

DEBATES
of the
Missouri Constitutional
Convention *of* 1875



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Resolved, That the number of members constituting the Committee on Miscellaneous Provisions be increased to 9 by adding two more members to be appointed by the President.

[7, 110] The question was put and the resolution agreed to.

Mr. Lay: I now renew my motion to adjourn until 9 O'clock tomorrow morning.

The question was put and the motion was carried.

The Convention thereupon adjourned.

EIGHTH DAY

Thursday, May 13th, 1875

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[8, 2] Jefferson City, Thursday, May 13, 1875.

The Convention met pursuant to adjournment and was called to order by President Johnson.

The President: I am informed by the Secretary that in consequence of the demands made by the various committees for resolutions that he has been unable to write up the Journal. Therefore the reading will be dispensed with.

PREAMBLE AND BILL OF RIGHTS

Mr. Gantt: Mr. President, the Committee upon Preamble and Bill of Rights of the Constitution have instructed me to make the report which I have before me and which I will read to the Convention.

(Insert)¹

¹From *Journal*, I, 194-197.—

We, the people of the State of Missouri, without [with] profound reverence for the Supreme Ruler of the Universe and grateful for his goodness, do for the better government of the State, establish this Constitution. In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded we declare:

[8, 3] Mr. Gantt: This, Mr. President, is the report which I am instructed by the Committee to make. We have arrived at this result with a reasonable amount of unanimity; not absolute unanimity, but there has been a harmony in our proceedings which is very gratifying I believe to every member of it. We have not aimed so much to consult the

1. That all political power is vested in the people of the State ⁸⁹] with those limitations only which are imposed on them by the Constitution of the United States and that the government hereby established is clothed with that portion of the political power thus inherent in the people which is defined, ascertained and committed to some department thereof by this instrument.

2. That the power not thus defined, ascertained and committed to some one of the departments of the government hereby established are reserved to the people and constitute that mass of governmental powers, the presence or absence of which distinguishes arbitrary from limited governments.

3. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails of its chief design.

4. That the people of this State have, now and always, the inherent exclusive and inalienable right, subject to the limitations before mentioned, of regulating after and amending their State Government whenever and in such manner as to them shall seem expedient.

5. That religious belief is a matter beyond the sphere of the government proposed by this Constitution; that no one can be questioned in respect of his religious opinions by any instrumentality of this government, or for any purpose connected with its administration, but that acts of immorality, licentiousness, or conduct inconsistent with the good order, peace or safety of society, may be rightfully presented and punished notwithstanding that the persons guilty of such acts or conduct may proffer and allege in excuse or justification thereof, that they are committed in obedience to the dictates of conscience.

6. That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, preacher, minister or teacher of any sect, church creed or denomination of religion; but that if any person shall voluntarily make a contract for any such object he shall be held to the performance of the same.

7. That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof as such; and that no preference shall be given to or any discrimination made against any church, sect, denomination or creed of religion or any form of religion, faith or worship.

8. That every gift, sale or devise of land to any priest, minister, public teacher or preacher of the gospel as such or to any religious sect, ⁹⁰] order or denomination or to or for the support, use or benefit of or in trust for any minister, public teacher or preacher of the gospel as such, or any religious order, sect or denomination; and every gift or sale of goods or chattels, to go in succession or to take effect after the death of the donor or seller to or for such use, support or benefit; and also every devise of goods or chattels to or for the support of any minister, public teacher, priest or preacher of the Gospel as such, or any religious sect, order or denomination, shall be void: except always a gift, sale or devise of so much land as may be required for a house of public worship, a chapel, a parsonage and a burial ground to be held for those purposes only, the quantity of land so held by any congregation, church or religious society not to exceed five acres in the country or one acre in a town or city.

9. That all elections ought to be free and open.

niceties of rhetoric, as to use language which is incapable of being misunderstood. We have availed ourselves of every suggestion which reached us from any quarter, and which was acceptable to us. In respect of the Preamble, Mr. President, it was the opinion of some of us that, being engaged in a work entirely secular, it would be well to omit

10. That courts of justice shall be open to every person and certain remedy afforded for every injury to person, property or character. That right and justice should be administered without sale, denial or delay and that the existence of a wrong for which the law affords no redress is a scandal to government.

11. That all persons shall be secure in their persons, papers, houses, and effects, from arbitrary searches and seizures; that no warrant shall issue to search any place or seize any person or thing except on probable cause, shown by oath or affirmation, and in every case whenever such probable cause is so shown, the warrant, by virtue of which alone it shall be lawful to make such search or seizure, shall describe the place to be searched or the person or thing to be seized, as nearly as may be.

12. That no person shall for an indictable offense be proceeded against criminally by information except in cases arising in the land or naval forces or in the militia in time of war or public danger or by leave of court for oppression or malfeasance in office.

13. That no conviction shall work corruption of blood nor forfeiture of the estate of the offender, except so much thereof as may be necessary to pay a fine imposed by law and the costs of prosecution and that the estate of those dying by suicide shall descend or vest as if they had died from disease.

14. That no law be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence and the jury under the direction of the court, shall determine the law and the fact.

15. That no act retrospective in its operation shall be passed by the General Assembly.

16. That imprisonment for debt shall not be allowed except for non-payment of fines and penalties imposed for violation of law, or when a debtor refuses to deliver up his estate for the benefit of creditors, in such manner as shall be prescribed by law, or when there is strong presumption of fraud.

17. That all property in the State except such as belongs to the United States, the State of Missouri, to counties, cities or municipal subdivisions, or municipal corporations within this State, or such as is held exclusively for the interment of the bodies of deceased persons, shall be taxed in proportion to its value for all purposes for which other property, similarly situated, is taxable and the General Assembly shall have no power to exempt from taxation of any kind, whether State or municipal purposes, the property of any particular owner or class of owners.

18. That the dwelling house of each citizen shall be sacred from invasion or entry by all persons except officers of justices in the execution of a warrant as described in Section eleven of this article, or in fresh pursuit on view of a fugitive from arrest; and that the right of no citizen to keep and bear arms in defense of his home, person and property when lawfully threatened or in aid of the civil power when thereto legally summoned shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.

19. That no person elected or appointed to any office or employment of trust or profit under the laws of Missouri or any ordinance of any municipality in this State shall hold such office without personally performing the duties to the same belonging.

20. That no person who is now or may hereafter become a collector or receiver of public money or assistant or deputy of such receiver or collector, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof or under any municipality therein until he shall have accounted for and paid over all the public money for which he may be accountable.

all reference or anything resembling an invocation or prayer in that [8, 4] Preamble considering that it was no more proper to be inserted in the Preamble or the organic law than in the Preamble of the statutory law; but that was not the opinion of the majority of the Committee, and in consequence the reference is made to the Great Disposer and Creator of the universe in terms as reverent as we could

21. No person who shall hereafter be guilty of embezzling any [92] money belonging to whomsoever or of appropriating to his own use any money received by him in trust or confidence from another, as distinguished from a debt arising out of the casualties of ordinary trade and business, shall be eligible to any office of trust or profit under the laws of this State or the ordinance of any municipality therein until he shall have paid and made good any such defalcation.

22. That no private property can be taken for private use with or without compensation, unless by consent of the owner, and that whenever an attempt is made to take private property for use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and as such judicially determined without regard to any legislative assertion that the use is public.

23. That whenever private property is taken or damaged for public use, just compensation shall be made to the owner thereof and the measure of such compensation shall be the fair price or value in money of the property taken for, or a sum sufficient to balance the injury done thereto by the public use without any deduction from such price, value or compensation by reason of any real or alleged benefit to the same or other property of the owner by the proposed public use. In all cases, the owner of the property taken or injured may require that compensation be assessed by a jury and until the compensation awarded shall be paid to the owner or into court for the use of the owner, the proprietary rights of the owner shall not be divested.

24. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses against him face to face, to have process to compel the attendance of witnesses in his behalf, and a speedy trial by an impartial jury of the county.

25. That no person shall be compelled to testify against himself in a criminal cause nor shall any person after being once acquitted by a jury be again, for the same offense, put in jeopardy of life or liberty; but if the jury to which the question of his guilt or innocence is submitted, fail to render a verdict, the court before which the trial is had may in its discretion, discharge the jury and commit or bail the prisoner for trial at the next term of court, or if the state of business will permit at the same term and if judgment be arrested after verdict of guilty on a defective indictment, or if judgment on a verdict of guilty be reversed [93] for error in law, nothing herein contained shall prevent a new trial of the prisoner on a proper indictment, or according to correct principles of law.

26. That all persons shall be bailable by sufficient sureties except in capital cases when the presumption of guilt is great.

27. That bail more than sufficient to secure the appearance of the accused for trial shall not be required nor shall excessive fines be imposed, nor cruel and unusual punishment be inflicted.

28. That the privilege of the writ of *habeas corpus* shall never be suspended.

29. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

30. That the limitations imposed on the State of Missouri in common with her sister states by the Federal Constitution are cheerfully acquiesced in and so far as it is possible or becoming for the State of Missouri to enact as part of her organic law provisions which are already and by an authority superior to her own, part of the supreme law of the land, are hereby declared to be incorporated into this Constitution.

command. If any reference is made to that Being, and our dependence upon Him, we conceive that we have complied with the rules of propriety and the sentiment of every member of the Committee, at any rate in the phraseology which we have adopted.

We then come to the declaration of the existence of all political power in the people of the State, with those limitations only which are imposed by the Constitution of the United States. We did not think it necessary to enu- [8, 5] merate in terms those restrictions; they are familiar to us all I believe. It is provided by the Constitution of the United States, amongst other things, that no state shall pass an *ex post facto* law, bill of attainder or law impairing the obligation of contracts, and many others. We did not consider that it was proper directly and in terms to legislate upon those subjects; but, indeed, that consideration will more properly be adverted to when I come to the latter part of this declaration of rights. That the people are the depository of all political power subject to those limitations and that it is by no means the intention of the people of any limited government, or of such government, as has ever existed in this country—I do not mean in Missouri [8, 6] alone, but anywhere in the United States since it was first settled by Europeans—to give any government all the powers which reside in the people is, I think, too plain for argument. It is competent, Mr. President, for example, for the Parliament of Great Britain to abolish the Christian religion and establish Mohammedanism in that country by an Act of Parliament. In order to do this they must have the consent of kings, lords and commons, for that is what is necessary to the validity of an Act of Parliament. Nevertheless, if that consent be had, and the kings, lords and commons of England constitute the people of England, if that consent be had that stupenduous revolution would be accomplished. So with us, except so far as we are limited by the Constitution of [8, 7] the United States.¹ The people of Missouri

¹It is evident that this period should have been a comma.

possess all the power which any people under the sun have. Must they therefore exercise it? Must they therefore give all the power to their agents whom they appoint to administer their government? By no means. "Tis excellent to have a giant's strength, 'Tis tyrannous to use it as a giant."

The people of Missouri intend, and have always intended, to confer only a small portion of the powers inherent in them upon the various departments of the government which they establish, and it is declared in the First Section of the Bill of Rights that "only those powers of government are committed to the government established by this instrument which are ascertained and defined, and [8, 8] specially committed to some one or other of those departments, and that the remainder of those powers"—powers which I trust will never be given to any government of the civilized land, which always will be reserved to the people [as] an entity, and by no means a practical working thing—that that great reservation will remain with the people as it has remained heretofore. But for the purpose of making it quite plain, and bringing the idea prominently before the world that we are a limited government, and that we have only those powers which are given to us, we have thought it best to adopt this enumeration.

It is then declared that the main office of government is the security of life, liberty and property—the protection of those things—not protection in the [8, 9] sense in which capital is employed in thousands of industries in order to render bloated one or two in some favored locality—not protection in that sense, but equal protection to all, so that every man may sit secure under the shadow of his own vine and fig tree, and have none to make him afraid.

The 4th Article of the Bill of Rights declares that the people of the State have the inherent and inalienable right, subject to the limitations imposed by the Constitution of the United States, of amending and regulating their internal State government and police whenever, and in such manner as to them shall seem meet; that there is no power that can challenge this right. To your Committee that seemed to

be almost a truism; but I have actually, since this Convention was called, listened to some persons, & sensible [8, 10] men too, who have declared their opinion to be, that such were the fetters imposed upon us by the Constitution adopted in 1865, that unless we walked strictly in the path that was then traced for us our work would be a nullity. The Committee whose work I report were of the opinion that that matter was too plain to need argument, and only required a statement, and in deference to their views I satisfy myself with stating the proposition, & if any one is found to question it why someone of the Committee will be very apt to [refute it].¹

The next provision refers to the separation of the church and State; the complete severance that there is between the two, declaring that religious faith is a matter beyond the sphere of the government proposed by this Constitution, and [8, 11] that no religious test can be applied to any person who proposes to serve the State or by any instrumentality of the State in any part of its administration; and it also declares, after having thus secured the fullest freedom of conscience, that, if any persons and fanatics of that kind have been known before this day—that if any person under the pretense of obeying the dictates of his conscience shall be guilty of licentious immorality, or conduct subversive of the good order of society, he shall not escape the punishment & reprehension which the preservation of that good order requires by alleging, forsooth, in doing all this that he is obeying the dictates of a higher law.

The Eighth Article of the Bill of Rights which I report is the same as the 13th Article of the existing Bill of Rights [8, 12] down to the words "shall be void." Then follows in the 13th Article of the Bill of Rights, as existing in the Constitution of 1865, a proviso of a religious corporation.

The Committee whose work I report omitted the 12th Article of the present Bill of Rights, considering that it was abundantly covered by other provisions in the Bill of Rights,

¹In the MS. of the *Debates* the words "refute it" following the word "to" were crossed out.

and was amply provided for by the general scope of what was understood to be the rest of the Constitution that would be reported to this body, & therefore, that proviso was regarded as unnecessary. The Clause which constitutes the 8th Article of the Bill of Rights which I have been instructed to report is substantially the old act of *mort main*. It prevents the accumulation in dead hands or into the ecclesiastical hand, of property.

[8, 13] Mr. President, the greater part of those present in this body are lawyers, and all such will agree with me that I am correct in stating that the acts of *mort main* were passed in Great Britain to remedy an evil which was admitted to be of large proportions long before the reign of Henry VIII: long before the Reformation effected by Luther, and before, indeed, the incipient reformation commenced by Wickliffe; so that it will not do to say that this 8th Section is a discrimination against the oldest form of Christianity—the Catholic Church—for, whilst England was yet a Catholic country, acknowledging the supremacy of the Pope, & in every way a member of the Catholic Church, these *mort main* acts were passed and had become the law of the land by the continued action of the kings, lords and commons of England for [8, 14] the retroversion or [of] ecclesiastical usurpations. Moreover, the exact terms in which this Article is framed were taken from the Constitution of Maryland, and have been a part of the Constitution of Maryland ever since Maryland was a state, and even whilst she was a colony; and it is instructive, Mr. President, to remember under what circumstances and by whom Maryland was colonized. Lord Baltimore was the lord proprietor; he was a Catholic and a great portion of those who settled in Maryland were Catholics & at the time of the revolution a majority of all those people, from Charles Carroll of Carolton, [sic] were of that faith.

I will not undertake to say what proportion of the inhabitants of Maryland are of that persuasion now. It is my native state, and I left it thirty-six years ago—but [8, 15] a large proportion, if not a majority, are Catholics

to this day and this provision remains part of her Constitution and is almost the only article which was reenacted *ipsissimis verbis*, by the Convention which met there in 1867.

I do not intend to mention any names, Mr. President, but I have conversed with some of the most enlightened, and I may add, some of the most zealous Catholics in St. Louis on this subject, and though I know that amongst the clergy there may be some difference of opinion or perhaps the clergy of the Catholic Church may be generally opposed to a provision of this kind, a large and most respectable portion of the laity of their church are in favor of such a provision as this which has been reported.

The IXth Section declares "that all elections shall be free [8, 16] and open." It was at first contemplated by the Committee to say something more upon the subject of elections, but it was deemed more appropriate not to do it, in deference to the fact that there was a Committee which was supposed to have that subject more particularly within its charge and that we should not attempt to encroach upon the province [of] that Committee or to forestall its action.

The next provision—the 10th is, "that Courts of Justice shall be open to every person, and certain remedy be afforded to every person, property or character; that right and justice shall be administered without sale, denial or delay, and that the existence of a wrong for which the law affords no redress is a scandal to government."

That, Mr. President, is substantially, with the exception of the sentiment contained [8, 17] in the last sentence, the old provision, time honored, that was rung [*sic*] by the mailed Barons from John at Runnymede, that provision of *magna charta* the great charter of the liberties of England and of America. It would be a waste of time if I detain the Convention with any remarks in support of a provision which nobody I apprehend will attempt to impeach.

The 11th Article provides for the security of all persons in their persons, papers, houses and effects, against arbitrary seizures, and searches, and declare that no entry shall be

made into any house against the will of the owner, unless by an officer armed with a warrant issued upon probable cause shown by oath or affirmation and that in all such cases the person or thing to be seized and the place to be searched [8, 18] shall be described as nearly as may be.

The evil, Mr. President, of arbitrary seizures under general warrants is traditional. It has been known in England for a time long antecedent to the great struggle with which the name of Wilkes is connected in which he redeemed a very doubtful character by being a champion of sacred principle. But, in our own country, and I intend to be very brief, sir, and I do not intend to open a sore—in our own country and within a comparatively recent period we have known quite enough of the evils of arbitrary arrests, and arbitrary seizures and searches, to perceive the wisdom, the necessity of erecting as many barriers against that abuse as it is possible for us to do.

It is impossible however, Mr. President, that any gentle- [8, 19] man should desire any enforcement of that view, I am satisfied that so you, say all.

The 12th Section declares that for an indictable offense no person shall be proceeded against criminally by information except in cases arising in the land or naval service or in the militia [*sic*] in time of war or when the court directs an officer to be tried for oppression or malfeasance in office.

There is no danger of this power, given to a court, of its being abused because anything looking to oppression or like an act of oppression on the part of the court would be so certainly met by recalcitration on the part of the jury that it would defeat the object which an oppressive judge might have at heart and unless he be void of common sense he will perceive in order to avail himself of any [8, 20] useful purpose of the privilege here given that he must exercise it very discreetly.

It may however some time enable the court to direct the summary trial of an unworthy official and the prompt punishment which may be demanded by the necessities of the public good.

The 13th Section provides that no conviction shall work corruption of blood, no conviction for any offense. We did not enumerate the causes. The idea is one as is the case with several others here, to which we were indebted to the suggestions made by the member from Cooper (Mr. Adams) and I think, although I trust that the youngest of us will never live to hear of another trial for treason, I think that in point of principle, the Article declares a most healthful provision. It is declared [8, 21] however, that the exemption of the estate of an offender from forfeiture shall not extend to such fines as may be imposed by law or by putting on the estate of the offender all the costs of the prosecution which may result in his conviction. That was rather an exclusion of the conclusion, than a denial of anything was supposed to be within the view of the gentleman who suggested the amendment which we have adopted.

The 14th Section provides for the freedom of speech and the press in the same terms substantially that are found in the old Constitution and the 15th Section declares that no act retrospective in its operation shall be passed by the General Assembly. Those are familiar topics and need no illustration.

[8, 22] The 16th Section perhaps may demand a passing notice. It is "that imprisonment for debt shall not exist in the State of Missouri, except for the non-payment of fines and penalties imposed for violations of law,"—so far it is the law at present—"or when a debtor refuses to deliver up his estate for the benefit of creditors, in such manner as shall be prescribed by law, or when there is a strong presumption of fraud."

Now the idea contained in that clause of the Article is to be found in the constitutions of several other states, and it was the opinion of the Committee that it was a just provision. I have known instances, Mr. President, where a worthless fellow who made no provision for the support of his family, whose [8, 23] wife was obliged to slave and whose children were obliged to beg who sported a diamond pin or a diamond ring of which the market value was thousands of

dollars, but which no constable or no sheriff could touch; I say that fellow should go to jail until he gives up these ornaments for the support of his family and the payment of his debts—I ask pardon when I say that “I say so”—the Committee were of that opinion and instructed me to say so.

The 17th Section is substantially that all property of a public nature with the addition of another class of property which is devoted exclusively to public purposes shall be exempt from taxation and that all other property shall be taxed in proportion to its value without exemption for State [8, 24] and county purposes. By the operation of that provision we avoid the absurdity of taking money with one hand from public property in order to return it with the other for the keeping up of public institutions, and therefore the property of the State, the property of every municipal subdivision of the State, including of course, school districts, school townships, will be exempt from taxation; also cemeteries used exclusively for the interment of the bodies of deceased persons.

That last is a public use, when a man dies his remains are an offense to the survivors and must either be put in the ground, burned and dissipated in the air, or in some other manner of which the experience of mankind does not approve, disposed of; therefore the interment of the bodies of the dead, and I cannot help thinking that in [8, 25] the interment or putting of men into the ground so that they may mingle with the dust from which they were made, is the most appropriate mode of disposing of our mortal remains after the spirit is out of them—I say that the providing of a place for the reception of those remains is a high sanitary purpose, and may be looked upon as a public purpose. There is, I believe, except the Potter’s Field, no public burying ground in Missouri. At any rate there is not in our county, I cannot speak of the arrangements in other localities. The taste and the piety of the survivors seeks to erect some memorial of the dead on the spot where their remains lie buried, and they wish to preserve therefore, the ownership of that spot in order that what [8, 26] they there erect may remain

undisturbed; but if there be any sentiment which deserves indulgence it is the one to which I have alluded. If there be any purpose which can be called a public one I think that purpose is answered by such a cemetery as we establish for the interment of the bodies of deceased persons, and therefore I think that the exemption of cemeteries from taxation has well justified the saying that they come within the reasons of the rule if not within the letter of the rule which exempts public property from taxation. But, all other property is declared to be subject to taxation.

Now upon this subject, Mr. President, the Committee was not unanimous. A majority directed me to report this Article, and a very respectable minority had their doubts about it, and thought that the property of churches should be included in the exemption from taxation; but I ask all such gentlemen, all who think that such an exemption should exist, to reflect upon this most obvious consideration. If you exempt any part of the property of the community from taxation you impose upon what remains after that exemption is made, a burden of government, and you necessarily increase the burdens of government upon the remainder of the property, by exempting any portion of it, so that in fact you do put the burden of supporting that church in a greater or less degree, upon the property which is held for secular uses, upon the secular property.

Now, to do that is in [8, 28] violation of a principle of our Constitution which has been there since 1820.

It does compel every person whose taxes are increased by the exemption of the church property to pay an additional tax which in effect goes to the support of the church.

Now, Mr. President, we ought to be, in the matter of our organic law, sedulous to stand upon principle, and I ask any gentleman to put this question to himself, if you can withdraw any portion of the property of a community from taxation, that property being private; if you can exempt the property of the churches from taxation, & if you must not necessarily thereby increase the taxes upon secular property. Whether you do this to a large degree or to a

small degree is nothing to the question as far as the principle [8, 29] is concerned, the principle is the same; whether you devote $\frac{1}{2}$ of the property of the State to the maintenance of an ecclesiastical establishment and put the entire burden upon the other half, including the cost of maintaining and providing palaces and hierarchical dignitaries for the half that is appropriated to ecclesiastical uses—the principle is the same as if you only withdrew from the taxation for a general support of the government one ten thousandth part of the property of the State—the principle I say is the same; the degree differs indeed very widely but the principle is what contains the seminal element of mischief, and it is that against which we ought to concur. Now any gentleman who will consider it, will see that there is really no distinction in prin- [8, 30] ciple between exempting any property, no matter how small the valuation belonging to a church from taxation, and appropriating tens of thousands of dollars annually from the public treasury, from taxes first collected and then paid over to cardinals, archbishops, and other hierarchical dignitaries for the support of their church, for the building of temples and palaces—temples in which they may worship, and palaces in which they may dwell. The principle I say is the same. The degree is very different and because the degree is different & because the pressure of the evil is felt to be but light, we are indifferent for the most part & inclined to condone the evil. It ought to be otherwise.

We ought to be now as [8, 31] sensitive to the approach of evil as Edmund Burke declared that the colonies were in 1774, when he said they argued misgovernment at a distance & sniffed the approach of tyranny in every tainted breeze.

We, Mr. President, ought not to allow a single tainted breath to visit our nostrils from this Preamble and we can only do that by standing punctiliously on the ground of impartiality.

The next provision is that the dwelling house of every citizen shall be sacred from invasion of [or] entry by all

persons except officers of justice in the execution of a warrant as described by Section 11 or in fresh pursuit of a fugitive from justice or arrest.

It may be somewhat new to some of the members of the Convention—I know it was to me [8, 32] when my attention was first called to it—that in the charter of the city of St. Louis a provision has found its way which allows a policeman to go in at any hour in the day into my house. He may go in when he pleases.

Mr. Mortelle [Mortell]: No.

Mr. Gantt: It is in the charter of the city of St. Louis, and I say that thing ought to be impossible; it is against the law and if some policeman is shot on the threshold by some indignant citizen, then perhaps the law will be vindicated by the court declaring that under the legislative enactment or provision or charter which authorizes this violation of the sanctity of the home of a citizen, was a usurpation and conferred no immunity to the misguided man who assumed to be governed by it. Then this provision goes on and declares, that the [8, 33] right of every citizen to bear arms in support of his house, his person, and his property, when these are unlawfully threatened, shall never be questioned, and that he shall also have the right to bear arms when he is summoned legally or under authority of law to aid the civil processes or to defend the State. There will be no difference of opinion I think upon that subject; but then the declaration is distinctly made, Mr. President, that nothing contained in this provision shall be construed to sanction or justify the wearing of concealed weapons. I need not call the attention of my brethren of the bar to the fact that in one, at least, of the states of the Union, the decision was made that a provision in the Constitution declaring that the right of any citizen to bear arms shall not be questioned, prohibited the [8, 34] Legislature from preventing the wearing of concealed weapons. The wearing of concealed weapons is a practice which I presume meets with the general reprobation of all thinking men. It is a practice which cannot be too severely condemned.

It is a practice which is fraught with the most incalculable evil.

The Committee desired me to say in reference to this provision that they gave no sanction to the idea which is sometimes entertained, not however by our Supreme Court, that the right to bear arms shall not [sic] include the right to carry a pistol in the pocket or a bowie knife under the belt.

The 19th Section declares in substance that no person shall be elected or appointed to an office and farm it out; that he must perform the duties of it personally. Of course that does not [8, 35] mean, and cannot by any sensible interpretation of it mean, that he must perform all the duties, and that he may not have an assistant or deputy, but that he shall, as a matter of fact, be himself the head man of his office.

The 20th and 21st provisions are respectively that no one who has been an unfaithful depositor of the public money or any one who has embezzled private funds or committed a breach of trust and not made good the defalcation, that such a person is not the proper individual to make laws for the State of Missouri, or to be the holder of an office of trust or profit within its borders. And it does seem to me, Mr. President, that that is a proposition so plain that it will find few, I believe none, who will gainsay it.

[8, 36] The 22nd and 23rd provisions are important, and here again, I wish to declare the obligations of the Committee to the assistance received from the gentleman from Cooper (Mr. Adams). They declare that private property shall not be taken for private use without the consent of the owner. There shall be no talk about compensation—no talk about giving the value of the property taken to the owner. If it is for a private use the consent of the owner is the indispensable condition to its being taken, and that it shall not be competent for the General Assembly if some one covets the vineyard of his neighbor to declare that that vineyard may be taken and used as the vineyard of the trespasser and “that it is hereby devoted to public use,”

but that in every such case the question [8, 37] whether the use declared be really a public one, shall be a judicial question to be determined by a court of competent jurisdiction. If the court be of the opinion—if the court shall declare as a matter of law that it is not a public use, but that it is a private use, then, as many declarations as there are lines in a legislative enactment will not mend the matter, and the legislative assertion that black is white and that 2 and 2 make 5, will be unavailing.

The 23rd Section which respects the taking of private property for public use also, makes a change in the existing provision of the organic law. One of the greatest abuses which we in St. Louis have experienced, has been the taking of private property for a use alleged to¹ be public, and which perhaps was public but when the question of compensation came to be considered, we are gravely told by way of being compensated, “Why we have taken half your lot but you are better off now than you were before the lot was taken, the half is worth more than the whole in effect. The part which is taken was worth \$500 and the balance is improved to the extent of \$1000, pay us the odd \$500.” That is what has been done to us in St. Louis and we have got very tired of it. I am glad to learn that something of the kind, though perhaps not of the same enormity, has been practiced on the people in other parts of the State. I am glad to hear it I say, because being practiced on them it touches their sympathies and brings them up to help us to overthrow an evil. [8, 38] Therefore it is declared by this provision that when private property be taken for a use which is really public, compensation shall be made to the owner of the property taken, in money and that compensation shall be the fair price or value of the things taken and from that there shall be no diminution or abatement on account of any benefit real or alleged to the other property of the owner by reason of the proposed public use. That shuts the door to all schemes of spoliation of that nature.

¹A new page of MS. of *Debates* begins here but it bears no number and is followed by page 38.

We then check and arrest the most enormous abuse & we prevent & this is the important matter, we prevent a matter which does not concern the public use from being carried on by private interests under the specious guise and name of use of the public, and accompanied by, and consisting in from first to last [8, 39] an act of confiscation against defenseless owners of property in the neighborhood of the proposed improvement. Likewise, it is declared that when property is damaged by a public use, not taken but damaged, compensation shall be made to the owner.

I would suppose a case, Mr. President, that A has upon a small street a block of buildings. He has bought the land, he has built up houses to rent as residences, but a railroad is laid down along that street along which there are several daily trains. These houses will be left to the owls and bats as soon as their present lease is expired. No family will go into those houses. They remain untouched by public improvement & their value is ruined. That, this provision declares shall not be done without compensation being made to [8, 40] the proprietor by the corporation who desires the enjoyment of the franchise, which perhaps makes him a beggar.

It is further provided that in every case where private property is taken for public use, the owner of the property taken, or the claimant of the damage inflicted by public use, may require compensation to be assessed by a jury, and until that compensation which is assessed, be paid into court for the use of the owner, the proprietary rights of the owner shall not be divested; that is nothing more than simple justice.

About twenty years ago, Mr. President, the people of this State, I think lost their heads somewhat in a desire to start in the race of what was called "public improvement" and they gave privileges and incurred liabilities [8, 41] ties which need no illustration now & no argument now to show that they were ruinous and that the course then taken was most unwise, and that it would be worth millions and millions of dollars to the people of the State could they retrace the steps thus unfortunately taken. It is too late

to retrace them. It is not too late to stop short of them. We have had the edge of the precipice; we need not plunge over into the abyss.

The 24th Section is, that in all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation, and to have a copy thereof, to meet the witnesses against him face to face; to have compulsory process for the attend [8, 42] -ance of witnesses in his behalf and a speedy trial by an impartial jury of the county.

An old familiar law and a declaration of familiar rights that needs no illustration now.

The 25th Article—"That no one shall be compelled to testify against himself in a criminal cause, and that no one shall be twice put in jeopardy of life or liberty for the same offense."

That also is familiar; and in order to clear up a question which has been very recently decided by the courts in the different states, it is here declared, not only if the jury is discharged at the discretion of the court, being unable to make a verdict, the prisoner may be tried at a subsequent term; but that if there be a verdict [8, 43] of guilty on a defective indictment, & judgment be arrested, that then, as well as in the case of the reversal of judgment upon a verdict of guilty, that in either of these cases the prisoner may be tried again.

Now, Mr. President, I have no doubt that such is the law, but I am informed by some of the members of the Committee more familiar with criminal practice than I am, that in some of the states it has been held that arrested judgment after a verdict of guilty worked a substantial acquittance of the charge in favor of the prisoner. The matter has been decided variously and it was thought best to decide it in such manner as that there could be no mistake about it, and thus embody it in the 25th Section of the Bill of Rights.

[8, 44] The 26th Section declares that all persons shall be bailable by sufficient sureties, except in capital cases, where the presumption of guilt is great.

My brethren will observe that I have omitted a clause in the Bill of Rights in the present Constitution. I was instructed to make that omission because it was a superfluous thing. The present Constitution reads "Where the proof is evident or the presumption great"—Now if we refuse bail in capital cases where the presumption is great we must necessarily refuse it where the proof is manifest; & therefore, it was quite enough to say "where the presumption is great" and there stop. I was instructed to report the Article in this form and it has my approval.

[8, 45] The 27th Section is that bail more than sufficient to secure the attendance of the accused for trial shall not be required nor shall excessive fines be imposed nor cruel or unusual punishments be inflicted. The only respect in which that differs from the existing Article is, that in place of the words "excessive bail shall not be required" it is declared. What is the object of bail; to secure the attendance of the accused for trial and if that object is attained, all is.

The 28th Section provides that the privilege of the writ of *habeas corpus* shall never be suspended.

Mr. President, fifteen years ago any one who would have introduced a provision of this kind would have been thought almost as superfluous as one who [8, 46] should rise at this day and say that the law of gravitation shall not be suspended. I do not believe fifteen years ago it entered into the minds of any gentleman who was at that time old enough to have formed an opinion on the subject & to have reflected upon it, that it was possible that in these United States the privilege of the writ of *habeas corpus* could ever be suspended except in the actual presence of the armed hand in the front that law martial which supersedes the civil law of necessity; and yet, sir, within those fifteen years we have seen violations of the privilege of personal liberty which have made the citizens of European governments, & especially of the British government, stand half incredulously half wonderingly. We have seen, too, such abuse in the way of suspension of that high privilege that we think [8, 47] it is

more wise to say that it shall not be suspended upon any pretext at all.

Some gentlemen will say in case this country is the seat of war, what then? Why when it is the seat of war, the laws will be silent in the presence of arms and the law will then be for the time abrogated, as surely as the heat of summer is abrogated by the cold of winter; but when the storm of war passes, then the privilege will remain, and as soon as the armed force is withdrawn then it will be capable of being invoked for the protection of the citizen.

I trust never again to see a law by virtue of which this privilege is abrogated, suspended for one moment.

I am in danger of declama [8, 48] -tion if I go into the consideration of this subject. I wish to speak soberly but I wish to declare my hearty concurrence with the instructions of the Committee and to urge their recommendation upon the serious attention of the Convention in regard to the inestimable privilege of the writ of *habeas corpus*.

The 29th Article is one about which there will be little difficulty. "The military shall always be in strict subordination to the civil power and that no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law."

Mr. President, I was reading a little while ago a history of England in which the Commons of England asserted their freedom against the usurpation [8, 49] of Charles I. They had succeeded in overthrowing the power of the king. The power of Parliament was supreme in the nation and it may be said that at that time there was not only a Parliamentary government but that there was a government by the army, for the army was incapable [*sic*] of supreme power. With Cromwell at its head there was nothing that could withstand its rule in the kingdom. It is a most interesting incident that at that time a citizen of London brought a memorial before Parliament setting forth that he had furnished arms & provisions to the Parliamentary forces that a committee of Parliament had acknowledged the debt

which the Parliament owed him, and asked for its payment. It seems that they had acknowl- [8, 50] edged the debt but they had made no provision for its payment and he urged them, to be particularly speedy in making provision for its payment, for he said, "I am actually held under arrest for debt by a malignant," (which meant one of the opposite faction, a royalist,) "to whom I owe about one-third of that which the Parliament owes me; and I ask for the means of paying that man in order that I may be discharged from imprisonment."

Mr. President, I am afraid if any such bill as that had been brought before Congress during our late civil war that a "malignant" would have been sent to Fort LaFayette for wanting what was not his own. And yet, he had a right to ask for his debts—I say Fort LaFayette—he [8, 51] might have been sent to a place called "Davy Jones Locker." But Parliament took the matter into consideration and did not order his release from arrest & after a very tedious process they paid him the money and then he paid his debt. I do think there is more instruction in the sobriety of that proceeding, in the case which the Commons of England showed for the rights of a citizen, than in the record of the incidents of the battles of Nasby, Edgehill or Marston Moore. It speaks a language which is not to be mistaken. It made an impression upon me which I shall certainly retain to the end of my days and I think if I were a much younger man it would remain with me till I lost all recollection.

Now they have no such [8, 52] provision in their constitution, in fact they have no written constitution properly speaking. They have a Declaration of Rights, but they have no written constitution in England, and have not any organic law, which it would not be competent for the Parliament of England to set aside by an edict, and yet they refused to set aside or proscribe the privileges of a citizen although tyrannously exerted, although thus invidiously put in force against a man who was recommended to them as a loyal citizen. They refused thus to discriminate in

favor of one of their own party against one of the opposite faction, but with an honesty & an adherence to principle which is worthy of all praise & all imitation they paid their debt and left the merchant of London to pay his.

[8, 53] Now, Mr. President, the last provision is that the limitation imposed on the State of Missouri in common with her sister states by the Federal Constitution, are cheerfully acquiesced in, and so far as it is possible or becoming for the State of Missouri to enact as part of her organic law, provisions which are already, and by an authority superior to her own, part of the supreme law of the land, are hereby declared to be incorporated in this Constitution.

We thought, Mr. President, that it was better to put this matter in this shape than to enact or propose for enactment as if we were the discoverers of any principle in statesmanship, that the State should not pass a bill of attainder, that it should not pass an *ex post facto* law, that [8, 54] it should not pass a law impairing the obligation of contracts, that it should not coin money and emit bills of credit &c, for all these things we are prohibited from doing. We cannot do that then to any purpose. If we go through the bare form of so declaring, we are simply stultifying ourselves and doing a vain thing. We are forbidden from doing it by the supreme law of the land, and if we insert them as original provisions in our Constitution, the inference might be that we did not know that prohibition was contained elsewhere. We preferred to make it quite plain to all who may read this Constitution, whether clerical or laity, that these provisions rest for their sanction upon the Constitution of the United States, and that we were but obeying [8, 55] that Constitution as loyal members of the American Union. We do declare that so far as is becoming or possible we adopt them, and we express our approval and acceptance of them, and admit their obligations. That, we considered to be the most proper form in which our acceptance of these provisions could be qualified and now, Mr. President, having presented this report and explained perhaps un-

necessarily, the considerations which governed us, in its preparation, I commit it to the Convention.

[8, 56] Mr. Switzler: I suppose, Mr. President, that all discussion of the report made by the Committee is now out of order, and that under the 51st Rule indeed, the discussion which we have heard is strictly out of order; therefore I move you, sir, that the report be printed and be referred to the Committee of the Whole.

I believe we have a rule, Mr. President, already adopted under which the report is to be printed without a motion—100 copies, I think is the rule. Am I correct in the announcement that we have a rule by which it can be printed?

The President: I so understand it.

Mr. Switzler: Then the report will be printed under the rule and referred to the Committee of the Whole. That is my motion.

[8, 57] Mr. Letcher: Mr. President, I ask the gentleman from Boone to modify his motion. He asks for the printing of this report. I think it is best to fix the time when the Convention will go into Committee of the Whole in order to consider the report.

Mr. Switzler: Well, sir, I do not know whether a motion in that form would be in order. I move therefore if it be in order, that it be referred to the Committee of the Whole at 9 o'clock on Monday morning or Tuesday morning as suggested.

The President: The first motion is to print?

Mr. Switzler: Yes, sir, the motion is made to print. I was informed however afterwards that it was needless to make it because we have a rule already, under which it will be printed. Therefore my motion is that the report be referred [8, 58] to the Committee of the Whole & that the Convention resolve itself into Committee of the Whole at 10 o'clock Tuesday morning.

Mr. Cotty: If the gentleman will withdraw that motion just for a moment, at the suggestion of two other members of the Committee I have a little matter which I think proper to introduce here.