. 160: 128 U. S. 189. Retrospective laws not impairing obligations of contracts or partaking the character of *ex post facto* laws, are not forbidden by this section, see 3 McLean 217: 5 McLean 165: 6 McLean 441, See titles Retrospective, Retroactive and Constitutional Law, Remedies and Procedure, Ultra Vires, Const. Limitations, Punishment, etc., and False Imprisonment.

## LAWS IMPAIRING OBLIGATIONS OF CONTRACTS.

See Const. U. S. Art. 1 Sec. 10, a prohibition upon the states. See Federalist Paper No. 44, No. 7 Private contracts. It appears that prior to the adoption of the Constitution, several of the colonies had passed laws seriously interfering with the obligation of contracts made in other states; Schouler Const. Studies 152. Law of defined, 102 U. S. 203: 6 How. 327. Change of remedy, 4 Wheat. 122: 1 How. 311: 103 U. S. 714. Discharge in bankruptcy, effect of, 12 Wheat. 213: 6 Pit. 348, 635: 128 U. S. 489: 4 Wall. 535. Remedy to enforce, 96 U. S. 69: 102 U. S. 651. Stat. of Limitations, 95 U. S. 628. See Contracts, Usury, Form of Action, Rules of Evidence, Burden of Proof, Exemption Laws, Stay Laws, Statute of Frauds, etc., Vested rights, Charters, Lotteries, Corporations, in Am. & Eng. Ency. of Law, and Savage's Index Digest.

## DECLARATION OF RIGHTS.

SECTION 12. Treason against this State shall consist only in levying war against it, adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

Treason. Testimony of two witnesses.

## TREASON; WHAT CONSTITUTES.

By Stat. 1 Edward 6 Chap 12 sec. 22, treason consisted in adhering to the King's enemies, compassing the King's death or levying war against him. In 1708 it was held by the English judges that writings or publications containing treasonable sentiments, subjected the author of them to indictment and trial for high treason; 14 St. Tri. 1376 note. In Owen's case, words spoken hostile to the King were held to constitute high treason; 2 St. Tri. 882. Constructive treason, see 3 St. Tri. 1466: Hardy's case, 24 St. Tri. 877. Attempt to marry a person claiming title to the Crown, held to be treason, as designed to compass the King's death, see Duke of Norfolk's case, 1 St. Tri. 1003. Two witnesses to same overt act. In Sir Walter Raleigh's case it was held that two witnesses to same act were not necessary, 2 St. Tri. 15. Treason against the United States or against the State, consists in levying war upon the State or adhering to her enemies and giving them aid and comfort; U. S. Const. Art. 3 Sec. 3 Cl. 1. Treason was thus liberally and clearly defined in order to eliminate from our laws the hated and unjust doctrine of "Constructive Treason," whereby many Englishmen had been tried, convicted and executed for hostile feelings expressed in words toward the King or some of his officers; see Schouler's Const. Studies 176.

## WHAT CONSTITUTES LEVYING WAR.

2 Dall. 346: 2 Abb. (U. S.) 364: 4 Cranch 75: 1 Dall. 35. Comments on the English doctrine of Constructive Treason: 4 Cranch 470: 3 Wash. 234: 2 Dall. 86: 2 Wall Jr. 139: 1 Paine 265. Giving aid and comfort to enemies defined; 2 Abb. (U. S.) 364. Necessity of two witnesses to the same overt act, see 2 Abb. (U. S.) 364.

## WHO CAN BE GUILTY OF TREASON AGAINST THE UNITED STATES.

1st. Citizens of the United States, wherever located.

2d. Aliens who reside within our limits and are enjoying the benefits and protection of our laws; 16 Wall. 147: 12 Wall. 342. It is difficult to imagine a case where treason against the State would not also be treason against the United States; see discussion of State rights, Secession fealty to State, etc., Schouler Const. Studies 177 note. Can it be committed against one of the United States? 4 Am. Law Mag. 318: Curiosities of the law of, 37: Fortn. Rev. 587: Louis Riel's case, 19 Am. Law Rev. 929: 21 Cent. L. J. 446: Aaron Burr's case, 1 Am. L. J. 344: Jefferson Davis' case, 3 Am. L. Rev. 368. Does resistance to laws constitute? 23 Law 705.

## DECLARATION OF RIGHTS.

SECTION 13. The laws shall not be suspended but by the Legislature or its authority.

Suspension of laws.

## SUSPENSION OF LAWS BY LEGISLATIVE AUTHORITY.

See Const. U. S. Art. 1 Sec. 9 Par. 2. Congress alone has the power to authorize suspension of Habeas Corpus within the jurisdiction of U. S. Courts and the suspension of its laws; 4 Wall. 2: 4 Cranch 75: 12 Wheat. 19: 1 Abb. 212: 5 Blatch. 63.

The civil laws of the United States can be suspended only in cases of absolute necessity as in case of actual rebellion or invasion; 4 Wall. 2.

A state cannot establish a military government, but it may use military power to overcome domestic insurrection and declare martial law for such purpose, but in all cases where such necessity does not exist, the civil law is supreme; 7 Howard 1. The laws of the state cannot be suspended

indefinitely even by the legislature; see Art. 4 Sec. 4 Const. U. S.: 7 Wall. 646; 12 Wheat. 29. Since the United States guarantees to every state a republican form of government and declares that the military law is subservient to civil law in all cases where necessity does not demand otherwise. Habeas Corpus and Martial Law; 93 Am. Rev. 471: 70 Ecl. Rev. 325; 64 Knick. 206: 45 Dub. Rev. 388. Martial law during the Revolution; 1 Mag. Am. Hist. 705 & 558, see also 5 U. S. Serv. Mag. 121, 516: 15 Cornhill 484: 43 Chamb. Jour. 6. When suspension of laws is justified; 163 No. Am. Rev. 549: 6 Spectator 1391. Distinction between military and martial law; 29 Law Mag. & Rev. 24.

Martial law; Soc. Sci. Ass'n (1868) 268: 93 N. Am. Rev. 471: 102 N. Am. Rev. 334: 3 L. J. 384: 42 L. T. 474. Power of Legislature to suspend a law for the benefit of an individual; 14 Am. Jur. 83: 13 Am. Jur. 72. Civil law is government by reason. Martial law is government by force and can only be justified from absolute necessity.

#### DECLARATION OF RIGHTS.

SECTION 14. No person shall be subject to corporal punishment under military law, except such as are employed in the army or navy, or in the militia when in actual service in time of war or public danger.

Corporal punishment under military law.

#### CORPORAL PUNISHMENT UNDER MILITARY LAW.

History of in U. S. Army and Navy. In 1775 Congress authorized whipping in the army not exceeding 39 lashes; see Art. 51 U. S. Military Code. In 1776 U. S. Military Code Art. 3 Sec. authorized infliction of 100 lashes; see also same Art. 24 1776. In 1781 it was proposed in Congress to increase punishment to 500 lashes, but this proposition was rejected by that body; see 3 Journal of Congress 631. In 1806 Art 87 U. S. Military Code, 50 lashes were made the limit. May 16, 1812, flogging in the army was abolished. March 2, 1833, this punishment was revived by law. It was largely practiced to punish deserters in the Florida and Mexican wars. Flogging was again abolished in U. S. Army Aug. 5, 1861. In 1874 by Art. 98 U. S. Military Code, flogging, marking, branding and tattooing as punishments were abolished in U. S. Army and in the Navy the same year by Art. 49 U. S. Naval Code. Shaving the head, carrying weights, wearing irons, etc., as punishments in the military service have been abolished by general orders; see Winthrop's Military Law, p. 673. On the field of battle and in actual service summary punishments not authorized by military law are often inflicted, even to the taking of life; and are justified by the necessities of the case: Winthrop's Military Law, p. 681.

Corporal punishment under our militia law is not recognized. The extreme punishment under our State military code consists in fining the offender, or in a dishonorable discharge from the service. Punishment in Army, 15 Blackw. 309: Whipping Post, 9 Am. Bar Ass'n Rept. 286. Flogging, 30 Pittsb. Leg. J. 126: 19 Dem. Rev. 90: 4 Law Mag. 129: 143 Mo. Rev. 380: 2 Law Mag. & Rev. (N. S.) 441: 1 Jurisp. 356: 14 Cent. Mag. 355: 20 Westm. 489: 6 19th Cent. 604. Naval Discipline, 3 U. S. Mag. 576. Whipping not a cruel and unusual punishment, 4 Crim. Law Mag. 401: 28 Pop. Sc. Mo. 830: 6 Alb. L. J. 70: 2 West. Hist. 192. Whipping Post, 29 Good Words 314: 32 Leisure Hours 103: 14 New Rev. 687: 27 Chambers Jour. 81: 16 Once a Week 398: 23 Lippincott 304: 1 Naval M. 413: 2 Westm. Rev. 230: 48 Harper 556.

Corporal punishment for civil offenses was formerly authorized; see Stat. U. S. Apr. 30, 1790, chap. 9, title "Larceny." Abolished Feb. 28, 1839, U. S. Stat. chap. 36 sec. 5. The whipping post, ducking stool and

stocks were New England institutions in colonial times, see Court of Records of York Co. Hist. New England: McMasters Hist. People of U. S. In England robbery with violence, and brutal assaults are punished with flogging on the bare back, 57 Albany Law Journal 105.

#### DECLARATION OF RIGHTS.

SECTION 15. The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Right of petition.

##### RIGHT TO ASSEMBLE PEACEABLY AND RIGHT OF PETITION.

Origin of public meetings. The Goth and Vandal tribes that destroyed the Roman Empire in the fifth century, introduced into Europe the principle of individual liberty, and also the right of every man to be heard, however humble his position; see Robertson's Charles the Fifth, state of Europe and notes. "The public meeting is seen from the first in the American colonies. As a means of expressing public opinion it must be regarded as a vital part of self government": Rise of the Republic of the U. S. (Frothingham) p. 27. Town meetings, laws relating to, see Frothingham p. 26. Prohibited by Duke of York in 1665; see same author p. 80: see Art. 1 Amnd. Const. U. S.: 5 How. 410: 92 U. S. 542. Petition, right of, 57 Law Jour. 381: 1 Law Jour. 468: 12 Westm. 430: 9 Law Jour. 634: 7 Irish L. T. 523: 7 Dem. Rev. 326. Free Discussion, right of, 9 Am. Bib. Repos. 368; see Mass. Code 1641: Virginia Code 1642: Letter of Joseph Warren, Mar. 19, 1766: Petition of freemen of Charleston 1668: Hist. Charlestown p. 159. Vindication of the right of petition; see Morse's life of John Q. Adams.

#### DECLARATION OF RIGHTS.

SECTION 16. Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned.

To keep and bear arms.

The right of the people to keep and bear arms for the common defence shall never be questioned.

This refers to the arms of a militia man or soldier and the word arms is used in a military sense. English vs. State, 35 Texas 476. It means to keep and use such arms for military purpose and not the carrying about of dangerous weapons and firearms for the purpose of committing murderous assault or engaging in personal encounters. Fife vs. State, 31 Ark. 455: Andrews vs. State, 3 Heisk. (Tenn.) 176. Law against carrying about dangerous weapons does not conflict with this provision. Hill vs. State, 53 Ga. 572: Wright vs. Commonwealth, 77 Pa. St. 470: Chatteaux vs. State, 53 Ala. 388: Cooley Const. Limit. sec. 350 note.

Art. 2, Amend. Const. U. S. The right to keep and bear arms shall not be prohibited. A law forbidding the formation of private military organizations or the drilling and parading of armed men in the street of a city, does not infringe on the prohibition of this article. 92 U. S. 502: 116 U. S. 252: 5 Howard (U. S.) 410. The law of Maine by implication recognizes the right of a citizen to go about armed with dangerous weapons whenever he has just cause to fear an assault upon himself, family or property. See Chap. 130 Sec. 9 of Rev. Stat. 1883. See People vs. Affeldt, 1 Crim. Law Mag. 97: 18 Chic. L. N. 239. Constitutionality of law prohibiting the carrying of concealed weapons; see full discussion and authority, 8 Crim. Law Mag. 404: 25 Am. Rep. 556: 31 Ark. 445: 8

Am. Rep. 8: 4 Ark. 18: 8 Humph. 158: 14 Am. Rep. 374: 18 Am. Rep. 538. State may prohibit a particular mode of carrying arms, (viz: concealed), 86 N. C. 697: 74 Mo. 528: 16 So. Car. 187: 2 Litt. (Ky.) 90. Travelers, 69 Md. 140: 69 Ala. 233. Officers of the law, 88 N. C. 625. Traveler, 63 Ala. 95. State may regulate the carrying of arms, but may not forbid carrying of arms, 9 Crim. Law Mag. 264.

## DECLARATION OF RIGHTS.

SECTION 17. No standing army shall be kept up in time of peace without the consent of the Legislature, and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Standing armies shall not be kept.

No standing army shall be kept. The military shall be subservient to civil power.

The standing army of modern times, originated in France in 1445, under Charles VII.; it was perfected and made a national organization by Louis XI. and Louis XIV. in his contest with the nobility. It was immediately adopted and organized by all the other nations of Europe. See Ency. Britannica, title "Army": Robertson's Hist. Chas. V., vol. 1, p. 104: Martin's Hist. France, vol. 1, p. 244. The maintenance of large standing armies in Europe has ever since been a constant menace to the peace of the world and an oppressive burden to the common people: 38 All the Year 17: 30 Dem. Rev. 131: 4 Republic. 209: 52 Westm. 205: 130 Mo. R. 73. Inconsistent with a free government: 10 Pamphleteer 109: 6 St. Paul 138: 47 N. Brit. Rev. 404: 12 Temple Bar 77: 13 Leisure Hour 809: 5 Overland M. (N. S.) 423. The King of England for sixty years prior to the Revolution kept a standing army in the American Colonies: Bancroft Hist. U. S. vol. 4 p. 228: vol. 5 p. 160 177: Grenvill's Diary, vol. 2, see Disarming of the people by Gen. Gage, Frothingham's Hist. Republic 365, 410. See Declaration of Independence, recital of oppressive acts of the King.

The army of the United States may consist of 100,000 men or less.

## DECLARATION OF RIGHTS.

SECTION 18. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, but in a manner to be prescribed by law.

No soldier to be quartered on citizens in time of peace.

In the time of the crusades, the Knight Templars and their followers lived upon the substance of the people whose countries they traversed. See Hist. of Crusades.

In feudal times the government furnished neither provisions and pay nor ammunition for the army. The men at arms lived upon the laboring classes and upon the spoils of war. Victor Duruy's Hist. France, p. 239. As late as 1792 England did not have barracks for twenty thousand soldiers and they billeted or lodged private soldiers upon the inhabitants or in buildings, hired or seized, for that purpose; see Ency. Britannica, title "Army." Prior to the revolution it was the practice of English commanders in America, to demand of the town authorities, quarters for their troops. It was also their custom to billet or assign soldiers to the homes of citizens regardless of their wishes or desires; see "Billeting of Soldiers" 43 New Eng. Gen. & Hist. Register 186; Bancroft Hist. of U. S. v. 6; p. 50, 201, 288; see also Seizure Private Property for use of Army, 8 West. Law Jr. 72. See Declaration of Independence, recital of oppressive acts, "Quartering large bodies of armed troops among us."

Until a comparatively recent period, in Europe, it has been customary to billet soldiers upon the inhabitants. The billeting of soldiers is practically unknown in our army; Winthrop's Military Law v. 1, p. 3 note.



## DECLARATION OF RIGHTS.

SECTION 19. Every person, for an injury done him in his person,—reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.

Right or redress for injuries. 68 Me., 236; 74 Me., 27; 76 Me., 41; 90 Me., 105. Trial by jury.

Right to a legal remedy by a due course of law for every loss or injury to person, property or immunity.

*Due course of law*, means such correct and orderly proceedings as are imposed by the law of the land. A law sound in policy and operating upon all alike. 153 U. S. 716; 92 U. S. 480. Taking private property for public use is due process of law, 95 U. S. 295. Due process of law does not imply in all cases, a trial by jury, 3 Sawyer 144. Due process means one which follows the forms of law appropriate to the cause and just to the parties. 111 U. S. 701. Summary seizure of property for taxes 18 How. 272; 96 U. S. 97; 95 U. S. 37; 115 U. S. 321; 92 U. S. 575.

Liens on lands or property, 113 U. S. 506; 125 U. S. 345. Due course of law does not necessarily imply judicial proceedings. *Palmer vs. McMahon* 133 U. S. 660. Street improvement, charge of lien on abutting owners, 28 U. S. 578. Notice by publication, 132 U. S. 524. Regulation of certain professions and employments not a denial of right 129 U. S. 114.

Examination, engineers and certification requisite to employment. Physicians, etc., 128 U. S. 96. Fixing liability of R. R., 127 U. S. 210, but see, laws fixing rates of transportation, rates of wages, etc., 134 U. S. 418. May fix maximum rates, 94 U. S. 113; *R. R. Co. vs. Iowa*, 94 U. S. 155, 164; 125 U. S. 680. Condemnation of right of way, 130 U. S. 559; 95 U. S. 714; 98 U. S. 403. Prohibition of use of engines in street of a city, 96 U. S. 521. Laws making use of property less valuable, 115 U. S. 512. Corporations, 118 U. S. 394. Tolls of public waterways, 123 U. S. 288. Requiring licenses to conduct business or trade, 113 U. S. 703. Police regulations, 113 U. S. 27. Summary punishment for contempt of court. Due process of law, 134 U. S. 31. Statute of Limitations deprives one of right of action after certain period of time, 115 U. S. 620.

*Damnum absque injuria*. There are many injuries and losses to individuals as well as to the public for which there is no legal remedy or redress. As for competition in business, 3 Blackstone Com. 224, 219, 125. Slanderous words proved true; Public improvements, 74 Me., 171; 109 U. S. 331; *Sedgwick on Damages*, 29, 111; 94 N. Y. 129; 133 Mass. 489; 25 Vt. 49. Exercise of a public right, 119 U. S. 285. Inconveniences thereby occasioned, 32 N. Y. 489; 64 Miss. 479; 53 Am. 123; See Am. and Eng. Ency.: Law, title "Damages" Gould, Chitty and Stephen on Pleading.

## DECLARATION OF RIGHTS.

SECTION 20. In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself and his counsel, or either, at his election.

3 Me., 97; 25 Me., 488; 35 Me., 255; 37 Me., 156, 165; 39 Me., 413; 55 Me., 193, 361; 60 Me., 43; 62 Me., 37; 65 Me., 133; 80 Me., 60; 86 Me., 58. See Declaration of Rights Art. 1, Sec. 6, and cases there cited.

## DECLARATION OF RIGHTS.

SECTION 21. Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.

7 Me., 273; 8 Me., 365; 10 Me., 447; 12 Me., 222; 16 Me., 9; 18 Me., 109; 31 Me., 172; 34 Me., 247; 43 Me., 356, 359; 47 Me., 206; 55 Me., 191;

58 Me., 590, 593, 598, 616; 59 Me., 318, 549, 553; 60 Me., 122, 132, 134, 138, 295-6; 70 Me., 524; 86 Me., 498; 93 Me., 129; 95 Me., 575.

See Declaration of Rights Art. 1, Sec. 1 and cases there cited.

#### DECLARATION OF RIGHTS.

SECTION 22. No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature.

57 Me., 394; 84 Me., 215. Special Taxation of real estate for street improvement, sewers, etc., see Ch. 285, Pub. Laws—1889; 9 Hirsh. 349; 34 Ill. 203; 32 Ark. 31; 73 Maine, 518; 112 Mass. 541; 127 Mass. 408; 114 Mass. 388; 124 Mass. 464; 70 Maine, 515; 82 Maine, 188.

Limitation on power of a county to Levy taxes, Duty on Taxation 1062. Limited only by constitution or Law enacted by legislature. The same rule applies to municipal corporations. They are both under the control of the legislature and can assess only such an amount of taxes yearly as that body authorizes.

The power of the legislature to lay taxes to any amount is unlimited except by the constitution of the State and of the United States Duty on Taxation 88.

The power to tax is vested exclusively in the legislature. Duty on Taxation 89; 76 Ill. 561; 4 Ill. 130; 21 Ill. 174; 4 N. Y. 425; 4 Wheat. 428; 52 Cal. 598; 52 Wisc. 37; 13 Fed. Rept. 785; note 52 Pa. St. 474; 11 Allen 268; 37 N. Y. Super. ct. 560; 4 Ohio 107; 5 Howard 625; 12 Well. 428; 32 Louisiana 239; 4 Neb. 537. Legislature may tax to the point of practical confiscation, distinction, 52 Wisc. 51; 4 Wheaton 429. See also Intoxicating Liquors, High License, etc. The legislature may tax the sale of certain commodities to the point of confiscation. Its discretion is the only limit to its power. See Duty on Taxation 91. Its responsibility to the people is the only check upon an abuse of this power 8 How. 82; 4 Wheat. 434; 10 Phila. 512; 21 Pa. St. 147; 37 N. Y. 560; 4 Pet. 514; 13 Fed. Rep. 726; 12 Nev. 275. See Don Passos on Taxation of estates of deceased persons, collateral inheritance tax, income tax, tax on trades and callings.

#### DECLARATION OF RIGHTS.

SECTION 23. No title of nobility or hereditary distinction, privilege, honor or emolument, shall ever be granted or confirmed, nor shall any office be created, the appointment to which shall be for a longer time than during good behavior.

Titles of nobility prohibited. Tenure of office.

See Art 1, Section 9. Constitution of United States.

The Governor of our state is called by courtesy and custom "Your Excellency" during his term of office. After vacating the office he is usually addressed by courtesy as "Governor."

Honorable, a title of distinction or respect, in the United States. It is usually given to persons who hold or have held positions of importance under the state or national government.

Bouvier's Dict. 960.

In this state by custom and courtesy this title is now used without much discrimination. It may be properly used in strict accordance with custom in the following instances:

The title of "Honorable" applies to Heads of Departments, Members of the Executive Council, Mayors of Cities, the President of the Senate, Senators and the Speaker of the House of Representatives. Members of the House of Representatives are known as "Esquires." Judges of all Maine Courts while in office have the right to be addressed as "Your Honors" until they vacate their offices and are then known as "Esquires." All other titles are received by commission, except the Attorney General, the law official of the State.

## DECLARATION OF RIGHTS.

SECTION 24. The enumeration of certain rights shall not impair nor deny others retained by the people.

Other rights not impaired. Individual Rights 48; Justice of the Peace 657; 10 Legal Advertiser 443; 32 Journal Jurisprudence 626; National and Political Rights distinguished 27; 19th Century 173. Perfection of Rights. Georgia Bar Association 1891, p. 60; Private Rights Town. Bar Assoc. 1893, p. 210; 3 Mich. Law Jour. 215; 55 New Eng. 97; 10 R. R. & Corp. Law Jour. 281; 34 Am. Law Register 134; 7 Howard Law Rev. 492; 163 N. Am. Rev. 64; 9 Howard Law Rev. 354. Who are the People, 26 Chicago Legal News 79; 1 Am. Mag. of Civics 288. The powers not granted to the United States by the constitution nor prohibited by it to the states are reserved to the states respectively or to the people. See Amd. Const. of United States, Article 10.

The powers retained and reserved to the people of this State under this article are such as are forbidden by our constitution and cannot be exercised by the legislative, judicial or executive departments, until delegated to them by the people through a constitutional amendment enlarging that instrument.

94 U. S. 113; 1 Wheaton 304. Not necessary to define powers retained by the people; 4 Wheaton 122; 7 Peters. 243; 123 U. S. 166; 5 Howard 410; 18 How. 71; 9 Wall 579; 6 Wall 611; 7 Wall 71; 8 Wall 430; 20 Wall 46; 122 U. S. 347; Local Improvements 111 U. S. 701; Protection Life and Health 97 U. S. 25; Power of legislature 3 Dallas 386; State cannot establish military government 7 Howard 1. Powers of the state depends upon its constitution and the people of the State have reserved to themselves the right to restrict, modify or enlarge the scope of this instrument Martin vs. Hunter; 1 Wheaton (U. S.) 304-325.

## ARTICLE II.

## ELECTORS.

SEC. 1. Every male citizen of the United States of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this State for the term of three months next preceding any election, shall be an elector for Governor, Senators and Representatives, in the town or plantation where his residence is so established; and the elections shall be by written ballot. But persons in the military, naval or marine service of the United States, or this State, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack, or military place, in any town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established. No person, however, shall be deemed to have lost his residence by reason of his absence from the State in the military service of the United States, or of this State. (d)

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

SEC. 3. No elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger.

SEC. 4. The election of Governor, Senators and Representatives shall be on the second Monday of September *annually* forever. But citizens of the State absent therefrom in the military service of the United States or of this State, and not in the regular army of the United States, being

(d) 7 Me., 497; 44 Me., 507; 54 Me., 602, 605; 68 Me., 592, 593; 76 Me., 165.

Qualifications of electors. (See Amendment. xxix.)

—written ballot. 7 Me., 492, 497.

—soldiers or seamen in U. S. service.

—students at colleges and academies.

(Resolve of Mar. 24, 1864; Amendment x.)

Electors exempt from arrest on election days. 8 Me., 187.

When exempt from military duty.

Time of state election. (See Amendment xxiii.)

otherwise qualified electors, shall be allowed to *vote on Tuesday next after the first Monday of November, in the year of our Lord one thousand eight hundred and sixty-four, for governor and senators, and their votes shall be counted and allowed in the same manner, and with the same effect, as if given on the second Monday of September in that year. And they shall be allowed to vote for governor, senators and representatives on the second Monday of September annually thereafter forever, in the manner herein provided.* On the day of election a poll shall be opened at every place without this State where a regiment, battalion, battery, company, or detachment of not less than twenty soldiers from the State of Maine, may be found or stationed, and every citizen of said State of the age of twenty-one years, in such military service, shall be entitled to vote as aforesaid; and he shall be considered as voting in the city, town, plantation and county in this State where he resided when he entered the service. The vote shall be taken by regiments when it can conveniently be done; when not so convenient, any detachment or part of a regiment, not less than twenty in number, and any battery or part thereof numbering twenty or more, shall be entitled to vote wherever they may be. The three ranking officers of such regiment, battalion, battery, company, or part of either, as the case may be, acting as such on the day of election, shall be supervisors of elections. If no officers, then three non-commissioned officers according to their seniority shall be such supervisors. If any officer or non-commissioned officer shall neglect or refuse to act, the next in rank shall take his place. In case there are no officers or non-commissioned officers present, or if they or either of them refuse to act, the electors present, not less than twenty, may choose, by written ballot enough of their own number, not exceeding three, to fill the vacancies, and the persons so chosen shall be supervisors of elections. All supervisors shall be first sworn to support the constitution of the United States and of this State, and faithfully and impartially to perform the duties of supervisors of elections. Each is authorized to administer the necessary oath to the others; and certificates thereof shall be annexed to the lists of votes by them to be made and returned into the office of the secretary of State of this State as hereinafter provided. The polls shall be opened and closed at such hours as the supervisors, or a majority of them, shall direct; *provided however, that due notice and sufficient time shall be given for all voters in the regiment, battalion, battery, detachment, company, or part of either, as the case may be, to vote. Regimental and field officers shall be entitled to vote with their respective commands. When not in actual command, such officers, and also all general and staff officers, and all surgeons, assistant surgeons, and chaplains, shall be entitled to vote at any place where polls are opened. The supervisors of elections shall prepare a ballot box or other suitable receptacle for the ballots. Upon one side of every ballot shall be printed or written the name of the county, and also of the city, town or plantation of this State, in which is the residence of the person proposing to vote. Upon the other side shall be the name or names of the persons to be voted for, and the office or offices which he or they are intended to fill. And before receiving any vote, the supervisors, or a majority of them, must be satisfied of the age and citizenship of the person claiming to vote, and that he has in fact a residence in the county, city, town or plantation which is printed or written on the vote offered by him. If his right to vote is challenged, they may require him to make true answers, upon oath, to all interrogatories touching his age, citizenship, residence, and right to vote, and shall hear any other evidence offered by him, or by those who challenge his right. They shall keep correct poll-lists of the names of all persons allowed to vote, and of their respective places of residence in this State, and also the number of the regiment and company or battery to which they belong; which lists shall be certified by them, or by a*

—soldiers allowed to vote for governor, &c.

(Resolve of Mar. 24, 1864; Amendment x.)

(See Amendment xxiii.)

—polls, where opened.

—vote, how taken.

—who shall act as supervisors.

—supervisors shall be sworn.

—their duties.

—proviso.

—certain officers, where they may vote.

—supervisors shall prepare ballot boxes.

—ballots, how to be prepared.

—qualifications of voters.

—supervisors shall keep correct poll lists.

—shall check names of voters.

—sort, count and declare votes.

—make return to the office of secretary of state. (See Amendment. xxiii.)

majority of them, to be correct, and that such residence is in accordance with the indorsement of the residence of each voter on his vote. They shall check the name of every person before he is allowed to vote, and the check-mark shall be plainly made against his name on the poll-lists. They shall sort, count and publicly declare the votes at the head of their respective commands on the day of election, unless prevented by the public enemy, and in that case as soon thereafter as may be; and on the same day of said declaration they shall form a list of the persons voted for, with the number of votes for each person against his name, and the office which he was intended to fill, and shall sign and seal up such list and cause the same, together with the poll-lists aforesaid, to be delivered into the office of the secretary of State aforesaid, *on or before the first day of December, in the year one thousand eight hundred and sixty-four, and on or before the fifteenth day of November annually thereafter forever.* The legislature of this State may pass any law additional to the foregoing provisions, if any shall, in practice, be found necessary in order more fully to carry into effect the purpose thereof.

### ARTICLE III.

#### DISTRIBUTION OF POWERS.

Powers distributed.

To be kept separate. (See Art. 9, § 2.)

SEC. 1. The powers of this government shall be divided into three distinct departments, the Legislative, Executive and Judicial. (a)

SEC. 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted. (b)

### ARTICLE IV.—PART FIRST.

#### LEGISLATIVE POWER—HOUSE OF REPRESENTATIVES.

Legislative department.

—style of acts.

Number of representatives fixed. (See Amendments xxiii, xxv.)

(Resolve of Apr. 16, 1841: Amendment iv.)  
3 Me., 477.  
33 Me., 587.

Apportionment among towns.  
6 Me., 486.

SEC. 1. The legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be styled the Legislature of Maine and the style of their acts and laws, shall be, "BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES IN LEGISLATURE ASSEMBLED."

SEC. 2. The House of Representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, for *one year* from the day next preceding the *annual* meeting of the Legislature. The Legislature, *which shall first be convened under this Constitution*, shall, *on or before the fifteenth day of August, in the year of our Lord, one thousand eight hundred and twenty-one, and the Legislature*, within every *subsequent* period of at most ten years, and at least five, cause the number of the inhabitants of the State to be ascertained, exclusive of foreigners not naturalized and Indians not taxed. The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties as near as may be, according to the number of inhabitants, having regard to the relative increase of population. *The number of representatives shall, on said first apportionment, be not less than one hundred nor more than one hundred and fifty.*

SEC. 3. Each town having fifteen hundred inhabitants may elect one representative; each town having three thousand seven hundred and fifty may elect two; each town having six thousand seven hundred and fifty may elect three; each town having ten thousand five hundred may elect four; each town having fifteen thousand may elect five; each town

(a) 3 Me., 326; 4 Me., 140; 62 Me., 597; 70 Me., 609.

(b) 3 Me., 372, 484; 7 Me., 14; 32 Me., 525; 64 Me., 195; 70 Me., 609, 610; 86 Me., 530; 95 Me., 573.

having twenty thousand two hundred and fifty may elect six; each town having twenty-six thousand two hundred and fifty may elect seven; but no town shall ever be entitled to more than seven representatives; and towns and plantations duly organized, not having fifteen hundred inhabitants, shall be classed, as conveniently as may be, into districts containing that number, and so as not to divide towns; and each such district may elect one representative; *and, when on this apportionment the number of representatives shall be two hundred, a different apportionment shall take place upon the above principle;* and, in case the fifteen hundred shall be too large or too small to apportion all the representatives to any county, it shall be so increased or diminished as to give the number of representatives according to the above rule and proportion; and whenever any town or towns, plantation or plantations not entitled to elect a representative shall determine against a classification with any other town or plantation, the Legislature may, at each apportionment of representatives, on the application of such town or plantation, authorize it to elect a representative for such portion of time and such periods, as shall be equal to its portion of representation; and the right of representation, so established, shall not be altered until the next general apportionment.

(Resolve of Apr. 16, 1841: Amendment iv.)

SEC. 4. No person shall be a member of the House of Representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty-one years, have been a resident in this State one year, *or from the adoption of this constitution;* and for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents.

Qualifications of a representative. (Resolve of Mar. 24, 1864: Amendment x.)

SEC. 5. The meetings within this State for the choice of representatives shall be warned in due course of law by the selectmen of the several towns seven days at least before the election, and the selectmen thereof shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count and declare them in open town meeting, and in the presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the selectmen and in open town meeting. And the towns and plantations organized by law, belonging to any class herein provided, shall hold their meetings at the same time in the respective towns and plantations; and the town and plantation meetings in such towns and plantations shall be notified, held and regulated, the votes received, sorted, counted and declared in the same manner. And the assessors and clerks of plantations shall have all the powers, and be subject to all the duties, which selectmen and town clerks have, and are subject to by this Constitution. And fair copies of the lists of votes shall be attested by the selectmen and town clerks of towns, and the assessors of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January *annually*. And the governor and council shall examine the returned copies of such lists, and also all lists of votes of citizens in the military service, returned to the secretary's office, as provided in article second, section four, of this constitution; and twenty days before the said first Wednesday of January, *annually*, shall issue a summons to such persons as shall appear to be elected (a) by a plurality of all the votes returned, to attend and take their seats. But all such lists shall be laid before the house of representatives on the first Wednesday of January *annu-*

Meetings for choice of representatives. (Resolve of Mar. 24, 1864: Amendment x.) 7 Me., 497. 25 Me., 567. 64 Me., 592. 70 Me., 561, 568.

—meetings of classed towns. (Resolve of Mar. 24, 1864: Amendment x.)

(Resolve of Mar. 24, 1864: Amendment x.)

70 Me., 564, 565. (See Amendments xxiii, xxv.)

—lists of votes shall be examined by governor and council.

—governor and council shall summon persons who appear to be elected.

(a) 70 Me., 561, 567, 568, 583, 585, 587, 594, 609, 610.

(Resolve of Aug. 2, 1847: Amendment vil.)

—lists shall be laid before the house of representatives. 64 Me., 539.

—manner of electing representatives and other civil officers in cities.

(Resolve of Mar. 7, 1834: Amendment I, amended by Resolve of Mar. 24, 1864: Amendment x.)

70 Me., 563.

Vacancies. 35 Me., 563. 70 Me., 597. House to choose its own officers. Power of impeachment.

ally, and they shall finally determine who are elected. The electors resident in any city may, at any meeting duly notified for the choice of representatives, vote for such representatives in their respective ward meetings, and the wardens in said wards shall preside impartially at such meetings, receive the votes of all qualified electors present, sort, count and declare them in open ward meetings, and in the presence of the ward clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the warden, and in open ward meetings; and a fair copy of this list shall be attested by the warden and ward clerk, sealed up in open ward meeting, and delivered to the city clerk within twenty-four hours after the close of the polls. And the electors resident in any city may at any meetings duly notified and holden for the choice of any other civil officers for whom they have been required heretofore to vote in town meeting, vote for such officers in their respective wards, and the same proceedings shall be had by the warden and ward clerk in each ward, as in the case of votes for representatives. And the aldermen of any city shall be in session within twenty-four hours after the close of the polls in such meetings, and in the presence of the city clerk shall open, examine and compare the copies from the lists of votes given in the several wards, of which the city clerk shall make a record, and return thereof shall be made into the Secretary of State's office in the same manner as selectmen of towns are required to do.

SEC. 6. Whenever the seat of a member shall be vacated by death, resignation, or otherwise, the vacancy may be filled by a new election.

SEC. 7. The House of Representatives shall choose their speaker, clerk and other officers. (a)

SEC. 8. The House of Representatives shall have the sole power of impeachment.

#### ARTICLE IV.—PART SECOND.

##### SENATE.

SEC. 1. The Senate shall consist of *not less than twenty, nor more than thirty-one* members, elected at the same time, and for the same term, as the representatives, by the qualified electors of the districts into which the State shall from time to time be divided. (b)

SEC. 2. The Legislature, *which shall be first convened under this Constitution*, shall, *on or before the fifteenth day of August in the year of our Lord, one thousand eight hundred and twenty-one, and the Legislature at every subsequent period of ten years*, cause the State to be divided into districts for the choice of senators. The districts shall conform, as near as may be, to county lines, and be apportioned according to the number of inhabitants. The number of senators shall *not exceed twenty at the first apportionment, and shall at each apportionment be increased, until they shall amount to thirty-one, according to the increase in the House of Representatives.*

SEC. 3. The meetings within this state for the election of senators shall be notified, held and regulated, and the votes received, sorted, counted, declared and recorded, in the same manner as those for representatives. And fair copies of the list of votes shall be attested by the selectmen and town clerks of towns, and the assessors and clerks of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January. All other qualified electors, living in places

Number of senators fixed. (See Amendments xxiii, xxv.)

State to be districted once in ten years.

—districts, how formed. 18 Me., 458.

Meetings for choice of senators. (Resolve of Mar. 24, 1864: Amendment x.)

25 Me., 568. 64 Me., 592, 595, 598.

(a) 70 Me., 588, 594, 595, 596, 597, 609, 610.

(b) 7 Me., 489.

unincorporated, who shall be assessed to the support of the government by the assessors of an adjacent town, shall have the privilege of voting for senators, representatives and governor in such town; and shall be notified by the selectmen thereof for that purpose accordingly.

--electors in unincorporated places.

SEC. 4. The Governor and Council shall, as soon as may be, examine the returned copies of such lists, and also the lists of votes of citizens in the military service, returned into the secretary's office, and twenty days before the said first Wednesday of January, issue a summons to such persons, as shall appear to be elected by a plurality of the votes for each district, to attend that day and take their seats. (a)

Votes to be examined by the governor and council. 64 Me., 588. (Amendment x, Amended by Resolve of Feb. 24, 1875: Amendment xiii.)

SEC. 5. The Senate shall, on the said first Wednesday of January, *annually*, determine who are elected by a plurality of votes to be senators in each district; and in case the full number of senators to be elected from each district shall not have been so elected, the members of the house of representatives and such senators, as shall have been elected, shall, from the highest numbers of the persons voted for, on said lists, equal to twice the number of senators deficient, in every district, if there be so many voted for, elect by joint ballot the number of senators required; and in this manner all vacancies in the senate shall be supplied as soon as may be, after such vacancies happen. (b)

Senate to decide election of its members. (See Amendments xxiii, xxv.) (Resolve of Feb. 24, 1875: Amendment xiii.) (See Amendment xxx.)

SEC. 6. The senators shall be twenty-five years of age at the commencement of the term, for which they are elected, and in all other respects their qualifications shall be the same, as those of the representatives.

Qualifications of senators.

SEC. 7. The Senate shall have the sole power to try all impeachments, and when sitting for that purpose shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Their judgment, however, shall not extend farther than to removal from office, and disqualification to hold or enjoy any office of honor, trust or profit under this State. But the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Senate shall try impeachment. --limitation of judgment.

SEC. 8. The Senate shall choose their president, secretary and other officers.

--party is liable to be tried and punished in court. Senate to choose its officers. 70 Me., 588, 593, 596, 597, 609, 610.

ARTICLE IV.—PART THIRD.

LEGISLATIVE POWER.

SEC. 1. The Legislature shall convene on the first Wednesday of January, *annually*, and shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States. (c)

Legislature to meet annually.

SEC. 2. Every bill or resolution having the force of law, to which the concurrence of both houses may be necessary, except on a question of adjournment, which shall have passed both houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the house, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall

--its powers. (See Amendments xxiii, xxv.)

Bills to be signed by the governor.

(a) 70 Me., 567-9, 583, 585, 609-10.

(b) 6 Me., 514; 7 Me., 489; 35 Me., 563; 64 Me., 596; 70 Me., 589.

(c) 3 Me., 326; 4 Me., 140; 6 Me., 412; 7 Me., 273; 9 Me., 54; 11 Me., 208; 12 Me., 354; 16 Me., 479; 31 Me., 172, 360; 32 Me., 343, 526; 33 Me., 558, 587; 35 Me., 319; 37 Me., 156; 39 Me., 258; 42 Me., 150, 299, 429; 43 Me., 202; 45 Me., 507; 49 Me., 346, 507; 55 Me., 190, 200; 58 Me., 594, 601; 59 Me., 85, 318, 549, 553; 60 Me., 122; 68 Me., 582; 74 Me., 137-140; 95 Me., 98, 575.



—proceedings, in case he disapproves.

—bills shall be returned by him within five days.

Each house to judge of its elections.

—majority, a quorum.

May punish and expel members.

Shall keep a Journal. 1880, c. 185.

—yeas and nays.

May punish for contempt.

—proviso.

Compensation of members.

—traveling expenses. 69 Me., 596.

Members are exempt from arrest. 16 Me., 132.

—freedom of debate.

Either house may originate bills.

—revenue bills.

—proviso.

Members not to be appointed to certain offices. 3 Me., 481. 32 Me., 528. 95 Me., 588. (Proviso.) (Obsolete.)

agree to pass it, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and, if approved by two-thirds of that house, it shall have the same effect, as if it had been signed by the Governor; but in all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both houses respectively. If the bill or resolution shall not be returned by the Governor within five days, (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it, unless the Legislature, by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting.

SEC. 3. Each house shall be the judge of the elections and qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties as each house shall provide. (a)

SEC. 4. 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 cause.

SEC. 5. Each house shall keep a journal, and from time to time publish its proceedings, except such parts as in their judgment may require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journals.

SEC. 6. Each house, during its session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for anything said, done, or doing in either house; *provided*, that no imprisonment shall extend beyond the period of the same session.

SEC. 7. The senators and representatives shall receive such compensation, as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature which enacted it. The expenses of the House of Representatives in traveling to the Legislature and returning therefrom, once in each session and no more, shall be paid by the State out of the public treasury to every member, who shall seasonably attend, in the judgment of the house, and does not depart therefrom without leave.

SEC. 8. The senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at, going to, and returning from each session of the Legislature; and no member shall be liable to answer for anything spoken in debate in either house, in any court or place elsewhere.

SEC. 9. Bills, orders or resolutions, may originate in either house, and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other cases; *provided*, that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue.

SEC. 10. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term except such offices as may be filled by elections by the people, *provided*, that this prohibition shall not extend to the members of the first Legislature.

(a) 35 Me., 563; 70 Me., 563, 585, 588, 593, 594, 595, 596, 597, 609, 610; 71 Me., 370; 95 Me., 588.

SEC. 11. No member of Congress, nor person holding any office under the United States (post-officers excepted) nor office of profit under this State, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either house during his being such member of congress, or his continuing in such office.

Persons disqualified to be members.  
95 Me., 585, 586.

SEC. 12. Neither house shall, during the session, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the houses shall be sitting.

Adjournments.

SEC. 13. The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.

Special legislation.  
(Resolve of Feb. 24, 1875: Amendment xiv.)

SEC. 14. Corporations shall be formed under general laws, and shall not be created by special acts of the Legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State. (a)

Corporations, to be formed under general laws.  
(Resolve of Feb. 24, 1875: Amendment xiv.)

SEC. 15. The Legislature shall, by a two-thirds concurrent vote of both branches, have the power to call constitutional conventions, for the purpose of amending this constitution.

Constitutional conventions.  
(Resolve of Feb. 24, 1875: Amendment xix.)

ARTICLE V.—PART FIRST.

EXECUTIVE POWERS.

SEC. 1. The supreme executive power of this State shall be vested in a Governor.

Governor.  
72 Me., 546, 563.

SEC. 2. The Governor shall be elected by the qualified electors, and shall hold his office *one year* from the first Wednesday of January in *each year*.

Election.  
70 Me., 591.  
(See Amendment xxiii.)  
Meetings for choice of governor.

SEC. 3. The meetings for election of governor shall be notified, held, and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives. They shall be sealed and returned into the secretary's office in the same manner, and at the same time as those for senators. And the secretary of state for the time being shall, on the first Wednesday of January, then next, lay the lists before the Senate and House of Representatives, and also the lists of votes of citizens in the military service returned into the secretary's office, to be by them examined, and, in case of a choice by a *majority* of all the votes returned, they shall declare and publish the same. But if no person shall have a *majority* of votes, the House of Representatives shall, by ballot, from the persons having the four highest numbers of votes on the lists, if so many there be, elect two persons and make return of their names to the Senate, of whom the Senate shall, by ballot, elect one, who shall be declared the Governor.

—votes to be returned to secretary of state.  
70 Me., 598.  
(Resolve of Mar. 24, 1864: Amendment x.)  
(See Amendment xxiv.)

—provision, in case there is no choice.  
7 Me., 489.

SEC. 4. The Governor shall, at the commencement of his term, be not less than thirty years of age; a natural born citizen of the United States, have been five years, *or from the adoption of this Constitution*, a resident of the State; and at the time of his election and during the term for which he is elected, be a resident of said State.

Qualification of governor.

SEC. 5. No person holding any office or place under the United States, this State, or any other power, shall exercise the office of Governor.

Disqualifications.

SEC. 6. The Governor shall at stated times, receive for his services a compensation, which shall not be increased or diminished during his continuance in office.

Compensation.

SEC. 7. He shall be commander-in-chief of the army and navy of the State and of the militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out

Commander-in-chief of the militia.

(a) 83 Me., 440; 91 Me., 194.

—not to march the militia out of the state.

To nominate officers.  
(Resolve of Mar. 17, 1855: Amendment ix, Amended by Resolve of Feb. 24, 1875: Amendment xvi.)

To give information and recommend measures.

May require information of any officer.

Power of governor to pardon and remit penalties, &c.

—conditions.  
(Resolve of Feb. 24, 1875: Amendment xv.)

—shall report to legislature at each session.

Shall enforce the laws.  
Convene the legislature on extraordinary occasions, and adjourn it in case of disagreement.  
(See Amendment xxiii.)  
—may change the place of meeting.

Vacancy, how supplied.  
6 Me., 506.  
70 Me., 493.

7 Me., 489.

of the State, without their consent or that of the Legislature, unless it shall become necessary, in order to march or transport them from one part of the State to another for the defence thereof.

SEC. 8. He shall nominate, and, with the advice and consent of the council, appoint all judicial officers, coroners, and notaries public; and he shall also nominate, and with the advice and consent of the council, appoint all other civil and military officers, whose appointment is not by this Constitution, or shall not by law be otherwise provided for; and every such nomination shall be made seven days, at least, prior to such appointment. (a)

SEC. 9. He shall from time to time give the Legislature information of the condition of the State, and recommend to their consideration such measures, as he may judge expedient.

SEC. 10. He may require information from any military officer or any officer in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 11. He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations, as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. And he shall communicate to the Legislature at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation or pardon, and the conditions, if any, upon which the same was granted.

SEC. 12. He shall take care that the laws be faithfully executed.

SEC. 13. He may, on extraordinary occasions, convene the Legislature; and in cases of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next *annual* meeting; and if, since the last adjournment, the place where the Legislature were next to convene shall have become dangerous from an enemy or contagious sickness, may direct the session to be held at some other convenient place within the State.

SEC. 14. Whenever the office of the Governor shall become vacant by death, resignation, removal from office or otherwise, the president of the Senate shall exercise the office of Governor until another Governor shall be duly qualified; and in case of the death, resignation, removal from office or disqualification of the president of the Senate, so exercising the office of Governor, the speaker of the House of Representatives shall exercise the office, until a president of the Senate shall have been chosen; and when the office of Governor, president of the Senate, and speaker of the House shall become vacant, in the recess of the Senate, the person, acting as Secretary of State for the time being, shall by proclamation convene the Senate, that a president may be chosen to exercise the office of Governor. And whenever either the president of the Senate or speaker of the House shall so exercise said office, he shall receive only the compensation of Governor, but his duties as president or speaker shall be suspended; and the Senate or House shall fill the vacancy until his duties as Governor shall cease.

(a) 32 Me., 526; 72 Me., 547.

ARTICLE V.—PART SECOND.

COUNCIL.

SEC. 1. There shall be a Council, to consist of seven persons, citizens of the United States, and residents of this State, to advise the Governor in the executive part of government, whom the Governor shall have full power, at his discretion, to assemble; and he with the Councilors, or a majority of them, may from time to time, hold and keep a council, for ordering and directing the affairs of State, according to law.

Council shall consist of seven.  
72 Me., 548, 549.

SEC. 2. The Councilors shall be chosen *annually*, on the first Wednesday of January, by joint ballot of the senators and representatives in convention; and vacancies, which shall afterwards happen, shall be filled in the same manner; but not more than one Councilor shall be elected from any district, prescribed for the election of senators; and they shall be privileged from arrest in the same manner as senators and representatives.

Councilors, how chosen. (See Amendment xxiii.)  
70 Me., 591.

—privileged from arrest.

SEC. 3. The resolutions and advice of Council, shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either house of the Legislature; and any Councilor may enter his dissent to the resolution of the majority.

Journal of their proceedings.

SEC. 4. No member of congress, or of the Legislature of this State, nor any person holding any office under the United States, (post officers excepted), nor any civil officers under this State (justices of the peace and notaries public excepted), shall be Councilors. And no Councilor shall be appointed to any office during the time for which he shall have been elected.

Persons disqualified to be councilors.

—not to be appointed to any office.

ARTICLE V.—PART THIRD.

SECRETARY.

SEC. 1. The Secretary of State shall be chosen *annually* at the first session of the Legislature, by joint ballot of the senators and representatives in convention.

Secretary, how chosen. (See amendment xxiii.)  
70 Me., 591.

SEC. 2. The records of the State shall be kept in the office of the Secretary, who may appoint his deputies, for whose conduct he shall be accountable.

—to keep the records of state, and may appoint deputies.

SEC. 3. He shall attend the Governor and Council, Senate and House of Representatives, in person or by his deputies, as they shall respectively require.

—to attend the governor and council.

SEC. 4. He shall carefully keep and preserve the records of all the official acts and proceedings of the Governor and Council, Senate and House of Representatives, and, when required, lay the same before either branch of the Legislature, and perform such other duties as are enjoined by this Constitution, or shall be required by law.

—to preserve the records of the executive and legislative departments.  
81 Me., 546.

ARTICLE V.—PART FOURTH.

TREASURER.

SEC. 1. The Treasurer shall be chosen *annually*, at the first session of the Legislature, by joint ballot of the senators and representatives in convention, but shall not be eligible more than *five* years successively.

Treasurer, how chosen. 70 Me., 590. (See Amendments xxiii,

SEC. 2. The Treasurer shall, before entering on the duties of his office, give bond to the State, with sureties, to the satisfaction of the Legislature, for the faithful discharge of his trust.

Must give bond. xxvii.)

Must not engage in trade.

Nor draw money but by warrant.

—account of receipts and expenditures to be published. (See Amendment xxiii.)

SEC. 3. The treasurer shall not, during his continuance in office, engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader.

SEC. 4. No money shall be drawn from the treasury, but by warrant from the Governor and Council, and in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the *annual* session of the Legislature.

## ARTICLE VI.

### JUDICIAL POWER.

Supreme and other courts. 3 Me., 326. 4 Me., 140. 86 Me., 530. Compensation of justices of S. J. court.

To give opinion when required by either branch of government. Tenure of judicial offices. (Resolve of Mar. 14, 1839: Amendment iii.)

21 Me., 550. 62 Me., 597. 79 Me., 439. Justices of the peace and notaries. 32 Me., 528. 62 Me., 596. 68 Me., 594. 79 Me., 439. Justices of the S. J. C. can hold no other office.

Judges and registers of probate, their election and tenure of office. (See Amendment xxiii.) —vacancies. (Resolve of Mar. 17, 1855: Amendment ix.) (See Amendment xxiii.)

Judges of municipal and police courts, their tenure. (Resolve of Feb. 24, 1875: Amendment xvi.)

SEC. 1. The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

SEC. 2. The justices of the Supreme Judicial Court shall, at stated times receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

SEC. 3. They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Council, Senate, or House of Representatives. (a)

SEC. 4. All judicial officers *now in office or who may be hereafter appointed* shall, *from and after the first day of March in the year eighteen hundred and forty*, hold their offices for the term of seven years from the time of their respective appointments, (unless sooner removed by impeachment or by address of both branches of the Legislature to the Executive) and no longer unless re-appointed thereto.

SEC. 5. Justices of the peace and notaries public, shall hold their offices during seven years, if they so long behave themselves well, at the expiration of which term, they may be re-appointed or others appointed, as the public interest may require.

SEC. 6. The justices of the Supreme Judicial Court shall hold no office under the United States, nor any State, nor any other office under this State, except that of justice of the peace.

SEC. 7. Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in at the *annual* election, on the second Monday of September, and shall hold their offices for four years, commencing on the first day of January next after their election. (b) Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid, at the September election next after their occurrence; and in the meantime, the Governor, with the advice and consent of the Council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January *thereafter*.

SEC. 8. Judges of municipal and police courts shall be appointed by the executive power, in the same manner as other judicial officers, and shall hold their offices for the term of four years; *provided, however, that the present incumbents shall hold their offices for the term for which they were elected*. (c)

(a) 58 Me., 572, 573, 574; 70 Me., 583, 608, 610, 611, 612; 72 Me., 544, 560; 81 Me., 602; 85 Me., 545; 95 Me., 565, 572.

(b) 44 Me., 388; 61 Me., 602; 64 Me., 596; 68 Me., 587; 79 Me., 439.

(c) 62 Me., 299; 72 Me., 563; 79 Me., 439.

## ARTICLE VII.

## MILITARY.

SEC. 1. The captains and subalterns of the militia shall be elected by the written votes of the members of their respective companies. The field officers of regiments by the written votes of the captains and subalterns of their respective regiments. The brigadier generals in like manner, by the field officers of their respective brigades.

Officers, how  
elected.  
25 Me., 157.

SEC. 2. The Legislature shall, by law, direct the manner of notifying the electors, conducting the elections, and making returns to the Governor of the officers elected; and, if the electors shall neglect or refuse to make such elections, after being duly notified according to law, the Governor shall appoint suitable persons to fill such offices.

Manner of  
conducting  
elections.

SEC. 3. The major generals shall be elected by the Senate and House of Representatives, each having a negative on the other. The adjutant general and quartermaster general shall be *chosen annually by joint ballot of the senators and representatives in convention*. But the adjutant general shall perform the duties of quartermaster general, until otherwise directed by law. The major generals and brigadier generals, and the commanding officers of regiments and battalions, shall appoint their respective staff officers; and all military officers shall be commissioned by the Governor. (a)

Major generals  
and adjutant  
generals, how  
elected.  
(Resolve of  
Mar. 17, 1855;  
Amendment  
ix.)  
(See Amend-  
ments xxiii,  
xxviii.)  
—staff officers,  
how ap-  
pointed.  
Organization  
of the militia.

SEC. 4. The militia, as divided into divisions, brigades, regiments, battalions and companies pursuant to the laws now in force, shall remain so organized, until the same shall be altered by the Legislature.

SEC. 5. Persons of the denominations of quakers and shakers, justices of the Supreme Judicial Court and ministers of the gospel may be exempted from military duty, but no other person of the age of eighteen and under the age of forty-five years, excepting officers of the militia who have been honorably discharged, shall be so exempted, unless he shall pay an equivalent to be fixed by law.

Who may be  
exempted from  
military duty.

## ARTICLE VIII.

## LITERATURE.

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be the duty to encourage and suitably endow from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the State; provided, that no donation, grant or endowment shall at any time be made by the Legislature to any literary institution now established, or which may hereafter be established, unless, at the time of making such endowment, the Legislature of the State shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof.

Legislature  
shall require  
towns to sup-  
port public  
schools.  
31 Me., 272.  
68 Me., 582.  
1872, c. 56.

—shall endow  
colleges and  
academies.  
—proviso.

(a) 44 Me., 388; 70 Me., 591.

## ARTICLE IX.

## GENERAL PROVISIONS.

Oaths and subscriptions.  
3 Me., 372.

SEC. 1. Every person elected or appointed to either of the places or offices provided in this Constitution, and every person elected, appointed, or commissioned to any judicial, executive, military or other office under this State, shall, before he enter on the discharge of the duties of his place or office, take and subscribe the following oath or affirmation: "I \_\_\_\_\_do swear, that I will support the Constitution of the United States, and of this State, so long as I shall continue a citizen thereof. So help me God."

—proviso.

"I\_\_\_\_\_do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as \_\_\_\_\_ according to the Constitution and laws of the State. So help me God." Provided, that an affirmation in the above forms may be substituted, when the person shall be conscientiously scrupulous of taking and subscribing an oath.

Before whom to be taken.  
70 Me., 590, 592, 593.

The oaths or affirmations shall be taken and subscribed by the Governor and councilors before the presiding officer of the Senate, in the presence of both houses of the Legislature, and by the senators and representatives before the Governor and Council, and by the residue of said officers, before such persons as shall be prescribed by the Legislature; and whenever the Governor or any councilor shall not be able to attend during the session of the Legislature to take and subscribe said oaths or affirmations, said oaths or affirmations may be taken and subscribed in the recess of the Legislature before any justice of the Supreme Judicial Court; *provided, that the senators and representatives, first elected under this Constitution, shall take and subscribe such oaths or affirmations before the president of the convention.*

(Proviso.)

(Obsolete.)

Offices incompatible with each other.  
7 Me., 14.  
64 Me., 195.  
68 Me., 594.  
71 Me., 209.  
95 Me., 575.

[See Art. III, § 2.  
Art. IV, Part 3, § 11.  
Art. V, Part 1, § 5.]

SEC. 2. No person holding the office of justice of the Supreme Judicial Court, or of any inferior court, attorney general, county attorney, treasurer of the State, adjutant general, judge of probate, register of probate, register of deeds, sheriffs or their deputies, clerks of the judicial courts, shall be a member of the Legislature; and any person holding either of the foregoing offices, elected to, and accepting a seat in the Congress of the United States, shall thereby vacate said office; and no person shall be capable of holding or exercising at the same time within this State, more than one of the offices before mentioned.

Commissions.

SEC. 3. All commissions shall be in the name of the State, signed by the Governor, attested by the secretary or his deputy, and have the seal of the State thereto affixed.

Elections on the first Wednesday of January may be adjourned from day to day.  
(See Amendment xxiii.)

SEC. 4. And in case the elections required by this Constitution on the first Wednesday of January *annually*, by the two houses of the Legislature, shall not be completed on that day, the same may be adjourned from day to day, until completed, in the following order; the vacancies in the Senate shall first be filled; the Governor shall then be elected, if there be no choice by the people; and afterwards the two houses shall elect the council.

Every civil officer may be removed by impeachment or address.  
60 Me., 66, 67.  
72 Me., 549.

SEC. 5. Every person holding any civil office under this State, may be removed by impeachment, for misdemeanor in office; and every person holding any office, may be removed by the Governor, with the advice of the Council, on the address of both branches of the Legislature. But before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defense.

Tenure of office.  
21 Me., 555.  
72 Me., 549, 563.

SEC. 6. The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council.

SEC. 7. While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years. (a)

SEC. 8. All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof. (b)

SEC. 9. The Legislature shall never, in any manner, suspend or surrender the power of taxation. (c)

SEC. 10. Sheriffs shall be elected by the people of their respective counties, by a plurality of the votes given in on the second Monday of September, and shall hold their offices for two years from the first day of January next after their election. Vacancies shall be filled in the same manner as is provided in the case of judges and registers of probate.

SEC. 11. The attorney general shall be chosen *annually* by joint ballot of the senators and representatives in the convention. Vacancy in said office, occurring when the Legislature is not in session, may be filled by the appointment of the Governor with the advice and consent of the Council. (d)

SEC. 12. But citizens of this State, absent therefrom in the military service of the United States or of this State, and not in the regular army of the United States, being otherwise qualified electors, shall be allowed to vote for judges and registers of probate, sheriffs, and all other county officers *on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and sixty-four, and their votes shall be counted and allowed in the same manner and with the same effect as if given on the second Monday of September in that year. And they shall be allowed to vote for all such officers on the second Monday in September annually thereafter forever.* And the votes shall be given at the same time and in the same manner, and the names of the several candidates shall be printed or written on the same ballots with those for Governor, senators and representatives, as provided in section four, article second of this Constitution.

SEC. 13. The Legislature may enact laws excluding from the right of suffrage, for a term not exceeding ten years, all persons convicted of bribery at any election, or of voting at any election, under the influence of a bribe.

SEC. 14. The credit of the State shall not be directly or indirectly loaned in any case. The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed three hundred thousand dollars, except to suppress insurrection, to repel invasion, or for purposes of war; but this amendment shall not be construed to refer to any money that has been, or may be deposited with this State by the government of the United States, or to any fund which the State shall hold in trust for any Indian tribe.

SEC. 15. *The State is authorized to issue bonds payable within twenty-one years, at a rate of interest not exceeding six per cent. a year, payable semi-annually, which bonds or their proceeds shall be devoted solely towards the reimbursement of the expenditures incurred by the cities, towns and plantations of the State for war purposes during the rebellion, upon the following basis: Each city, town and plantation shall receive from the State one hundred dollars for every man furnished for the military service of the United States under and after the call of July second, eighteen hundred and sixty-two, and accepted by the United States*

Valuation.

Taxation.  
(Resolve of  
Feb. 24, 1875:  
Am'd't xvii.)Power of  
taxation.  
(Ad'm't xvii.)  
Sheriffs, how  
elected, and  
tenure of  
office.(Resolve of  
Mar. 17, 1856:  
Amendment  
ix.)Att'y gen'l.  
(Resolve of  
Mar. 17, 1856:  
Amendment  
ix; See Amend-  
ment xxiii.)Citizens who  
may be al-  
lowed to vote  
for county  
officers.  
(Resolve of  
Mar. 24, 1864:  
Amendment  
x.)(See Amend-  
ment xxiii.)Bribery at  
elections.  
(Resolve of  
Feb. 24, 1875:  
Amendment  
xx.)Credit of  
state not to  
be loaned.  
—state debt  
limited to  
\$300,000.  
53 Me., 587.  
(Resolve of  
July 26, 1847:  
Amendment  
vi.)  
—exceptions.  
81 Me., 603.State to issue  
bonds in pay-  
ment of  
municipal  
war debt.  
(Resolve of  
Mar. 7, 1868:  
Amendment  
xi.)—basis of pay-  
ment.  
53 Me., 587.

(a) 62 Me., 73, 451; 63 Me., 277, 285; 84 Me., 215; 86 Me., 502.

(b) 62 Me., 73, 451; 63 Me., 277, 285; 67 Me., 136; 70 Me., 522, 607; 72 Me., 518, 525; 73 Me., 526; 84 Me., 215; 86 Me., 498, 502; 88 Me., 180; 93 Me., 594.

(c) 62 Me., 62, 451; 84 Me., 215.

(d) 70 Me., 591.



60 Me., 158.  
69 Me., 595.  
81 Me., 604.  
(Obsolete.)

—commission appointed to determine amount due cities, towns and plantations.

—limited to \$3,500,000.

Towns of 4,000 inhabitants or having inhabited islands, may be divided into voting districts. (Resolve of Mar. 15, 1869: Amendment xii.)

Laws now in force continue until repealed. 92 Me., 244. Constitution, how amended. (See art. 4, part 3, § 15.)

(See Amendment xxiii.) 1880, c. 248.

Constitution to be arranged by chief justice of S. J. C. (Resolve of Feb. 24, 1875: Amendment xxi.)

—constitution to be enrolled and printed with laws.

—supreme law of the state.

§§ 1, 2, 5, of art. x, not to be printed. § 5 in full force. (Resolve of Feb. 24, 1875: Amendment xxi.) 84 Me., 5.

towards its quota for the term of three years, and in the same proportion for every man so furnished and accepted for any shorter period; and the same shall be in full payment for any claim upon the State on account of its war debts by any such municipality. A commission appointed by the Governor and Council shall determine the amount to which each city, town and plantation is entitled; to be devoted to such reimbursement, the surplus, if any, to be appropriated to the soldiers who enlisted or were drafted and went at any time during the war, or if deceased, to their legal representatives. The issue of bonds hereby authorized shall not exceed in the aggregate three million five hundred thousand dollars, and this amendment shall not be construed to permit the credit of the State to be directly or indirectly loaned in any other case or for any other purpose.

SEC. 16. The Legislature may by law authorize the dividing of towns having not less than four thousand inhabitants, or having voters residing on any island within the limits thereof, into voting districts for the election of representatives to the Legislature, and prescribe the manner in which the votes shall be received, counted, and the result of the election declared.

## ARTICLE X.

### SCHEDULE.

SEC. 1. All laws now in force in this State, and not repugnant to this Constitution, shall remain, and be in force until altered or repealed by the Legislature, or shall expire by their own limitation.

SEC. 2. The Legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this Constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at their next *annual* meetings in the month of September, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this Constitution.

SEC. 3. *After the amendments proposed herewith shall have been submitted to popular vote, the chief justice of the Supreme Judicial Court shall arrange the Constitution, as amended, under appropriate titles, and in proper articles, parts and sections, omitting all sections, clauses and words not in force, and making no other changes in the provisions or language thereof, and shall submit the same to the Legislature at its next session.* And the draft, and arrangement, when approved by the Legislature, shall be enrolled on parchment and deposited in the office of the Secretary of State; and printed copies thereof shall be prefixed to the books containing the laws of the State. And the Constitution, with the amendments made thereto, in accordance with the provisions thereof, shall be the supreme law of the State.

SEC. 4. Sections one, two and five, of article ten of the existing Constitution, shall hereafter be omitted in any printed copies thereof prefixed to the laws of the State; but this shall not impair the validity of acts under those sections; and section five shall remain in full force, as part of the Constitution, according to the stipulations of said section, with the same effect as if contained in said printed copies.

## AMENDMENTS

*To the Amended Constitution of Maine, adopted in pursuance of the second section of the tenth article of the Amended Constitution.*

## ARTICLE XXII.

## LIMITATION OF MUNICIPAL INDEBTEDNESS.

No city or town shall hereafter create any debt or liability, which singly, or in the aggregate with previous debts or liabilities, shall exceed five per centum of the last regular valuation of said city or town; *provided, however,* that the adoption of this article shall not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans or for war, or to temporary loans to be paid out of money raised by taxation, during the year in which they are made.

Municipal indebtedness never to exceed 5 per cent. of valuation.—exceptions. (See Art. 1, §§ 1, 21.)  
85 Me., 518.  
91 Me., 367.  
92 Me., 292.  
95 Me., 242.

[The twenty-second Amendment to the (Amended) Constitution of Maine was proposed to the people by a Resolve of the fifty-sixth Legislature passed February 9, 1877, and having been adopted by the people at the ensuing annual election, September 10, 1877, took effect as a part of the constitution January 2, 1878, according to the provisions of the Resolve and the proclamation of Governor Connor issued December 20, 1877.]

## ARTICLE XXIII.

## BIENNIAL ELECTIONS AND BIENNIAL SESSIONS.

The governor, senators and representatives in the legislature, shall be elected biennially, and hold office two years from the first Wednesday in January next succeeding their election; and the legislature, at the first session next after the adoption of this article, shall make all needful provisions by law concerning the tenure of office of all county officers, and concerning the annual or biennial reports of the state treasurer and other state officers and institutions; and shall make all such provisions by law as may be required in consequence of the change from annual to biennial elections, and from annual to biennial sessions of the legislature. *The first election under this Article shall be in the year one thousand eight hundred and eighty; and the first meeting of the legislature under this article shall be on the first Wednesday of January, eighteen hundred and eighty-one.*

Biennial elections and sessions.

—suitable provision to be made for tenure of offices, &c. (See Art. iv, part 1, § 2; part 2, §§ 1, 5.)

—elections to be held each even year.

Section four, article two; section five, part one, article four; section four, part two, article four; section one, part three, article four; section thirteen, part one, article five; section two, part two, article five; section one, part three, article five; section one, part four, article five; section four, part four, article five; section three, article seven; section four, article nine, and section eleven, article nine, are amended, by substituting the word 'biennial' for the word "annual" wherever it occurs.

—'biennial' substituted for 'annual', in twelve places.

Section two, part one, article five, is amended, by striking out all after the word "office" and substituting therefor the following words: 'for two years from the first Wednesday of January next following the election.' Section seven, article six, and section two, article ten, are hereby amended by striking out the word "annual" and insert in place thereof the word 'biennial.'

§ 2, part 1, art. 5, of constitution, amended.

[The twenty-third Amendment was proposed to the people by a Resolve of the fifty-eighth Legislature passed March 4, 1879, and having been adopted September 8, was declared to have become a part of the Constitution by a Resolve of March 18, 1880.]

## ARTICLE XXIV.

## ELECTION OF GOVERNOR BY PLURALITY VOTE.

Governor to be elected by plurality. (See Art. v, part 1, § 3.)

The constitution of this State shall be amended, in the third section of the first part of article five, by striking out the word "majority," wherever it occurs therein, and inserting in the place thereof the word 'plurality.'

[The twenty-fourth Amendment was proposed to the people by a Resolve of the fifty-ninth Legislature passed January 27, 1880, and having been adopted September 13, was proclaimed by Governor Davis to be a part of the Constitution, Nov. 9, 1880.]

## ARTICLE XXV.

## BIENNIAL LEGISLATIVE TERMS.

Amendment to § 2, art. 4, part 1, of amended constitution. (See Art. iv, part 1, §§ 2, 5; part 2, §§ 1, 5;

Section two, article four, part first, of the constitution of this state, as amended under the "resolutions concerning an amendment of the constitution of Maine," approved the fourth day of March, in the year eighteen hundred and seventy-nine, shall be further amended by striking out the words "first Wednesday in January next succeeding their election," and inserting in place thereof the words 'day next preceding the biennial meeting of the legislature, and the amendment herein proposed, if adopted, shall determine the term of office of senators and representatives to be elected at the annual meeting in September, in the year eighteen hundred and eighty, as well as the term of senators and representatives thereafter to be elected,' so that said section, as amended, shall read as follows:

Biennial terms of senators and representatives.

'SEC. 2. The house of representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, and hold their office two years from the day next preceding the biennial meeting of the legislature, and the amendment herein proposed, if adopted, shall determine the term of office of senators and representatives to be elected at the annual meeting in September, in the year eighteen hundred and eighty, as well as the term of senators and representatives thereafter to be elected. The legislature, which shall first be convened under this constitution, shall on or before the fifteenth day of August, in the year of our Lord one thousand eight hundred and twenty-one, and the legislature, within every subsequent period of at most ten years, and at least five, cause the number of the inhabitants of the state to be ascertained, exclusive of foreigners not naturalized and Indians not taxed. The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population. The number of representatives shall, on said first apportionment, be not less than one hundred and not more than one hundred and fifty.'

(Obsolete.)

—legislature to ascertain number of inhabitants once every five or ten years.

—apportionment of representatives.

[The twenty-fifth Amendment was proposed to the people by a Resolve of the fifty-ninth Legislature passed March 18, 1880, and was adopted September 13, as appears from the transactions of the governor and council, preserved in the office of the secretary of state, wherein it is recorded that the report of the committee on elections to that effect was accepted by the council and approved by the governor, October 20, 1880. The amendment was never proclaimed by the governor nor declared by the Legislature, and it is not known that any public evidence of its adoption is in existence.]

## ARTICLE XXVI.

## PROHIBITION OF THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS.

The manufacture of intoxicating liquors, not including cider, and the sale and keeping for sale of intoxicating liquors, are and shall be forever prohibited. Except, however, that the sale and keeping for sale of such liquors for medicinal and mechanical purposes and the arts, and the sale and keeping for sale of cider may be permitted under such regulations as the Legislature may provide. The Legislature shall enact laws with suitable penalties for the suppression of the manufacture, sale and keeping for sale of intoxicating liquors, with the exceptions herein specified.

Manufacture and sale of intoxicating liquors prohibited.  
—exception.  
—legislature shall enact laws to carry this article into effect.  
82 Me., 213.

[The twenty-sixth amendment was proposed to the people by a resolve of the sixty-first legislature approved February 21, 1883, and having been adopted September 8, 1884, was proclaimed by Governor Robie to be a part of the Constitution, December 3, 1884, and took effect on the first Wednesday of January, 1885.]

## ARTICLE XXVII.

## ELIGIBILITY OF THE TREASURER OF STATE.

The treasurer shall be chosen biennially, at the first session of the legislature, by joint ballot of the Senators and Representatives in convention, but shall not be eligible more than six years successively.

Treasurer not eligible for more than six years.  
(See Art. v, Part 4, § 1.)

[The twenty-seventh amendment was proposed to the people by a resolve of the sixty-third legislature, approved March 10, 1887, and having been adopted September 10, 1888, was proclaimed by Governor Marble to be a part of the Constitution, December 14, 1888, and took effect on the first Wednesday of January, 1889.]

## ARTICLE XXVIII.

## APPOINTMENT OF ADJUTANT GENERAL.

The major generals shall be elected by the senate and house of representatives each having a negative on the other. The adjutant general and quarter-master general shall be appointed by the governor. But the adjutant general shall perform the duties of quarter-master general until otherwise directed by law. The major generals and brigadier generals and the commanding officers of regiments and battalions, shall appoint their respective staff officers; and all military officers shall be commissioned by the governor.

Major generals, how elected.

Adjutant general and quarter-master general appointed by governor.  
(See Art. vii, § 3.)

[The twenty-eighth amendment was proposed to the people by a resolve of the sixty-fourth legislature, approved March 31, 1891, and having been adopted September 12, 1892, was proclaimed by Governor Burleigh to be a part of the Constitution, December 13, 1892, and took effect on the first Wednesday of January, 1893.]

## ARTICLE XXIX.

## EDUCATIONAL QUALIFICATION OF VOTERS.

No person shall have the right to vote or be eligible to office under the constitution of this state, who shall not be able to read the constitution in the English language and write his name; provided, however, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any per-

Elector must be able to read constitution in English and write his name.

—exceptions.  
(See Art. II,  
§ 1.)

son who now has the right to vote, nor to any person who shall be sixty years of age or upwards at the time this amendment shall take effect.

[The twenty-ninth amendment was proposed to the people by a resolve of the sixty-fourth legislature, approved April 2, 1891, and having been adopted September 12, 1892, was proclaimed by Governor Burleigh to be a part of the Constitution, December 13, 1892, and took effect on the first Wednesday of January, 1893.]

## ARTICLE XXX.

### VACANCIES IN THE SENATE.

Amendment to  
Art. IV, Part 2,  
§ 5.

Section five, in article four, part two, is hereby amended by striking out the words "and in this manner all vacancies in the senate shall be supplied as soon as may be after such vacancies happen," and substituting therefor the following:

Vacancies in  
Senate, how  
filled.

'But all vacancies in the senate, arising from death, resignation, removal from the State, or like causes, shall be filled by an immediate election in the unrepresented district. The governor shall issue his proclamation therefor and therein fix the time of such election.'

[The thirtieth amendment was proposed to the people by a resolve of the sixty-eighth legislature, approved March 27, 1897, and having been adopted September 12, 1898, was proclaimed by Governor Powers to be a part of the constitution, October 25, 1898, and took effect on the first Wednesday of January, 1899.]

FIFTH REVISION OF THE PUBLIC LAWS.

---

STATE OF MAINE.

---

IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND THREE.

---

AN ACT

TO REVISE AND CONSOLIDATE THE PUBLIC LAWS OF  
THE STATE.

---

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES IN LEGISLATURE ASSEMBLED, in the manner stated under the several titles and chapters as follows, not including marginal and other notes, or references:

## TITLE ONE.

The State: its sovereignty, divisions, domain, revenue; parts of its civil and military administrations.

- 
- CHAP. I. Divisions of the State. Constitutional amendments. Statutes. Rules of construction. Standard time.
2. Sovereignty and Jurisdiction. Lands taken and ceded for military purposes. U. S. coast survey. Expenditure of appropriations. Sinking fund. Seat of government. Organization of the legislature. Notice of petitions for legislation. Tenure of office and qualification of officers. Secretary of State. Treasurer of State, and State bonds. State library. Distribution of public documents. Public printer. Public binder.
  3. Towns, their meetings, officers, powers, and duties.
  4. Elections.
  5. Public lands, their sale and settlement. Land agent. Location and care of lots for public uses. Forest commissioner, and preservation of forests.
  6. Assessment and collection of taxes.
  7. Registry of deeds.
  8. County treasurers.
  9. Indian tribes.
  10. The militia.
- 

### CHAPTER 1.

Divisions into counties, towns and plantations.

R. S., c. 1, § 1.  
72 Me., 432.

When constitutional amendments take effect, part 3, § 1.)

R. S., c. 1, § 2.

Proclamation and publication thereof.

R. S., c. 1, § 3.

Secretary to give notice of approval of public acts.

R. S., c. 1, § 4.

See c. 2, § 51.

81 Me., 546.

Acts become effective in thirty days after recess.

R. S., c. 1, § 5.

21 Me., 60.

30 Me., 489.

DIVISIONS OF THE STATE. CONSTITUTIONAL AMENDMENTS. STATUTES. RULES OF CONSTRUCTION. STANDARD TIME.

SECTION 1. The State is divided into counties, districts, towns, and plantations.

SEC. 2. Unless otherwise provided in the resolve submitting it, every constitutional amendment shall take effect and become part of the constitution, on the first Wednesday of January following its adoption by the people.

SEC. 3. Within thirty days after it appears that a constitutional amendment has been adopted, the governor shall make proclamation thereof, and the secretary of state shall forthwith cause such proclamation to be published in the state paper, and it shall also be prefixed to the next volume of acts and resolves.

SEC. 4. When a public act is approved by the governor, the secretary of state shall give written notice thereof to the presiding officers of the senate and house, describing it by its title, and the date of its approval, which shall be entered on the journal of each house.

SEC. 5. A statute becomes effective in thirty days after the recess of the legislature passing it, unless a different time is named therein. The repeal of an act or resolve passed after March four, eighteen hundred and seventy, does not revive any statute in force before the act or resolve took effect. The repeal of an act does not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any suit, or proceeding pending at the time of the repeal, for an offense committed or for recovery

of a penalty or forfeiture incurred under the act repealed. Actions pending at the time of the passage or repeal of an act, are not affected thereby. (a)

SEC. 6. The following rules shall be observed in the construction of statutes, unless such construction is inconsistent with the plain meaning of the enactment.

I. Words and phrases shall be construed according to the common meaning of the language. Technical words and phrases, and such as have a peculiar meaning convey such technical or peculiar meaning. (b)

II. Words of the singular number may include the plural; and words of the plural number may include the singular. Words of the masculine gender may include the feminine.

III. Words giving authority to three or more persons authorize a majority to act, when the enactment does not otherwise determine. (c)

IV. The words "annual meeting," applied to towns, mean the annual meeting required by law for choice of town officers.

V. The word "grantor" means the person who conveys a freehold estate or interest in land; and the word "grantee," the person to whom it is conveyed.

VI. The word "highway" may include a county bridge, county road or county way. (d)

VII. The word "inhabitant" means a person having an established residence in a place.

VIII. The words "insane person" may include an idiotic, non compos, lunatic, or distracted person: but in reference to idiotic or non compos persons this rule does not apply to chapter one hundred and forty-two.

IX. The word "issue," applied to the descent of estates, includes all lawful lineal descendants of the ancestor.

X. The words "land or lands," and the words "real estate," include lands and all tenements and hereditaments connected therewith, and all rights thereto and interests therein. (e)

XI. The word "month" means a calendar month; and the word "year," a calendar year, unless otherwise expressed. The word "year," used for a date, means year of our Lord. (f)

XII. The word "oath" includes an affirmation, when affirmation is allowed.

XIII. The word "person" may include a body corporate. (g)

XIV. By the words "preceding" or "following," used with reference to a section, is meant the section next preceding or following that in which it is used, when not otherwise expressed.

XV. When the seal of a court, magistrate, or public officer, is to be affixed to a paper, the word "seal" may mean an impression made on the paper for that purpose with or without wafer or wax.

XVI. Whenever a corporate seal is used or required on any instrument, an impression made on the paper of such instrument by the seal of the corporation, without any adhesive substance, shall be deemed a valid seal.

XVII. The words "United States" include territories and the District of Columbia. The word "state," used with reference to any organized portion thereof, may mean a territory or said district.

(a) 21 Me., 60; 23 Me., 237; 30 Me., 489; 45 Me., 73, 514; 49 Me., 533; 52 Me., 158; 61 Me., 24; 63 Me., 29, 30; 64 Me., 134, 435; 65 Me., 129; 68 Me., 396, 520, 527; 70 Me., 278; 71 Me., 404; 73 Me., 212; 75 Me., 444; 84 Me., 64; 88 Me., 227; 93 Me., 127; 95 Me., 315.

(b) 47 Me., 347; 49 Me., 525; 58 Me., 170, 328; 63 Me., 63; 64 Me., 129; 72 Me., 461; 75 Me., 116; 88 Me., 404.

(c) 39 Me., 223; 48 Me., 358-9, 406; 62 Me., 519; 63 Me., 265; 64 Me., 262; 77 Me., 129; 79 Me., 130.

(d) 18 Me., 412; 26 Me., 409; 34 Me., 12; 59 Me., 368, 452; 79 Me., 528.

(e) 69 Me., 347; 78 Me., 97; 85 Me., 331; 86 Me., 77, 131.

(f) 47 Me., 393; 64 Me., 332.

(g) 70 Me., 181; 95 Me., 448.

—construction of acts repealing other acts.

Rules of construction. R. S., c. 1, § 6.

Meaning of words and technical phrases. Singular; plural; gender. 48 Me., 560. 72 Me., 428.

Majority may act.

Annual meeting. 62 Me., 517. Grantor and grantee.

Highway. See c. 18, § 83, c. 19, § 1. Inhabitant. 37 Me., 372.

Insane. 49 Me., 361. 53 Me., 297. 76 Me., 595. Issue. 95 Me., 277.

Lands and real estate. See c. 6, §§ 3, 127.

Month. See c. 11, § 34, ¶ 1 —year.

Oath. 79 Me., 103.

Person. See c. 6, § 127. Preceding and following. Seal. 33 Me., 427. 34 Me., 222. 36 Me., 368. 66 Me., 227.

Corporate seal. 1889, c. 163.

United States.

—state.



Town.  
See c. 18, § 104.

Writing:  
—signature.  
56 Me., 392.  
68 Me., 387, 587.

Will.

Sworn, duly  
sworn, sworn  
according to  
law.

Agents' acts.

Disinterested,  
or indifferent.

Municipal  
officers.

State paper.  
(Resolve of  
1857, c. 1.  
See c. 79, § 7.)

Abstracts and  
notes.

Acts of incor-  
poration.  
1893, c. 226.  
24 Me., 143.  
69 Me., 317.  
83 Me., 445.  
93 Me., 127.

Organization  
of corporations.  
1897, c. 302.  
See c. 49, §§ 129,  
145; c. 51, §§ 7,  
191.

Affirmations.  
R. S., c. 1, § 7.  
75 Me., 488.  
79 Me., 103.  
Eastern stand-  
ard time  
established.  
1887, c. 29.

XVIII. The word "town" includes cities and plantations, unless otherwise expressed or implied. (a)

XIX. The words "in writing" and "written" include printing and other modes of making legible words. When the signature of a person is required, he must write it or make his mark.

XX. The word "will" includes a codicil.

XXI. The words "sworn," "duly sworn," or "sworn according to law," used in a statute, record, or certificate of administration of an oath, refer to the oath required by the constitution or laws in the case specified, and include every necessary subscription to such oath. (b)

XXII. When an act that may be lawfully done by an agent, is done by one authorized to do it, his principal may be regarded as having done it. (c)

XXIII. When a person is required to be disinterested or indifferent in a matter in which others are interested, a relationship by consanguinity or affinity within the sixth degree according to the civil law, or within the degree of second cousins inclusive, except by written consent of the parties, will disqualify. (d)

XXIV. The term "municipal officers" includes the mayor and aldermen of cities, the selectmen of towns, and the assessors of plantations. (e)

XXV. The words "state paper" mean the newspaper designated by the legislature, in which public acts, resolves, advertisements, and notices are required to be published.

XXVI. Abstracts of titles and chapters, and marginal and other notes are not legal provisions.

XXVII. Acts of incorporation shall be regarded in legal proceedings as public acts, and be in force on the date of their approval. All acts of incorporation granted since January one, eighteen hundred and ninety-three, become null and void in two years from the day when the same take effect, unless such corporations shall have organized and commenced actual business under their charters.

XXVIII. The organization of any corporation under any general law of the state becomes null and void within two years from the day when its certificate of incorporation has been filed in the office of the secretary of state, unless such corporation shall have commenced actual business under its organization.

Sec. 7. When a person required to be sworn, is conscientiously scrupulous of taking an oath, he may affirm.

Sec. 8. All courts, and all state, county and town officers and their employes, in the transaction of their official business, and all contracts, unless it is otherwise provided therein, and all proceedings in law and equity, shall be governed by the eastern division of standard time.

(a) 56 Me., 31; 66 Me., 155; 71 Me., 142; 77 Me., 422; 82 Me., 194.

(b) 30 Me., 326; 41 Me., 226; 42 Me., 376; 58 Me., 532; 84 Me., 378.

(c) 48 Me., 554; 59 Me., 175; 68 Me., 92, 387; 95 Me., 554.

(d) 29 Me., 542; 30 Me., 156; 32 Me., 311; 47 Me., 476, 594; 52 Me., 501; 59 Me., 264; 66 Me., 352; 68 Me., 219; 73 Me., 58; 79 Me., 33; 84 Me., 305; 86 Me., 185.

(e) See c. 27, § 67; 56 Me., 31; 71 Me., 142; 74 Me., 369; 78 Me., 106.

Note. Definitions under Australian ballot law, c. 4, § 50; under collateral inheritance tax law, c. 6, § 127; under law relating to inland fisheries and game, c. 30, §§ 8, 13, 18, and 38; under insolvent law, c. 70, § 13; under laws relating to cruelty to animals, c. 123, § 56.

Definition of words "benevolent and charitable corporations" under tax law, c. 6, § 6, ¶ II; of word "academy," c. 11, § 79; of words "way" and "team," c. 19, § 1; of intoxicating liquors, c. 27, § 41; of word "family" in pauper law, c. 24, § 9; of "public warehouseman," c. 31, § 8; of "itinerant vendors," c. 44, § 27; of "domestic" and "foreign" in insurance laws, c. 49, § 81; of "association" in insurance laws, c. 49, § 165; of "dwelling-house," c. 118, § 9; of "butter and cheese" under law relating to dairy products, c. 127, § 7; of words "felony" and "owner," c. 130, §§ 10, 11.

AMENDMENTS  
TO THE  
CONSTITUTION  
OF THE  
STATE OF MAINE

Adopted since 1902

AUGUSTA, MAINE

1913



WATERVILLE  
SENTINEL PUBLISHING COMPANY  
1913

## STATE OF MAINE.

### CHAPTER 121, RESOLVES OF 1907.

RESOLVES proposing an amendment to article four of the Constitution of the state of Maine, establishing a people's veto through the optional referendum, and a direct initiative by petition and at general or special elections.

*Resolved*, That the following amendment to the constitution of this state be proposed for the action of the legal voters of this state in the manner provided by the constitution, to wit:

Part first of article four is hereby amended as follows, namely:

By striking out all of section one after the word "Maine" in the third line thereof, and inserting in lieu thereof the following words 'But the people reserve to themselves power to propose and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style of their laws and acts shall be 'Be it enacted by the people of the state of Maine,' so that said section as amended shall read as follows, namely:

'The legislative power shall be vested in two distinct branches, a house of representatives and a senate, each to have a negative on the other, and both to be styled the legislature of Maine, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style of their laws and acts shall be, 'Be is enacted by the people of the state of Maine.'

Part third of article four is hereby amended as follows, namely:

By inserting in section one, after the words "biennially and" in the second line thereof, the words 'with the exceptions hereinafter stated,' so that said section shall read as amended:

'The legislature shall convene on the first Wednesday of January, biennially, and, with the exceptions hereinafter stated shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state, not repugnant to this constitution nor to that of the United States.'

Part third of article four is further amended by adding to said article the following sections to be numbered from sixteen to twenty-two inclusive, namely:

'Sect. 16. No act or joint resolution of the legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the legislature passing it, unless in case of emergency (which with the facts constituting the emergency shall be expressed in the preamble of the act,) the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. An

emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate.'

'Sect. 17. Upon written petition of not less than ten thousand electors, addressed to the governor and filed in the office of the secretary of state within ninety days after the recess of the legislature, requesting that one or more acts, bills, resolves or resolutions, or part or parts thereof, passed by the legislature, but not then in effect by reason of the provisions of the preceding section, be referred to the people, such acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election. As soon as it appears that the effect of any act, bill, resolve, or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people, which shall be at the next general election not less than sixty days after such proclamation, or in case of no general election within six months thereafter the governor may, and if so requested in said written petition therefor, shall order such measure submitted to the people at a special election not less than four nor more than six months after his proclamation thereof.'

'Sect. 18. The electors may propose to the legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the state constitution, by written petition addressed to the legislature or to either branch thereof and filed in the office of the secretary of state or presented to either branch of the legislature at least thirty days before the close of its session. Any measure thus proposed by not less than twelve thousand electors, unless enacted without change by the legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next general election to be held not less than sixty days after the first vote thereon be submitted by itself if it receives more than one-third of the votes given for and against both. If the measure initiated is enacted by the legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The legislature may order a special election on any measure that is subject to a vote of the people. The governor may, and if so requested in the written petitions addressed to the legislature, shall, by proclamation, order any measure proposed to the legislature by at least twelve thousand electors as herein provided, and not enacted by the legislature without change, referred to the people at a special election to be held not less than four or more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty days after the recess of the legislature, to which such measure was proposed.'

'Sect. 19. Any measure referred to the people and approved by a majority of the votes given thereon shall, unless a later date is specified in said measure, take effect and become a law in thirty days after the governor has made public proclamation of the result of the vote on said measure, which he shall

do within ten days after the vote thereon has been canvassed and determined. The veto power of the governor shall not extend to any measure approved by vote of the people, and any measure initiated by the people and passed by the legislature without change, if vetoed by the governor and if his veto is sustained by the legislature shall be referred to the people to be voted on at the next general election. The legislature may enact measures expressly conditioned upon the peoples' ratification by a referendum vote.'

'Sect. 20. As used in either of the three preceding sections the words "electors" and "people" mean the electors of the state qualified to vote for governor; "recess of the legislature" means the adjournment without day of a session of the legislature; "general election" means the November election for choice of presidential electors or the September election for choice of governor and other state and county officers; "measure" means an act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of one of the petitioners certified thereon, and accompanied by the certificate of the clerk of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for governor. The petitions shall set forth the full text of the measure requested or proposed. The full text of a measure submitted to a vote of the people under the provisions of the constitution need not be printed on the official ballots, but, until otherwise provided by the legislature, the secretary of state shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.'

'Sect. 21. The city council of any city may establish the initiative and referendum for the electors of such city in regard to its municipal affairs, provided that the ordinance establishing and providing the method of exercising such initiative and referendum shall not take effect until ratified by vote of a majority of the electors of said city, voting thereon at a municipal election. Provided, however, that the legislature may at any time provide a uniform method for the exercise of the initiative and referendum in municipal affairs.'

'Sect. 22. Until the legislature shall enact further regulations not inconsistent with the constitution for applying the people's veto and direct initiative, the election officers and other officials shall be governed by the provisions of this constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding sections self-executing.'

*Resolved*, That all the foregoing is proposed to be voted upon as one amendment, and not as two or more several amendments.

*Resolved*, That the aldermen of cities, the selectmen of towns and the assessors of the several plantations in this state are hereby empowered and directed to notify the inhabitants of their respective cities, towns, and plantations in the manner prescribed by law to vote at the meeting in September in the year one thousand nine hundred and eight upon the amendment proposed in the foregoing resolutions, and the question shall be:

"Shall the constitution be amended as proposed by a resolution of the legislature providing for the establishment of a people's veto through the optional referendum and a direct initiative by petition and at general or special elections?" and the inhabitants of said cities, towns and plantations shall vote by ballot on said question, those favoring the amendment voting "yes" and those opposing voting "no" upon their ballots, and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and lists of the votes so received shall be made and returned to the office of the secretary of state in the same manner as votes for governor and members of the legislature, and the governor and council shall count the

same and make return to the next legislature, and if it shall appear that a majority of the votes are in favor of the amendment, the constitution shall be amended accordingly.

*Resolved*, That the secretary of state shall prepare and furnish to the several cities, towns and plantations, ballots and blank returns in conformity to the foregoing resolves accompanied by a copy thereof.

[The thirty-first amendment was proposed to the people by a resolve of the seventy-third legislature, approved March 20, 1907, and having been adopted September 14, 1908, was proclaimed by Governor Cobb to be a part of the constitution, October 30, 1908, and took effect on the first Wednesday of January, 1909.]

---

CHAPTER 238, RESOLVES OF 1907.

RESOLVE to amend section two of article ten of the Constitution of the state of Maine.

*Resolved*, Two-thirds of both branches of the legislature concurring, that the following amendment to the constitution of the state of Maine be proposed for the action of the legal voters of this state at the next gubernatorial election in the manner prescribed by the constitution:

Section two in article ten as amended by the resolve of the fifty-eighth legislature passed March fourth, eighteen hundred and seventy-nine, and adopted September eighth, eighteen hundred and seventy-nine, is hereby further amended by striking out the words; "in the manner prescribed by law, at their next biennial meetings in the month of September," and inserting in place thereof the words: 'to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives on the second Monday in September following the passage of said resolve;' so that said section as amended, shall read as follows:

'Section 2. The legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this constitution; and, when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives, on the second Monday in September following the passage of said resolve, to give in their votes on the question, whether such amendments shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this constitution.'

[The thirty-second amendment was proposed to the people by a resolve of the seventy-third legislature, approved March 28, 1907, and having been adopted September 14, 1908, was proclaimed by Governor Cobb to be a part of the constitution, October 30, 1908, and took effect on the first Wednesday of January, 1909.]

## CHAPTER 210, RESOLVES OF 1911.

RESOLVE to amend the Constitution with reference to the seat of Government.

*Resolved*, That the following amendment to the constitution of the state be proposed for the action of the legal voters of this state in the manner provided by the constitution, to wit, by adding thereto the following article: "Augusta is hereby declared to be the seat of government of this state."

*Resolved*, That the aldermen of cities, the selectmen of towns and the assessors of the several plantations in this state, are hereby empowered and directed to notify the inhabitants of their respective cities, towns, or plantations, in the manner provided by law, to vote at a meeting to be held on the second Monday of September in the year one thousand nine hundred and eleven, upon an amendment proposed in the foregoing resolution, and the question shall be, 'shall the constitution be amended as proposed by resolution of the legislature providing that "Augusta is hereby declared to be the seat of government of this state," and the inhabitants of said city, town or plantation shall vote by ballot on said question, those favoring the amendment voting "yes" and those opposing voting "no" upon their ballots, and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and lists of the votes so received shall be made and returned to the office of the secretary of state in the same manner as votes for governor and members of the legislature, and the governor and council shall count the same and make return to the next legislature, and if it shall appear that a majority of the votes are in favor of the amendment, the constitution shall be amended accordingly.

*Resolved*, That the secretary of state shall prepare and furnish to the several cities, towns, and plantations, ballots and blank returns in conformity to the foregoing resolves accompanied by a copy thereof.'

[The thirty-third amendment was proposed to the people by a resolve of the seventy-fifth legislature, approved March 31, 1911, and having been adopted by the people September 11, 1911, was declared adopted by the legislature of Maine January 23, 1913, and by this declaration became a part of the constitution.]

## CHAPTER 221, RESOLVES OF 1911.

RESOLVE to amend article twenty-two of the Constitution, relating to cities of forty thousand inhabitants or more to increase the municipal indebtedness to seven and one-half per centum.

*Resolved*, That the following amendment to the constitution of this state be proposed for the action of the legal voters of this state in the manner provided by the constitution, to wit, article twenty-two of said constitution, limiting municipal indebtedness, is hereby amended by inserting after the word "town" in the first line thereof, the following words, 'having less than forty thousand inhabitants, according to the last census taken by the United States,' and by inserting after the word "however" in the fourth line, the following words, 'that cities having a population of forty thousand or more, according to the last census taken by the United States may create a debt or liability which single or in the aggregate with previous debt or liability, shall equal seven and one-half per centum of the last regular valuation of said city, that cities of forty thousand inhabitants or over, may, by a majority vote of their city government, increase the present rate of five per centum by one-fourth of one per centum in any one municipal year until in not less than ten years, the

AMENDMENTS TO THE CONSTITUTION OF MAINE.

maximum rate of seven and one-half per cent is reached, that any city failing to take the increase in any one municipal year then the increase for that year is lost and no increase can be made until the next year as provided above, and provided further,' so that said article as amended, shall read as follows:

'No city or town having less than forty thousand inhabitants, according to the last census taken by the United States, shall hereafter create any debt or liability, which single or in the aggregate, with previous debts or liabilities shall exceed five per centum of the last regular valuation of said city or town: provided, however, that cities having a population of forty thousand or more, according to the last census taken by the United States, may create a debt or liability which single or in the aggregate, with previous debts or liabilities, shall equal seven and one-half per cent of the last regular valuation of said city, that cities of forty thousand inhabitants, or over, may, by a majority vote of their city government, increase the present rate of five per centum by one-fourth of one per cent in any one municipal year, until, in not less than ten years, the maximum rate of seven and one-half per cent is reached, that any city failing to take the increase in any one municipal year then the increase for that year is lost and no increase can be made until the next year as provided above, and provided further, that the adoption of this article shall not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans, or for war or to temporary loans to be paid out of the money raised by taxes during the year in which they were made.'

*Resolved*, That the aldermen of cities, selectmen of towns, and the assessors of the several plantations in this state, are hereby empowered and directed to notify the inhabitants of their respective cities, towns, or plantations, in the manner provided by law, to vote at a meeting to be held on the second Monday of September in the year one thousand nine hundred and eleven, upon an amendment proposed in the foregoing resolution, and the question shall be: "Shall the constitution be amended as proposed by resolution of the legislature providing that the towns having a population of forty thousand inhabitants or more, according to the last census taken by the United States, be permitted to create a debt or liability which single or in the aggregate equals seven and one-half per centum of its last regular valuation and that the increase in amount of debt be no greater than one-quarter of one per centum, over the present rate of five per cent in any one year, and the inhabitants of said city, town or plantation shall vote by ballot on said question, those favoring the amendment voting "yes" upon their ballots and those opposing voting "no" upon their ballots, and the ballots shall be received, sorted, counted, and declared in open ward, town, and plantation meetings, and lists of the votes so received shall be made and returned to the office of secretary of state in the same manner as votes for governor and members of the legislature and the governor and council shall count the same and make return to the next legislature and if it shall appear that a majority of the votes are in favor of the amendment the constitution shall be amended accordingly.

*Resolved*, That the secretary of state shall prepare and furnish to the several cities, towns, and plantations, ballots and blank returns in conformity to the foregoing resolves accompanied by a copy thereof.

[The thirty-fourth amendment was proposed to the people by a resolve of the seventy-fifth legislature, approved March 31, 1911, and having been adopted by the people September 11, 1911, was declared adopted by the legislature of Maine January 23, 1913, and by this declaration became a part of the constitution.]



## AMENDMENTS TO THE CONSTITUTION OF MAINE.

### CHAPTER 1, RESOLVES OF 1912.

RESOLVE amending article nine of the Constitution, so as to provide for a bond issue for State Highways.

*Resolved*, Two-thirds of the legislature concurring, that the following amendment to the constitution of the state be proposed:

Article nine of the constitution is hereby amended by adding the following section:

'Section 17. The legislature may authorize the issuing of bonds not exceeding two million dollars in amount at any one time, payable within forty-one years, at a rate of interest not exceeding four per centum per annum, payable semi-annually, which bonds or their proceeds shall be devoted solely to the building and maintaining of state highways; provided, however, that bonds issued and outstanding under the authority of this section shall never, in the aggregate, exceed two million dollars; the expenditure of said money to be divided equitably among the several counties of the state.'

Section fourteen of said article is amended by adding after the word "except," in the fifth line thereof, the following words: "For the purposes of building and maintaining of state highways," so that said section fourteen, as amended, shall read as follows:

'Section 14. The credit of the state shall not be directly or indirectly loaned in any case. The legislature shall not create any debt or debts, liability or liabilities, on behalf of the state, which shall singly, or in the aggregate with previous debts and liabilities hereafter incurred at any one time, exceed three hundred thousand dollars, except for the purposes of building and maintaining of state highways, to suppress insurrection, to repel invasion, or for purposes of war; but this amendment shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States, or to any fund which the state shall hold in trust for any Indian tribe.'

*Resolved*, That the aldermen of cities, the selectmen of towns and the assessors of the several plantations in this state are hereby empowered and directed to notify the inhabitants of their respective cities, towns and plantations in the manner prescribed by law to vote at the regular state election meeting in September in the year nineteen hundred and twelve upon the amendment proposed in the foregoing resolution, and the question shall be: "Shall the constitution be amended as proposed by a resolution of the legislature providing for the issuing of state bonds for the purposes of building and maintaining state highways?"

And the inhabitants of said cities, towns and plantations shall vote by ballot on said question, those favoring the amendment voting "yes" and those opposing "no" on their ballots, and the ballots shall be assorted, counted and declared in open ward, town and plantation meetings, and returns made to the office of the secretary of state in the same manner as votes for governor and members of the legislature, and the governor and council shall count the same and make return to the next legislature, and if it shall appear that a majority of the votes are in favor of the amendment, the constitution shall be amended accordingly.

*Resolved*, That the secretary of state shall prepare and furnish to the several cities, towns and plantations, ballots and blank returns in conformity with the foregoing resolves accompanied by a copy thereof.

[The thirty-fifth amendment was proposed to the people by a resolve of the seventy-fifth legislature, approved March 25, 1912, and having been adopted by the people September 9, 1912, was declared adopted by the legislature of Maine January 23, 1913, and by this declaration became a part of the constitution.]