SCRAP BOOK

ON

LAW AND POLITICS, MEN AND TIMES.

BY

GEORGE ROBERTSON, L. L. D.

MINIMA PARS SUI.

"Non sibe sed Pratriæ."

"Non ego ventosæ venor suffragia Plebis."

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DEDICATION.

THE AUTHOR TO HIS CHILDREN:—

Hoping that it may be a safe guide to you and your's, in time to come, your Father affectionately dedicates to you and, through you, to your descendants, this humble volume of his occasional effusions, as a faithful memorial of principles and conduct which he hopes that you will approve and try to illustrate.

"Avise le fin"—
"Soyez ferme."

PREFACE.

WISHING to exhibit a sample of his capabilities as Printer and Binder, recently established in the city of Lexington, Ky., the Publisher, understanding that the Hon. GEORGE ROBERTSON retained copies of many of his miscellaneous addresses, the publication of which, in a more permanent form, had been desired by many friends, obtained his consent to publish such of them as constitute this volume.

In making the selection, variety, as well as utility, has been consulted. Some of the selected articles are on constitutional principles of vital importance—some on interesting questions of legislation and political economy—some on general jurisprudence—and others literary, biographic, and historic.

The author, not desiring such a publication, during his life, yielded his consent to it now, as he informed the Publisher, chiefly for the purpose of preserving fugitive writings, which he desires to save and transmit to his posterity; and he is, therefore, permitted to dedicate to his children—a volume which the Publisher hopes, that not only they, but the Public, and especially of Kentucky, will find to contain sound principles, interesting facts, and wholesome counsels.

The mechanical execution is not, altogether, as satisfactory as was desired and expected. Typographical errors have resulted from accident and haste. But, while most of these are too minute for a special reference to them, only a few pervert or obscure the sense. One of the later may be found in the fourth line of the first page, where "GOVERNOR" is misprinted for LIEUT.-GOVERNOR. Matter also, which the larger and more open style of ordinary book print, would have extended to at least 650 pages, having been compressed into only 402 pages, the volume is neither as readable, nor as attractive to the taste as it might, at no greater cost, have been made. But, with all its faults, it is submitted to a generous public, who will be concerned more for the substance than the form—the body than the drapery.

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PRELECTION.

At the annual election in August, 1816, George Madison was elected Governor, and Gabriel Slaughter Lieutenant Governor of Kentucky. Madison took the official oath, but died in October, 1816, before he had entered on the duties of his office, which having devolved, under the constitution, on the Governor elect, Slaughter undertook the performance of them, and appointed John Pope Secretary of State. Mr. Pope, as a prominent politician, had become obnoxious to the prejudices of the dominant party, under the banner of his former rival, Henry Clay. That party manifested general and violent dissatisfaction at the appointment of Pope, who they feared would control the State administration and dispense its executive patronage. To get clear of him, some of his leading opponents proposed the election of a new Governor to fill the office during the residue of the term for which Madison had been elected; and that purpose engaged the attention and agitated the passions of the people of Kentucky with extraordinary fervor for more than a year.

At the first legislative session succeeding Madison's death, on the 27th day of January, 1817, Mr. J. Cabell Breckinridge, a member of the House of Representatives, submitted the following resolution:

"*Resolved*, That the General Assembly of the Commonwealth of Kentucky provide by law for electing a Governor to fill the vacancy occasioned by the death of our late Governor."

For that resolution, after elaborate discussion, in committee of the whole, the following was substituted:

"*Resolved by the General Assembly of the Commonwealth of Kentucky*, That the present Lieutenant Governor is entitled to hold, by constitutional right, the office of Governor during the residue of the term for which his late Excellency, *George Madison* was elected, and that no provision can be made by law for holding an election to supply the vacancy."

On the 30th of January, 1817, the House adopted the substitute by the following vote:

Yeas—Messrs. Barret, Birney, Blackburn, Booker, Bowman, Caldwell, Carson, Cook, Cotton, Cox, Cummins, Cunningham, Davidson, Davis, Dollerhide, Duncan, (of Lincoln) Elleston, Ewing, Ford, Gaither, Garrison, Gilmore, Given, Goode, Grant, Green, Grundy, Harrison, Hawkins, Helm, Holeman, Hornbeck, H. Jones, Logan, Love, Marshall, Mercer, Mills, Moorman, Monroe, McConnell, McHatton, McMahan, McMillan, Reeves, Robertson, Rowan, Rudd, Shepherd, Slaughter, Spilman, S. Stevenson, Stapp, P. Stevenson, Todd, Green, Underwood, Ward, P. White, Weir, Wickliffe, Woods, and Yantis—63.

Nays—Messrs. Speaker, (J. J. Crittenden) Armstrong, Barbour, Breckinridge, Clark, Coleman, Dallam, Davenport, Duncan, (of Daviess,) Fleming, Gaines, Hart, Hickman, Hopson, Hunter, Jamison, Irvine, J. Jones, Lackey, Metcalfe, Owings, Parker, Rice, South, Trigg, Turner, Wall, and W. White—28.

On the same day the Senate concurred by the following vote:

Yeas—Messrs. Speaker, (Ed. Bullock, of Fayette,) Bartlet, Bowmar, Chapline, Churchill, Ewing, Faulkner, Griffin, J. Garrard, W. Garrard, Hillyer, Hardin, Jones, Lancaster, Mason, Owens, Perrin, Sebree, Sharp, Simrall, Smith, Thompson, K. Taylor, Worthington, Wickliffe, Wood, Waide, Welch, and Wilson—29.

Nays—Messrs. Chambers, South, and Yancy—3.

To carry the question at the August election in 1817, the defeated party effected a thorough organization, brought out candidates in all the counties, and agitated the State as it had never been moved before. At that election the following persons were elected members of the House of Representatives:

Nathan Gaither and Cyrus Walker, of Adair; Anach Dawson, of Allen; Cave Johnson, of Boone; John Porter, of Butler; Thomas Fletcher, of Bath; Joseph R. Underwood and Hardin Davis, of Barren; William Jewell, of Bullitt; Edward R. Chew, of Breckinridge; Larkin Anderson, of Bracken; John L. Hickman, George W. Baylor, and Samuel G. Mitchell, of Bourbon; Jessee Coffee, of Casey; Alfred Sanford, of Campbell; John Mercer, of Caldwell; William N. Lane and John Donaldson, of Christian; James Gholson, of Cumberland; John Bates, of Clay; Wm. Glenn, of Daviess; Stephen Trigg, of Estill; Joseph C. Breckinridge, John Parker, and Thomas T. Barr, of Fayette; Alexander Lackey, of Floyd; William P. Fleming and Michael Cassedy, of Fleming; Charles S. Todd and George M. Bibb, of Franklin; John Cunningham, of Grayson; Thompson Ward, of Greenup; Robert P. Letcher and James Spilman, of Garrard; Robert Barret and John Edmonson, of Green; William O. Butler, of Gallatin; Aaron Hart and Benjamin Shacklett, of Hardin; William K. Wall and John Givens, of Harrison; David White and Charles H. Allen, of Henry; Fortunatus F. Dulany, of Union and Henderson; Wm. R. Weir, of Hopkins; Richard Barbour and James Hunter, of Jefferson; William Walker, of Jessamine; Joseph Parsons, of Knox; Benjamin Duncan and Samuel Shackleford, of Lincoln; Boanerges Roberts and Presley N. O'Bannon, of Logan; Christopher Haynes, of Livingston; Thomas Marshall, of Lewis; John Adair and John B. Thompson, of Mercer; Samuel South, John Tribble, and Archibald Woods, of Madison; Duvall Payne and Walker Reed, of Mason; Moses Wickliffe, of Muhlenburg; Eli Shortridge and John Jamison, of Montgomery; John Rowan, Samuel T. Beall, and Henry Cotton, Nelson; Thomas Metcalfe, Nicholas; James Johnson, of Ohio; John Dollerhide and Joseph Porter, Pulaski; William Clark, of Pendleton; William Smith, of Rockcastle; John T. Johnson and Garrett Wall, of Scott; John Logan, George B. Knight, and Berryman P. Dupuy, of Shelby; Willis Field and William S. Hunter, of Woodford; Solomon P. Sharp and Cornelius Turner, of Warren; Walter Emmerson, of Wayne; Fleming Robinson, H. H. Bayne, and Richard Cocke, of Washington.

And the following members constituted the Senate of Kentucky:

Anthony Bartlett, of Henry county; Harman Bowmar, of Woodford; Jesse Bledsoe, of Bourbon; Wm. T. Barry, of Fayette; John L. Bridges, of Mercer; Samuel Churchill, of Jefferson and Bullitt; James Crutcher, of Hardin; Joseph Eve, of Knox and Clay; John Faulkner, of Garrard; Dickson Given, Livingston and Caldwell; Thomas G. Harrison, of Washington; James Hillyer, Henderson, Ohio, and Daviess; John Griffin, Pulaski and Casey; Wm. Hardin, of Breckinridge, Grayson, and Butler; Francis Johnson, of Warren and Allen; Humphrey Jones, of Madison; James Mason, of Montgomery and Estill; Wm. Owens, of Green and Adair; James Parks, of Fleming and Nicholas; Josephus Perrin, of Harrison and Bracken; James Simrall, of Shelby; Ben. South, of Bath, Floyd, and Greenup; Richard Southgate, of Campbell, Pendleton, and Boone; Richard Taylor, of Franklin and Gallatin; Hubbard Taylor, of Clarke; David Thompson, of Scott; Joseph Welch, of Lincoln; Martin H. Wickliffe, of Nelson; Wm. Wood, of Cumberland and Wayne; Wm. Worthington, of Muhlenburg, Hopkins and Union; Joel Yancy, of Barren.

On the 2d of December, 1817, upon the motion of Mr. Reed, a select committee, consisting of Messrs. Baylor, Bibb, Sharp, White, J. T. Johnson, Fletcher, Reed and Shortridge, was appointed to prepare a bill for a new election; on the 4th the committee reported a bill providing for an election of a Governor to supply the vacancy occasioned by Madison's death, and *also for an election of a Lieutenant*

Governor for the same fractional term; which bill passed the house on the 15th of the same month by the following vote:

Yeas—Messrs. Speaker, (Breckinridge), Allen, Anderson, Barbour, Barr, Baylor, Bibb, Butler, Cassedy, Chew, Clark, Davis, Dawson, Donaldson, Dulany, W. Emmerson, Field, Fleming, Fletcher, Gholson, Givens, Glenn, Haynes, Hickman, Hopson, J. Hunter, W. S. Hunter, Jamison, C. Johnson, J. Johnson, Parsons, Patton, Payne, J. Porter, Reed, Roberts, Sanford, Sharp, Shortridge, South, Todd, Tribble, Trigg, Turner, W. Wall, G. Wall, Ward, White, and Weir—56.

Nays—Messrs. Adair, Barret, Bates, Bayne, Beall, Cocke, Coffee, Cotton, Cunningham, Duncan, J. Emmerson, Gaither, Hart, Jewell, Knight, Letcher, Marshall, Mercer, J. Porter, Robinson, Rowan, Shacklett, Shackelford, Spilman, Smith, Thompson, Underwood, C. Walker, Wickliffe, and Woods—30.

But, on the 18th of the same month, the Senate refused to order the bill to be read a second time, and thus defeated it by the following vote.

On the question, shall the bill be read a second time?—

Yeas—Messrs. Barry, Bledsoe, Bowmar, Chambers, Given, Johnson, Parks, Perrin, South, Southgate, H. Taylor, Thompson, Wood, and Young—14.

Nays—Messrs. Speaker, (R. Ewing,) Bridges, Crutcher, Eve, Faulkner, Griffin, Hardin, Harrison, Hillyer, Jones, Owens, Simrall, R. Taylor, Welch, Wickliffe, Wilson, and Worthington—18.

When the canvass for 1817 began, it was believed that such a torrent of popular sentiment for a new election had been gotten up as to leave scarcely a hope of arresting its progress or diverting its course. But the leading men who believed that the constitution would be violated and Slaughter's rights outraged by a new election, determined to resist it to the utmost. It became an all-absorbing topic, and no subject ever produced more intense or pervading excitement in Kentucky. At the request of some friends at Frankfort, Mr. Robertson, then just elected to Congress from the Garrard district, before he was 26 years old, wrote the following constitutional argument, signed "A Kentuckian." Those friends, though it was written on the spur of the occasion, thought fit to publish it in a pamphlet, entitled, "*The Constitutionalist,* by a Kentuckian," and circulated it extensively through the State. It was, at the time, supposed to have had a very great influence on the public mind, and to have contributed, more than any other means, to that recoil in the popular sentiment which resulted in an abandonment of the project of a new election by act of assembly. A review of the scenes of that year would be interesting and rather profitable to all who desire to understand the history of Kentucky measures and men.

TO THE PEOPLE OF KENTUCKY.

An humble and obscure fellow-citizen feels it his duty to address you on a subject which has become interesting to us all; and one which, as men possessing personal rights, and as citizens duly appreciating our civil and political privileges, it is equally our duty to investigate impartially and deliberately, and our interest to decide correctly and independently. Since the universally lamented death of our late venerable Chief Magistrate, the question has frequently presented itself to every thinking mind, "How and by whom shall this chasm in our state government, which we so deeply deplore, be filled?" In the solution of this question it will, on a thorough and impartial investigation, be found there is no intrinsic difficulty. And had you turned to your Constitution, and read it, and expounded it by your own common sense for yourselves, disregarding the pathetic appeals that have been so dexterously made to your feelings and prejudices, there would have been no contrariety of opinion on this much abused and agitated subject; and instead of the commotion which now pervades this country, and not only degrades us in the estimaton of our astonished neighbors, but threatens to ruin our dearest rights, there would have been perfect repose, harmony and content. But some of those who ought to have been among your best friends have availed themselves of the confidence you had reposed in their intelligence and political integrity—not to give you sound and wholesome counsel, nor to enlighten your understandings, nor to lead you to the truth—but to distort and misinterpret the Constitution, to seduce you of your judgment, and drive you into error, anarchy and confusion. Instead of addressing your reason, men from whom we should have expected better and wiser things have vociferously appealed to your feelings—instead of legitimate argument, they have resorted to noisy declamation—instead of ever mentioning our *own constitution*, they take us with a gigantic stride across the Atlantic to Greece, and Rome, and Africa, to speculate on the ruins of Athens, Rome, and Carthage. Instead of showing us what our constitution *is*, they assay all their ingenuity to show us what it *might have been;* and instead of telling us what artificial rights we now enjoy, since the organization of our political machine, they discant in swelling strains about our natural and primitive sovereignty and equality, which every man in Kentucky understands, and no one ever did or will deny. It is thus that a question which, of itself, would never have created any difficulty or excited any zeal, has become an electioneering hobby, and a constant theme of inflammatory declamation. It has been so entirely metamorphosed by distortion of features, deceitful attitudes, and tinsel dress, that many honest men, not well acquainted with it, and not being connoiseurs in political physiognomy, have been grossly deceived in its character. Hence, a non-descript Drama has been set on foot in this country, by a few men, for what purpose we say not, which, although, in the first scenes, it so much excited the derision of the auditory, that it was deemed a Farce, and has only yet so far changed its aspect as to induce some to think it a harmless Comedy, will, it is feared, unless the principal dramatis personæ are hissed from the stage, end an afflicting Tragedy. By those few men are meant the noisy few who have been writing, speaking and *becoming* candidates for office, to prove that we must have a new election of governor before the expiration of the deceased governor's constitutional period of service, or in other words, to prove that *they* are on the side of the people against their constitution; in other and still plainer words, against the people. When this constitutional question was first propounded, there was an unprecedented unanimity in the State. It was almost universally believed that there was no room for a rational doubt. We all believed that Gabriel Slaughter would administer the government under the constitution, until the expiration of the term for which Madison was elected; but as some circumstances occurred shortly after the introduction of the Lieutenant Governor into the gubernatorial chair, which provoked a *few men*, it is natural to suppose, (even if we had not witnessed it) that they would put their ingenuity on the Rack to torture from it a device by which affairs might be revolutionized and they might triumph. An election of another governor was the spurious offspring. Although there had been no doubt on the constitution, and although they themselves could not doubt, they must have hoped by sophistry, denunciation, and adulation to the people to induce others to believe what they could not themselves believe—and in trying to convince others they have, as is very common, almost convinced themselves.—Under false colors they have without a solitary argument, but merely by flatery, and pretty names induced many honest, unsuspecting men to join them in their unholy crusade against the constitution. And though the advocates for a new election have been miraculously convinced without one solitary argument that will stand scrutiny, it is feared many are so firmly enlisted and have so far committed them-

selves that nothing short of mathematical demonstration will convince them *back again*. But, hopeless as the attempt may be, it is the duty of every good citizen to make an effort; more especially as he may thereby prevent the further extension of this contagious doctrine, and counteract the exertions of those who, encouraged by an accidental accession to their small corps, are stimulated to redouble their efforts. That the attempt now to elect a governor is a flagrant and dangerous violation of the constitution is, I have no doubt, as conclusively demonstable from that instrument itself, as any question can be, that is susceptible of the remotest doubt. And to demonstrate to every man's conviction, who is not under the influence of an inflexible predetermination, that it would be unconstitutional to elect a governor before the expiration of the term for which Madison was elected, so that there will be no ground left for a rational doubt, is the only object of this essay.

To effectuate this object I only ask that you will go with me to the constitution, and impartially and attentively explore it, expelling from your minds every extraneous argument, and forgetting that you had ever thought on the subject; and if the result be not a thorough and indubitable conviction that the constitution, not only does not authorize a new election, but by every fair and permissable construction interdicts the exercise of that privilege, it must be because "A man convinced against his will, is of the same opinion still."

Preparatory to the investigation of this subject, it should be premised that ours is a government of laws and not of men. Our constitution is the basis; the laws we make in unison with it are all mere superstucture. The constitution is the great charter of our social compact, defining and distributing the functions of political sovereignty. It is an article of agreement between the people and their functionaries. The former have no more right to alter or modify it, except in the way therein provided, than the latter. And our political rights are secure or insecure in proportion to the degree of our respect and veneration for that sacred instrument. The sovereignty therein transferred is not reclaimable at our mere whim or pleasure; when we wish to know what right or power we have thereby delegated, and what retained, we must advert *to that instrument itself;* and if there should be an apparent ambiguity in any clause or article, we should examine the whole attentively, and give that construction which would make all the different parts consistent; we should resort to the established rules of construction, and whatever inference we deduce by this process, is as much an inviolable part of the constitution as anything that the words may literally and undeniably import. To prove this by argument is useless; for it is an axiom, the truth of which no man, who is capable of investigation, can controvert.

Let it not be said that we have any more right to violate or disavow that which may be called constructive than that which is literal. The one is as sacred and as obligatory as the other, because it is as much the constitution. Both are equally constructive; the only difference is the mode of construction. Why is it that we cheerfully and unhesitatingly submit to whatever the constitution expressly declares? Is it because there is any affinity between the sign and the thing signified; or language and ideas? No. Language is conventional; it is an arbitrary association of sounds significant by compact. Therefore when we hear a man speak we affix to his expressions that meaning which common usage and consent have given to them. If one man make to another a promise in language plain and simple, how is his engagement to be understood and performed? In the way in which common consent interprets his words; and although he might have had a different meaning, he is nevertheless absolutely bound by that which his words invariably import. Is not this solely because it is presumed that he intended to convey the same ideas by his words that other men do? What is even this then but construction? And what is this obligation, other than constructive?

But when words are, in themselves, uncertain, how do we understand them? Why certainly in no other sense than that in which we presume they were intended to be understood. To solve difficulties of this kind, common consent has established certain criteria, or rules of construction to which we must resort, and by which ambiguous expressions are to be interpreted. These rules are coeval mith language itself, and are founded in its constitution and in common sense. This is then a part of the same compact by which words are made significant. When an individual uses words which are literally doubtful, it is to be presumed he intended to convey by them that meaning, which those universal and fundamental rules established by general consent give to them. This is construction; but no more so than giving to words that meaning which common consent says they *literally* import, is construction. The meaning in both cases is founded on and deduced from compact; and the only difference between them is, as before remarked, the process by which it is ascertained. If a man make a contract, the literal meaning of which is doubtful, is it not construed by the rules we have mentioned? And is he not as much bound by this interpretation, as if there had been no necessity to resort to them? Certainly he is.

Apply these preliminary remarks to our constitution. Ask yourselves if there be any real ambiguity in that instrument in regard to the question about to be discussed. If you should think there is, only ask yourselves, to what inference the proper and universal rules of construction will certainly and inevitably lead. If they will authorize the belief that the constitution does not deprive you of the right to elect a new governor under existing circumstances, it will be admitted that you have the power to exercise it, if you choose. But on the contrary, if they will convince you (of which I

have no doubt) that you cannot consistently with the constitution exercise this privilege, I presume and hope that every honest and candid man will frankly acknowledge that the right does not exist, and will, without a murmur, cheerfully submit to the present state of things, consoling himself that it was ordained by his country, and decreed by one of the wisest, best, and freest constitutions extant in the world.

I shall endeavor to show you, as briefly as the nature of the subject will permit, that there is no ambiguity in the constitution in relation to the present question. But, if there should be, when it is attentively examined and correctly expounded, no dispassionate man, in his senses, and honestly in pursuit of truth, can possibly doubt.

In the investigation of this subject I shall not follow the zigzag and declamatory course that the advocates of a new election have pursued—but will take the *constitution* for my compass, and reason for my square. I shall not, as they have done, endeavor insidiously to assail your feelings and alarm your fears, but shall openly appeal to your judgments, with no other weapons than reason and the constitution. All I shall ask of those advocates, is to make the following admissions: 1st. That we have a constitution. 2d. That it is not right to violate it. 3d. That, *that* and that alone should control us, and determine for us the present question. And 4th. That if *it* should be doubtful we should examine the whole of it, and give it such a construction as will make all the parts harmonize, and give them all effect.

And all I shall ask of you is your attention, your impartiality and the honest exercise of your rational faculties. This is all the armor I want; with these weapons I fear not the result. At the threshhold, I will concede to the new election men all that they have based their arguments on, and which no good man ever denied—which is that we, the people, are the only legitimate source of all political power; and that our government was instituted by us and for our peace and happiness—but with this appendage or qualification—we are now sovereign, only so far as we are not circumscribed or restrained by our own act and consent. For in all well organized societies, it has been discovered to be expedient that the people, in order to secure their civil rights inviolate, should, by one great primeval act of united sovereignty, establish some fundamental principles, which even they themselves could not by mere legislation control. This is their constitution. We have followed their example. Let it not be forgotten that we have a CONSTITUTION—one which it is our duty and our best interest ever to revere and defend; and one, even the confines of which it would be worse than sacrilege to invade; for it is the bulwark of our dearest rights religious, civil, and political.

The momentous question now recurs—What does this instrument pronounce on the subject now agitating this country? I think its language is plain and decisive. It may be found in the following clauses:

Article 3, Sec. 1. "The supreme executive power of the commonwealth shall be vested in a chief magistrate, who shall be styled the governor of the commonwealth of Kentucky."

Sec. 4. The governor shall be elected for the term of four years by the citizens entitled to suffrage, at the times and places where they shall respectively vote for representatives. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the legislature may direct."

Art. 3, Sec. 16. "A lieutenant-governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor.

"Sec. 17. He shall, by virtue of his office, be speaker of the senate, have a right, when in committee of the whole, to debate and vote on all subjects; and when the senate are equally divided, to give the casting vote.

"Sec. 18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until another be duly qualified, or the governor, absent or impeached, shall return or be acquitted."

"Sec. 24. A secretary shall be appointed and commissioned during the term for which the governor shall have been elected, if he shall so long behave himself well."

"Art. 2, Sec. 30. The general assembly shall regulate by law, by whom, and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof."

"Art. 6, Sec. 3. Every person shall be disqualified from serving as a governor, lieutenant-governor, senator, or representative, for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat, to procure his election."

"Schedule, Sec. 5. In order that no inconvenience may arise from the change made by this constitution, in the time of holding the general election, it is hereby ordained, that the first election for governor, lieutenant-governor and members of the general assembly, shall commence on the first Monday in May in the year eighteen hundred; The persons then elected shall continue in office during the several terms of service prescribed by this constitution, and until the next general election, which shall be held after their said terms shall have respectively expired."

The foregoing are faithful extracts, from our present constitution, of all that can operate on our question. They contain every sentence, every word and every mark of punctuation,

that can affect the subject, condensed in one mass, that you may see the whole at one view without any difficulty or false coloring. This is the text. The commentary shall be candid, and I trust satisfactory.

I would ask you, in the first place, if you had never thought on, or heard of the subject before, could you see anything in these clauses that requires explanation? Could you see any incongruity or any mystery in the simple expressions which they contain. No, you never would entertain a doubt; if you have a doubt, it is not derived from the constitution. Human language could not be plainer. No subject could require more perspicuity than characterizes every part of the foregoing extracts. You at once see that there is not one word said about a new election to fill a vacancy which might occur in the office of governor, but that many provisions are made to supercede the necessity of it by filling the vacancy without a special election. Consequently there can be no doubt that the constitution gives us no authority to elect another governor at this time or under existing circumstances.

Although this will be acknowledged by even those who are as skeptical as Dr. Douty: Yet they will insist that it is not necessary that the constitution should *give* us the privilege, because we possess it inherently, and have a right to do this, as well as everything else we please, unless prohibited by the constitution. This I deny, and could refute by showing the purposes and nature of our government, and adducing examples in which, although there is no express constitutional inhibation, still, there can be no legislative right. But as I have no doubt of convincing every dispassionate man, without resorting to this kind of argument which would be conclusive in this kind of case, I shall not consume time by endeavoring to prove that in the case under consideration the constitution must give the right or it cannot be exercised, but wave this question. But if I should admit, for argument sake, that we have a right to elect a new governor, unless restrained by the constitution, I shall now undertake to prove clearly that it would be palpably inconsistent with that instrument under existing circumstances.

The only question then for me to discuss, and for you to decide, is whether the alledged right to elect a governor before the expiration of the term for which Madison was elected, is interdicted by the constitution, or is inconsistent with any of its provisions. If I show that it is, I shall have attained my object. This proposition is, from the constitution, almost self-evident. It is very clear from its whole tenor that the convention never intended that an accidental vacancy, in the executive, should be filled by popular election.

You find from the foregoing extracts that the governor is to be elected by the people entitled to suffrage, at certain times, for the *term* of four years, and thathe shall possess certain enumerated qualifications, have certain defined powers and prerogatives, and receive a fixed salary. You may find also that the same parts of the constitution *amendatory* of our first constitution *in that respect,* provide for the election of a lieutenant governor in *the same manner,* at *the same time,* to *possess all the same qualifications;*—but who is not to enjoy the same powers and privileges nor receive the same compensation, except on the occurrence of certain contingencies; and who *then* becomes, by the constitution, invested with all the same power and authority, and receives the same pay that the governor elect enjoys while in the administration of the government.

Ask yourselves candidly what is the plain and only sensible meaning of these provisions? Why is a governor to be elected for four years? The reasons are obvious, and are founded in long and instructive experience and the wisest policy. But the members of the convention did not forget that the man whom we might elect as our chief executive officer, would be mortal, and liable to all the casualties incident to humanity. That they ruminated extensively and profoundly on this subject is evident from the ample and detailed provisions they have made to obviate any difficulty and prevent any possible inconvenience. Examine those provisions attentively; observe the forecast, the exactness, the nice precaution of those who made them. They have provided against an interregnum, in the event of almost any possible contingency. Have they said one word, among all those provisions, about a special election of a governor? Certainly not. Is it reconcilable with any rational or authorized construction to suppose that they intended one should be elected, at any other time or in any other manner than those prescribed by the constitution? If it is, then you must say that those men, some of whom were admired as men of stupendous intellects, and were illustrious ornaments of their state, did not understand themselves. For if they intended that we should have the right to elect a new governor under circumstances like the present, they have certainly acted in a manner that is utterly inexplicable; made a great many reduntant provisions in the constitution which could only embarrass and mislead, and have betrayed as much stupidity and folly as could have been exhibited by much weaker men, who had no design in what they said. But such an imputation would be impious ingratitude to those, to whom we should forever be most grateful. It would be a most wicked and impotent thrust at the consecrated character of THAT MAN, whose collossal mind and luminous pencil are conspicuous in every clause of the sacred instrument which he *drew,* and whose memory is embalmed in the hearts of his contrymen.

The members of the convention thought (and correctly too) that they had left no room for doubt. They had said all and done all they could, or that was necessary, if they intended that there should be no new election; if they *did* intend that there should be no election, what more or else would they have said or done? Nothing. But if they had intended that we should elect before the expiration of the four

years, can we, as honest, candid, intelligent men, say or believe that they would have used the language they have, *and no more?* If they had designed such an absurdity, would they have made *all* the provisions they have to fill any vacancy that might happen? And would they not have made *others* quite different and more plain? They have endeavored to be as particular and perspicuous as possible. But if they intended a new election, have they been perspicuous or even intelligible, or have they not used a language that imports a meaning different from, and inconsistent with that intention? But explore the whole of the constitution, and observe how consistent, how plain, how cautious and particular they have been in every other part. For fear of doubt or inconvenience, they have provided expressly for the election of members to fill both branches of the legislative department, when any vacancy should occur in either. Why did they not include the executive? The reason is obvious; they intended to *exclude him.*

When they were so circumspect as to deem it proper to insert a special clause authorizing the legislature to pass a law declaring how and by whom writs of election should issue to fill vacancies that might happen in either branch of the legislature, can you give any good reason why they did not insert a similar clause in regard to the executive department; was it not equally proper and necessary? Their having done it in the first case shows that *they* thought it was necessary; if they had intended it in the latter, would they not have used the same precaution? Now, whether this special clause were necessary to give the legislature the right, or not, is totally immaterial. The members of the convention have inserted it in one case and omitted it in the other, and the very circumstance of their having used it in the one, when perhaps it was not absolutely necessary, shows unanswerably that, in the other not embraced by it, they intended that the right should not be exercised.

But, if this argument needed any support, it is strongly fortified by another consideration. In the cases above mentioned, in which the constitution has made a special provision for an election to fill vacancies, there was not as much necessity for such a provision, as there certainly would be for one for a new election to fill vocancies in the executive department. For in the former, vacancies that might happen were not otherwise provided for; but in the latter they are, most carefully and abundantly. The advocates for a new election say that the legislature have the right to do whatever the constitution does not prohibit. As we are passing, let us again admit this. To what does it lead? Why certainly to a very strong confirmation of the reasoning I have just deduced from the special clause in one part of the constitution. For it will be acknowledged that there is no clause or expression in the constitution which inhibits the passage of a law authorizing an election to fill vacancies that might happen in either branch of the legislature, or with which *such a law would be inconsistent,* and it will also be acknowledged that no provision to fill such vacancies, otherwise than by *election,* is to be found in the constitution. The new election men say that, for these reasons the legislature would have had the right to pass any law they might think expedient to fill these vacancies without the authorization of the convention men. These latter thought differently; but we have admitted, for argument, that they thought so too—well, if they thought so too, why did they insert this special clause? Every man will now be able to answer. It was because they feared that others might have serious doubts on this subject; that there might be a difference of construction, which it was their duty to prevent. They have therefore inserted a special clause, knowing it could do no harm, and might do good by precluding the possibility of misconception. This clause is therefore not mere supererogation. Well, if they thought it was necessary, in order to prevent any doubt or inconvenience in the cases which it embraces, must they not have known it was much more necessary in the executive department? Certainly; because for the latter other provisions are made, and *some of them,* as I will presently show, *inconsistent* with a special election; and the very insertion of these would induce any man to believe that such election was intended to be dispensed with for wise purposes. I ask then, again, why were not executive vacancies included in the special clause authorizing a special election? Or why did not the people say, in the 30th clause of the 2d article, "The Legislature shall direct by law how writs of election may issue to fill vacancies that might happen in either branch thereof, or in the EXECUTIVE?" It was because the convention did not intend that there should be such election. They thought that the insertion of the clause in one case and the omission of it in the other, *in which there was more necessity* for it if it had been intended, the ample provisions which they had otherwise made to supercede the necessity of an election, and the inconsistency of some of them with such election, constituted as much as they ought to do or could do, to prevent any misconstruction. You will think so too.

But if it were possible, from the foregoing considerations, to doubt whether the convention intended a new election or not, to remove these doubts look at the provisions they have made to render it unnecessary, by substituting other officers, in case of the death, removal, &c. &c. of the governor elect. And how can you then doubt? If the convention could possibly have intended that we might elect a successor before the expiration of the constitutional term, why and for what purpose did they create a new secondary officer unknown to the old constitution? Why did they create a lieutenant governor? For if they intended an election for governor to be held at the next annual election succeeding the death or removal of the elect governor, the lieutenant governor would be a supernumerary; because in that event there would be no necessity for such an

officer. For the provision in the old constitution was amply sufficient, which declared that in the event of the governor's death, &c., the speaker of the senate should administer the government until another governor should be qualified. Why the amendment of the old constitution in this respect? In creation there is always some design. What did the convention design when they amended the old constitution and created a lieutenant-governor? Was it merely that he might administer the government a few days, or weeks, or months, instead of the speaker of the senate, when in fact, for every other purpose he is only the speaker? It is impossible, because there was no necessity, no motive for it. The provisions in the old constitution were equally as good, and therefore would not have been so radically changed without some adequate object. Nor can it be presumed that the lieutenant governor was created, merely to act occasionally as speaker of the senate when they should be in session, and have no office in vacation; because there was no necessity *for* it and no propriety *in* it. He would not do better than the speaker who might be chosen by the senators themselves from their own body, and indeed a recurrence to experience will convince us that the speaker chosen by the senators has, with a very few exceptions, discharged the functions of the chair with more dignity and ability than the lieutenant governors elected by the people. But why should the convention impose upon the senate a presiding officer who would not be their choice? Why not permit them to elect whomsoever they might choose, for that purpose? And why give to one particular county in some instances a double representation in the senate? And why put us to the trouble and inconvenience of being electioneered *with* and of voting *for* a man merely to do that which the speaker of the old constitution could do as well, and in nineteen cases out of twenty a great deal better? Why should this man possess any qualifications more than other senators must have before they are eligible to a seat in the senate, if he is created merely for a speaker? But more particularly, why is it necessary that he should possess *precisely the same qualifications* with the governor, be elected *at the same time*, and *continue in office for the same time?* I believe you cannot answer these interrogatories satisfactorily, and still think that you can elect a governor before the expiration of Madison's term of service. You must acknowledge that such an answer would be inconsistent with a sound construction of the constitution. It is very obvious that the convention created the lieutenant governor to be the successor of the governor in case he should die or resign, &c., for the remainder of his term; and that, on the happening of any of those contingencies mentioned, he should become the governor, and have all the power, prerogatives, and emoluments appertaining to the office. The motive that induced the convention to designate the lieutenant governor to succeed the governor for the residue of his term, was a benevolent one. It was, that in case we should lose our governor, we might have a successor who was our next choice, without the inconvenience and popular zeal and commotion generally produced by a general and very important election. And they have abundantly shown us, that they did not approve the policy of electing a governor oftener than once in four years. If there should be any doubt of the truth of the foregoing positions, it will be entirely removed by reasons and proofs which shall be given presently, in their proper place.

But suppose the foregoing view of the intention and design of those wise men who adopted the constitution, collectable convincingly from the plain provisions which they have made, should leave any room for a reasonable and honest difference of opinion, the impossibility of electing a governor before the quadrennial election prescribed by the constitution, without violating some of the plainest and wisest provisions of that instrument, would interpose an insuperable obstacle and hush every serious doubt. How will you elect a new governor under existing circumstances? The constitutional rights and duties of the present incumbent constitute a barrier you cannot, you dare not surmount. If you could really believe from what has already been said that you have the right, when you come to the clauses which speak of the rights and duties of lieutenant governor, how and when he shall be elected, the duration of his office, &c., where will you find ground for hesitation? Where one solitary loop on which to hang a sluggish doubt? "A lieutenant governor *shall* be elected at *every* election of governor—in the same manner, continue in office the *same time.*" Now if you proceed to elect a new governor, what will you do with the lieutenant governor? You have no right to remove him against his will, except by impeachment. But if you elect a governor, the constitution is imperious that you *shall* elect a lieutenant governor. If you do so you thereby remove Slaughter; this you are compelled to do, or not elect at all. What then will you do? How extricate yourselves from this dilemma? You had been told very dogmatically by some of the new election men, since the commencement of this popularity campaign, that the expressions "at every election of governor a lieutenant governor shall be elected," only alluded to ordinary quadrennial elections spoken of in the constitution. Of this they said they had no doubt. Upon this palpable error they built all their arguments, by which many men pretended to be convinced. And they admitted that unless this, their novel absurdity, was true, you could not elect a new governor to fill the remainder of Madison's term. MARK THIS, I earnestly beseech you; for it was the only foundation of their opinions and hopes. Look at the fallacy and palpable absurdity of this forced construction. Only pursue the course to which it points, and see where you will end your journey. Elect a governor at the next August election, (for if you have the right at all, it *must* be exercised at some annual election) for the remainder of Madison's term,

without a lieutenant governor, what will be the consequences? Why, a palpable violation of the constitution, which declares he shall be elected for four years. Well, suppose you elect him for four years, what then? You have a governor in office for four years, and a lieutenant governor in office for only three years. And at the expiration of these three years what will you do for a lieutenant governor? You must elect one or have none. The latter you would not tolerate, the former you could not constitutionally do; because he must be elected when you elect your governor, and having elected your governor for four years, you cannot elect another before the expiration of that time. But if you could, you would involve yourselves in this absurdity: the governor you would elect would not be in office for upwards of a year after his election, and the lieutenant governor whom you elected with him would go into office instantly. But suppose you could elect your lieutenant governor before your governor or your governor before your lieutenant governor, in what a labyrinth of difficulties would you, even if it were permissible, involve yourselves? You would never thereafter be able to elect a governor and lieutenant governor at the same time, which the constitution expressly requires. These considerations will prove unanswerably that a lieutenant governor must be elected *whenever* a governor shall be elected as the constitution directs.

But if it could possibly be true that the convention only alluded to the quadrennial elections, by the requisition aforesaid, then it is equally true that they could not possibly have intended that there should be any other election at any other time nor in any other manner.

The advocates of a new election, finding that this sophism was too barefaced, have *at last* abandoned it, and taken refuge on a position equally indefensible, which, with their united strength, they have endeavored to fortify by arguments equally fallacious. And here permit me to pause, not to express my own surprise,(for to me it is no strange matter) but to invite you to look at the facility with which some men change the most important and responsible opinions. And to ask you, if they were wrong *before*, (which they acknowledge) is it not more probable they are wrong now? If you had believed them then, they confess you would have erred; if you believe them now I have no doubt you will equally err. This is the predicament of the newspaper advocates of a new election. They admit that the reasons which once convinced them, and by which they endeavored most pertinaciously to convince others, were absurd, but still persist that their opinion, founded on those absurdities, is correct. They cetainly must have been encouraged by the little anecdote of a judge and his lawyer. The latter made a motion to the former, and after a very long, elaborate, and, as he thought, able argument, was told by the judge that his reasons and arguments were absurd and ridiculous, but still he was constrained to decide in his favor for reasons that he, the lawyer, had never seen nor touched.

But notice, I beg you, the corner stone of the newly conceived argument. They admit that you must elect a lieutenant governor at every election of governor, and that you must elect a governor for four years, but contend that it would be no violation of the constitution to supersede Slaughter before the expiration of his four years by the election of another lieutenant governor. This is now their stronghold, behind which they have entrenched themselves. If this be untenable they must surrender. Although they have said a great deal on the subject, you will bear in mind that it is all on the truth of the foregoing proposition; that is their sandy foundation; all the rest is but embroidered superstructure.

Now it does seem to me that, if there ever existed an absurdity that exposes itself, this is one. If this be the correct interpretation of the constitution, why was it never before discovered? If it be so plain and obvious, why never before perceived? And why do not the unassisted optics of common men perceive it? I venture to say that no man in Kentucky doubted, when Slaughter was elected, that he was in office for four years, and I fear not to say unhesitatingly that no man who had never heard of this new construction could read the constitution impartially, and doubt that he was elected for four years. The constitution declares that a governor shall be elected for the term of four years, and that at every election of governor a lieutenant governor shall be elected, who shall possess the same qualifications and continue in office the same time. What does the expression, "continue in office the same time," mean? Would you not say four years? Is it to be presumed that the wise men who adopted the constitution, would create so important an office as lieutenant governor without defining the term during which he should serve? Can you think that the duration of the second office in the country would be uncertain? This would be sporting with common sense, and insulting the understanding of those who framed the constitution.

You are told that the lieutenant governor is the incident, the mere automaton of the governor, and goes out of office whenever his principal, his master may resign, die, or be dismissed. This is tantamount to saying that the governor can dismiss the lieutenant governor whenever he may choose to do so. For I presume he can resign when he may think fit. Do you believe any honorable man would accept an office which he must hold by so precarious and servile a tenure? It would be a degradation. Do you believe that the framers of the constitution ever intended that, if the governor should be dismissed from office for crime or misdemeanor, the lieutenant governor should share the expulsion or disgrace? Did they intend that he should forfeit his office, which his merit had earned, merely because an infamous wretch, over whose conduct he had no control and for which he was not

responsible, might be disgracefully forced to surrender *his?* Why should he, more than any other member of the senate, or of the government, lose his office on account of the resignation, death, refusal to qualify or dismissal from office of the governor? The convention never intended it. The constitution does not require it, nor even permit it. It means only what it plainly says, that the lieutenant governor shall be elected at the same time and continue in office the same time that the governor is elected to continue—or in other words, it means that he *shall have a right* to continue in office as long as the governor *has a right* to continue in office. This is the proper transposition—this is filling up the ellipsis. For the expressions, "same qualifications and same time" must refer to some antecedent expressions. They certainly do refer to those previous parts of the constitution, which define the qualifications of the governor and the duration of his office—otherwise they would mean nothing. Then the "same qualifications" which the lieutenant governor is required to possess, mean the very same that the constitution declares the governor shall possess—that is, that he shall be 35 years of age, &c., and the "same time as," certainly refers to the time the constitution declares that the governor shall continue in office, that is four years. For if the word *same*, when annexed to qualifications, refer you to the constitutional qualifications of the governor, it certainly means, when annexed to *time*, in the same clause, the governor's constitutional time, or period of service. Any other construction would confound all the rules of the English language.

But you are told you must give a most rigid and literal construction to this expression. This is not the same language which the same gentlemen use on other parts of the constitution. I care not how punctilious you are in adherence to the letter. The letter imports nothing more nor less than that the lieutenant governor shall have the right to continue in office as long as the governor has a right to continue in office, and no longer. If the expression, "shall continue in office the same time," mean what some men absurdly say it does, that he shall go out of office whenever the governor may happen to die, or choose to resign, or should be dismissed, whether he is willing or not, then certainly it means, by the same construction and for the same reason, that he shall be compelled to continue *in* office as long as the governor may choose or may be permitted to remain in his office. The rule must be reciprocal, and when the language is the same you must give the same construction to either alternative. But to what absurd anti-republican consequences would this lead? You will invite a man to accept one of the first offices in your power to bestow on distinguished merit, and force him to continue in that office just as long as another man with whom he has no connexion or privity, and whom, perhaps, he never saw, may think proper to retain him. This is not, cannot be the language of that wise and republican constitution which is our shield and our boast. No; it is the language of those who will, if you permit them, distort, mangle, and mutilate that sacred charter, to subserve their own personal purposes.

But ye who believe, or pretend to believe that the lieutenant governor shall, willing or unwilling, dead or alive, continue in office as long as the governor may happen to continue in office, and no longer, be so good as to answer a few simple questions, which you should have digested before you adopted or promulged this opinion:—1st. If the lieutenant governor can only continue in office so long as the governor may happen to do so, suppose the governor should refuse to qualify, and the lieutenant governor had qualified, will you say the lieutenant governor never was in office? 2nd. Has he not the right to qualify whenever he pleases, after his term of service shall commence? 3d. Is he not in office the moment he shall qualify? These questions you are bound to answer affirmatively. The consequence is, that the lieutenant governor is *in* office when the governor is *not;* and further, if the governor should happen to be prevented from qualifying, by indisposition, absence or other causes, one year, and then should be installed into office, he would serve three years, and the lieutenant governor four; for he could not be in office before he is qualified, and the lieutenant governor was bound to administer the government until he should qualify. They would not then continue in office the same time, according to your construction of the expression. It is made the duty of the lieutenant governor to administer the government, in case the governor should refuse to qualify, until a governor shall be duly qualified. It will be admitted, then, that in this event he is in office, and that the governor elect is not. Then he has a right to continue in office, although the governor may be out of office.

How absurd does the doctrine now appear, that Slaughter was out of office as soon as Madison died? But let us exhibit this monster in one or two more attitudes. Suppose governor Madison had refused to qualify as governor; then he would not have been in office—what would have followed? The constitution tells us—Slaughter would have had to qualify, and take on him the administration of the government. The constitution says so. It declares that in case the governor refuse to qualify, the lieutenant governor *shall* administer the government until a governor shall be duly qualified. Who is alluded to by the expression, the lieutenant governor? Why certainly Slaughter; it could not have been Hickman, (the old lieutenant governor) for he was out of office, and if he had not been the administration would, by the constitution, have devolved on Shelby, the former governor. Then the constitution declares that if Madison should refuse to qualify, Slaughter *should* qualify, and assume the gubernatorial functions. How would he have qualified? As governor? No; certainly as lieutenant governor. But how could he qualify as lieutenant governor, when, by Madison's death, he had forfeited all his right to his office?

But if there were no other expressions in the constitution, the word *continue* would alone be sufficient for my purpose. For it evidently implies that there had been a beginning—that the thing to be continued must have begun. This would show that the lieutenant governor had a right to induction into office whether the governor would or would not qualify. But this is repugnant to the construction of the new election men, for it would show that the lieutenant governor had a right to continue in office, although the governor never was in office. But again, how could the lieutenant governor, Slaughter, administer the government for one month, after Madison's death, if by that event he lost his office of lieutenant governor? For if his office expired when Madison expired, he was that moment a private citizen, and no more lieutenant governor than any one of you—but still we hear of his going on with the administration of the government, not as a private citizen, but as lieutenant governor; and again, did Col. Slaughter, when he was called to the execution of the duties he is now discharging, take any new oath? I presume not, because it was not necessary. But if he had, by Madison's death, become a mere private citizen, certainly it would have been necessary that he should take the oath; because, whenever his office expired, his oath ceased to operate—he was certainly absolved from any liability which could afterwards result from that departed oath. For still more light on this subject, I would ask you to look at the 5th clause of the Schedule to the constitution, which declares that the persons elected at the first general election after the adoption of the new constitution, "shall continue in office during the several terms of service prescribed by the constitution, and until the next general election, which shall be held after their said terms shall have respectively expired." Look at the whole of this clause, and if there could remain a lurking doubt, I think it will vanish. Look particularly at *"their several terms of service,"* and *"until the next general election,* after their said terms shall have expired." You will not fail to see that the lieutenant governor is included with the other officers. He is then to continue in office during his term of service, prescribed by the constitution. What do *you* understand, what did the convention understand, what does every man understand by a term? Not an uncertain, vague, indefinite period, dependent on casuality, and of uncertain, unknown duration—but a fixed, definite prescribed period, of certain and known extent. What, then, did the convention mean, by the clause just quoted? Every man will answer, they meant, as regards the lieutenant governor, by the expression, "term prescribed"—the term of four years—otherwise they meant nothing, which cannot be justly imputed to them. You can as little doubt that by the expression, "the next general election," is meant the general election at the end of the respective terms of the officers; that is, four years after the former election mentioned in the constitution. It could not mean a special election; and an election of governor, under existing circumstances, would certainly be a special election and for a special purpose.

But all argument on this subject would be useless, if you would attentively and impartially examine your constitution for yourselves. Would it not be strange absurdity, to say the constitution intended that the lieutenant governor would go out of office whenever the governor might die, resign, refuse to qualify, *when he was created expressly to succeed him in the government*, on the *happening of any of these contingencies?* If it did intend it, why did it not say so? But can it be believed that it would create an officer for no other purpose, designate him as the successor of the governor, make it necessary that he should have the *same* qualifications, be elected at the *same* time, by the whole state, and declare that he should *go out of office at the very moment* when it becomes necessary for him to do that for which he was elected, and which he is positively commissioned to do?

But to prove still more conclusively that the lieutenant governor is elected for four years, I would ask you to look at the 3d clause of the 6th article of the constitution, which I have already shown you, and which declares that the governor, lieutenant governor, &c., upon conviction of bribery or treating, shall be disqualified from serving as governor or lieutenant governor, &c., for the term for which they shall have been elected. What is meant by the term, for which the lieutenant governor was elected? Can you say that no definite time is intended? This would be nonsense. The convention, in the use of those words, meant what many other parts of that constitution strongly import, FOUR YEARS. What other time could they have alluded to? When they say he shall be ineligible for the term for which he was elected, they say that he was *elected for a term;* it must therefore mean that he was elected for the term for which the governor was elected, for if he were elected for only as *long* as the governor *might* continue in office, he would not be elected for ANY TERM. But the clause to which we have just referred denounces a certain penalty against the governor, lieutenant governor, and others, for conviction of bribery or treating to procure their offices; no penal law can be enforced unless it be certain and definite—no punishment, which is indeterminate, can be inflicted. The convention, then, intending to prevent corruption in elections, have described the penalty which they deemed most efficacious. But if they did not intend that the lieutenant governor should be ineligible in case of conviction, for the term of four years, they did not intend that *he* should be punished, although they say expressly that he shall be. For how could sentence be pronounced for no certain punishment? Did any man ever hear of such a condemnation? But suppose both the governor and lieutenant governor should be guilty of bribery to procure their election, and after they are both sworn into office they are impeached, and the governor convicted, he then is ineligible for the term for which he was elected, that

is four years. But how then would you convict the lieutenant governor? The new election men tell you he is out of office the very moment the governor goes out of office, and that consequently the time for which he was elected has expired; you therefore could not try him, nor if you could, would you have any right to convict: because his term having already expired by the expulsion of the governor, you cannot disqualify him from serving as lieutenant governor, if he should be immediately elected again. But suppose you should convict the lieutenant governor first, and the next day convict the governor. By the doctrine of the new election men, the governor would be punished *for four years*, and the lieutenant governor only one day, *for the very same offence;* and this would not be the worst, for on the next day he would be eligible to the office of lieutenant governor. How absurd and ridiculous would this train of reasoning, if pursued, render the doctrine, that the lieutenant governor is out of office the moment the governor may happen to die, resign, or be dismissed? But for the same crime the governor and senators are disqualified for four years; and why should not the lieutenant governor be punished as severely? Every candid man, who will attentively examine the constitution, must see, beyond a doubt, not only from this clause, but every other upon which I have relied, and from their whole scope and design, that the lieutenant governor is *elected for four years.*

But some gentlemen, who acknowledge that even after they had examined *our* constitution over and over again, and heard all the speeches in the legislature, they were satisfied we had no right to elect a new governor, have, wonderful to be said, told us publicly, that the New York constitution has changed their opinion, and convinced them that they were wrong! It is strange, passing strange, that this argument, which, when scrutinized, is most decisive against a new election, should be wielded in favor of it. And it is equally strange, that Kentuckians should rely on the legislature of New York, or of any other state, for an exposition of their constitution. Do not those men who have used the decision of the New York legislature, know that it is not authority? They must admit it is not. Do they use it as argument? Then, by a much more potent argument, I would give them the decision of our own legislature, *not on the New York constitution, but our own.* But if the New York decision were authority, or even argument here, I would only ask you to examine the New York and Kentucky constitutions impartially, and if the comparison do not furnish you with as strong an argument as you could require against a new election, I am most egregiously deceived.

Constitution of New York, Sec. 17th.—"And this convention doth forever, in the name and by the authority of this state, ordain, determine, and declare, that the supreme executive power and authority of this state shall be vested in a governor; and statedly, once in every three years, *and as often as the seat of government shall become vacant*, a wise and discreet freeholder of this state shall be, by ballot, elected governor by the freeholders of this state, qualified, as before described, to elect senators; which elections shall always be held at the times and places of choosing representatives in assembly for each respective county, and that the person who hath the greatest number of votes within the state, shall be governor thereof."

You now perceive why the New York legislature authorizes a new election. You find that the first clause expressly *authorizes and directs it.* Well, it is said our's was transcribed from it—what is the consequence? The New York convention intended that there should be a new election, and deemed it necessary to make an express provision in their constitution authorizing it. If our convention intended that *we* should have a new election, why did they omit this special clause in the New York constitution? Would not the circumstance, that when copying this part of the constitution of New York, they *excluded* that expression which expressly authorized a new election, be irresistible proof that our convention did not intend that *we* should elect a governor under existing circumstances? In regard to the lieutenant governor the comparison is equally decisive. By the New York constitution, the lieutenant governor is to serve until the next election of governor. Our constitution says, "until another be duly qualified," which is not the language of the New York constitution, but of the old constitution of Kentucky. It is very clear, if the governor of New York should die or resign, that another governor, to fill his vacancy, might be elected, because the constitution says so; and it is equally clear, that the moment another is elected, the lieutenant governor is out of office, because the constitution says he shall only continue in office until such election.

I think it is now sufficiently demonstrated that the lieutenant governor, Slaughter, is, by his election, in office for four years; and it cannot be denied that at every election of governor there must be an election of lieutenant governor. The inference is irresistible that a governor cannot be elected until four years shall have expired from the last election of governor—in other words, that Slaughter can remain "until a governor be duly qualified," which you now see, only means that a governor be elected at the ordinary quadrennial election, and sworn in according to the requisitions of the constitution. Duly qualified can import nothing else than that he should be regularly elected, at the general election, four years succeeding the last general election, in the manner prescribed by the constitution, possess all the qualifications, and take the oath which it requires. No man can be duly qualified as governor of this commonwealth in any other way. And if you should ever say he can, with that voice, by which

you consecrate his usurpation, you consign your constitution to the GRAVE.

Having briefly and in a desultory manner examined all those parts of our present constitution which tend to the elucidation of the subject, I proposed to illustrate; and having, as I think, clearly demonstrated that a new election of governor, as attempted, is not only unauthorized by that instrument, but is palpably inconsistent with many of its positive provisions, and in violation of common sense and every legitimate rule of construction, I might be content to close the constitutional argument.

But before I leave the constitution, I must, for a moment, place the subject in a different attitude, which will, I am sure, confound all opposition. For this purpose I must ask your indulgence to go with me to the old constitution, and compare it with our present one. From this source I believe you will be able to discover an argument, that will, like electricity, flash conviction on every mind, and one that will be completely triumphant.

This process of argument cannot be objected to, because it must and will convince, and because it is the most correct and unexceptionable kind of argument on construction. It is an established maxim of legal construction, that when any remedial law is ambiguous, or the reason, application or design of it uncertain, we should resort to the old law, the mischief and the remedy.

The advocates have concentrated all their argument on this ground, to-wit, a comparison with, *not our old coustitution*, but that of New York! It will be recollected that the instrument to which I now invite your attention was our first constitution, and that the one under which we now live is only an amendment of the old one. It is fair, therefore, to examine the old constitution, to see the provisions therein contained in regard to the executive department, ascertain how far we then had, or whether we had at all the right of electing a governor to fill a casual vacancy before the expiration of the constitutional term, and whether any, and what changes or amendments are to be found in the new constitution.

Old Constitution, Art. 2, Sec. 2.—"The governor shall be chosen by the electors of the senate, at the same time, at the same place, and in the same manner."

Sec. 3. "The governor shall hold his office during four years."

Sec. 15. "In case of the death or resignation of the governor, or of his removal from office, the speaker of the senate shall exercise the office of governor, until another shall be duly qualified."

It will be recollected that under this constitution there was no lieutenant governor, and we see from the foregoing extracts how the governor was to be elected, the duration of his office, and how vacancies that might happen in his office by death, resignation, or removal, were to be filled. You see that the language of the old constitution, "until another be duly qualified," is precisely the same used in the new—and that the only difference is, that by the old constitution the speaker of the senate was to fill the vacancy, until another governor should "be duly qualified," and by the new the lieutenant governor in the first instance has that right. It becomes material now, to enquire how and when, by the old constitution, the new governor could be duly qualified, to succeed the ex-governor. And to enable us to do this satisfactorily, it is only necessary that we should ascertain how and when senators were to be elected by the first constitution. For you must not forget that the governor was to be elected in the same manner and at the same time.

Old Constitution, Art. 1, Sec.—"The senate shall be chosen in the following manner: All persons qualified to vote for representatives, shall, on the first Tuesday in May, in the present year, and on the same day in every fourth year forever thereafter, at the place appointed by law, for choosing representatives, elect by ballot, by a majority of votes, as many persons as they are entitled to have, for representatives for their respective counties, to be ELECTORS of the senate."

Sec. 12. "The electors of the senate shall meet at such place as shall be appointed for convening the legislature on the 3d Tuesday in May in the present year, and on the same day in every fourth year thereafter."

The governor was to be elected for four years, at the *same time* and in the *same manner* that senators were elected. Senators were elected once in every four years, by electors who were elected every four years, and were to meet once in every four years. Hence, it is plain that a governor could only be elected once in four years. Suppose governor Shelby (who was our first governor under the old constitution) had resigned, or died one year after he was installed, or "duly qualified," upon whom would the administration of the government have devolved? You will answer, the speaker of the senate. Well, how long would he have had a right to the office and emoluments of governor? You will reply, until "another governor shall have been duly qualified." But now ask yourselves the important question, when could this new governor be "duly qualified?" The solution is given by the constitution. He could not be constitutionally elected until four years succeeding the election of the former governor, Shelby. If he could, I should be gratified to know when. Could he have been elected in any other way than by electors of the senate? No. Could they be elected, or hold their electorial meeting more than once in four years? Most certainly not. But it may be said by some of the new election sophists, that the constitution only declares they *shall* be elected once in every four years, and shall meet to vote once in every four years, but does not prohibit their election and convention oftener if any exigency should require it. I might admit, that if the provisions made in the constitution to fill the vacancy in the office of governor should happen to fail, then, to prevent anarchy and a dissolution

of the government, we would have a right to fill the vacancy when and how we might think fit—because the power would, in that event, revert to us. But this has no concern with the present question. In the one proposed, the people of Kentucky would not have had a right to elect a governor in any other manner or at any other time than that prescribed by the constitution. For see the absurdity of a contrary doctrine. Suppose (governor Shelby having resigned three years before the expiration of his term,) that the people had immediately elected electors, and that they had forthwith, or at any time before the expiration of the term, elected a governor—would they have had a right to elect senators at the same time? They had not. Would they have elected a governor for the remnant of Shelby's term? They could not, for the constitution is imperative that he *shall* be elected for four years. Could they have elected him for four years? You must instantly perceive that they could not—for the constitution is express and positive that the electors of the senate shall elect senators and a governor once in every four years. But this they could not do, if this special board of electors just mentioned had a right to elect a governor for four years, after two years of Shelby's term had expired, and had actually elected one for that period—for the term of this new governor would extend two years beyond the time, when electors of the senate are commanded to elect a governor; therefore either *they* must not be permitted to obey and support the constitution, or the special electors, unknown to the constitution, had not the right to elect. This being the alternative, no honest man, however skeptical, can possibly hesitate. I think this view of the subject demonstrates, beyond a doubt, that under the old constitution, a new governor could not have been "duly qualified" until the expiration of the term for which his predecessor was elected, and that consequently the functions, power, prerogatives and emoluments of governor devolved on the speaker of the senate, in case of the death or resignation of the governor, for the remainder of that term.

Those, then, are the provisions, and this the doctrine of the old constitution. After a few years' experiment, it was in some respects found to be defective. To amend it and make it more perfect, a convention was called, and assembled in 1799. In some of the prominent features of the old constitution they made a radical change, and in August, 1799, adopted, as an amendment or substitute, *that* master piece of political architecture, our present constitution. But in relation to the executive department, and the mode of filling vacancies that might occur in it, what have they done? They knew well the provisions of the old constitution on this subject, and their inevitable construction. Have they changed them? So far as regards our present enquiry, they have not, but confirmed and re-adopted them. In the old constitution, the expression, "until another be duly qualified" meant, until he should have been elected by electors of the senate four years after the former election, and taken the requisite oath. If the new convention used the same words without any other explanation or restriction, did they not intend that they should convey the same meaning? You find that the only difference between the two constitutions, in case of vacancy in the office of governor is, that in the first, the speaker of the senate should administer the government until another be duly qualified—and in the last, the lieutenant governor should administer the government until another be duly qualified.

If the members of the convention had thought the old constitution was defective in its provisions for filling a vacancy in the office of governor in any other respect, why did they not change those provisions? We find that they have materially altered the old constitution in other respects. They have even changed the mode in which the governor shall be elected, giving the qualified voters, instead of electors of the senate, that right. They have created a lieutenant governor for the sole purpose of administering the government, instead of the speaker of the senate. They have extended the enumeration of instances in which he shall act as governor. Why, then, did they not change the old constitution, so far as it had fixed the time when a new governor should be duly qualified? The answer is obvious—they did not think good policy would authorize it. They very wisely believed that the remedy would be worse than the disease. Instead of changing the time of election, they have only altered the manner—instead of authorizing a special election of a new governor, they have doubly increased the obstacles to it, and the number of persons who may fill any vacancy that may occur, by making more and wiser provisions for that purpose. And now you may see a complete explication of the reasons why, and the purpose for which a lieutenant governor was created. It was thought as the speaker of the senate might frequently be a very weak man, totally unfit for the office of governor, and was not the choice of the state, that it would be unwise and unsafe to confide the administration of the government to him for so long a time as two or three years, if it could be conveniently avoided.

The convention determined that, when a governor should be elected, a lieutenant governor should also be elected, in the same way and possessing the same qualifications, for the purpose of succeeding him in office, in case he should vacate it any time before the expiration of his term of service, or be suspended from the exercise of its functions by impeachment or absence from the state. They knew from experience, the school of wisdom, that a too frequent recurrence to popular elections for the first office under the government would be dangerous and mischievous. They determined that once in four years would be as often as the harmony of the country and the stability of the government would warrant the election of governor, and to prevent any mischief that might result from an election at a

shorter period, the old convention provided who should be governor, or in case the governor elect should vacate his office. The new convention, influenced by the same motives, have not only ratified this policy, but through abundant caution, have made the succession more secure, more perfect and more satisfactory. They have designated the lieutenant governor (whom they created for that special purpose, and no other) in the first place, and then in the case of casualty, the speaker of the senate. Hence they required that a secondary officer should be elected with the first, in the same manner and possessing the same qualifications —that if by any accident we should lose our governor, his functions shall devolve on and be discharged by a man of our own choice, whom we have elected for that very purpose, knowing at the time we elected him that he might be called to the executive chair. It would be ridiculously absurd to say that the lieutenant governor was created for any other purpose, even to be speaker of the senate. The constitution itself is decisive. It says, "the lieutenant governor shall, by *virtue of his office,*" be speaker of the senate.

From this concise and hasty view of the two constitutions, I presume no man can doubt what the convention intended when they used the expression, "until another be duly qualified." For it must mean in the new constitution what it did in the old, the new being only a continuance of the old, and in the same language; and that the present incumbent, Gabriel Slaughter, has a constitutional right to the office which he now fills, until the expiration of the term for which Madison was elected, and until another governor be constitutionally elected, constitutionally qualified, and constitutionally sworn into office—that is, "until another be duly qualified"—which means, qualified according to and in pursuance of the constitution. If further argument could be necessary for any capacity, I might refer you to the constitutions of some of our sister states, adopted before ours, in which the same expression, "until another be duly qualified," is used, and from which it is clear that a new election to fill a vacancy in the executive office was unauthorized and unnecessary. Indeed, if it were necessary, and time would permit, the subject might be pursued to almost *mathematical demonstration.*

As the only object of the new convention was to amend the old constitution where they should deem it defective, is it not clear, that if they had believed that it was defective, because it did not authorize an election to fill a vacancy in the office of governor until the expiration of four years, and because it confided the helm of state to a mere speaker of the senate, elected by only about one twentieth of the state, they would have amended it, so as to authorize such election after the adoption of the new constitution? But instead of this, they have only changed the right of election from electors elected by the people, and given it to the people themselves. They have said that *we* shall exercise the right personally, and not representatively or by proxy; and that a lieutenant governor, whom we shall elect for no other purpose, shall, in case of a vacancy in the office of governor, act as governor, instead of the speaker of the senate, in the old constitution. Therefore, if under the old constitution we had not a right to elect, much stronger are the reasons why we cannot now.

But it is said by the advocates of a new election, "that it would be anti-republican, contrary to the spirit and genius of our government to submit to be governed by a mere subaltern." This, you may perceive, is done to excite feeling and prejudice, and drown reason. Those gentlemen must certainly have sense enough to know that this slang is not to be taken for argument, and that intelligent men will not be seduced by it. But, in all their argument, they have never once drawn their reasoning from the constitution, but have invariably gone behind it, to a period when we were in a state of nature, and were not fettered by what they would call constitutional chains. It is not proper to ask us what we may like or dislike, or what, if we had the power, we would do—they should show us what we may do and what we must do. But this doctrine they will please to call anti-republican, because it does not permit us to do whatever we please.—Therefore they say that we ought not to submit to the government of the lieutenant governor. And how do they attempt to prove it? Not by the constitution—not by shewing us that the constitution does not give him the right to govern us, but by telling us that if we suffer it, we are resigning our liberty, (that is, of doing what we please, right or wrong) and tamely renouncing the elective franchise. Is not this most ridiculous argument? They know well that we have surrendered this right to a certain extent, by our social compact, and that we cannot exercise it except when and in the manner that compact will authorize. We have surrendered it on the altar of the common good, by that great, and solemn, and sovereign Fiat, which no human legislature can repeal. But if this appeal to the selfish bias of our nature were an apposite argument, how easily is it refuted? Was it not equally hard, and equally subversive of what some men call *our rights,* to compel us to be ruled (as the old constitution did) by a man who was only elected as a senator by perhaps one county? Certainly, and much more so; for now we have a man who was our choice, in whom we reposed confidence, and whom we elected for the purpose of filling the vacancy he now fills; and whether it be hard or soft, necessary or unnecessary, is immaterial. It is enough that *we* have, by the most solemn act we have ever done, and I believe as wise an one, said it should be so; we elected him voluntarily, knowing that he might become our governor if a certain contingency should happen—*it has happened*—and he thereby becomes as much our governor as if we had chosen him instead of the lamented Madison. By the death of Madison, he, to-wit, Slaughter, has a vested right to all the honor, power, and profit

appertaining to the office of governor; we have given it to him by our voices in the convention, and at his election, and have no right to take it away without his consent.

It has also been said by some, that Slaughter has not a right to administer the government until the expiration of the term for which he was elected, because he would still be eligible to the office of governor, which would be contrary to the spirit of the constitution, which declares that the governor shall not be re-eligible to the office of governor for seven years after the expiration of the term for which he was elected. This is so futile an argument that I shall only refer you to the 3d article and 8th clause of the constitution to prove its fallacy. By that clause, the lieutenant governor, in case the governor shall be absent from the state, shall administer the government until his return, or another be duly qualified. Suppose he should not return until the expiration of the term for which he was elected, would not the lieutenant governor have a right to his office the whole of that time? Certainly he would. Would that make him ineligible to the office of governor at the next election? It would not. This argument also is then prostrated. I will not pretend to answer the arguments in detail that have been used—they are all completely answered. I will not fatigue your patience nor insult your understanding by detaining you with further argument to prove that which is almost as self-evident as that you have noses on your faces, and which, if proof were necessary, has been abundantly, and I believe unanswerably demonstrated, to the satisfaction and conviction of every impartial mind. I might say much more on this subject, but I have said more already than I would have desired, if the nature of the subject would have permitted less. The constitution is sufficiently plain on its face, but the ingenuity of man can distort and disguise, by subtle sophistry, the most self-evident truth. This has been the object of the advocates of a new election. To aid in an honest endeavor to defeat their machinations, and arrest the further extension of their erroneous and mischievous doctrines, was the only motive that prompted this address. And I think I have shewn clearly that we have not a right to elect a governor to supply the vacancy occasioned by Madison's death—by proving, in the first place, from the provisions in the constitution, that the convention did not intend that there should be such election; in the second place, that at every election for governor there should be an election for lieutenant governor, and that the lieutenant governor is elected for four years, and that consequently we cannot *now* elect another in his place. And the latter proposition I think I have abundantly supported, not only from our *own*, but also from the constitution of New York, and *the old CONSTITUTION*, from which the *NEW* was copied, and not as alleged from that of New York. I think no man will now feel a doubt; but I do not expect that those who have written in the newspapers, and made stump speeches in favor of a new election, will change their course; for it cannot be expected that men who publish to the world opinions, for which they are not able to give one good reason, and whose exaltation into notice and office depends solely on the success of their opinions, will ever change their conduct until their dispositions and tempers be radically altered. To those men I did not address myself with any hope of success; but it is to *you* who may have been innocently seduced by their artifice, and deluded by the confidence you reposed in their intelligence and candor, without examining the constitution, and who have no interest or disposition to violate it; you, the honest yeomanry of the country, who are the stay and hope of the government, and who will spill your blood in defence of your constitutional liberty. Examine honestly, I conjure you, the conduct of those prominent men who advocate a new election; observe their situations and their motions, look at their arguments, and ask yourselves, in the honesty of your hearts, why all this parade, this zeal and fermentation? Is it because those men love their country more than their countrymen do?—because they are *disinterestedly* and exclusively our friends, or because they wish to do *us* a service? Or is it not more because they love *themselves*, and wish to climb into office and power by exciting *our* prejudices and our fears? Do they furnish any evidence of their love for us, or regard for our interest, peace or happiness, when, without any good cause, they attempt to excite tumult and commotion, destroy the harmony of the country, and bring on all the horrors of a civil war? And for what is this to be done? To *preserve* our constitution? No; to sacrifice it. Is it to promote our interest or happiness? This *cannot* be.

But an attempt has been made to lull our apprehensions. We have been gravely told that there is no danger of confusion, anarchy, or civil strife. This is the language of all revolutionists. Can you believe it? Suppose you elect another governor to supersede Slaughter, will *he* give up the administration of the government? Surely if he be a firm and honest man, determined to do his duty, and save the constitution from violence, and his country from ruin and disgrace, he will defend them to the last. If he would tamely submit, he would treacherously surrender them—he would be a pusillanimous and unfaithful sentinel. *He is not such a man.* But suppose he should be frightened or forced out of his duty, would you say there was no commotion, no violence? And what further would be the consequence? Those who do not believe that the constitution warrants an election, would not submit to any law signed by the new governor. How would you force obedience? Would not this be anarchy? But then the courts, the last anchor of safety, would be appealed to; some might decide one way through fear, others differently from a sense of duty. But do you believe the Court of Appeals, sworn to support the constitution, would surrender it? But we are boldly told, that they *dare not refuse!!* Oh! my country, art thou, with all thy

noble and exalted destinies, quivering on this awful precipice! Have we come to this, that a few men may sack the constitution when they please, with impunity? The advocates of a new election admit that we have not a right to change the constitution in any other way than that therein prescribed, but some of them still have the effrontery to say, that we can force the courts to give it what construction we please. What is this but repealing it? Are we not constrained to fear that any man who will endeavor to make us believe such doctrines, would prostrate our liberties that *he* might rise on their ruins? Will you then, people of Kentucky, permit yourselves to be duped and cheated out of your constitution by those candidates for power? Are you not freemen? Then think for yourselves, and act like men who deserve to be free; act coolly, deliberately, and wisely. I do not ask you to believe what I have said, because I have an interest in the welfare of my country, and none in erring on the question I undertake to discuss; but because I have addressed you in the language of truth and honest sincerity; for although I do not, nor never expect to hold any office under the state government, yet I do feel a deep interest in Kentucky's welfare and repose; it is the place of my birth and my home.

If any thing I have said, or any position I have taken be doubtful, I only ask you to examine the constitution over and over again until you shall become completely satisfied. But if it be possible you can still doubt, pursue the course dictated by your interest and safety. Recollect that if it even be doubtful, whether you have the right to elect a governor, to fill the vacancy occasioned by Madison's death, you cannot violate the constitution by a submission to the present state of things, but that you *may* destroy it, and with it your peace and happiness, by hazarding an unnecessary election. Sport not with this sacred instrument, I beseech you. It is your interest and duty, not only to yourselves, but to your children and your children's children, to defend it even against the slightest encroachment. This is the only way to preserve your liberties, and transmit them unimpaired to your posterity.

A KENTUCKIAN.

PRELECTION.

On the 16th of December, 1818, on the motion of Mr. Robertson, of Kentucky, a select committee, consisting of Mr. Robertson, Mr. Beecher, of Ohio, and Mr. Jones, of Tennessee, was appointed to inquire into the expediency of organizing a separate territorial government, in that portion of the then territory of Missouri, lying south of 36:30° north latitude. On the 21st of the same month, Mr. Robertson reported to the House of Representatives of the United States the Bill, as it finally passed. On the 18th of February, 1819, the following amendment was offered, in the committee of the whole, by *John W. Taylor*, of New York:

"*And be it further enacted*, That neither slavery nor involuntary servitude shall be introduced into the said territory, otherwise than for the punishment of crimes, whereby the party shall have been lawfully convicted. And all children born of slaves within the said territory shall be free, but may be held to service until the age of 25 years."

This was a year before the agitation of the "*Missouri Controversy*," and may be deemed the origin of what has since been called "*the Wilmot Proviso.*"

On that proposition the following speech was made. The proposed amendment having been rejected by the committee of the whole, Mr. Taylor renewed it in the House, which also rejected it by the following vote:

Yeas—Messrs. Adams, Allen, of Mass., Anderson, of Pa., Barber, of Ohio, Bateman, Bennett, Boden, Boss, Comstock, Crafts, Cushman, Darlington, Drake, Folger, Fuller, Hall, of Del., Hasbrouck, Hendricks, Herrick, Hiester, Hitchcock, Hostetter, Hubbard, Hunter, Huntington, Irving, of N. Y., Lawyer, Lincoln, Linn, Livermore, W. Maclay, W. P. Maclay, Marchand, Mason, of R. I., Merrill, Robert Moore, Samuel Moore, Morton, Moseley, Murray, Jer. Nelson, Ogle, Orr, Palmer, Petterson, Pawling, Rice, Rich, Richards, Rogers, Ruggles, Sampson, Savage, Scudder, Seybert, Sherwood. Southward, Spencer. Tallmadge, Tarr, Taylor, Terry, Tompkins, Townsend, Wallace, Wendover, Whiteside, Williams, of Conn., Williams, of N. Y., Wilson, of Pa.—70.

Nays—Messrs. Anderson, of Kentucky, Austin, Ball, Barbour, of Va., Bassett, Bayley, Beecher, Bloomfield, Blount, Bryan, Burwell, Butler, of La., Cobb, Cook, Crawford, Culbreth, Desha, Earl, Edwards, Garnett, Hall, of N. C., Harrison, Hogg, Holmes, Johnson, of Va., Johnson, of Ky., Jones, Kinsey, Lewis, Little, Lowndes, M'Lane, of Del., M'Lean, of Ill., M'Coy, Marr, Mason, of Mass., H. Nelson, T. M. Nelson, New, Newton, Ogden, Owen, Parrott, Pegram, Peter, Pindall, Pleasants, Porter, Quarles, Reed, of Ga., Rhea, Robertson, Sawyer, Settle, Shaw, Simpkins, Slocumb, S. Smith, Alex. Smyth, J. S. Smith, Speed, Stewart, of N. C., Storrs, Stuart, of Md., Terrell, Trimble, Tucker, of Va., Tucker, of S. C., Tyler, Walker, of N. C., Williams, of N. C.—71.

Mr. T. then moved so much of said amendment as related prospectively to the issue of slaves, and that was adopted by the following vote:

Yeas—Messrs. Adams, Anderson, of Pa., Barber, of Ohio, Bateman, Bennett, Boden, Boss, Comstock. Crafts, Cushman, Darlington, Drake, Ellicott, Folger, Fuller, Gilbert, Hall, of Del., Hasbrouck, Hendricks, Herrick, Hiester, Hitchcock, Hostetter, Hubbard, Hunter, Huntington, Irving, of N. Y., Kirtland, Lawyer, Lincoln, Linn, Livermore, W. Maclay, W. P. Maclay, Marchand, Merrill, Mills, Robt. Moore, Samuel Moore, Morton, Moseley, Murray, Jer. Nelson, Ogle, Orr, Palmer, Patterson, Pawling, Rice, Rich, Richards, Rogers, Ruggles, Sampson, Savage, Schuyler, Scudder, Seybert, Sherwood, Southward, Spencer, Tallmadge,

Tarr, Taylor, Terry, Tompkins, Townsend, Wallace, Wendover, Westerlo, Whiteside, Williams, of Con., Williams, of N. C., Williams, of N. Y., Wilson, of Pa.—75.

Nays—Messrs. Abbott, Anderson, of Ky., Austin, Ball, Barbour, of Va., Bassett, Bayley, Beecher, Bloomfield, Blount, Bryan, Burwell, Butler, of La., Cobb, Cook, Crawford, Cruger, Culbreth, Desha, Earl, Edwards, Garnett, Hall, N. C., Harrison, Hogg, Holmes, Johnson of Va., Johnson, of Ky., Jones. Kinsey, Lewis, Little Lowndes, M'Lane, of Del., McLean, of Ill., M'Coy, Marr, Mason, of Mass., Middleton, H. Nelson, T. M. Nelson, Nesbitt, New, Ogden, Owen, Parrott, Pegram, Peter, Pindall, Pleasant, Quarles, Reed, of Md., Reed, of Ga., Rhea, Robertson, Sawyer, Settle, Shaw, Simkins, Slocumb, S. Smith, Alex, Smyth, J. S. Smith, Speed, Stwart, of N. C., Storrs, Stuart, of Md, Terrell, Trimble, Tucker, of Va., Tucker, of S. C., Tyler, Walker, of N. C.—73.

On the next day Mr. Robertson moved a reference of the Bill to a select committee, with instructions to strike out of the 1st section thereof the following words: "*And all children born of slaves within the said territory shall be free, but may be held to service until the age of twenty-five years.*"

Which motion prevailed by the following vote:

Yeas—Messrs. Abbott, Anderson, of Ky., Austin, Baldwin, Ball, Barbour, of Va., Bassett, Bayley, Beecher, Bloomfield, Blount, Bryan, Butler, of La., Campbell, Cobb, Colston, Cook, Crawford, Cruger, Davidson, Desha, Earl, Edwards, Ervin, of S. C., Fisher, Floyd, Garnett, Hall, of N. C., Harrison, Hogg, Holmes, Johnson, of Va., Johnson, of Kentucky, Jones, Kinsey, Lewis, Little, Lowndes, M'Lane, of Del., McLean, of Ill., McCoy, Marr, Mason, of Mass., Mercer, Middleton, H. Nelson, T. M. Nelson, Nesbitt. New, Newton, Ogden, Owen, Parrott, Pegram, Peter, Pindall, Pleasants, Poindexter, Quarles, Reed, of Md., Reed, of Ga., Rhea, Ringgold, Robertson, Sawyer, Settle, Shaw, Simkins. Slocumb, S. Smith, Bal. Smith, Alex. Smith, J. S. Smith. Speed, Stewart, of N. C., Storrs, Strother, Stuart, of Md., Terrell. Trimble, Tucker, of Va., Tucker, of S. C., Tyler, Walker, of N. C., Walker, of Ky., Whitman, Williams, of N. C.—88.

Nays—Messrs. Adams, Allen, of Mass., Anderson, of Pa., Barber, of Ohio, Bateman, Bennett, Boden, Boss, Clagen, Comstock, Crafts, Cushman, Darlington, Drake, Ellicott, Folger, Fuller, Gage, Gilbert, Hale, Hall, of Del., Hasbrouk, Hendricks, Herkimer, Herrick, Hiester, Hitchcock, Hopkinson, Hostetter, Hubbard, Hunter, Huntington, Irving, of N. Y., Kirtland, Lawyer, Lincoln, Linn, Livermore, W. Maclay, W. P. Maclay, Marchand, Mason, of R. I., Merrill, Mills, Robert Moore, Samuel Moore, Morton, Moseley, Murray, Jer. Nelson, Ogle, Orr, Palmer, Patterson, Pawling, Pitkin, Porter, Rice, Rich, Richards, Rogers, Ruggles, Sampson. Savage, Schuyler, Scudder, Sergeant, Seybert, Sherwood, Silsbee, Southard, Spencer, Tallmadge, Tarr, Taylor, Terry, Tompkins, Townsend, Upham, Wallace, Wendover, Westerlo, Whiteside, Wilkin, Williams, of Con., Williams, of N. Y, Wilson, of Mass., Wilson, of Pa.—88.

There being an equal division, the Speaker (Henry Clay) declared himself in the affirmative, and so the said motion was carried.

And Mr. Robertson, of Ky., Mr. Silisbee, of Mass., Mr. Burwell, of Va., Mr. Mills, of Mass., and Mr. Lowndes, of S. C., were appointed the said committee.

On the same day Mr. Robertson reported the bill without the said amendment; and on the question of concurrence with the committee in striking out said amendment, the House concurred by the following vote:

Yeas—Messrs. Abbott, Anderson, of Ky., Austin, Baldwin, Ball, Barbour, of Va., Bassett, Bayley, Beecher, Bloomfield, Blount, Bryan, Burwell, Butler, of La., Campbell, Cobb, Colston, Cook, Crawford, Cruger, Culbreth, Davidson, Desha, Earl, Edwards, Ervin, of S. C., Fisher, Floyd, Garnett, Hall, of N. C., Harrison, Hogg, Holmes, Johnson, of Va., Johnson, of Ky., Jones, Kinsey, Lewis, Little, Lowndes, M'Lane, of Del., M'Lean, of Ill., M'Coy, Marr, Mason, of Mass., Mercer, Middleton, H. Nelson, T. M. Nelson, Nesbitt, New, Newton, Og-

den, Owen, Parrott, Pegram, Peter, Pindall, Pleasants, Poindexter, Quarles, Reed, of Md., Reed, of Ga., Rhea, Ringgold, Robertson, Sawyer, Settle, Shaw, Simkins, Slocumb, S. Smith, Bal. Smith, Alex. Smith, J. S. Smith, Speed, Stewart, of N. C., Storrs, Strother, Stuart, of Md., Terrell, Trimble, Tucker, of Va., Tucker, of S. C., Tyler, Walker, of N. C., Walker, of Ky., Whitman, Williams, of N. C.—89.

Nays—Messrs. Adams, Allen, of Mass., Anderson, of Pa., Barber, of Ohio, Bateman, Bennett, Boden, Boss, Clagett, Comstock, Crafts, Cushman, Darlington, Drake Ellicott, Folger, Fuller, Gage, Gilbert, Hale, Hall, of Del., Hasbrouk, Hendricks, Herkimer, Herrick, Hiester, Hitchcock, Hopkinson, Hostetter, Hubbard, Huntington, Irving, of N. Y., Kirtland, Lawyer, Lincoln, Linn, Livermore, W. Maclay, W. P. Maclay, Marchand, Mason, of R. I., Merrill, Mills, Robert Moore, Samuel Moore, Morton, Moseley, Murray, Jer. Nelson, Ogle, Orr, Palmer, Patterson, Pawling, Pitkin, Porter, Rice, Rich, Richards, Rogers, Ruggles, Savage, Schuyler, Scudder, Sergeant, Seybert, Sherwood, Silsbee, Southward, Spencer, Tallmadge, Tarr, Taylor, Terry, Tompkins, Townsend, Upham, Wallace, Wendover, Westerlo, Whiteside, Wilkin, Williams, of Con., Williams, of N. Y., Wilson, of Mass., Wilson, of Pa.—87.

The Bill, as originally reported, was then engrossed, and on the next day, (20th February, 1819) was passed.

From the foregoing synopsis, the present age and posterity will be able to see how equally divided, and how geographical, in this first controversy on the subject, were the parties which have since so much agitated the public mind and disturbed the public peace, and may also see how far the following speech was prophetical of the consequences of all such agitation, and presented an outline of the true national power and policy, on a most delicate and interesting topic.

SPEECH OF MR. ROBERTSON, OF KENTUCKY,

On the Bill to establish the Territorial Government of Arkansas.

[Congressional Debates, 18th of February, 1819.]

When leave was asked to bring in this bill to organize a separate territorial government for Arkansas, I explained the reasons which, in my judgment, should commend such a measure to the approval of Congress. I had consulted no person on the subject—not even the delegate from Missouri, from which the proposed territory was to be taken. But it seemed to me that the remote, forlorn, and almost lawless condition of the population of the Arkansas regions, demands, in resistless tones, a separate and efficient organization and government; and in this sentiment I am happy to find, not only that the worthy delegate from Missouri concurs, but that the vote on the leave proves the unanimous concurrence of this House also.

It would be useless, therefore, to repeat or enlarge on the suggestions made on a former occasion, to prove the propriety of passing the bill, as reported, nor is any argument as to any of the details of the bill necessary now—because no objection has been made, or is apprehended on any such ground.

The great and only proper subject of debate is, whether it should pass with the proposed interdiction of slavery, inserted in it as a condition of its passage. To that proposition I am altogether opposed, and if it be maintained, I shall vote against my own bill.

My argument will be confined to a brief discussion of the amendment for interdicting slavery, proposed by the gentleman from New York, (Mr. Taylor) and urged with so much zeal and vehemence by himself and some other Northern members. And not intending to argue this grave matter *in extenso*, I shall content myself, on the present occasion, with a condensed outline of the principal reasons which convince me that the question, now agitated in a new form, *for the first time*, is indiscreetly proposed, and should be stifled in its germ.

Slavery was the most delicate and formidable of all the vexatious subjects which divided the councils which made and adopted the Constitution of the United States. Had it not been wisely put to sleep by a magnanimous compromise, the charter of our Union would never have been sealed. The same spirit of patriotic nationality and forbearance is indispensable to the harmony and preservation of that glorious offspring of mutual concession, of local interests, and compromise of conflicting and long cherished opinions; and the general government, responsible to all, and the guardian of the national interests of all, as a faithful trustee, must, by its impartiality, moderation, and benevolence, conciliate the confidence and affection of all its citizens, North and South, East and West. This can be effectually done only by administering the government, (in its legislative function, especially,) in the spirit of compromise which brought it into being.

That spirit left slavery as a local concern, to be disposed of by *local interest and opinion*, and it is the duty of Congress to abstain from any act which will disturb that wise and eventful adjustment of a matter which can *never be otherwise settled, either justly or peaceably*. Having prohibited foreign importations of slaves into the United States, Congress should leave, as the patriarchs of the constitution left, the domestic institution to the states, and the people of territories of the United States, to be disposed of as each separate community of freemen may choose for themselves; and in this domestic aspect of slavery, Congress ought never to touch it or countenance any agitation concerning it among the states, or the people of the United States, in any form or for any purpose. *It is a sensitive plant, which the national hand cannot touch without injury*, or sense of outrage, or extreme danger of both.

Congress has, I admit, constitutional power to legislate over the District of Columbia, and over Arkansas, and over every other territory subject to the exclusive jurisdiction of the United States government; and I concede, also, that this is so far plenary as to be subject to no other limitation than sound discretion and the federal constitution. In other words, that the legislative power of Congress is as comprehensive as that of the territory itself would be, if it, instead of the general government, were permitted to exercise all power over its own concerns, which might be consistent with the constitution or the United States. That constitution does not *guarantee* to the people of the territories the right to establish slavery. It leaves that concern to the discretion of Congress, and the will of the people of the territories. But it does guarantee to every citizen of the United States his private property, against the power of the general government (except for taxation) without the consent of the owner or just compensation. Although, therefore,

Congress may emancipate slaves in any of the territories of the United States where it exists, the exercise of that power is subject to the condition that any owner, who withholds his consent to the act, shall be paid the value of his slave or slaves so emancipated against his will. Yet, as property in human beings as slaves is merely *legal*, whether persons imported into a territory subject to the jurisdiction of the United States, shall be slaves there or not, must be a question of local law, and depends, therefore, on the will of the law-giver, constitutionally expressed. Of course the freemen of any such territory, if permitted to exercise all legislative authority for themselves, could, without doubt as to the power, prohibit the institution of slavery within their limits; and consequently, Congress, as long as it shall choose to legislate for any such territory, may interdict the introduction of slavery as a domestic institution. But I deny that such legislation, by Congress, would ever be NECESSARY to the public welfare, OR WOULD, IN ANY CASE, WITHOUT THE HEARTY CONCURRENCE OF THE SLAVE STATES, BE EITHER JUST OR PRUDENT. Congress has no power over slavery in any of the states of the Union. Its continuance, therefore, in the United States, under the guarantees of the federal constitution, depends altogether on the will of the respective states in which it exists. An expansion of its area would not, of itself, augment its evils or prolong its existence, but would certainly tend to meliorate its condition. Neither policy nor benevolence would circumscribe it within the states where it now exists. No such effort, by Congress, would be benevolent, because deterioration in the value of slaves and an aggravation of the perils and privations incident to slavery in its best estate would be the necessary consequences of all such unphilanthropic legislation. Nor would such legislative interference be politic. 1st. Because it would be inconsistent with true benevolence. 2nd. Because it would, to a great extent, give *to a section* of the Union and *one class* of our citizens a monopoly of the territories bought with the money or the blood of all, and would, therefore, seem to be invidious and unparental. 3rd. Because it would be inconsistent with the compromising spirit of the constitution—would be felt, by a large portion of our fellow-citizens, as intended indirectly to operate to the disparagement of their property guarantied by the public faith, and might, therefore, not only alienate the affections of many from the national government, but breed sectional collisions, and generate and exasperate sectional parties—the most dangerous to the Union of all others—and on a subject most pregnant with unreasonable and uncompromising passions; and lastly, because no such legislation can do any practical good, and therefore, *being gratuitous*, would be the more unkind and offensive; for if it could neither hasten the peaceful extinction of slavery, nor improve the condition of slaves in the United States, by what just or prudent motive of national patriotism could it be justified or extenuated? None but a morbid philanthropy, false in its aims and perhaps fatal in its results; for, sir, a spirit of propheoy is not necessary to enable a *statesman* to foresee that all such Congressional action will awaken jealousies and excite alarm, *which will contribute to the unnatural prolongation of the legal existence of slavery in Amercca, rivet chains for slaves*, and, in its ultimate issue, might probably even dissolve the Union.

According to the principles of the Declaration of Independence, principles consecrated in the affections, and imbedded in the institutions of the countrymen of Washington, every separate community of freemen ought to regulate their own social organization. Under the protection of these principles, the citizens who shall cast their lots in Arkansas ought to decide for themselves whether slavery shall exist there or not, just as they would control all their other domestic institutions and social relations at home. Against their will, Congress ought not to force the establishment of slavery or any other domestic relation among them—against their will Congress ought not to prohibit slavery there. As long as it shall exist in any of the states of the Union, every territory of the United States, as well as each state, should be allowed to participate in it or not, as each, for itself, may choose. Let *them* all alone, and especially let *it* alone. This is the true and *only safe* policy. If, in climate, soil, and products, ARKANSAS be so adapted to slave labor as to induce a majority of the immigrants to it to carry slaves with them from slave states, or to incline a majority of its freemen to prefer the institution of slavery, why not let the felt interests and inclinations of those who elect to make that Southern country their home, decide its destiny as to the relation of slavery? A transportation of slaves from states to territories does not increase the number of slaves in the United States, nor establish a slavery that did not already exist; and if left to the promptings of their own interests and feelings, the people of Arkansas should choose to maintain the institution of slavery, Congress will not be responsible. What is it to Congress, or to the cause of universal liberty, whether I shall continue with my slaves in Kentucky or remove them to Arkansas? And why should Congress say to me, "you shall not live in Arkansas unless you first sell or manumit your slaves?" Was the power to legislate over that territory given for any such purpose? Or could the application of it to such a purpose promote the harmony of the Union, or the cause of emancipation, or the mitigation of slavery, or the aggregate prosperity and general welfare of the people of the United States? SLAVERY IS GEOGRAPHICAL. Arkansas is in the slave latitude. Citizens in slave states will be more inclined than those in free states to settle there, as the people in the latter states will be more disposed than those of the former, to settle in territories north of about 37 degrees, north latitude. Then, if Congress *will* legislate on slavery in the territories, sound policy and distributive justice and equality would recommend that it draw a latitudinal line, (say about 37 degrees north lati-

tude) south of which slavery may exist, but north of which it shall not. I would have no insuperable objection to this, although I would prefer total abstinence from all interference on that subject. No congressional act is necessary north of that line, beyond which slavery if left to its natural current, will never run or long continue, and any unnecessary act of interference by Congress will excite jealous feelings, incompatible with the moral cement of the Union.

And now, Mr. Chairman, allow me to say, that if the proposed restriction be pertinaciously insisted on and maintained by the majority of Congress, that majority will heedlessly sow *wind*, and may, in time to come, woefully reap the whirlwind. They may, and I fear will, recklessly raise a storm that will scatter the seeds of discord over this favored land—Dragons' teeth, whose rank and pestilential crop, *upas*-like, may poison the vital elements of this young, robust, and promising Union, and finally, in the progress of desolation, may DESTROY ITS HEART FOREVER.

Let us pause and soberly reflect before we take this rash and perilous step. Let us take counsel of our patriarchs of '88. Let us consider our memorable past, and look, with patriot's hearts and statesmen's eyes, to our eventful future. Let us do as Washington, and Franklin, and Jefferson did, and would certainly do again were they now here. And if we shall all take this prudent course, I feel quite sure that the provision, now, for the first time, unfortunately agitated, will be rejected by such a vote as will rebuke all Congressional legislation on American slavery, and assure, as far as the national councils can assure, peace to our country, and to our *Union* strength, and health, and hopeful influence over the destinies of our race, here and elsewhere—now and evermore.

PRELECTION.

On the 17th day of December, 1819, Mr. Robertson, of Kentucky, submitted to the House of Representatives of the United States the following resolution, which was adopted:

"*Resolved*, That the committee on the Public Lands be instructed to inquire into the expediency of so altering the laws regulating the sales of the vacant lands of the United States, that from and after the day of , no credit shall be given thereon, and a less quantity may be purchased, and at a less price than is authorized by the existing laws."

After consultation, it was deemed prudent to introduce the same subject into the Senate, whereby time might be saved in the discussion and progress of a bill.

And for that purpose, Mr. Leake of Mississippi, on the 20th of December, 1819, brought the subject before the Senate by a resolution, similar, in substance, to that previously adopted by the other House, on the resotion offered by Mr. Robertson.

Before the subject had been further acted on in the House of Representatives, a bill passed the Senate changing the mode of selling the public lands. That bill was reported by the land committee of the House, with amendments striking out the provisions for cash sales, at a minimum of $1,25 an acre, and for a sale of as small a quantity as 80 acres. Upon full argument, in committee of the whole, chiefly by Mr. Clay on one side and Mr. Robertson on the other, those amendments were rejected; and, on the question whether the House would concur in the rejection, for which Mr. Robertson contended, the vote was—yeas, 135; nays, 19; and on the next day, 20th of April, 1820, the bill passed by a vote of 133 to 23, of which 23 a majority were from the West. The yeas and nays were as follows:

Yeas—Messrs. Abbott, Alexander, Allen, of Mass., Anderson, of Ky., Archer, of Md., Baker, Baldwin, Barbour, Bateman, Bayley, Beecher, Boden, Brush, Buffum, Campbell, Case, Claggett, Clark, Cobb, Crafts, Crawford, Culbreth, Cushman, Cuthbert, Darlington, Davidson, Dennison, Dewitt, Dickinson, Dowse, Earl, Eddy, Edwards, of Conn., Edwards, of Pa., Edwards, of N. C., Fay, Fisher, Floyd, Folger, Foot, Forrest, Fuller, Fullerton, Garnett, Gross, of N. Y., Gross, of Pa., Hall, of N. Y., Hall, of Pa., Hall, of Del., Hall., of N. C., Hardin, of Ky., Hazard, Hemphill, Herrick, Hibshman, Hiester, Hill, Holmes, Hooks, Hostetter, Kendall, Kinsey, Little, Linn, Livermore, Lyman, McCoy, McLane, of Del., Mallary, Marchand, Mason, Meech, Meigs, Mercer, R. Moore, S. Moore, Monell, Morton, Moseley, Murray, Neale, Nelson, of Mass., Newton, Overstreet, Parker, of Mass., Parker, of Va., Patterson, Phelps, Philson, Pickney, Pindall, Pitcher, Plumer, Rankin, Reed, Rhea, Rich, Richards, Richmond, Robertson, Rogers, Ross, Russ, Sampson, Sawyer, Sergeant, Settle, Shaw, Silsbee, Simkins, Sloan, Slocumb, Smith, of N. J., Smith, of Md., B. Smith, of Va., Smith, of N. C., Southard, Storrs, Strong, of N. Y., Swearingen, Tarr, Taylor Tomlin-

son, Tompkins, Tracy, Tucker, of S. C., Tyler, Van Renssealaer, Wallace, Wendover, Williams, of Va., Williams, of N. C.—133.

Nays—Messrs. Allen, of Tenn., Ball, Bloomfield, Brown, of Ky., Bryan, Burwell, Butler, of Lou., Cannon, Cook, Crowel, Culpepper, Ford, Hackley, Hendricks, Johnson, Jones, of Tenn., McCreary, McLean, of Ky., Stevens, Trimble, of Ky., Tucker, of Va., Walker—23.

Mr. R. C. Anderson, Mr. B. Hardin, and Mr. Robertson, were the only members from Kentucky who voted for the bill.

This law was opposed as anti-Western, and when it passed, was believed to be exceedingly unpopular in the West; but with even that prospect of being proscribed, Mr. Robertson, for reasons suggested in the following speech, staked himself on the law, as its author, and predicted that time would prove it to be a blessing. And time has, long since, affixed its approving seal to that prediction. No law ever enacted by Congress has been more generally approved, or has operated more beneficently on the Union, and *especially on the population and destiny of the great Valley of the Mississippi.*

This law established the system under which the public lands have been sold ever since the year 1820.

SPEECH OF MR. ROBERTSON, OF KENTUCKY,

On the Change of the System of Land Sales.

[Congressional Debate, 1820.]

Mr. Robertson said, that it was with reluctance and unfeigned diffidence he had taken the floor, to offer to the committee anything which he would be able to say on the interesting subject under consideration. He was not friendly to apologetical speeches, nor in the habit of making them, but he owed to the committee an apology for his inability to make them any adequate return for their kind indulgence in rising, on his motion, to give him a full opportunity to deliver his sentiments.

Laboring under severe indisposition, he was totally incapacitated to do justice to the committee, or to the subject which he was about to discuss. Under this embarrassment, well aware of the magnitude of the subject, and of the delicate and interesting considerations involved in its discussion, and the great interests to be affected by its decision, he would not, if permitted to consult his feelings, obtrude himself on the committee, but would surrender the floor most cheerfully to some other member who could entertain them more profitably and more acceptably than he could hope to do, under the most favorable circumstances. But the peculiar situation in which he happened to stand left him no such discretion. He felt himself constrained, by a sense of duty to his state and himself, to give some of the reasons which would influence his vote.

Having introduced, early in the session, a resolution, instructing the committie on public lands to inquire into the expediency of the measure now under consideration, it was necessary, lest he might be suspected of a dereliction of duty, to defend the policy of the system he had recommended.

And having the misfortune not to be supported by the co-operation of some of his colleagues, who opposed the bill from the avowed apprehension that it would injure the Western country, and aimed a blow at its prosperity and influence, he felt imperiously called upon, by considerations which he could not resist, and obligations from which he should not shrink, to vindicate the policy of his course, and endeavor to maintain the rectitude of his opinions and the integrity of his motives.

He said that he was not so vain as to suppose that he would be able to offer to the committee any considerations in favor of the bill that had not occurred to them, but he did hope and believe that he should be able successfully to defend his opinions with the nation, and even the Western country.

Uninteresting as the desultory observations he should make must necessarily be, he hoped the committee would hear him patiently. No one could be insensible to the importance of the subject, or to the necessity of serious and sober consideration in deciding on it. It is a question in which not only the government, but the people—not only the East, but the West—not only the present generation, but posterity must, in some degree, be interested. He feared that its importance is not sufficiently felt, nor its character and its tendencies fully understood

He would not attempt to give to it any factitious importance. It is intrinsically as interesting to the people as any subject that can engage the attention of Congress during the present session. Whether regarded in its effects on the fiscal concerns of the government, or the strength, prosperity, and independence of the West, or its inevitable moral and political tendencies, it had strong claims to the most dispassionate consideration.

Having bestowed on the subject, said Mr. Robertson, all the reflection that its importance and a due respect for the opinions of others required and his limited means permitted, and having come to the conclusion that the passage of the bill is demanded by considerations of policy which he thought a statesman could not safely resist, he could not hesitate to give it his vote, disregarding the consequnnces that had been threatened. He felt bound to discharge his duty impartially, and he should do it fearlessly.

He said he regretted that he could not co-operate with his colleague, (the Speaker, Mr. Clay,) whose feelings on this subject he admired, but with whose opinions he could not concur.

But he must be permitted on this, as well as on all other occasions of public duty, to pursue the dictates of his own conscience and judgment. Acting on his own responsibility, if he was wrong, it was sufficient for him that he believed he was right. And on this subject, others might think as they pleased, but he felt a strong conviction that the adoption of the cash system would promote, not only the interest of the general government and of the people of the United States, but the substantial and permanent interests of the Western country.

Mr. Robertson said, that the question is not whether the plan for selling the public

lands now proposed as a substitute for the one in operation is unexceptionable or would effectually prevent the recurrence of all the abuses and difficulties which it was acknowledged had resulted from defects in the latter, but only whether it be more perfect, and better suited to the purposes for which the old system was established.

He said that the Senate's bill, like all other human productions, however perfect in theory, would, no doubt, in its execution, be found liable to some objections. But these, he felt sure, would be comparatively insignificant; and he thought that the proposed law is not only better than the existing one, but as perfect as the experience of twenty years, and the circumstances of the times and the country would enable Congress to make one.

He said, that in opposition to the bill, it had been urged that the present system is a venerable one, and not to be changed unless practical men should pronounce the change necessary. He did not profess to be a very "*practical man*," or to know more on this subject than others; but he thought that no one should be denounced as a rash or an unskillful innovator, who should, after an experiment of twenty years, endeavor to correct abuses and prevent difficulties which it had disclosed, and which might produce consequences, which, if not averted by timely interposition, might embarrass the government and disturb society. He thought that if the system which had been in operation for twenty years were known to be defective, it should be amended, and that if the argument of innovation were applicable now, it never would be inapplicable. As to "practical men," he said he did not precisely comprehend its import. But he supposed that those who had observed and felt the operation of the present system, from its adoption until now, might be considered sufficiently "practical" for all the purposes of the bill; and, although he was unwilling to adopt the opinions of others, merely because he might consider *them* "practical men," he would tell the gentleman from Tennessee, (Mr. Jones) that he believed the most practical men in the United States, on land subjects, are in favor of the change proposed in the bill under consideration. He would ask, who is more "practical" on all subjects that concerned the public lands than a late Senator from Ohio; (Mr. Morrow) and whose opinions have and deserve more universal influence? He had been called, by a Senator from Kentucky, (Mr. Crittenden) the Palinurus of the Senate. And is it so soon forgotten, that he wished to make the adoption of the system now proposed the last act of his long political life? That he felt and avowed the necessity of reforming the present system? And, said Mr. Robertson, the voice of the people will applaud him for his patriotic purpose.

By the law now in operation, said Mr. Robertson, the public lands are sold in quantities not less than one hundred and sixty acres, and at a price not less than two dollars per acre, one-fourth to be paid at the time of sale, and the remainder in four years, with interest, if not punctually paid, and the land forfeited, if the whole consideration be not paid in five years. The bill before the committee proposes to sell the public lands for cash, at a price not less than one dollar and twenty-five cents per acre, and in tracts containing not less than eighty acres.

The first system, he said, having been tried twenty years, is ascertained to be defective. The last is intended to remedy the defects of the first, which, it is believed, might be effectually and safely done. The first, it is true, had been prepared with great care, and was considered, when adopted, better adapted than any other that could then be devised, to the ends for which it was instituted. These ends were, 1st. Revenue, and 2nd. The promotion of the general and substantial interests of society, by extending population and encouraging industry, and the domestic, social, and civic virtues. But, said he, consistently with these purposes, it is ascertained that it cannot be fully executed. The experience of 20 years had demonstrated its inefficiency and its tendency, from abuse and accident, to consequences unforseen and mischievous. Instead of proving a sure resource of revenue, he believed that, ere long, the treasury could not rely no it. Instead of meliorating the condition of the poor, it had often been an instrument in the hands of the rich, by which they were enabled to oppress that class and enrich themselves. Instead of strengthening the Union and enriching the country, he feared that, if persisted in, it would tend to weaken the one and embarrass the other; instead of increasing the resources of the West, he believed that it tends to their subduction; in short, he believed that it could not be continued in operation, without creating the most unpleasant embarrassments in the government and among the people. That it was defective, he said, he believed all acknowledged. But, in regard to the nature and extent of its defects, their operation and ultimate tendency, and their remedies, there was a diversity of opinion. However, for all his purposes, it would only be necessary to show one radical defect, and that the proposed substitute would remedy it, without producing any bad effects that legislation could prevent.

This radical defect, he said, he found in the credit given to the purchaser, and he believed that the most serious difficulties that had occurred, or would occur, under the operation of the credit system, might be ascribed to the credit.

Mr. Robertson said that he should not venture to state that the revenue had been diminished by the sale of the public lands on credit. It was impossible to ascertain, with certainty, whether there had been any diminution in its amount, as the cash system had never been tried. But he would venture to predict that there would, in a few years, be a loss inevitably, unless the bill before the committee should become a law. It was well known, he said, that application had been made, by the pur-

chasers of public lands, for many years successively, for indulgence, and that laws had been repeatedly passed, exempting from forfeiture lands which had been purchased on credit, and for which the purchasers had failed punctually to pay. This kind of indulgence had almost become a matter of course. It had been extended, with a few exceptions, annually, for more than ten years. He believed it had never been refused, and he doubted whether it ever would be. A bill had been engrossed this morning, extending the indulgence one year longer, and it is obvious that a similar law must pass at the next session, and for many consecutive years, or the debtors for the public lands must be subjected to great distress, and many of them to ruin. Mr. Robertson said that he did not wish to be understood as intimating that the indulgencies heretofore given were unnecessary or improper; on the contrary, he was sure that they had been proper, and that it would be necessary to renew them. But he thought that that policy must be unwise which subjected the national legislature and the people to such vexatious embarrassments, and that any system which required such temporary and mitigating expedients in its operation, must be radically defective. The necessity of continued indulgence indicated very clearly the necessity of changing the system which produced it. Indeed, said he, every argument that has been or could be urged in favor of indulgence, tends strongly to show the propriety of refusing, in future, that credit which has rendered such arguments proper and necessary.

He said that he had frequently heard it stated, and his friend from Tennessee, (Mr. Jones) had reiterated, that the accumulation of the debt for the public lands, and the inability of the debtors to discharge it, resulted from temporary and accidental causes, and that it is not probable that the indulgence thereby rendered necessary would long be required.

He would not, he said, enter into an examination of those circumstances alluded to by the gentleman in support of that opinion, because their character rendered a minute investigation of them unnecessary. He thought it easily demonstrable, that the causes of the accumulation of the debt were neither accidental nor temporary; they existed in the nature of the system, and would continue to produce their results, as long as it should be kept in operation. The circumstances mentioned by the gentlemen may have had some influence on the extent of the increase, but, if they had never occurred, the debt would have grown, and indulgence have been necessary. The debt had been gradually accumulated for many years—in good times, and in bad times, and under all circumstances.

It could not reasonably be expected that a man, who should be able to pay only the first installment for a tract of land, could transplant himself and family in the Western wilds, open a farm, build his houses, support his family, and be able in four years, to save, by the cultivation of the soil, as much as would pay the remaining three-fourths of the consideration. Under the most auspicious circumstances, some of the purchasers must unavoidably become delinquent. But if misfortune or calamity should fall on the public debtor, or the currency should become deranged, or the seasons unpropitious, or the market for agricultural products dull or unprofitable, how would the debt be punctually discharged? But, said he, add to these considerations the exorbitant prices which the advantages of credit tempt the speculator to promise, (which is the most fruitful source of accumulation) and which it is impossible that he can ever pay, and how inevitable is the growth of the land debt? It must continue to increase as long as credit shall be given.

Such a system, said he, liable to so many contingencies, must be intrinsically defective. It could not long be continued in operation, without defeating the ends of its institution. It could not be executed. He would not say, if persisted in, it would eventually create a debt so large that it never could be paid. But, he would say, and was bound to believe, that the debt would become so much augmented, that its entire collection would be difficult, remote, doubtful and perilous. And he should not attempt to disguise his apprehension that it never would be entirely collected; or, if collected, that it would be under circumstances which would prove that it would have been better that it had never been either contracted or coerced. He felt compelled to believe, that if the credit system be continued much longer, the government would necessarily lose a great part of the proceeds of sales, or would have to secure them at the expense of the best interests of the Union.

He was unable to perceive how such a dilemma could be avoided. The people could not pay the debt now due; that debt must increase; the causes are permanent, and the effects inevitable. When, and how, he asked, would it be collected? If it will be difficult or impossible to collect twenty-two million, how much more difficult will it be to collect, with safety, one hundred million? Will you refuse further indulgence, and thereby subject the land to forfeiture? Then, passing by other consequences, you distress and ruin many of the purchasers; and, in that event, it will have been unfortunate for them that you gave them credit. If you refuse indulgence, confusion, disaffection, and oppression will follow; if you grant it, the government loses revenue. Gentlemen might choose their alternative. But it is certainly the province of an enlighted policy to prevent this dilemma, when it might be possible, by opportune interposition. This, he thought, is now practicable; but no one could say how long it would be so. And if, by such interposition, the government should sell its lands for 34 cents per acre less, (the difference between cash payments under the two systems) it will be more than compensated, by certainly in getting the whole amount of sales

Mr. Robertson said, that it was useless to talk to him of the security the government pos-

sessed, by holding the title to the land. This security is only nominal; for while, by holding it, with a heavy and ruinous debt impending over your land debtors, you keep them comparatively in a state of dependence and tenancy, you will, at the same time, be unable or unwilling to evict them, and sell their houses to hungry speculators and strangers. But, if you should so sell, it would be an event that might be deeply felt, and long deplored.

The home of a freeman, said he, is dear to his heart. It is sacred; it is the centre of his affections and of his happiness; it is the sanctuary of his wife and children. It is consecrated by being his home, and often endeared to him by being the birth-place of his little ones. Will you venture, for a paltry consideration, to tear this from him, and thereby strike into wild and discordant commotion, all those tender strings? He felt, he said, that he was touching a delicate subject, on which it would be painful to dilate. He would, therefore, not pursue it, but content himself by having hinted at it, with barely opening the door to the view of some of the consequences that would attend the credit system.

Mr. Robertson said, that all his observation and experience taught him to believe that any permanent system of credit, national or individual, is pernicious. It is unnatural and seductive, and had generally brought on those concerned in its operations, distress, and not unfrequently ruin. It is nationally a Pandora's box. What else, he asked, was more fruitful of the distress with which the people of the United States are now so much afflicted? And what else is the cause of the magnitude of the land debt, and its concomitant embarrassments? Would not the people now be in a better condition, if it had never been incurred? And would not the Western country, particularly, be more prosperous and independent, if credit had never been given on the public lands? Would it not be, in relation to the general government, out of debt?

But, in addition to the objections he had mentioned, he said there were many others to the land credit. It deceived and embarrassed the purchaser. It compelled him frequently to promise too high a price for his land; it tempted him to go beyond his means; it placed the occupant in the power of the non-resident speculator, and subjected the purchasers, of every descripiton, to the control of circumstances which they could not foresee or avert, to the caprice of fortune, and to the mercy of government.

The purchaser, said he, if there were no credit, would not have to complain of the vitiated paper currency, nor to reproach the government with refusing to receive of him such depreciated paper as he had been compelled, in his transactions, to receive; nor would the capitalist be able to unhouse the poor man, with family, who had enhanced the value of the soil by improvements, and who, without his fault, had become unable to pay the whole price for it punctually; nor would the ears of Congress be assailed with reports of nefarious speculations, in fraud of the government, and to the injury of the poor. Look, said he, to Alabama. What, but credit, was the cause of the exorbitant prices bid there for land, or of the great speculations that had been made there or attempted? Would not many, who purchased there, be unable to pay? Was not the magnitude of that debt alarming? He did not, he said, wish to pursue this part of the subject; he had no doubt he was sufficiently understood.

Mr. Robertson here observed, that the objections to the credit system, which had most influence with him, were of a character different from those which were merely financial or personal, and of infinitely more consequence in view of wise policy and enlightened patriotism. They grew out of the moral and political tendencies of credit between the people and their government. This was, he said, an embarrassing topic; but his duty would not excuse its pretermission. He could not avoid it. It lay across his way. He should, therefore, give his opinion in regard to it without disguise.

History, and a knowledge of the nature of republican government, proved, that the relation of creditor and debtor, ought not to exist between the government and the people. It begets obligations, and interests, and feelings, incompatible with the genius of free institutions. If the citizen must stand in that relation to his government, it is best that he should be the creditor. If he stand in the attitude of debtor, his interest may not be the interest of the government, and his feelings may not always be in accordance with his duty. But, the objections to such a relation are multiplied and strengthened when it is permitted to exist between the government and an entire community, or a large portion of the whole population. It is then that the government may be compelled to feel its own impotency, and the supremacy of those passions which it was instituted to control; and it is then that it may be in danger of degenerating into a government of men, and not of laws; of passions, and not of principles; of arbitrary force, and not of enlightened public opinion.

He said, that it had been very seldom the policy of governments to encourage or permit this odious and dangerous relation permanently; and most of those that ever did, had left striking memorials of its impolicy. In Great Britain it exists to a great extent; and there, it is true, it is not deprecated by those who administer the government, but is considered by them the bulwark of the constitution. It fortifies *that* government, by making it the interest of the opulent and influential to maintain it. In this mercenary way, public sentiment is stifled, and instead of being endangered, the government is almost impregnably entrenched behind wealth and aristocracy. Therefore, in England, the public debt is considered by many a public blessing.

But, for the same reasons, he believed that, in free governments, it would be considered the greatest curse. What would be the condition

of England, if, instead of being the debtor, she was the creditor of her subjects? Who would then be the ministerial champion? Who would then preserve the government from revolution?

Mr. Robertson said, that he did not mean to argue that the creation of a large land debt would eventuate in the disruption of our happy confederacy; but its tendencies would be towards disunion. If, said he, in England, it is necessary to the existence of the government, that it should be deeply indebted to its subjects, he would submit it to serious consideration, whether, in the United States, the Union would be strengthened or cemented by permitting the citizens to be largely indebted to the government?

If, in England, the indebtedness of the people to the government would endanger its stability, would it be wise or safe to maintain the converse of the proposition here?

He thought no argument could be derived from the peculiar character of the American institutions or people, sufficiently strong to render it prudent policy here, to encourage or permit a large body of the community to become largely indebted to the government. On the contrary, he believed that a practical or philosophical view of the peculiar contexture of the American institutions, would show that such an experiment would be as dangerous here as elsewhere. In this free country, said Mr. R., public opinion is the substratum of the political fabric, and the attachment and confidence of the people constitute the cement which increases its strength and preserves its symmetry.

Without the support of the first, the whole superstructure is prostrate; forfeit the last, and the fairest and most sacred temple of liberty on earth is in dilapidation. It is not indestructable, and depends more on moral than political principles.

The peculiar conformation of the federal government—being *"imperium in imperio"*—enhances the value of public sentiment, and renders it more necessary to the stability of constitutional authority that popular confidence should be preserved, and the whole moral strength of the body politic kept undivided on the side of the Union. The union of the states, he said, was the first object of the constitution. Nothing should be encouraged that could weaken its ties. They are few and weak enough. Local feelings and sectional jealousies are already sufficiently strong and numerous. He feared it might be unsafe to increase them; it might do mischief; it could not possibly do good. He repeated, that he did not mean to insinuate that the Western debt, if augmented to even one hundred million, would destroy the Union. He could not utter such a sentiment. But he did mean to say that such a debt would inevitably tend to inspire feelings and generate interests, at war with the fundamental principles of the Union. He hoped that there would always be too much American virtue and good sense to permit any circumstances to produce such an awful catastrophe as dissolution.

But he was an unsafe guardian of the constitution, who would do or permit to be done, while he could prevent it, anything that might provoke any attempt, or even inclination, towards its destruction. Mr. Robertson said he felt devoted to Western interests, and had great confidence in Western virtues, moral and political; but, on a national question, which should be decided on national principles, he would be guilty of incivism if he were to act under the influence of local or sectional feelings. He was not so Godwinian in his opinion of human nature, nor so Utopian in his political principles, as to legislate on the supposed perfectability of the one, or practical infallibility of the others. Legislation should be adapted to men and things as they are, and every legislator should regard the passions, as well as the virtue of human nature. Why is it, said he, that manners govern laws? Why was it that Solon, when asked whether his laws were as perfect as he could make them, replied, that they were as good as the people would bear?

Mr. Robertson said, that the people of the West are attached to the general government; he did not wish to see that attachment alienated. They are patriotic, and he did not wish to have that patriotism chilled by any system of public policy, which, he feared, if persisted in, might have that effect. Their feelings, said he, are with the Union. Do not provoke indifference; do not excite their jealousies or their fears, but encourage their confidence by deserving it. Then, indeed, they would always be found among the first in your councils and in your fields. Then do not weaken, but strengthen the ligaments that bind the body politic, and you will diffuse health and vigor through the system.

But, said he, how different may be its condition, if, by continuing the credit system, Congress should compel the West, in self-defence, to oppose in a body the passage, or resist the execution of laws which it may be the interest and wish of the East to enact and to enforce, or should give the East an engine with which it might annoy and oppress the West, or should distract and pervert the public councils, and array the East and the West against each other. Should this state of things ever occur, (and that it must sooner or later, under the present system, if continued, seemed to him as inevitable as the decrees of fate) no man should shut his eyes to the consequences that must follow. He would not portray them, but the effect that would be produced on the feelings and policy of the West, and on the legislation of Congress, not to look at ulterior results, must be seen by all who are acquainted with human nature, or the history of the world. Would not the West be interested deeply in indulgence, while the other members of the Union might be inclined, or even necessitated, to coerce payment? Might not a Western party be created, (and would it not be formidable?) with anti-national interests and feelings? Would not the people of the West expect and require indulgence? Might they

not be willing or compelled to make sacrifices to obtain it? If opposed, might they not be exasperated? If defeated, might they not feel it their duty to resist? Might not indulgence become a prominent feature in Western policy? Might not members of Congress be elected solely with a view to the indulgence? Might they not be willing to make legislative compromises to attain the only end of their election? Would not the East thus have an ascendency, almost irresistible, over the West?

From such a humiliating and perilous predicament, Mr. Robertson said he would, while it was yet possible, rescue the Western country. The mammoth land debt, if permitted to grow, would be sufficiently calamitous if it should only lead to some of the consequences at which he had hinted. Such consequences it was the duty of every citizen to avert. He knew, he said, that he would be told, that the people of the United States are too virtuous and enlightened to permit a sectional debt, however large, to influence their political feelings or conduct; but he was not yet prepared to believe that human nature is so far sublimated in the United States as to be exempt from the influence of interest, passion, or ambition. He said, that if any illustration were necessary to show the effect of a land debt on legislation and local parties, an experiment had been made in Kentucky, which furnished a very apposite exemplification

In that state there was a large body of the people indebted to the government for lands purchased south of Green River, on credit. The debt had been due many years, but at every session of the legislature, indulgence had been granted since the debt became due. Members had been elected to the legislature, with instructions to obtain a further indulgence. A promise to procure it, or the belief that they would make all necessary efforts, was generally a "*sine qua non*" to their election, The Green River country had become very strong, and its indulgence had become a sort of party question—a political hobby. It is believed that it has frequently been the subject of "legislative compromises"—the consideration for other laws, and other laws the consideration for that. He believed that it is now considered almost a matter of course and of right. He had no doubt that it had frequently been granted against the free consent of the legislature, and had been the means of passing laws that otherwise would not have been enacted. That state had not yet gotten the debt in; he had doubts whether it ever would—the prospect being no better now than it was many years ago.

He said, that he believed that the Green River indulgence had been sometimes necessary, and he did not know that it is not, even yet, proper; but he had alluded to it to show the effect of a land debt on revenue, on party elections and on legislation. If, said he, such have been the fate and effects of a Green River land debt in Kentucky, what must be the consequences in the United States of a Western debt? Are the citizens south and north of Green River less united in interest and feeling than the people west and east of the Alleghany mountains? Are the citizens of Kentucky less attached to their State constitution than the western people are to the general government? He said, that the nature of the confederation would prove that a federal land debt must be infinitely more mischievous than any state debt, under any circumstances, on account of the magnitude of the debt, and the confliction of political interests, and feelings, and obligations, not merely in the West, but in the East, and the North, and the South.

He said, that if he should be compelled to select any portion of the population of the United States to defend the Union, in any emergency, he should look to the West.

He concurred fully with his colleague, (Mr. Brown) that the people of the West are as much devoted to the general interests of the Union, and would make as many sacrifices to maintain them as any other portion of the American population; and if it would not be deemed invidious, he would say more. They have given many and signal proofs of it. But this, he said, is no argument in favor of the credit system—a system that would, in its ultimate tendencies, conflict with those national feelings that now animate them—but on the contrary, it is a persuasive one against it. Having now the warm and cordial support of the West, it would not be wise to persist in a course of measures that must inevitably tend to stifle those moral impulses which prompted to it. He would invigorate the arm, and distend the heart of Western patriotism, and not paralyze the one and contract the other, nor nerve the one and steel the other against the common interests. He would repeat, that he did not believe that, if the land debt should increase to any amount, the Western people would resist, *by force*, its collection, or desire the subversion of the government to avoid its payment. But he asked, if it could be prudent, in a government depending for its existence and support on public opinion, to make it the interest of the people to embarrass its regular operations, or to resist its laws? And, said he, might not a large debt, hanging over one moity of the nation, create, throughout the whole, interests, and feelings, and conduct, not calculated to advance the happiness of the people, or strengthen constitutional authority?

Every government that ever had to encounter a large popular debt, had felt it to be a potent adversary. Why did Lycugus and Solon abolish all debt in the organization of their systems of government? Why did the Roman Plebians, after being oppressed by their Patrician creditors, raise the standard of revolt, and retreat to *mons sacer?* And why did the Patricians ultimately submit? And what were the progress and effects of the long struggle? If, said he, the land debt be permitted to accumulate, and its enforcement be attempted, the West may not resist; it may not murmur; it may not evince sensation, even; but the debt might not be collected, and he did not wish to see the experiment tried. There is no necessity to

make any experiment on the temper of the West. Western freemen would never willingly "give up the ship." They would never secede, unless disfranchised by those who ought to be their friends; and, if they ever should retreat to the sacred mountain, he hoped there would be one *Menenius* and one *Valerius* among them, who would be able to rally them again under the standard of the Union.

But it could not be the interest of the United States to persist in the system which could produce any consequences which it is the duty of every enlightened and patriotic statesman to prevent—a system that would engender discord and party feuds, and excite jealousies and discontent, and perhaps insubordination.

Every consideration which could operate on his mind, he said, strengthened his conviction that the credit system could not be executed, or, if executed, that it would do much mischief. In its execution, it would defeat some of the ends for which it was established; and he thought it required no argument to show that a system, whose operations are incompatible with its designs, and subversive of the first purposes for which a government was instituted, and which counteracts the policy of wise legislation, ought to be abolished. That the credit system is such an one, he had endeavored to show. It ought, therefore, he thought, to be repealed, if one less exceptionable could be substituted. He thought the bill under consideration furnished such an one. It remained, therefore, for him to offer some reasons to show that the mode proposed is better than that in operation.

Mr. Robertson said, if he had been successful in his attempt to prove that the credit system is defective, because it is a credit system, it would be unnecessary to consume time by an effort to show that the cash system will be preferable, so far, because it will be a cash system. As the strongest general considerations which, in his opinion, conduced to show the superiority of the cash over the credit system had already been anticipated in his endeavor to exhibit some objections to credit in the foregoing part of his argument, he would not reiterate them. If he had shown the defectiveness of credit, it would necessarily follow that the proposed system is, *quo ad hoc*, preferable.

Upon that ground he was willing to rest the comparative merits of the two systems, so far as it might depend on the two leading and characteristic features of credit ond cash. These are so important and controlling, that a comparison of the more minute traits would be unnecessary; because, whatever might be its results, they could have no influence in the decision. But, if such a comparison could be at all material, he was sure it would result in showing the superiority of the proposed over the existing system, in every feature in which they differ.

The principal of these, in addition to credit and cash, is the minimum quantity of land and of price. The reduction of each in the bill under consideration is intended to remove the objections that had been urged to the substitution of cash for credit. And in this it is singularly and completely successful.

He thought that it would be fair to conclude that the bill ought to pass. That it ought, there could be no doubt, unless objections could be urged to it more formidable than those to which the existing law is liable, or arguments against it stronger than those which were pressed against the latter.

He said he had heard only two objections to the proposed system. 1st. That it would oppress the poor man, by giving the capitalist and speculator an unreasonable and unjust advantage over him. 2nd. That it would retard the population and diminish the influence of the Western country. He believed that no other objections that are even plausible had been or could be made, and these he considered by no means formidable. He thought that a very slight examination would be sufficient to show that they are both evanescent. He expected results from the cash system, in its operations on the poor, the rich, and the Western country, the opposite of those apprehended by its opposers, and which he should endeavor briefly to exhibit, in the course of the notice he should take of the objections.

But it should not, said Mr. Robertson, escape notice, that if the objections are in themselves true, they constitute no sufficient argument to prevent the passage of the bill; for, if the interests of the government and of the body of the people require its passage, it would be unreasonable to demand or permit its rejection, merely because a particular class of the community or district of country might be injured by it. Otherwise, all legislation would not only be nugatory, but unjust; because every general law, however much it may promote the interests of the majority, must be incompatible with some individual rights or interests in society. Therefore, the political axiom—that private interests should be sacrificed on the altar of the public good—would be a sufficient answer to the objections, if they were founded upon correct hypotheses.

But, he said, if it were material to take more particular notice of the objections, he thought it was as nearly demonstrable as any moral or political proposition, from its nature, could be, that the cash system would not only diminish and embarrass speculation, but promote the interests of the poor, and the permanent and substantial welfare of the Western country.

He believed that no other system would tend more to those results, unless it should be one by which the public lands should be gratuitously distributed; and, for such an one, he was unwilling to believe that there would be any serious advocates. If there were any such, he would recommend to them the immediate abrogation of the credit system, and the substitution of an Agrarian law.

But, said he, the public land being a common fund, and Congress being its depository, it is their duty to dispose of it in such a manner as to promote the common interest. They

are bound by their trust to sell it, and to those who can pay for it. And he thought it could not be matter of complaint that Congress, and not any particular class of private individuals, should prescribe the terms of sale, and that such terms should be offered as would produce the most general good. Neither the poor nor the rich have any right to complain, if credit should be refused. If they are unwilling to purchase the public lands on the terms proposed, they will retain their money, and the public its lands, and no injury is done to either.

By the poor, he said, he understood, as regards the argument, not that class of society who are in a state of pauperism, but those who are, comparatively, in a state of mediocrity, and are unable to purchase land for any other purpose than to occupy it. Under the credit system, a man who has no money cannot purchase; to be able to buy public lands he must have funds, and as much as will be required by the cash system. Gentlemen, he said, had argued against the bill as if they believed that, under the credit system, a poor man, without money, could purchase a home; and that, therefore, he will be excluded by the bill from all participation in the purchases of public lands. But he is already excluded. Who can purchase now, that may not buy, and as easily, under the cash system? Who will be excluded? Not the man without money; he cannot purchase now. Not the man who is now barely able to pay the first instalment for one hundred and sixty acres, at the minimum price, for he would proceed to show that the same individual might purchase, with more certainty and more to his advantage, under the proposed system.

Under the existing law, a man cannot purchase for himself a home, even if there were no competition, unless he be able to advance eighty dollars; and if he be a prudent man, he will not purchase at all, if that eighty dollars be the whole amount of his pecuniary resources; for, before he can procure a title, he must pay two hundred and forty dollars more, in three installments, or forfeit his land, with his 80 dollars advanced, should he be unable to make punctual payment of the whole price. If the credit should tempt him to make the purchase, under the expectation of making the money to discharge the debt he incurs, or of indulgence if he should fail, he subjects himself to all loss and embarrassment that may result from accident or from the fluctuation and depreciation of the currency, and places himself in the power of the usurer, the speculator, and the government. The land would not be his, and he could not be considered an independent citizen in the sterling import of those words. The little pittance he may, by industry and economy, be able to save, he cannot consider his own until he shall have paid for his land; the land is not his until he can get a patent. He may be dependent on the capitalist for money to procure the title and save his home from forfeiture, or must supplicate the indulgence of Congress; and, at last, after having removed his family many hundred miles, and improved land which he considered his own, either the hungry speculator may take it from him, or the humanity of the government must interpose. And if he should die before he shall have made complete payment, he leaves his helpless family in a strange and foreign land, without a home.

But the credit system induces the speculators, as well as others, to bid a higher price at the sales than would be given in cash, and frequently more than the value of the land. Hence the poor man, with his eighty dollars, is almost entirely excluded from the sales. He is afraid or unable to compete with the rich man, or with the speculator. The consequence is, that the rich and adventurous monopolize the best land, and leave only the refuse to the other class.

The speculator buys as much land as he can make the first payment for, under the expectation of being able, before the expiration of five years, to sell it for a higher price. He has, by law, five years within which to make this experiment, and as much longer as he can prevail upon Congress to indulge him; hence, it so often happens that the first is the last payment, and that indulgence becomes so necessary and so frequent, and that the land revenue fails. If the purchaser for speculation can, while the government will indulge him, sell the land to a man who wants a home, but was not able to bid against him at the public sale, he will sell on a long credit, at a higher price than he promised—a much higher price—and by transferring his certificate, will interpose the poor man between himself and the government, with a liability to pay the remaining installments, with all the accumulation of interest, and with all other liabilities incident to the credit. If he cannot sell for more than he promised to give, he repeats his application to Congress for indulgence, and they continue to grant it. But, if it should be refused, and the land forfeited, the adventurer will only have lost the amount of the first payment which he had advanced.

What better terms can the speculator, said he, desire? What can more encourage speculation, or oppress the poor and honest man, than the credit system? It increases the facilities and inducements to speculation; it increases the means and number of speculators. This is observed every day. Alabama speaks a language that cannot be misunderstood—$70 an acre promised, never to be paid!

But, said Mr. Robertson, the cash system now offered is better for the honest purchaser, not only because it would enable him to get land with more certainty and security, and better land, but because it would put it in his power to get it cheaper, for two reasons: 1st. The minimum is less; and 2nd, land will sell on a credit for a price higher than the cash value, by more than the interest of that value.

Under the proposed system, a man can purchase eighty acres of land, if he can pay one hundred dollars; he gets his patent, and has a home. He is an independent citizen, not in

the power of capitalists or the government, in regard to his title. Even if credit would not enhance the price, it is, nevertheless, a fact worthy of notice, that under the cash system, a purchaser can buy a home for only one-fifth more than the fourth of the credit price, which fourth must be advanced. It is true, he will only get half the quantity, but he does not give half the price, and the smallness of the tract is no objection, but a strong argument in favor of the proposed system, as it regards the poor—for thereby a man will be enabled to procure a home, who could not, or ought not to attempt it now, and those who can purchase more than the minimum quantity will have the liberty to do so.

But the best land is sold at the public sales to the highest bidder, and the credit would cause it to sell for a higher price than it would for cash, by at least one-fifth. This is the difference between the price of eighty acres purchased under the cash system, and the fourth of the price of one hundred and sixty on credit. The consequence is, that a man will be able, under the proposed system, to buy eighty acres at public sale, for the amount of only one-fourth of the price of one hundred and sixty on credit. In the one case, the purchaser has parted with a certain sum of money, and obtained in exchange a title to eighty acres of land; in the other, he has disbursed the same sum, as one-fourth of the price of one hundred and sixty acres, to which he has no title, and for which he cannot obtain a patent until he shall have paid the remaining three-fourths. Which would the poor, the honest, the free man prefer? Could there be any hesitancy in the option? Would he not choose the cash system? And would not the speculator, for the same reasons, prefer the credit system?

But, said Mr. Robertson, it had been urged by the gentleman from Tennessee, (Mr. Jones) that, by requiring cash, too much power is given to money; that the capitalist will buy all the good land, because the poor man will be unable to bid against him beyond the small sum he may have. This argument, he said, was more plausible than sound, and had been already anticipated and answered. But the imposing manner in which it had been exhibed entitled it to a direct reply.

Money, said he, will have power as long as it is money. It is that which gives it value. Its power cannot be destroyed without destroying its value. But he felt sure that its influence in relation to the public land and its purchasers, will not be augmented, but greatly diminished, by the passage of the bill under consideration, in the reduction which it would effect in the number of speculators and in the extent of their purchases, in a ratio of at least three to one, and in the reduction, in a correspondent ratio of the number of other purchasers and the extent of their purchases. Under the credit system, a speculator, with fifty thousand dollars, will, at the minimum price, purchase one hundred thousand acres of land, the amount of his money being sufficient to complete the first insallment on that quantity. Under the cash system he will be able to purchase only forty thousand acres. The same quantity of money, then, will purchase almost three times as much land under the credit, as it will under the cash system. The advantages of credit to the purposes of speculation will give the same sum the power to purchase the full triple quantity. To purchase one hundred thousand acres under the cash system, there will be required five men with $25,000 each. Under the credit system, it will be purchased by two men with the same sum. If credit did not increase the price, then two speculators can monopolize as much land under the credit system as five men under the cash system; and the same quantity of money in circulation would, therefore, increase the number of speculators, and the extent of their purchases, in the proportion of five to two, by allowing credit; and, as before stated, the effect of credit would swell the number to the proportion of three to one. Can any one, said he, fail to perceive the effect which credit has in increasing the number and power of speculators, and thereby the power of their money? Will not the poor man have a greater number of competitors? Will there not be less land left for him to purchase? And will not his chances of buying good land be diminished? And would not the number of purchasers for use be greatly diminished, and thereby the population of the West be retarded? Under the credit system, the capitalists can monopolize, with the same sum, more land than they could for cash, in the proportion of a hundred to forty. The capital, then, which would purchase 100,000 acres on credit, would, on the cash payment, leave 60,000 acres unappropriated, which the settlers could purchase, without competition with the non-resident monied men. As to that part of the argument which assumes that, in a contest for a particular tract of land, an advantage is given to the rich over the poor man, by requiring cash, he said that the same objections would apply with equal force to credit. For if the poor man could not compete with the rich man, after he had gone in his bid to the extent of his funds, when the whole amount is to be advanced, he must be in the same predicament if only one-fourth of the amount be required. In the latter case, after he had been forced up by the capitalist to as much as he could pay the first installment of, he could bid no higher. But the objection, he said, would have much more force in it, if urged against the credit system; because, by requiring cash, the number of speculators is reduced, and most of their schemes and contrivances will be baffled.

If any further illustration on this subject were necessary, he said that the gentleman who made the objection had himself furnished a very striking one. That gentleman had said, that if the cash system should be adopted, the United States would never collect the money due for land which had been sold, because that system would depreciate the value of the land for which the debt was contracted.

This argument, said he, is a *"felo de se"*—it cuts its own throat. For why will the cash system tend to depreciate the land sold under the credit system? It is because it gives more advantages to the purchaser—because it is a better system for the purchaser. This is the reason, and the only one. It does give more advantages to the purchaser; not the speculator, but the man who may desire to purchase for his own use; it gives him more good land to make his choice in at a less price, with less competition, with more certainty, and less embarrassment.

Mr. Robertson said, that every view of the subject he could take helped to show that the objection to the cash system, which is founded on the assertion that it will not be advantageous to the poor man, is indefensible, and that this system is strongly recommended by the advantages it will secure to all classes of purchasers, except the speculators. These could not be entirely put down; to frustrate them is only a secondary object. But, if it were a primary one, a more effective method than the cash system could not well be devised.

The only remaining topic, he said, is the effect that the cash system would produce in the Western country. He repeated, that its effect on the substantial interests of the West would be beneficent; but if it should be detrimental, by checking population, he could not, for that cause alone, vote against it. This effect could not change his opinion of duty, but would only tend to diminish his solicitude for the passage of the bill. He did not come here to legislate for any particular section of country, or portion of the people of the Union, but for the whole. The laws which his vote might contribute to pass would operate on all; and, therefore, it would be but right that the interests of all should be consulted. As a citizen, he might delight to obey the dictates of his local feelings or personal wishes, but, as a legislator, he felt bound to submit his conduct to the guidance of other and higher considerations.

But, if he were at liberty to act on selfish principles to promote local interests, it would be his first and paramount duty to look to his own state, and to confine his views within her periphery; for, if he represented, exclusively, any local interest, it was that of Kentucky. And if such, he said, were his condition, and such his duty, and it were true that the cash law would check population, he would not hesitate to support the bill; he would hail its passage with acclamations of joy. For, what would more promote the prosperity of Kentucky, than a system which would prevent that efflux of money and of population which had already so much exhausted her, and which was, to a great extent, the effect of the system in operation? So far as the cash system would diminish emigration and sales, it would tend to diminish the drain of people and money from Kentucky. But, he said, he was sure that the law would not have any deleterious operation on Western interests, by checking any population or preventing any sales that would redound to the advantage of the West. If his only object were the aggrandisement of the West, he would vote for it. He believed that nothing which Congress could do by legislation would more certainly promote the prosperity and independence of the West.

The member from Tennessee, (Mr. Jones,) had expressed astonishment that the Western members should differ in their opinion on this subject. He felt as much surprise at it as the gentleman could feel. He could not perceive how the apprehension could be entertained by a Western man, that the cash system would injure the Western country. He was as much devoted to Western interests as any of its representatives. He claimed it as his duty to be so. He had been charged, obliquely, since it was known that he was in favor of the cash system, with anti-Western feelings and policy. He was as sensitive on that subject as on any other; but while he would not say he was imperturbable, he would say that such charges or insinuations, fulminated from the press or the stump, could not alter his opinion or his vote.

He was not to be driven from his purpose, or deterred from doing his duty by denunciation, or threats of defection of friends.

He said he respected, as much as any representative should do, the deliberate and temperate voice of public sentiment. But he believed that public sentiment, in Kentucky, would be decidedly in favor of the cash system, whenever understood and tried. However, he must say, that the only way to change his vote would be to change his opinion.

Did his colleagues, he asked, suppose that they gave evidence of more attachment to the West by their votes than he felt? He hoped they would do him the justice to believe that he was as much devoted to the West as any of its citizens. Why should he not be? He had as great a stake beyond the mountains as any other man, and he was bound to the West by as many and as tender ties. Was it not the country of his birth—the home of "wife, children, and friends?" Did it not embosom all that he held most dear? And did it not contain the sacred spot in which the relics of his father reposed? He could yield to none in devotion to its soil and its interests. He loved it not only instinctively, because it was his birth-place and home, but rationally, because it was the fairest portion of the globe. Its soil is luxuriant, its climate salubrious, its population virtuous and hospitable—*its men are brave, and its women chaste.* Bound to him by such ties, and thus deserving his affection, he would never desert its cause. As long as he should continue in its service, he would be faithful to its interests. He would advocate and promote them, as far as might be consistent with the general welfare, and he believed he was doing it by supporting the cash bill; for he believed that the West never would attain the high destinies before it if the system of credit, which had already so much embarrassed and enfeebled it, should be continued. Why is it, said he, that that country is now so much in debt? Why is the balance of trade so much

against it? Why is its currency so much deranged and depreciated? Why is such a languor pervading that rich and resourceful country?

He knew that these were effects of more causes than one; the general system of credit was one; but he had no doubt that one of the most prolific sources of the calamities with which the West is afflicted, is the credit on the public lands. This had tempted them to go beyond their means, and contract debts which they could not pay; it had depreciated the Western paper currency, and had tended to augment and vitiate that currency. Could any one fail to see its operation in producing these effects? He would ask his colleagues whether the Western country would not now be in a better condition, if there never had been any credit given in the sale of public lands? Would it not be more independent, and have more and better money? Would it not owe $22,000,000 less? He said, that that country never could be restored to its naturally healthy and prosperous state, as long as such an immense debt is suspended over it, like an incubus, which paralyses its best fiscal and moral energies. Is it not desirable to extricate it from this condition? Is it not the duty of its friends to make an effort? He said that he did not know anything which Congress could do, that would tend more to this result, than the adoption of the cash system. That will prevent the accumulation of the debt, and tend to correct and restore the Western currency. Should it be adopted, those who migrate from the East and transplant themselves in the West, would buy only as much land as they could pay for; the purchase money they would carry with them from the East, and all they could make on the land for four years, would add to the resources, and swell the currency of the West, by being distributed among its people. But if this system be rejected, then the Eastern immigrants will only make the first payment with their Eastern funds; they will generally purchase as much land as they can make the first payment for; the remaining three-fourths, for which they get credit, must be made in the West, and, when paid, abstracted from its resources. Is there not a great difference between adding the three-fourths to the capital of the West, and abstracting them from it? Will not the credit, then, always oppress the West, render good money scarce, and increase the amount of bad money? Under the credit system, not only is an immense sum annually withdrawn from the West, which, under the cash system, would be retained, but that sum consists of specie, or the best paper of the West. The withdrawal of this makes a vacuum, which must be filled by an augmentation of a vacillating paper medium. This augmentation depreciates and vitiates the currency; this currency the public debtor must take, but the government will not receive it from him In addition to those considerations, he said, it should be recollected, that the same quantity of land which would draw from the West $800,000, under the credit, would only take $500,000 under the cash system. Was he not justified in saying that the substitution of the cash system would meliorate the condition of the West? It would enable it to owe less, have fewer and better banks, more money and better money, and more and better population.

He said, there was another aspect of the subject entitled to the serious consideration of the real friends of the West. It is the influence which the credit system would give the East over the West. Some of the causes of this influence had been sufficiently alluded to in considering the topics of discussion. He hoped gentlemen would recollect them, and make the proper application of them.

He would only add, that a large Western debt would give the Eastern politicians, in a struggle for power, a powerful weapon. It would render it impossible that the West could have a fair and equal contest. It would be the talisman, whose spell, in the hands of dexterous men, might be subjugation or dissolution. Such men would not only have the advantage derived from the debility, languor, and distress which a large debt would produce in the West, but they could hold the appalling sum *in terrorem* over the devoted West, and say—pay, or submit. Then, said he, might you see enforced the maximum, *"parcere subjectis, debellare superbos."* He said, he hoped that these consequences would never be realized; but, as a Western man, he was anxious to render an occurrence of them impossible, and to rescue the West from danger before it might be too late. He said, if he were an Eastern man, and desired supremacy over the West, and labored under such a destitution of principle as to resort to legislative power to effect it, he knew nothing which he would so strongly advocate as the continuance of the credit system. He would make the debt as large as possible. To counteract such policy, he desired the cash system to pass; and, in advocating it, he felt sure he was advocating the best interests of the West. He said, let the Western people get out of debt, and leave their posterity free, and then they would have power, and wealth, and independence. Nature had decreed it. They will then preserve their influence, their rank, and their public spirit; they will then move and act in the majesty of their native and characteristic independence; they will be a great, a powerful, and a happy people.

Gentlemen need not fear that the march of Western power or population would be retarded by the cash system. If the view he had taken of the whole subject be correct, the effects of the system would be very different. He could not see how the system could impair the power, or diminish the population of the West. Would it impair the strength of the West to get out of debt, and add to its resources? Or would it diminish or obstruct the current of immigration to the West, to offer to the immigrants terms of purchase more advantageous to them and to the country to which they wish to go, than those now offered? Or would it check population to prevent the

monopoly of large tracts of good land by speculators, who would not settle on them? He said, that if the cash system would prevent the immigration of any class of citizens to the West, it would be a class that would not be a very valuable accession to the strength, the morals, or the wealth of the West, but who would only increase the Western debt, and diminish the real and substantial resources of the Western country.

He said, that the Western country would populate soon enough; men would go to it whenever it should be their interest to go. It is not good policy to invite or decoy them thither any sooner. Let the principle of population, and the rule that regulates and controls it, have their natural operation. Do not endeavor to increase its fecundity, or accelerate its results, by artificial expedients. It cannot be desirable to have a mushroom population; let it grow gradually and naturally, and it will be homogeneous, and happy, and strong. Let the body politic work its own cure, if diseased. There is a recuperative spirit in it—a *vis medicatrix naturæ*, that will preserve its health and vigor. He did not profess to know much of political pathology, but he thought there could be no doubt that the resources and ultimate power of the West are certain, if its friends would forbear their nostrums, and let things regulate themselves according to the natural laws of health.

Let the population of the West grow on its own natural resources, without the artificial aid of a delusory credit. The surest way to increase an efficient population, which alone will strengthen the resources and power of the West, is to expel bloating luxury and speculation, by stifling their pander, morbid credit, and encourage industry, virtue, and economy. The first step towards this policy is to extricate the West from debt, with all its paraphernalia; to confine its expenditures within its actual means, and make its citizens independent cultivators of the soil, and not the tenants of the speculator or the government. The cash system, so far as it could operate, would tend to these wholesome results, by distributing the lands, in small tracts, among the people, for their own use, and by frustrating speculation, and preventing monopolies. He expected much good from it. He hoped, therefore, that it would be adopted.

He had, in an immethodical manner, he said, offered some of the considerations which would influence his vote. He had endeavored to show that the cash system is required by the fiscal and political interests of the general government—by the advantages it would afford to the *bona fide* purchaser—and by the substantial and permanent welfare of the Western country. Whether he had been successful, would appear from the decision of the committee. Whatever that decision should be, he would be content. He had discharged his duty to himself and his country. If he had erred, he should be supported by the approbation of his conscience, and the clearest convictions of duty; and he believed he would, at last, be sustained by the opinions of his fellow-citizens, and the verdict of posterity.

If the bill should pass, he hoped that his friends, who differed with him on this interesting subject, and especially the Speaker, (Mr. Clay,) who would follow him in the debate, might live long enough to witness and to enjoy, the benefits which, he believed, would result from it, not only to the Union, and to the poor and actual settler, but to the great interests of the West—to its strength, prosperity, and power, and to the independence and happiness of its people.

PRELECTION.

In 1821 the Legislature of Kentucky directed a committee, appointed for that purpose, to obtain information and report concerning the best and most practicable mode of organizing some system for popular education. That committee reported to the Legislature of 1822–3, facts communicated from gentlemen in other States where Common Schools had been tried. The report was referred to the committee on Education, of which Mr. Robertson was chairman, having been elected from the county of Garrard for that session, after having resigned his seat in Congress for an entire term.

Mr. Robertson made the following report, which was adopted. The circulation of that report awakened public attention to the subject, which finally resulted in the adoption of a system of Common Schools in Kentucky. And in these proceedings we may see the initial steps taken by this State on this interesting subject.

REPORT OF THE COMMITTEE ON EDUCATION

IN THE

HOUSE OF REPRESENTATIVES.

[Session of 1823.]

The select committee on so much of the Governor's message as relates to Education, to whom was referred the report of the Commissioners on Common Schools, have considered the subject submitted to them, with as much attention as the short time allowed them for deliberation would permit, and now beg leave to make the following report:

It can scarcely be necessary, in this enlightened age, to present to a free people any arguments in favor of a general diffusion of knowledge, farther than what have already been advanced by the commissioners; and were there even any peculiar circumstances attending the situation of Kentucky, which might render it expedient to take an extensive survey of the value and utility of common schools, with a notice of their history and effects, moral, social, and political, your committee would deem it only necessary to call the attention of the community to the ample and judicious remarks upon this subject, contained in the report of the commissioners. Availing themselves, therefore, of that valuable document, which presents so satisfactory and imposing a view of the subject, they will confine themselves, in this report, to a few hasty and prominent considerations, supplementary to the suggestions made by the commissioners.

Ever since the period when the intellectual and moral darkness, which hung over mankind during the middle ages, was dispelled by the light of science, and of civil and religious liberty, which dawned in the fifteenth century, the march of liberal ideas and true philosophy, although slow, has been steady and constantly progressive, until the time has arrived when the rights of man are generally understood, and he is restored, in some portions at least of the civilized world, to the dignity of his nature, and elevated to his just rank in the scale of being. This happy consummation has not been the result of blind chance; but of the natural and powerful influence of reason, in its gradual developments. Ignorance and superstition are the talismanic agents, by the aid of which the ambitious demagogue has ever been enabled to deceive and control, and by which alone tyrants have subjugated the great body of the people. No people were ever long free, unless they were not only virtuous, but enlightened. We need not recur to the ancient histories of Greece and Rome, for an exemplification of this truth. It is abundantly attested by the records of more modern times. Wherever ignorance and its concomitants predominate, no matter what may be the name or the form of the government, the destinies of the many are controlled by the artifices of the favored few; the voice of reason is hushed, and she is made the puppet of passion, and prostituted at the shine of ambition. No free institutions, however perfect in theory, ever were, or ever can be, durable or effective, unless the public mind be generally enlightened. Ignorance, if predominant, will inevitably convert a free and happy government into the most oppressing and galling despotism.

Under a form of government like ours, whose very basis is the equality of the citizens —whose soul is public opinion—it is more peculiarly essential that knowledge should be accessible to all. If the great mass of the people be ignorant, liberty will soon be stifled; her votaries will be amused with her shadow, while her substance is gradually drawn away, and her vitality extinguished. The great objects and tendencies of education are, not only to enlighten, but to liberalize and expand the mind, to improve the heart, and thereby to meliorate and dignify the condition of society. The muses are the natural associates and guardians of liberty. Their residence is her favorite abode. To enjoy our rights, we must understand them well; to secure and protect them, we must not only feel their value, but be acquainted with their extent and appropriate limitation.

That theory which pronounces all men equal, is in practice a delusion, unless all have the capacity to know, and thus to preserve inviolate, their civil and political rights. No species of inequality is so much to be dreaded in a popular government, or deserves so highly to be deprecated by the patriot and philanthropist, as the inequality of mind and of mental attainments. Fortune ever has been, and ever will be, unequal in the distribution of her gifts; but this inequality should, as much as possible, be counteracted, and its anti-republican tendency checked and restrained by the guardianship and benevolence of a provident government. The intellect of every citizen, especially in a republic, is the property of the commonwealth. Indeed, the cultivated minds of the people constitute the chief

treasure of a free state. There is an infinite expansibility in the mind of man; and it is among the first and most important duties of the government, to improve the elasticity and cultivate the intellectual energy of the whole commmunity. Thus, the common property of society, which constitutes the basis of its power and happiness, will be indefinitely augmented. Thus, and thus only, will liberty and equality, social peace and permanent prosperity, be preserved

"Knowledge is power;" and the only way to preserve an equality of the latter, is to promote a general diffusion of the former. But a wholesome development of the moral, physical, and intellectual faculties of all the people of both sexes, will make our institutions more stable and our laws more efficacious—will elevate the character of our State, and promote both personal and social peace and happiness, and will afford the best of all safeguards of public order and individual security. The only truly effectual law is that inscribed on the Heart; and by enlightening the popular Head, and rectifying the popular Heart, public peace and private right will be made more secure than they could possibly be made by the wisest code of human laws, backed by the best of human sanctions; and consequently much more will be saved to the public and to individuals, by popular education, of the right sort, than will be expended in the universal diffusion of it, even at the cost of the commonwealth. It is, therefore, at once the interest and duty of government to afford facilities for education; so that, as far as possible, every intellectual seed may be made to expand and fructify. The general diffusion of scholastic instruction cannot be expected from the spontaneous and unassisted efforts of the people. The rich, it is true, can educate themselves; but the poor, and those in moderate circumstances, must depend, in a great measure, for the means of information, upon the care and assistance of a parental government. Hence, the propriety of legislative interposition and patronage. By the tutelar assistance of the state, many a brilliant mind, otherwise destined to languish in obscurity, may be brought forth and expanded; many an humble individual, otherwise without the means of cultivation and improvement, may be rendered an ornament and benefactor of mankind, and enabled to "pluck from the lofty cliff its deathless laurel."

Wherever common schools have been tried, their results have been eminently beneficial. In Kentucky, the experiment has never yet been made, only because the population has not heretofore been deemed sufficiently dense and homogeneous, nor the condition of the people so much diversified by the inequalities of fortune, as to render its adoption expedient or necessary. Literary institutions for the attainment of the higher branches of knowledge, and for the education of those whose funds are sufficient to pay for their own tuition, have, we are proud and happy to say, been sufficiently multiplied and liberally patronized in Kentucky; and we may confidently indulge the hope, that our University is destined to reflect honor on the State, and lustre on the Union.

But while we are thus wise and generous in the patronage of the higher seminaries of learning, shall we neglect those of a more humble, but not less essential or valuable character? While we are thus benefitting the state, by the facilities we afford to one class of our citizens, is it judicious, is it republican, to withhold the aid it is in our power to afford to those who need it most, the great mass of the community? While other states are wisely laboring to improve the system, and extend the advantages of common schools, shall Kentucky be careless or indifferent on the subject? Shall she not be anxious to maintain her rank, in this important particular, as she has hitherto done in other respects, among her sisters of the federal family? Kentucky abounds in resources, natural, moral, and intellectual. Let it then be our effort to call them forth, and render them useful. Let us be careful to husband them well, and rouse into action all the dormant energies of our citizens. This course, in the opinion of the committee, is due, not only to our own interests as a state, but to the great cause of freedom and humanity. The American States are the depositories of the liberties of mankind. They are, by their political experiment, fighting the great moral battle of succeeding generations. By the diffusion of knowledge, and the promotion of virtue, our free institutions may be rendered indestructible, and the blessings of self-government extended and perpetuated.

Common schools have ever been considered the best agents for circulating the rudiments of knowledge. In most of the old states, they are, and long have been, in successful operation. Kentucky, being the first offspring of the "original thirteen," and being the nucleus of all the young states in the great valley of the Mississippi, owes it to herself and to them, to set a good example, by instituting, as early as possible, a system of education, that promises to be the source of such extensive and durable usefulness.

The only doubt with the committee, is as to the practicability of maturing and adopting an appropriate system at the present time.

They are inclined to believe, that an attempt to put any plan into immediate operation, might, for the want of maturity and systematic arrangement, be unsuccessful and inauspicious. The Literary Fund, they fear, is at present insufficient to accomplish the object. It should, in the opinion of the committee, be so far enlarged, as, by its interest, to support the whole system. How and when this can be effected, they think should be left to the decision of succeeding legislatures. That it may be effected, and that speedily, they are well convinced; and although the time does not appear to have arrived, when it would be prudent or practicable to commence the actual operations of the system, the committee are

extremely anxious that the legislature should begin, even now, by its preparatory measures, to give an impulse to public opinion, and to lay the foundation of the ultimate edifice.

The committee are neither prepared nor inclined to submit any plan for adoption, at this late period of the session. None has occurred to them more eligible than that suggested by the commissioners. Its general principles, your committee most sincerely and confidently recommend. By uniting voluntary individual contributions with the public appropriations, the rich will certainly educate their children, because they have paid for their education, and can procure it at a moderate expense; and the poor will avail themselves of the opportunity, because it will cost them nothing. In this way, all classes of society may be sufficiently informed, with an expenditure of money comparatively inconsiderable.

It is all-important, that the experiment of common schools, whenever made, should be successful. A failure, in the first instance, might discourage future attempts, and be fatal to the ultimate result. The system should be well matured, and adapted to the peculiar condition and genius of our population; and the people must approve it, or it will inevitably fail. That the people are favorable to the object, and will unite in any judicious and appropriate plan for attaining it, there can be no doubt. The committee, therefore, deem it expedient to diffuse information on the subject, and call public attention to its consideration, which can be done, perhaps, in no other way more effectually, than by the publication and distribution of the report of the commissioners. Time enough will be afforded, between this and the next session of the legislature, for examination and deliberation; and then, it may be hoped, the representatives of the people will come together prepared to act on this interesting subject, safely and decisively. The committee, therefore, respectfully recommend the adoption of the following resolution:

Resolved by the General Assembly of the Commonwealth of Kentucky, That five thousand copies of the report of the commissioners on Common Schools, and of the report of the house of representatives on Education, be printed in a pamphlet, for the use of the people of Kentucky; and that it be the duty of the secretary of state to transmit to the clerk's office of each county court in the state, for distribution, as many of said pamphlets as each county shall be entitled to, at the rate of fifty for each representative.

G. ROBERTSON, *Chairman.*

PRELECTION.

Shortly after the close of the last war with England, the Legislature of Kentucky initiated, what has since been called, "the relief system," by extending the right to replevy judgments from three to twelve months. To minister still more relief to debtors "*The Bank of the Commonwealth*" was chartered by a statute passed on the 29th of November, 1820, and without any other capital than the net proceeds of the sales, as they might accrue, of some vacant lands,—and for the debts or notes of which Bank the State was not to be responsible beyond the said capital, which was scarcely more than nominal. It was foreseen and, by the debtor class desired that the notes issued by that Bank would soon become depreciated; and in a short time, the depreciation fell to two dollars in paper of said Bank for one dollar in gold or silver. To effectuate the relief intended by the charter, the Legislature, on the 25th of December, passed an act providing that, if a judgment creditor would endorse on his execution that he would take the paper of said Bank at par in satisfaction of his judgment, the debtor should be entitled to a replevin of only three months; but that, if such endorsement should not be made, the debtor might replevy for *two years*; and, by an act of 1821, the *ca-sa* for debt was abolished, and the right to subject choses in action and equities to the satisfaction of judgments was substituted. These extensions of replevin and this abrogation of the *ca-sa* were, in terms, made applicable to all debts whenever or wherever contracted—and were, consequently, expressly retroactive in their operation—embracing contracts made in Kentucky before the date of the enactment as well as such as should be made afterwards. To the retrospective aspect many conservative men objected as inconsistent with that provision in the national constitution which prohibits any State enactment "*impairing the obligation of contracts*," and also with that of the constitution of Kentucky which forbids any legislative act "*impairing contracts*." A majority of the people of Kentucky, desiring legislative relief, either because they were in debt or sympathized with those who were, endeavored to uphold the whole relief system, while a firm and scrupulous minority denounced it as unconstitutional and void. That collision produced universal excitement, which controlled the local elections. The question was brought before the Court of Appeals of Kentucky, and at its Fall term, in 1823, that tribunal unanimously decided, in an opinion delivered on the 8th of October, 1823, by Ch. Jus. Boyle, in the case of Blair vs. Williams, and in opinions *seriatim* by the whole court on the 11th of the same month, in the case of Lapsley vs. Brashear, &c., that, so far as the Legislature had attempted to make the extension of replevin retroactive, its acts were interdicted by both the constitution of the State and of the Union. As was foreseen, those decisions produced very great exasperation and consequent denunciation of the court. The Judges were charged with arrogating supremacy over the popular will—their authority to declare void any act of the Legislature was denied, and

they were denounced by the organs and stump orators of the dominant relief party as usurpers and self-made kings. No popular controversy, waged without bloodshed, was ever more absorbing or acrimonious than that which raged, like a hurricane, over Kentucky for about three years succeeding the promulgation of those judicial decisions.

On the 10th day of December, 1823, the following resolutions, prefaced by a long, bombastic, denunciatory, and *ad captandum* preamble, were adopted by the following vote in the House of Representatives—

Yeas—Messrs. Abel, Ashby, Breckinridge, Brown, Chenowith, Churchill, Cockerill, Daveiss, Dejarnett, Desha, H. S. Emerson, J. Emerson, Eward, Farrow, Fletcher, French, Galloway, Green, S. Griffith, Hall, Harald, Hayden, Holt, Joyes, Lecompte, Lee, Lynch, Macy, May, Mitchell, Mosley, Mullens, Munford, J. M'Connell, M'Dowell, M'Elroy, Napier, Nuttall, Oldham, O'Bannon, Porter, Prince, Railey, Riddle, Rodes, Rowan, Secrest, Selby, Stapp, Stephens, Stith, Thomas, Ward, Webber, Woolford and Younger—56.

Nays—Mr. Speaker, Messrs. Alexander, Berry, Caldwell, Cox, Cunningham, Duncan, Farmer, D. Garrard, Gist, W. R. Griffith, Hawes, Lander, Laughlin, Logan, Lyne, Marshall, Montgomery, Morgan, J. M. M'Connell, M'Millan, New, Oglesby, Pope, Rapier, Rumsey, Russell, G. Slaughter, P. C. Slaughter, Thomson, Tilford, Todd, True, Turner, Wickliffe, Wood, Woodson and Woodward—40.

Mr. Robertson, then Speaker of the House, made the following speech on that occasion, in opposition to that preamble and those resolutions.

SPEECH OF MR. ROBERTSON,

Delivered in Committee of the Whole in the Legislature of Kentucky, on the 4th day of December, 1823, *on a long preamble, concluding with the following resotions in relation to the Court of Appeals, for their late decision against the two years replevin and endorsrment acts of this State.*

Resolved by the General Assembly of the Commonwealth of Kentucky, That they do most solemnly protest against the doctrines promulgated in that decision, as ruinous in their practical effects to the good people of this Commonwealth, and subversive of their dearest and most invaluable political rights.

And it is hereby further resolved by the authority aforesaid, That if the decision should not, by the court, be reviewed, or reversed, but should be attempted to be enforced upon the good people of this commonwealth, the legislature cannot, ought not, and will not furnish any facilities for its enforcement; on the contrary, that it is the bounden duty of the legislature, in vindication of the rights of the people, and the great principles upon which those rights depend, to withhold the agency of the ministerial officers of the government from assisting in the practical propagation of the erroneous doctrine of that decision, at least until an opportunity be afforded to the people of exploring the new theory of obligation, which it attempts to establish.

Resolved further, by the authority aforesaid, That any effort which the legislature may feel it a duty to make for the *contravention* of the erroneous doctrine of that decision, ought not to interfere with, or obstruct the administration of justice according to the existing laws which, whether they were or were not expedient, are believed to be constitutional and valid; and which should, when it shall be thought expedient to do so, be repealed by the *Legislature,* and not by the Appellate Court.

Mr. Robertson (Speaker) arose and said he had not expected that the friends of the resolution would have precipitated their opponents into a discussion of them before time had been given to examine carefully, and endeavor to comprehend the elaborate printed speech which preceeded them as a preamble, and which had been laid on the tables of members only one day before.

He had supposed the only object of printing 500 copies of that argument, was to enable the members to examine it deliberately and faithfully. This he had not had sufficient time to do, although he believed he had read it twice during that morning and the preceding night. He confessed that there were some sentences in it which he feared no member of the committee could clearly and satisfactorily explain. However, he hoped, unprepared as he was, if he could have the patient and close attention of the members, that he should be able to suggest some reasons, which, if they could not convince, would at least bring those who advocated the resolution to pause and reflect seriously before they should give a final decision. And he hoped that if this argument should be protracted to a length which might be inconvenient to some gentlemen, the acknowledged importance of the subject would be a sufficient apology for the time which should be consumed in discussing it. It was a momentous subject. It was, in its practical results, no other than whether the Judiciary should be, as it was intended by the constitution, a check on the other departments, or whether the legislature should be uncontrolled, and uncontrollable by anything but its own sense of propriety.

That time could not be said to be wasted or employed improperly, which might be necessary for a full development, to the people, of the character and tendency of such a measure, and for an impartial examination and refutation of the arguments which had been published in support of it. Those arguments had been elaborated from a subtle mind, and were intended for general diffusion among the people. He considered them as a tissue of sophisms, and intended to examine them with that freedom which he had a right to use, to show their fallacy. He considered them as poisonous, and was determined to distribute their antidote, as far as he could, by the humble contributions of his mind. He had hoped that this subject would not be brought before the legislature during this session; it could do no good; the community had been long enough agitated; the public mind had been long enough and highly enough inflamed. He had come here for the purpose of endeavoring to restore the people to peace, to confidence, to repose and to concord. This proposition will not tend to any of these desirable ends; it is not intended for conciliation, or the *people's* good. As the gentleman from Jefferson (Mr. Rowan) has forced the subject on the consideration of the legislature and of the people, and has thought proper to urge it with all the powers of his intellect, in a long *"ad captandum"* manifesto, which has been published, it is important that the public mind should be enlightened by a full and free discussion. The people must now understand and decide for themselves the great and fundamental principles involved in these resolutions. Whenever

they shall be permitted to investigate them dispassionately and impartially, they will decide them correctly, and it is hoped, irrevocably. This is an eventful crisis in the affairs of Kentucky—a great era in her history and the development of her constitution. Let the people be informed of the truth—let them have light, and all will be right. Many of them have been deceived. These resolutions are designed to deceive and amuse them still longer. They are illusory: *they speak one thing and mean another.* The people should know it. Let the discussion therefore be ample and free, and if it should result in the inculcation of right notions of constitutional government, of *"civil liberty"* in its genuine and practical import, and of *"political sovereignty,"* this legislature may felicitate itself for having done more good and prevented more mischief than it it could have done by any legislation.

Whatever shall be thought of these resolutions here or elsewhere—whatever feelings they may generate, he hoped, (he said) that the discussion would be grave and decorous, and the decision dispassionate and impartial. He would most respectfully and earnestly entreat the members of the committee to endeavor to feel a just sense of their responsibility, and their public duty—to stifle all passion, and to look only to the public good. Thus prepared, he would hope for a good result, for a vote which would be the decision of sober and enlightened reason, not of passion; for such a vote as men *must* give who submit to the control of their judgments alone, and who look only to the glory, prosperity, and happiness of their country.

The subject of debate naturally divides itself, said Mr. Robertson, into two primary positions. 1st. Is the decision of the Court of Appeals correct? 2nd. Even if it should be believed to be wrong, are the resolutions proper and in consonance with the theory and fundamental principles of the government?

He would invert the natural order and consider the last proposition first; and after having endeavored to show that, even if the court had erred, there were still insurmountable objections to the resolutions, he should try to prove that the decision was sustainable on the plainest principles of reason, and of justice, and by the obvious and undeniable import of the federal and state constitutions; and strange as it might appear, he expected to derive no inconsiderable support to his argument from the preamble itself, and hoped to be able before he could resume his seat, to exhibit such palpable fallacies and incongruities in that recondite document, as to induce even its zealous author to doubt the legitimacy of his conclusion.

Having on a former occasion given his opinion on so much of this subject as relates to the decision of the supreme court on the occupant laws of this state, on which he had suggested what he considered the most elligible course for the legislature to pursue, he would forbear any animadversions on that topic now, and should only notice the two first resolutions in relation to the Court of Appeals, as what followed was only a consequence from them.

Among many strong and striking objections to those resolutions, he would only mention a few. First, when taken in connection with the preamble which assigns the reasons for adopting them, they import what is not true—that is, that the court has been guilty of usurpation. Secondly, they *practically* deny that the court has a right to decide on the constitutionality of the acts of the legislature. Thirdly, they strike at the constitutional power and independence of the judiciary, effect no good or practicable end, are derogatory to the character of the state, and contain assertions which are not just or true.

And 1st, is it true, said he, that the court have been guilty of usurpation? If they have, what apology has the gentleman, who introduced these resolutions, for not moving to remove the judges from office? Why content himself with decrying them? He knows, and this committee knows, that there has been no usurpation. Usurpation is the assumption of power not delegated. Have the court arrogated to themselves any power that does not constitutionally belong to their station? It is not to be believed that any member will be "blunt and bold" enough to utter such an opinion, except the mover of the resolutions; and it would be due to him, to suppose in charity, that the utterance of such a monstrous sentiment, in the last paragraph of his preamble, was an inadvertence; for that gentleman, for reasons which shall be hereafter disclosed, should be the last member of the committee who would make so unauthorized a charge.—What have the court done? They have decided, on their oath of office, that the Constitution of the United States is *paramount to an act of the Kentucky Legislature.* In doing this what unusual or dangerous power have they exerted? In pronouncing an act of assembly to be unconstitutional, they have done only what every court in the United States has often and properly done; and what it is frequently their duty to do. If this makes them usurpers they have been guilty of usurpation ever since they were elevated to the bench, and the member who has exhibited the charge has participated in that usurpation more than once, whilst he was associated with a majority of them.

No proposition, (said he,) is more universally conceded by the enlightened, or is more firmly established by authority or reason, than the power of the judiciary, *and their duty, too,* to declare an act of legislation void for repugnance to the constitution; a power and a duty which result from the nature of the judicial functions, the objects of the judicial trust, and constitute a palladium of security for the dearest individual rights. The constitution is the paramount law; the Judges, Legislature, and every citizen, are bound by it.—The powers of legislation are limited by it; the rights of the citizen are guaranteed and protected by it; and the courts are bound by their oaths to enforce it. It establishes certain great

fundamental principles which are held sacred, and lays down landmarks which the legislature cannot transcend; which *even the people themselves are not allowed to overleap.* It is to the legislature the charter of their privileges and duties. It is not a *chart blanche;* it is well filled up. It distributes the powers of government among three bodies of magistracy; makes each the depository of a distinct portion, and to a certain extent, independent of the others. The whole people being too multitudinous to perform the functions of government, without the intermediation of agents or trustees, have, by the constitution, confided to the legislature the power to make laws for them; to the judiciary the power to expound laws *for them;* and to the executive the power to execute laws for them. When the legislature enact laws, they do it in the name and with the sovereign power of the people; when the courts expound the laws and decide private controversies, they also do it *in the name and with the sovereign power of the people.* If the legislature are the people, because they represent them in one attribute of their power, the judges *are as much the people,* when they represent them in *another attribute of sovereignty?* Hence, there is nothing unreasonable in "three men as judges controlling one hundred and thirty-eight men as legislators"—it is the *people* who control the one hundred and thirty-eight, through their agents; the *judges,* whom they have created for that purpose. Each department of agency is responsible to the people for delinquency, but only in the modes prescribed in the constitution; that is the power of attorney from the people to each of the departments, and must be enforced until revoked; neither has a right to transcend the authority delegated in this power of attorney. It declares that the legislature shall not pass certain laws—their not having the right to pass such is the political liberty of the citizen. But this boasted liberty would be only nominal; it would be only a mockery, unless the individual whose rights would be assailed by unconstitutional acts could appeal to some independent judicial tribunal for redress.

A constitution is a compact with all society and each individual composing it, which is intended for the protection of each, however humble or weak, from the oppression of the whole. The will of the majority should control when it is expressed in accordance with this fundamental compact. But a majority, however large or powerful, or virtuous, have no right to coerce a minority, however small or obnoxious, contrary to the fundamental principles thus adopted by all for the security of each; for if a majority can have the political power to act in contravention of the guarantees of the constitution, there is no necessity for a constitution: the will of the majority will then be that constitution, or must supercede it. But as it was known that man was fallible and under the dominion of passion, interest, and even honest delusion, and as the framers of the constitution knew from experience, that however virtuous and enlightened the people might be, still it was necessary that *they* should be governed, and that majorities might be wrong, it was thought necessary, in order to secure inviolate the great principles of civil and religious liberty, that there should be established certain great boundaries of power, which, until changed in the mode prescribed, the people themselves could not prostrate. Hence, to secure the ends of association, it was deemed right that the legislature should not be permitted to enforce any law which they were not permitted to enact by their letter of attorney—that they should not *adjudicate* on, or *execute* their own laws. Montesquieu, Jefferson, and all modern writers on political law agree, that that government is a despotism, whatever may be its name or its form, in which legislative and judicial powers are consolidated. The great improvement in the systems of modern republics, and that which distinguishes them most above those of antiquity, renders them most stable, and endears them most to our affections, *is the interposition of checks and ballances.* There can be no political security in any government in which all power is consolidated in one department, even if that should be the legislature.

"An elective despotism," says Mr. Jefferson, in his notes on Virginia, "is not the government which we fought for." The American constitutions are all modelled conformably to this principle. In all we find three separate departments, with powers mutually to check each other. The constitution of Kentucky is replete with this pervading principle.

The House of Representatives cannot pass a law without the concurrence of the Senate, nor can both concurring, unless there be a majority of all elected, make a valid enaction without the sanction of the governor, however much their constituents may desire or need it; and so of many other provisions of the constitution. Those who made it, were unwilling to trust the varying and uncertain opinions of a dominant majority. They thought that public rectitude of motive was not a sufficient security for the rights of individuals. If it would be, there would be no necessity for a constitution—and government itself, in its mildest form, would be *tyranny.* The only object of a limited constitution, is to secure the few against the encroachments of the many. How can this great purpose be effected unless there is some constitutional check on the legislature? What should be that check? Those who made the constitution thought that the best which could be devised would be an enlighted Judiciary; they thought wisely—a better could not have been imagined. Judges are selected for their superior knowledge of the laws and constitution, and for their probity; they have no motive to decide wrong; they have no power except that of the preventive character—they hold neither the purse nor the sword. Their only ambition is to adorn the bench by their wisdom and purity—they do not mingle in party or electioneering contests. As it was known that contests would arise between portions of the community as to the construction of the compact

to which all the members have become parties, and as there would be great danger and palpable incongruity in permitting either party interested to decide irrevocably against the other, it was agreed that some umpire should be selected, to whom the people should confide the power of deliberating and deciding between them. An infallible tribunal could not be created out of fallible materials—but there must be some arbiter, and none less liable or disposed to err could have been selected, than an independent judiciary. But the primary end of their creation will be defeated if they be not allowed to declare an act which shall be inconsistent with the constitution, void. If they have not this power, then there is no constitution except the arbitrary will of a majority of the legislature. The limitations in the constitution would be nugatory. Therefore, an honest judiciary is the anchor of the republic.

Our constitution has a conservative principle; that principle is that the legislature are prohibited to pass certain laws, and if they should disregard the prohibition, their act shall be a nullity. When a court declares an act of assembly void, for repugnancy to the fundamental law, it only says that the will of the people expressed in their constitution, is paramount to that indicated by their legislature. The court does not repeal the law; it is repealed already by the people in their constitution—it never was *law*. If the legislature act contrary to the authority given by the people in the constitution, they act without authority, and their act is void. The constitution is superior to them—they derive their power from it—and even the people, who are the ultimate depositories of all power, cannot control, resist or suspend it, except by controlling it in the mode prescribed by themselves.

Any individual, therefore, has a right to the protection of its guarantees, not only against the opposition of a majority of the Legislature, *but of the people themselves*. For the constitution governs majorities as well as minorities.—If the Legislature can enact and enforce any statute which they may think fit to enact, then they are above the constitution. When a court decides in favor of an individual, every other member of the community cannot reverse that decision, except by abolishing the constitution. In this consists the value of the constitution; in this consists the political liberty of the people. Civil liberty is *exemption* from oppression; political liberty is the *security* from oppression which is afforded by the form of government. But if the legislature have the right to violate the constitution, and then adjudicate on their own act, the citizen *may* enjoy civil liberty, but he has *no political* liberty. The constitution then would be no better than an act of assembly.

When a judge is called on to decide what the law is, where two statutes are in conflict he must pronounce what is in force—*a fortiori*, when a mere statute and the constitution are in conflict, he must declare which is the law—it is inherent in the nature of his office. If the majority violate the constitution and assail the liberty of the minority, who is to decide between them? If the legislature destroy the liberty of speech or of conscience, who shall decide between them and the disfranchised individuals? An impartial and enlightened court, sworn to support the constitution.

If the court had the power, said he, they certainly were not usurpers for having done their duty. Being compelled judicially to decide the case presented to them, they had the right to render judgment for that party on whose side they believed the constitution to incline. If this was usurpation, why was the case forced upon them? For if it were settled already by the legislature, it was not a judicial question, there being nothing more to decide. The court manifested as much reluctance to give the decision as was compatible with their duty; they desired to avoid giving any opinion which would invalidate the replevin act; but when they could not with propriety longer avoid a direct decision on it, what did they do? Why they—decided it! And for this they are denounced, by at least one gentleman, as "usurpers." Monstrous and perilous denunciation!! Suppose they had contumaciously refused to decide the case, or had prostituted their consciences and judgment at the shrine of popularity, or had assumed legislative omnipotence; would they not then justly have subjected themselves to the imputation of "usurpation," or of official corruption, and have deserved removal from office? Certainly. In what a predicament then are they placed? If they will not adjudicate, they must be removed; if they decide honestly and correctly, they are "usurpers!" A doctrine which involves such consequences must be false. Let us beware, said he, that we shall not exemplify the fable of the wolf and the lamb; let us take care that, whilst we are crying out murderers, we are not insidiously assassinating the court; and not only violating the constitution, but sapping the principles of civil liberty and blighting the honor of our state. The court did their duty honestly; let us follow their example. They usurped no power; let us not go out of our sphere lest we be guilty of "usurpation."

He argued next in support of the second objection, which was, that whilst the preamble conceded to the court the right to declare a legislative act unconstitutional, it in effect practically denied the right, by requiring as a "SINE QUA NON" to its exercise, that the unconstitutionality of the act must be "OBVIOUS AND PALPABLE." This qualification, (said he,) is "obviously and palpably" unauthorized; else it destroys the concession of right in ANY case and leaves the legislature uncontrolled, except by its own reason, discretion or passions.

What, he inquired, was meant by "obvious and palpable," when used in the preamble? Was it intended that the repugnance to the constitution should be obvious to all men of all grades of intellect, or only to the most enlightened? Must it be palpable to those who are torturing their minds to seize some pretext for not seeing it? To those who are determined,

from pride, interest or ambition, to shut their eyes against it? Must it be obvious to the legislature who passed the act, or it must be obvious to the court who are called on to determine it? Certainly to the court. No prudent and intelligent tribunal of justice will ever refuse to enforce the legislative will, unless that will be to that tribunal plainly interdicted by the constitution. The court of appeals has not done, nor ever will do it. A Judge has no personal motive to do it; he may lose, he cannot gain by it. There is no danger of his ever doing it unless he feel imperiously bound by an honest and clear conviction of duty. Judges do, no doubt, frequently lend their agency to the enforcement of the legislative will, when they are *inclined* to believe that the paramount will of the people has been disregarded; and this is perhaps proper. There is no danger to be apprehended from the Judiciary, except that, through fear of offending the legislature, and of thereby subjecting themselves to a perilous responsibility, they may tamely connive at legislative encroachments, and fail to enforce constitutional rights. This is exemplified by the history of all jurisprudence, especially by that of those governments in which the judges were dependent on the legislative or executive department. Hence the wisdom of the convention in endeavoring to render the judiciary as independent of the legislature as would enable it to decide all cases according to its honest convictions of right and duty, without consulting or fearing the popular branch of the government. The right to judge involves the right to the faculty of judgment; it pre-supposes the existence of that faculty, and necessarily implies its freedom from control or fear.

A decision given contrary to the opinion of the judge, is certainly not HIS judgment. It is his duty, in defiance of all consequences, to pronounce his own opinion; and in doing so, who can say that it was not obvious and palpable to him? If it be not obvious to him on a constitutional question, he will not give it; if obvious to him, although imperceptible to all others, he is bound to give it. But it is contended that the court have no right to decide an act of assembly unconstitutional, unless the repugnance be "OBVIOUS AND PALPABLE" to the legislature! How would the court ever ascertain this fact? It would not fairly be presumable that the legislature would pass an act which should be to *them* "obviously and palpably" unconstitutional. If they ever should be corrupt enough to do so, they would be proud enough not to acknowledge it. And if the judge shall have the right to pronounce their acts unconstitutional only when they are "palpably and obviously" so to themselves, then it results inevitably, that he has no right to give his own opinion unless it be in accordance with their's; and hence would this consequence result, that he would have the right in no case, however obvious to him, to declare a legislative act unconstitutional, but would be compelled to violate his oath, and assist the legislature to prostitute the constitution at the shrine of ambition or wanton power. Can such a doctrine as that, which leads to such absurdities, be orthodox? No; it is worse than Utopian. But again, if a proposition be "obviously and palpably" repugnant to the constitution, it is not only not to be presumed that the legislature will, even in the wantonness of arrogated power, adopt it; but if they unexpectedly should, there could be no doubt that the next legislature would repeal it. Therefore there would be no necessity for courts to possess the power of resisting the constitutional encroachments of the legislature on the rights of individuals, unless it could be exercised in cases which the legislature would not acknowledge to be "obvious and palpable" violations of the constitution, because it is not probable that it ever would become necessary to exercise it; and if it should be, it could not be exercised.

From this brief view it irresistibly results, that if a Judge have no right to decide that a legislative act is unconstitutional, whenever obviously so to him, unless it be "obviously and palpably" so to the legislature, he has no right to do it in any case. But it is admitted in the printed argument that he has that right; therefore he has it, like all other judicial rights, to be exercised according to the best dictates of his own conscience and judgment. It is his privilege and his official duty to follow the light of his own reason. It is the duty of the legislature to act conformably to its own judgment in enacting statutes. It is equally incumbent on the judge to follow the convictions of his mind in expounding them. There are no degrees in the repugnance of legislation to the constitution. An act is either constitutional or unconstitutional. If an act be unconstitutional, it cannot be material whether it is "obviously" so or not. It is void—and it is because it is void that the courts ought not to enforce it. A judge has no right to enforce an unconstitutional statute; it is not LAW, and he is appointed to administer law. It does not belong to the legislature to decide what the law is, but to the judge. He cannot, therefore, without usurpation, without an abuse and perversion of his office, enforce against a citizen, an act of the legislature which is a nullity. He said he would be glad to be informed of the difference between a violation of the constitution, which is "obvious," and one which is not "palpable" to every understanding. Each is void, and one as much so as the other, for there are no degrees in NONENTITY.

But it is contended, said Mr. Robertson, that a judge has no right to determine by construction that a legislative act is unconstitutional. This is an unfortunate subterfuge. Must reason be proscribed? Must it be banished from the judicial mind? Must a JUDGE have no judgment? What is the province of reason but to construe? What is the object of construction but to find truth? The right to construe is of the essence of the judicial character. A judge, without the faculty to construe law, common, statute, or constitutional, would be a phenomenon. All his decisions are the re-

sult of construction. His principal function is to construe, interpret, expound law, and the constitution is not only LAW, but above all other law.

It is impossible, even in the common affairs of life, to detect error or discover truth, without "construction," without reasoning from some self-evident principle to some more occult truth, and so on by a regular gradation to the final conclusion, which, when it is educed, is as certain as the primary proposition, from which it was, by a regular process, drawn. How are the most important truths in the moral, intellectual, and physical world ascetained, except by the faculty of reason and some process of construction? The most recondite principles are, by these agents, developed with all the certainty of intuition. The truth of even a mathematical theorem is at first disguised. But by a regular chain of reasoning, from one proposition to another, the demonstration is complete and the conclusion irresistible. And must not a judge, who is the arbiter of life and death, be permitted to trace out right and detect wrong by a process which is so successful, and unerring, and universal? Must he not see truth, unless she be presented naked to him? If so, the only qualification of a judge would be, not mind, not integrity, not experience, but instinct!

But, said he, we have an apposite illustration of what the gentleman from Jefferson (Mr. Rowan) means, when he says that a court has no right to construe an act of assembly to be contrary to the constitution, in the celebrated and very elaborate opinion written by himself when on the bench, in the case of the United States' Bank against Morrison. In that case he reasons, and metaphysically, too, through about thirty pages in an octavo volume, to prove that the charter of the United States' Bank is unconstitutional. He here "construed." He not only decided that the charter was unconstitutional, but declared that he would not, EVEN AS A JUDGE, SWORN TO SUPPORT THE CONSTITUTION AND LAWS OF THE UNITED STATES, submit to the decision of the Supreme Court. And did he think that the law creating the bank was "obviously and palpably unconstitutional?" If he did, why did he reason, and construe, and define so much and so unmercifully as he did? If he did not, according to his new light, HE was guilty of usurpation.

But he did not think that the unconstitutionality of the law was "obvious and palpable," or he would not have "construed" so much, to enable others destitute of his happy perspicacity, to see that which was "palpable" to his mind without "construction." Besides, he could not have believed that that was "obvious and palpable," which the wisest men in America had never been able to see.

The Bank law had been decided to be constitutional by the Congress of 1791, and by President WASHINGTON, by whom it was passed. It had been considered constitutional by the Congress of 1815-16, and by President Madison, who re-enacted it. It had been decided to be constitutional by the Supreme Court of the United States; and all those decisions had been ratified and acquiesced in for many years, by the intelligence of the Union. Yet to judge Rowan's mind the charter was "obviously and palpably" unconstitutional! otherwise, he now says, that he would have been guilty of "usurpation" in presuming to decide against the validity of the law. HE WAS THEN A JUDGE—HE IS NOW A LEGISLATOR. He had a right to do as he did, but he denies that right to other judges; that which was duty in him was "usurpation" in them. The law establishing the Bank was not "palpably" unconstitutional, to the Congresses and Presidents who enacted it—nor to the Supreme Court; nor to any one individual in the United States; yet the Judge decided that it was void, and whether the opinion was right or wrong he had the right to decide as he did, if he THOUGHT as he decided. He had a right to his own opinion; why shall not others have the same right? Others have the same right, others have always exercised it and always will, as long as they are honest and independent—as long as they are, in the genuine import, JUDGES.

He thought it was difficult to escape the conclusion, (he said,) that, if the statute be *unconstitutional*, whether it be "obviously and palpably" so or not, the court had a right to refuse to carry it into effect. They were bound to do so, by their oaths, their consciences, and their duty to the constitution and the people.

What would the people do with a Judge, who, when a majority of the Legislature assail their dearest rights, guaranteed by the constitution, should, through fear of that majority, against his solemn oath, assist in the usurpation? They would hurl him down, as a traitor to them and to his own conscience.

The humble citizen cannot be disfranchised or oppressed, or divested of any of his constitutional rights, although a dominant majority in the Legislature may decree it. It is the boast of the free man that, however poor, obscure or obnoxious he may be, he is protected and upheld by a constitution which knows no distinction of rank or condition, and which is above the highest and strongest, even the united Legislature itself—and it is his consolation, that, if a majority should trample on his rights, the constitution has provided for him an independent and enlightened court, to whom he can appeal and demand JUSTICE. But it would be a mockery of justice to tell him, though his most sacred rights had been invaded and destroyed, yet if his deprivation were not "obvious and palpable" to the next legislature, there was no redress: for the injury to him would be as afflicting, and to the constitution as extensive, as if it were ever so "obvious;" and therefore the court would be bound to protect him. Any other doctrine would strike at the root of civil liberty, and would subject the humble and the weak to the mercy of the wealthy and the strong.

The constitution is the sanctuary for the injured and oppressed, and the judiciary are

ordained to minister at its holy altar. To minister faithfully they must have pure hearts and sound heads, and act in obedience to their unbiassed dictates, "palpable or impalpable," popular or unpopular. This is the doctrine of reason, of justice and of the constitution.

This, he said, led him to his third and strongest objection to the 1st resolution, which is, that it strikes at the independence of the judiciary and at the equilibrium of the constitution. He considered this a declaration of war against the judges, and against the fundamental principles of the constitution—a proclamation for resistance and anarchy—a beating up for volunteers in a crusade against the judiciary.

In vain may it be acknowledged that the constitution of Kentucky limits the powers of the legislature—in vain may it be conceded that it distributes all delegated sovereignty into *three* separate, distinct, and independent departments; that which is LEGISLATIVE to the legislature, that which is JUDICIAL to the judiciary, and that which is EXECUTIVE to the executive department. In vain may it be yielded, that these move in different spheres—are erected for mutual checks to maintain the balance of power. In vain may it be admitted, that the legislature have no right to pass an unconstitutional act, and if they do, the courts may declare it void, as it must be. In vain may it be boasted that Kentucky has constitutional liberty, if the legislature, consistently with propriety and fundamental principles, can annoy or control the judiciary in any other mode than that designated in the constitution; or if they can usurp judicial power, violate the constitution, overule the decisions of the courts, and enforce their own invalid, unconstitutional acts of usurpation.

This difficulty was foreseen by the author of the resolutions, and in his printed argument he endeavors to remove it. He says that "the legislature are responsible to the people, and the courts to the legislature." Therefore, the legislature have a right to do as their judgments or passions may dictate in arraigning and controlling that department. A perfect *nonsequitur*—The legislature are responsible to the people, but how? the courts are also responsible, and how? In the same way, and to the same extent? Is that the argument? If it be, it is false; if it be not, the conclusion is illegitimate. The members of the convention, knowing the necessity of such a principle, determined that the three departments should, as nearly as possible, be equipoised, and to secure this end, also determined that each should be independent of the other, except so far as they have, in the constitution, declared otherwise.

The independence of the judiciary is constitutional, not merely legal. It cannot be reached by the legislature in any other modes than those by the constitution prescribed. These are, impeachment and address. The judiciary is established by the constitution, and can only be controlled by it, or according to its principles.

If a judge be guilty of corruption, impeach him; for the judicial ermine is not to be stained with even the suspicion of such delinquency. If, for any other cause contemplated by the constitution, it be proper to remove a judge from office, remove him by address. But do not effect the object of indirection. Why did the constitution prescribe two modes which have been designated, unless it was intended that the judiciary should be exempt from any other proceedings by the legislature? Those two modes of operating on the judges were devised, because, without any delegation of power on the subject to the legislature by the constitution, the judges could not be reached at all, as they are declared by the constitution to be a co-ordinate department, in office for life, unless removed in some mode provided. If it were intended that the legislature should have any other control over the judges and their decisions, why was it not mentioned, and why were *those* modes specified?

It may be argued, that there may be no impropriety in the legislature expressing its opinion. To this it may be replied unanswerably, that it is always a sufficient objection to such a course, that it is abstract; that it is, in fact, not legislation; for, in thus acting, the members do not act in their representative, but individual capacities, and their opinion can be entitled to no greater effect, than that of a collection of the same number of their constituents. If such a proceeding be preparatory to an address, or impeachment, it might be permissible. But this is disavowed. Then what is the object? Is it to compel the court to change their opinion? If they regard their oaths or sense of duty, this will not be effected, and if it could, what would be the consequence? Nothing more nor less than this; that the legislature, after passing an unconstitutional act, may *instruct* and compel the judiciary to carry it into effect; the practical tendency of which would be to deprive them of the power of deciding on the constitutionality of the acts of assembly, although it is acknowledged that they have it. For, it is plain, that such conduct of the legislature would have this effect or none. Then the legislature would be above the constitution, and not that above them. All power would be absorbed by the legislature, and the constitution would be no more sacred, or inviolable, or stable, than acts of the legislature.

If a bare majority can eventually effect the downfall of the judiciary, by censuring their conduct and degrading them in the estimation of the people, or by reversing or suspending their decisions, the constitutional equilibrium is gone, and that beautiful theory which supposes that there are three departments of power, each moving in its appropriate orbit, free from any dependence on or responsibility to the others, except as provided by the constitution, is an ILLUSION.

Mr. Madison, in the 47th number of the letters of "Publius," speaking of the necessity of three departments of government independent of each other, says, "That no political

truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty. The accumulation of all power, legislative, executive and judicial in the same hands, whether of one, or a few, or many, and whether hereditary, self-appointed or elective, may be pronounced the very definition of tyranny."

Every constitution in the United States has been so modeled as to prevent this accumulation of power in the hands of the legislative department. That of Kentucky is careful to defeat it. But all its wise precautions will be unavailing, if it be proper or permissible by the constitution to adopt the resolutions under consideration.

All the apprehensions of the convention were directed to the legislature, because there could be no danger of usurpation to an oppressive degree by the judiciary. They well knew that the legislative would be the most powerful branch of the government, and that there would be danger of its encroachments on the other two; they knew that it was the most popular branch, would have the most influence over the public mind, and would be most apt to overleap the barriers of the constitution.

They knew that the judiciary, from the nature of its functions, and from its very constitution, would be the weakest department; having less power, less ambition, less passion, less influence over the springs of public opinion, than the legislature: and therefore they provided that judges should be irresponsible to the legislature, except for corruption or some other delinquency for which they might be removed by TWO-THIRDS of all the votes of each house on charges to be spread at length on the journals. They further declared, that

"The powers of the government of the state of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: Those which are legislative to one; those which are executive to another; and those which are judiciary to another." "No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances herein after expressly directed or permitted.—*Con. of Ky., Art. I.*

But this legislature is now called on to erect itself into a body of censors, into a judicial tribunal, a grand inquisitorial body, to revise, and, in effect, to reverse the decision of the court of the last resort known to the constitution. Who gave us, said he, this high power? Who made us a court of appeals? Who vested us with judicial power? Not the constitution. It declares that all our power shall be exclusively legislative. Not the people; they elected us to legislate for them according to the authority given by them in the constitution. They did not send us here to subvert, but to execute the principles of the government; not to arrogate to ourselves judicial powers, not to abase and degrade the judges, but to sustain them, or remove them from office, if two thirds should believe that they had forfeited their office.

As well might the legislature endeavor to control the governor, or the judiciary the legislature; and if it be proper to endeavor to reverse the decision of a court, it would be much better, before it is given, to instruct the court by resolution what decision to render.

All the power which the legislature has over the courts is defined carefully and with precision, in the constitution. If it has any other power, whence derived, how limited? It has no legitimate origin, and would be illimitable.

If the legislature can reverse the decisions of the courts, or resist them successfully, either directly or indirectly, where is judicial independence? All prostrate at the feet of an irritated majority—all overwhelmed in the uncontrolled and appalling power usurped by the legislature. Sir, said he, we are treading on dangerous ground—we are about to establish a perilous precedent. If we can paralyze the courts and refuse to execute their decrees, the constitution is a shadow, the power of the courts an illusion, political and civil liberty a chimera, all within the gigantic grasp of the power of the legislature, all dependent on legislative will. And is there no necessity for the barriers and checks of the constitution? Should the legislature be above them? If not jealously watched and guarded, is there not danger that it will prostrate them and assume to itself unbridled dominion? Listen to the voice of history and experience; look into the volume of nature, and what will you find? You will find that there is great danger of encroachments by the legislative department, and great necessity to restrain and muzzle it. Let us hear what Mr. Madison says on this subject. In the 48th number of "Publius," after showing that paper barriers between the three departments are insufficient, he says that "experience has shown that some more adequate defence is indispensably necessary, for the more feeble against the more powerful members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its "IMPETUOUS VORTEX." In the same number he says, that "in a representative republic, where the executive magistracy is carefully limited, and where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude; yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes; it is against the enterprising ambition of this department, that the people ought to indulge all their jealousy, and exhaust all their precaution."

Mr. Jefferson, too, in his notes on Virginia, in speaking of the necessity of three departments,

and of the defect in the old Virginia constitution, in not making the courts sufficiently independent of the legislature, says: "They, (the legislature) have accordingly in many instances decided rights which ought to have been left to judicial controversy." The board of censors selected in Pennsylvania, in 1783, to enquire into violations of the constitution, reported many by the legislature, and among others mention this, "that cases belonging to the judiciary were frequently drawn within legislative cognizance and determination."

Mr. Madison further says, in No. 51 of "Publius," that, "In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it was evident that each department should have a WILL of its own." Further on he says, "But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each the necessary constitutional means, and personal motives to resist the encroachments of the others." Again he says, "In a society in which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature, where the weaker individual is not secured against the violence of the stronger." And in the same number he says, that "in framing a government which is to be administered by men, over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place, OBLIGE it to control itself. A dependence on the people is, no doubt, the primary control of the government; but experience has taught mankind the necessity of auxiliary precautions."

These, said Mr. Robertson, are admonitory lessons. Our forefathers profited by them, and endeavored to secure their benefits to us, but we are unwilling to enjoy them. You see in them the danger of legislative usurpation, and the wisdom of the convention in endeavoring to check it, by an honest judiciary; and their solicitude that that judiciary should have the *means* and the *motives* to check it—should have a will of its own, and be so far independent of the legislature as not to be afraid to exert it. But we are endeavoring to disregard the wisdom of the world and to prostrate the judiciary, not by removal, but by abuse, so that in future they shall never dare to decide against the legislature. PROTECT THE CHARACTER OF YOUR JUDGES AS LONG AS YOU PERMIT THEM TO HOLD THEIR SEATS; you owe it to your country and to yourselves.

It is necessary that the court should possess the confidence of the people. What good can be effected by destroying it? Do not degrade your judges and leave them in office—it will degrade yourselves and your constituents. If you cannot remove them, you cannot touch them. You have no right to control their decision—the parties litigant have a vested right to it. Nothing which you can do can divest it. But if you have the right to degrade them for giving an honest opinion, you may deter them from ever deciding that any act you pass is unconstitutional. This would suit the ambitious and designing. Such is the design of the resolutions—they have no other object or tendency.

There is no danger, continued Mr. Robertson, that the judges will ever overrun the liberties of the people. Who ever heard of a judge, who was not made the instrument of either the executive or legislative department, oppressing a whole community. He may be an oppressor indeed, but it is only when he is made the engine of the legislature or the minion of the executive; it is a dependent, not an independent judge who is to be feared. Who ever heard of a judge mounting to dominion over the liberties of any people? No one ever did or ever will.

The ambitious man, who meditates supreme sway over his country's destinies, never mounts the Bench. He mounts the "stump," and winds himself into public favor, by flattering the prejudices and passions of the majority, as the serpent decoyed Eve. The man destitute of principle, who stifles his conscience, always rides the current, delights in raising a storm that he may mount it and direct the whirlwind; whose ostensible object is his country's glory, while the delight of his soul is supreme power; in whose lips is liberty, but in whose heart is monarchy! This is the man whom his countrymen may fear. Such was Julius Cæsar, Oliver Cromwell, and all others who have stolen from the people their liberty. To such men the most appalling object is an independent, virtuous judiciary. That checks their career. They never can seize the crown until the judiciary is undermined. Hence it will always be found that they denounce independent judges, and endeavor to persuade the people that they are oppressed by them. Their only resource is the omnipotence of the legislature, where, if they can get a seat, and can, by counterfeiting their politics and disguising their designs, get at the head of the majority, they stand the uncontrolled arbiters of their country's destinies.

But, said Mr. Robertson, there is a peculiar objection to the resolution which proposes resistance. This portion he thought was too strongly concocted. It is only necessary to present it to the lips to have it rejected. Shall Kentucky set the first example of rebellion? Such he would call it, for such it was, against the constitution and against the settled principles of constitutional liberty. He would not like to see an act passed conformably to the resolution; it would bring the state into confusion and anarchy; the constituted authorities would be put down, or there would be an interregnum of political principle, and civil commotion would ensue.

The clerk who would obey your mandate and disregard the decision of the judge would be removed from office by the court of appeals for a dereliction of duty. If he should obey

the court and not the legislature, the clerk would be sued by the debtor, and the legislature would be bound in honor to indemnify him. One part of the community would be thrown into active opposition against another, and there would be no law but that of force, if any attempt should be made to enforce the act.

But, continued he, the two years replevin act is decided to be prohibited by the federal constitution. An appeal has gone to the supreme court; suppose that court shall affirm the decision. What then? RESIST THE GENERAL GOVERNMENT? Whenever such a crisis shall occur, we shall see a practical illustration of the benefits of the federal constitution—the advantages of the union of the states. We may see another Shay's insurrection, but there the catastrophe will end. Let it not be forgotten that it is the federal constitution that has been violated, and that even a removal of your judges will not effect the decision. Kentucky has no right to prevent its enforcement; it belongs to all the states and must be as uniform in its application as it is immutable in its principles.

The resolutions in any aspect can do no possible good, they may do much mischief.—They may establish a precedent, which, if sanctioned by the people, would, in time, tear down one pillar of the political temple, and the whole fabric will tumble into ruins. But they can administer no relief. They will only excite hopes which can never be gratified. There is only one remedy. Let the affairs of the country go on in their usual and natural channel; let the constitution prevail; give up party strife and party pride and ambition, and act only for the permanent welfare and honor of the people. Then confidence will be inspired, industry will be stimulated, morality will resume her empire, and virtue and prosperity triumph. The people will look then to the only sources of real relief—their own conduct, a rich soil and a benificent Heaven.—But persist in legislative encroachments, and relief itself is hopeless. Every legislative interference will render another more necessary. Keep up the credit of your paper, as well as you can by prudent means. Do not relax the system in relation to it which has been adopted; wind it up slowly but certainly. The bank is a sensitive plant, touch it and it dies. Let it alone and the people will have confidence in it, and that alone will make it good: and as its paper is withdrawn, a better currency will inevitably supply its place. You will never have a specie currency while you have depreciated paper.

The opinion of the court is not ruinous; it will inflict little or no injury. It is the best opinion for the people which could have been given; and if it should happen to be severely felt by some, it is not the fault of the court or of the constitution. Nor is the opinion "subversive of the principles of civil liberty," unless it be inconsistent with those principles for men to pay their debts according to contract, or for the Legislature to be restrained by the constitution. If such be the principle of civil liberty, he did not desire or claim to be one of her votaries. She was a licentious courtezan, not the chaste vestal virgin exhibited in the constitution. He thought that civil liberty consisted in equal and exact justice, and should still cling to that opinion.

Any other liberty than that enjoyed in the inviolability of private rights, and integrity of the constitution, is licentiousness. No community was ever legislated out of debt, nor ever will be. If Kentucky would profit by an afflictive experience, she might yet be wise and prosperous.

This was a consummation (he said) which he most fervently prayed for. His only interest was the glory and happiness of his State. He was bound to it by many and strong ties. It was his birth place. It embosomed all that was most dear and endearing to him, and he enjoyed a melancholy pleasure in the hope that it would be the repository of his ashes. This State once occupied a proud eminence in the Union; "KENTUCKIAN" was a certain passport, for all who bore it, to the esteem and affection of all who loved the brave and the noble. *It is not so now;* but he did not even yet despair of an eventual restoration, if the people are permitted to think and act for themselves. They possess even yet all the elements of moral, of physical and of intellectual greatness. Do not stifle or relax them; but incite them to development and activity. This can only be done by a stable fixed policy; an inflexible adherence to the principles of sound political economy and of undisturbed justice. Do not endeavor to excite the people longer. They are now quiescent; they will do right; they will understand their constitutional rights and at last sustain their constitution.

Having disposed of the first topic of discussion by suggesting some of the most prominent objections to the resolutions in the abstract, he would (continued Mr. R.) proceed to give some reasons in support of his opinion that the decisions of the Court of Appeals was correct. He would endeavor to show that any two years replevin law which is retroactive in its operation *on contracts*, is unconstitutional and void. He would confine himself to the principle decided by the court, and although other objections might be urged against the validity of the replevin act on which they adjudicated, he should only argue that it was interdicted by that clause in the federal constitution, which declares, that "no State shall pass any ex post facto law or *law impairing the obligation of contracts.*"

In analysing this subject, (said he) it is only necessary to ascertain with satisfactory precision what is the constitutional import of the expression, "the obligation of contracts," and what is "impairing" that obligation. Although there *seemed* to be a great diversity of opinion in relation to what is the obligation of a contract, yet he thought it strange that no one of those who denied the definition given

by the court, had ever been able to state in what the obligation of a contract consists. Even the long preamble to the resolution (incredible as it may appear to one who never read it) does not attempt to define it. The author of that argument denounces the court for imputed error; yet the anxious reader looks in vain through the twenty-six pages of swelling sentences, and "metaphysical" subtilty, for the source of that error. He is dumb on the all important question, what is the *legal* obligation of a contract. He would be glad to know (said he) what right any gentleman has to assert so dogmatically that the definition given by the court is incorrect until he can shew, or at least attempts to shew, that some other definition is the right one. The obligation of a contract is some one thing, certainly. It is necessary to ascertain what it is, and that it is radically different from what the court say it is, before their decision should be arraigned. The author of the printed argument might certainly, in his long discussion, have shown of what he thought the obligation of a contract consists, if he really believes that it does not consist of what the court has decided that it does; for before he can know that the court erred, he must know that the obligation is different from what the court says it is, and to know that, he must know what it is. He ought, therefore, not only in justice to the court, but to himself and his own character for understanding to have condescended to disclose the great secret—for secret it is if the court has not found it, and secret will, it is feared, always remain. At the threshold, therefore, it is fair to infer that the judges are right until their oppenents can tell what they believe the legal obligation is, and from their silence it is equally fair to conclude that they are unable to give any definition which is even plausible; and that therefore the court have *"hit the nail on the head."*

It is remarkable that in the printed speech, if he had even a glimmering of light on the subject, the author seems, in three different places, to have given, no doubt inadvertently, different views of the obligation of a contract, each irreconcilable with the other, two palpably wrong, and one in exact accordance with that given by the court. He expected to derive some assistance from the argument of the gentleman, and thought he could shew that he had (without intending it) fortified the decision of the court impregnably. It has been said that this argument "is a conclusive and triumphant refutation of the reasoning of the court;" he thought that it would require microscopic vision to find where the refutation lurks. He thought that it was a most "triumphant" *vindication* of the court's opinion, because it is supposed to embody all that can be urged against it, and when that is examined and analized, it is found to contain no argument against the principle decided by the court, but (without intending to do it) sustains it: for wherever there is anything tangible in it, it is in unison with the doctrine of the court.

"Obligation," in the Constitution of the United States, means what it does elsewhere, and what it imported in common use at the time it was inserted. To oblige is to bind, force, coerce, &c. The derivative, "obligation," is the binding, forcing power or quality of the thing. It is defined by *Justinian* to be the ligament which binds, and by *Pothier* to be *"vinculum juris"* or bond, or tie, or chain of right: a moral obligation or ligament is defined to be that which binds the conscience, which is the *law* of nature; and a legal obligation, of course, that which binds in or by civil law.—The obligation of a contract is that which induces, compels, or ensures its enforcement. *It is not the instrument or agent by which it is coerced, but the right which the obligee has to use coercion, that is the essence of the obligation.*—This is either moral or legal, and generally both. When there is no municipal law, which will compel the performance of an engagement, that which induces the performance, is the natural law, and is called the moral obligation, which is either internal or external, imperfect or perfect. It is internal when conscience is the only persuasive or coercive power. Such is the obligation of benevolence, gratitude, and a long train of moral virtues. The obligation of benevolence and gratitude, is the will of deity, the law of our nature. We are impelled or induced to acts of benevolence, &c., by a sense of respect for that will, and by the dictates of that law written on the heart; but the obligation is internal, it exists only in the bosom, and is imperfect, because no external or physical force can be exerted, to compel. In a state of nature, where there is no law but that of Heaven, man is responsible only to his God for breaches of the imperfect, internal obligations; the obligation consists in a sense of his responsibility to his maker and his own conscience; "impair" this accountability, or *stifle conscience, and you "impair the obligation."* But when a man is responsible to his fellowman, who has a right to use force, the obligation is external and perfect; and as this perfect moral obligation consists in the right to apply force, it can only be impaired *by affecting the force, or the right to use it.* If the right to use force be withdrawn, the obligation is therefore destroyed; if the right be rendered less certain or efficient, the obligation must be impaired.—These are moral obligations. But in a state of society there are legal obligations. Man having surrendered to society his natural right to exert force on his fellow man, society alone has the right to apply it. As the perfect moral obligation, in a state of nature, consisted solely in the force of the individual, or rather in his right to use it, so in society, when transformed into a *legal* obligation, it consists exclusively in the force of the community, or with more precision, in the individual's right to use it; and as each individual composing the body politic, has surrendered his natural right to force, the aggregate community is bound to exert it for the protection of his rights; and if the laws of society direct the application of the united force in particular cases, the legal obligation of those cases *is the right to have the*

force exerted. The *legal* "obligation," then, of a contract, *is essentially and exclusively, the right of the obligee to compel the obligor by law.* If this be not the legal obligation, there is none; and there would be no difference between a legal and moral obligation, or between a right in a state of nature and a right in a social state. If the civil law will not enforce a particular species of contract, such contract has no legal obligation: its obligation is purely moral, binding only on the conscience; as in the case of contracts prohibited by law, such as usurious contracts and others. Can any one believe that an usurious contract, if prohibited by law, or a contract proscribed by the statute of frauds and perjuries, has any legal obligation? They certainly have none, because the law will not enforce them. Is it not absurd to say that that has a legal obligation, which is contrary to law? When there is no law to compel, there can be no legal obligation. A contract contrary to law, *is not in law obligatory:* a contract without law, is not in *law binding:* a contract *permitted* by law but which the law will not *enforce,* is not obligatory *by law,* but binds only the conscience of the parties; the obligation of such a contract, then, is moral, not legal. Some contracts have both a moral and a legal obligation; some have one and not the other; and some have neither. A contract which is not contrary to the laws of deity or of society, and which the latter will enforce, has both a moral and legal obligation; the moral is not destroyed by the legal: the latter is only superadded to the former. The obligation is moral, because it is binding in conscience; it is legal because it is binding in law; as it would not be moral if not binding in conscience, *it could not be legal if not binding in law.* If then a contract have a legal obligation only when the law will enforce it, it is the right to use the power of the law to enforce it, which alone constitutes the essence of the legal obligation, and consequently anything which diminishes this force or impairs the right to have it exercised, inevitably impairs the obligation. If the law of society declare that an usurious contract shall not be enforced, it has no legal obligation, but its moral obligation is not diminished; indeed it is rather enhanced, because the integrity of the obligor's conscience is then the only security which the obligee has. A contract prohibited both by the laws of God and of man, has neither a moral nor legal obligation. Such would be a contract between A. and B., that if A. would kill a particular individual, B. would pay him $100.—Such a contract would have no moral obligation because contrary to the moral law. It would have no legal obligation, because contrary to the civil law, and because there is no law to enforce it. It is the *"law,"* therefore, that is the essence of obligation in each case, moral and legal. It is the law of nature acting on the heart which constitutes the moral, it is the law of man *acting on man,* that creates the legal obligation; and any thing which impairs the force or efficiency of the law in either case, impairs the obligation. If A., for a legal consideration, promise to pay B. $100 on a particular day, and fail to pay on the day, B. will have the right to coerce an indemnity for non-payment, by appealing to the law. If, when the contract was made, the law gave the right to B. to coerce A., that legal right cannot be taken away by future legislation, without *destroying* the legal obligation of the contract; for whenever the law refuses to *oblige,* there can be no legal obligation. And by a parity of reasoning the right which A. had by law to coerce B. cannot be suspended, postponed, or rendered less efficient or certain, without *"impairing"* that obligation. If, when a contract is made, the law of the place is pledged to enforce it, would it be constitutional for the legislature afterwards to repeal all laws giving remedy and thereby leave the obligee in the contract in a worse condition than he would have been in, in a state of nature? In a natural state he would have the right to coerce the obligor by using individual force, but this right having been surrendered to society, and that society having abrogated all law allowing a resort to social force, there would be nothing left, but the naked contract, without either a *perfect* moral, or a legal obligation; the casket would remain, but the jewel would be despoiled; the body would be left, but the vital spark, the very soul which animated it, would be destroyed. Such a law would destroy the legal obligation of the contract. No man can or will deny this: it must be, and certainly is, conceded by every member of the committee. If a law denying remedy would *destroy,* would not a law, suspending or protracting remedy, *"impair"* the *legal* obligation? The conclusion is not only fair, but inevitable. In the one case, the obligation would be destroyed, because there would be no law to oblige; in the other, it would be impaired, because *the right* to oblige by *law,* (which alone is the legal obligation) would be rendered less valuable, less certain, less efficient, *less coercive.* When the right to enforce a contract is barred by the statute of limitations, the legal obligation of the contract is gone, but the moral remains—and while the conscience of the obligor is not released, his property and his legal liabilities are. The law is withdrawn from the contract, and leaves the parties liable only to the obligations of good faith. Wherever the law withholds its powers of coercion, there can be no legal obligation, there is no *obliging* either party by law. To shew still further, what is an obligation purely legal, what, (he asked) is the the obligation by which slaves are bound to their masters? It cannot be moral, because slavery is contrary to the laws of a benignant heaven. It is, therefore, purely a legal obligation; the law of Kentucky tolerates the dominion of man over his fellow man, and authorizes the application of force by the master, to subjugate, chastise, and imprison his slave. This mere human legislation is the only tenure by which the black man is cloven down. Repeal the laws permitting a master to chastise or control the slave by force, or to reclaim him by force or by suit, and where then is the obliga-

tion of slavery? It would be destroyed, and universal emancipation would be the result.—So when a debt is barred by limitation, the obligor is absolved from all legal liability or responsibility *in law*, to pay it.

If when a contract be made, the law allows the creditor to force the debtor in three months after judgment, and if, as has been shewn, this right to force him by law, is the legal obligation of the contract, would not a law very materially "*impair*" that obligation, which should declare that the execution should not issue for ten years after judgment, or when issued should not coerce the debtor in less than fifty years? If it would not, then there can be no difference between impairing and destroying an obligation; for if any thing but total destruction of the legal obligation by withdrawing the law, can impair it, such a law would impair it. But there is a difference between destroying and impairing a legal obligation.—A man's constitution may be very much impaired, his hold on life may be very much weakened—still life is not destroyed, still he clings to it. So the obligation of a contract may exist in a very impaired state, the legal hold which the creditor had on the debtor when he made his contract, may be so much impaired that it may be of little or no value, and eventually be lost.

The legal obligation of every contract is, therefore, THE RIGHT OF THE CONTRACTING PARTIES TO COERCE EACH OTHER BY LAW, and thereby obtain indemnity; and any thing which WEAKENS, POSTPONES, OR IMPAIRS THAT RIGHT, necessarily IMPAIRS THAT OBLIGATION.

Mr. Robertson said, that it could hardly be necessary to observe, that in using the word obligation, the Federal Convention meant the legal, and not the moral obligation. They intended by the prohibition, to prevent some sort of legislation, and this they could not have done by denying to the States the power to impair moral obligation; because no finite legislature has the power or right to abrogate or impair moral obligation. It derives its essence from Deity, and can only be affected by a change in the natural and moral code. Man cannot repeal the laws of God, in all the plenitude of his power. No human power can ever hush the murmurings of conscience, or exempt man from his moral obligation to do right. But it is not necessary to dilate further on this topic, because there is no diversity of opinion in the Legislature, nor can there be elsewhere, when there is any reflection, on this subject. The constitution was applied to man in society and not in a state of nature. The Legislature has no right to impair a *legal* obligation: this is the intent of the constitution.

He had, (he said) detained the committee, and he hoped not unprofitably, with this short analysis of "obligation," for the purpose of bringing the mind to some visible and tangible point, some ultimate principle to which he might fasten those who oppose the decision of the court, and who not only fail to give any sort of definition of *legal* obligation, but seemed anxious to avoid any scrutiny into the subject. It was evident that the convention, who were wise men, meant something by the use of the word obligation. They would not have used it as a mere expletive; supererogation or tautology is not attributable to them. They knew what it did mean, and they knew too, that it was not the essence of the contract itself; because, as before stated, there may be many contracts without obligation, legal or moral. Obligation is an adventitious quality attached to the contract by law. It is not the mere stipulation or agreement of the parties: first, because the parties may make stipulations against the natural as well as civil law, and then there would be no obligation, either moral or legal, attached to them: they would not possess this vital principle. Second, Because it is not in the power of any legislature to alter or impair the terms or stipulations of the parties; these are immutable except by the parties. The Legislature can only change the effect of the contract, not its nature. To illustrate this idea, suppose A. agrees to deliver to B., on a certain day, a horse of a certain value and description, can any Legislature convert this into a contract to pay money, or tobacco, or to deliver horses at a different time or of a different value and description? Certainly not; whatever the parties have agreed, is the contract, and the Legislature cannot make any other contract for them. But the Legislature could, if not interdicted by the constitution, change the effect or the value of the contract, and thereby change the legal obligation, by providing that if it were for money, it might be discharged in tobacco, or if to be performed on one day, the obligor should not be responsible by suit until afterwards; but still the terms of the contract would be the same, and the Legislature, by legislating as supposed, would only change the legal obligation of the contract. That obligation being the right by law, to coerce the contract, must be impaired by law, which enforces on either party any thing else but the contract. The Legislature, by declaring that the obligor shall have longer time to comply with his contract than that agreed on, do not thereby change the time stipulated by the parties; that is still the same; they can only declare that, for non-compliance on the day agreed on, the obligor shall not be sued until a certain other time, and this impairs the legal obligation, which consists in the right to sue and prosecute the suit. The time for the performance in the contract is not the obligation of the contract; for if the obligor comply, the contract cannot be enforced: if he do not comply, then, and not till then, can the obligor demand the interposition and aid of the law, not to compel performance on the day which is impossible, but to obtain reparation for non-performance. If the obligation consists in the time stipulated in the contract for performance, that obligation never could be impaired by any Legislature. It would be not only impaired, but destroyed by the obligor himself, and how would any Legislature afterwards impair what was already destroyed?—No law can compel a man to perform on the

day; it is only for failing to do so, that the law coerces or obliges.

The convention meant to prevent Legislatures from depriving the parties to contracts of some *legal* right in relation to them, not to prevent them from changing the time or other terms, which, without the prohibition, it would be ridiculous to suppose that they could do.—The only mode in which the *legal* obligation of a contract can possibly be impaired by legislation, is so to change the law for enforcing the stipulation of the parties, as to render the enforcement less certain, or efficient, or speedy, and thereby diminish the value. This may be done, either by postponing the right to resort to the aid and coercion of the law, or by changing the effect of its coercive power, by depriving the creditor of his right to compel the thing for which he contracted or its equivalent. If the Legislature deny the creditor any remedy for twenty years; or qualify it by denying him the right to coerce anything from the obligor but tobacco, when he contracted for money, the right of using the power of the law to enforce the contract, is certainly impaired, and as much so in the one case as the other; for if the obligation be impaired, by refusing him the legal means of coercing anything but property when he is entitled to money, it must be equally impaired by refusing him the right to the legal means of forcing the money for twenty years, unless he will take property, when the law under which he contracted allowed him to coerce the money in three months. There is no legal right when there is no legal power to enforce it. This is self-evident.—Blackstone says, that "that there is a legal remedy for every legal right;" whenever there is a right without a remedy, it is not a legal but a moral right. Hence there is no legal right, where there is no legal remedy. The legal right, therefore, consists in the law which gives redress, as has been attempted to be proved, not in any particular mode of coercion, but in the right to use the power of legal agency to enforce a just claim.

But, (said he,) while those who oppose these doctrines fail to exhibit any other, they object that they confound right and remedy, Not so; they are certainly mistaken. The decision of the court, when examined fairly, asserts nothing new on right and remedy. The court only decide this principle, that the obligation of a contract consists in the legal right to enforce it, not in the particular form of coercion. There is an obvious distinction between a right to coerce, and the mode of exercising it. Where the right to use force effectually is taken away, there is no legal obligation. But as long as the right to force is left unimpaired, it cannot be essential that it should be exercised in one mode or another, provided either will effect the end; but no mode can be substited *which will not attain the end.* Remedy is the means prescribed by law, to employ the force to which an obligee is entitled, and may at any time be modified in any manner so as not to defeat or postpone the end The obligation is the right to enforce the contract; the remedy is means given to enforce it. In a state of nature the perfect moral obligation is the right to use individual force: the exertion of that force is the individual's remedy. When A. is entitled to $100, by contract with B., the legal obligation is A.'s *right* to recover judgment against B., and use the power of society to enforce the judgment. It does not consist in the particular mode prescribed for obtaining a judgement, nor in any particular mode of execution; it is not material to him, or to his legal right or obligation, whether he shall enforce his contract in the circuit court, or the county court, or whether he do it by action of debt, covenant, or petition and summons, so that the right and power of coercion are not destroyed or impaired. It would be destroyed by refusing a remedy, because then there would be no right to coerce it; it would be impaired by so modifying the remedy as to render the end less certain or the right less valuable, or the exertion of legal force less effectual. The obligation and the remedy are not precisely the same therefore. There is a radical difference between them, as before stated. There can be no legal obligation where there is no legal remedy; but the moral obligation and moral right remain the same, with or without the remedy. Right is a compound, generally. Its ingredients are moral and legal. The latter is gone when the remedy is destroyed, but the former still remains, and therefore it is said, and correctly, too, that there is a difference between the gross right and the remedy; that although there be no remedy, there is a right. The obligee has a right to his debt barred by limitation, but it is only a moral right. There is also a difference between legal right and remedy, if the latter be understood to mean only the mode of proceeding; for a change of mode will not destroy, although it may impair the legal right. But if remedy be understood to be the exertion of legal force to effect right, and not the particular "MODUS AGENDI" of that force, then between this sort of remedy and legal right there is no possible difference; because where there is no legal remedy, there is no legal, but only a moral right. The obligation of a contract is, therefore, destroyed by taking away all remedy; it is impaired, by so changing the remedy as to render it less efficient, or speedy, or certain, or valuable. While the right is conceded to the Legislature to change the mode of action or execution, it is insisted on, as a clear proposition, that they cannot do it, so as to "impair the obligation of contracts." If they can do it constitutionally, in such a manner as to postpone the collection fifteen months longer than the time beyond which it could not have been delayed by law when the contract was made, they would have the power to postpone it fifty years; for if the power to postpone exist at all, it is only limited by discretion and expediency. And if the Legislature have the power of postponing it, they would have the right to deny it altogether. And if they have these powers, the clause in the constitution prohibiting States from impairing contracts,

is nugatory and cannot possibly ever be violated.

Suppose A. lend B. $10,000 in specie, on the faith of the act passed last session, declaring that such debts shall not be replevyable more than three months, and suppose, shortly after the loan, the Legislature p ss a law allowing B. to replevy ten years unless A. will take horses and cattle--who would say that such a law would be constitutional? Not one man.

Here nothing is done but to change the remedy. But it is so changed as to impair the legal obligation. If the change had only been, that a petition and summons might be sued out instead of debt, &c., the obligation would not be impaired; the force which A. had a right to use to coerce the contract, would not be diminished or postponed. The legal obligation of the contract would be A.'s right by law to force the *specie* out of B. at the expiration of three months. Any act which would not allow a coercion of specie, would certainly impair that obligation, and as certainly would it be impaired by not permitting the coercion of the specie in less than two years

Suppose, (said he) Mr. Chairman, you have the right to go to Lexington to-morrow, it could not materially affect the right, to travel in a carriage, on horse, or on foot, so that in either mode you may arrive at your destination during the day. But suppose that you were compelled to go in a loaded waggon, which could not arrive until the next day, or were compelled to go by way of Cincinnati, in consequence of which you could not arrive in Lexington in less than two weeks. These would all be only different modes of conveyance, but would there not be a great difference in their effects? The first modes would not postpone or impair the right; the last would. So, if when a contract is made, the obligee has the right to coerce the obligor within three months, and the *nature* of the remedy be so changed that he shall not be permitted to do it in less than two years, the right would be affected or impaired: that is, the right to use coercion, which is the obligation. But if the mode of suit only be changed, so that the right to enforce the contract is not delayed or impaired, the obligation is not affected. The difference is in the mode and the end of the remedy. The mode is immaterial so long as the end is attained. It is not important to A. by what means the law shall compel B. to pay his money, provided it forces him to pay specie and within the time within which it is pledged to do it. And this has always been the doctrine of the court of appeals, and nothing else can be made out of the cases cited in the preamble to the resolutions. They there decided that the mode of remedy could be changed without impairing the right. So they say yet. But they never decided, nor ever can, that a retrospective act, taking away all remedy, or suspending or postponing it for the purpose of delay, is constitutional. Remedy is given to the plaintiff for his benefit, but an extension of replevin for the purpose of delay, is not giving the plaintiff remedy; it is giving the defendant relief against the consent of the plaintiff. For the purpose of shewing that the court had not reversed any of their former opinions in relation to right and remedy, (he said) he would refer to the case most relied on in 1st Bibb's reports, 561-9. The court in that case decide that the act allowing a petition and summons to be brought on a bond for money executed before the act passed, is not unconstitutional. They say that "it is the mode of recovery only which is changed." And who but the merest tyro in the art of reasoning, would ever have thought that such a law, only changing the *mode* of action without affecting the end, could be an impairing of the obligation of the contract? This is the principle settled in all the cases. But when did that court, or any other, ever decide, that if the remedy be taken away, the legal obligation remains? Or if it be so altered as materially to postpone the right of coercion, which is the essence of the obligation, that the obligation is not impaired? No such case can be found in any book of reports.

It was almost self-evident, (he said) that if there were no legal remedy there can be no legal right. He did not know any one who would deny it. It would be seen that the preamble did not controvert it. He did not know how those who made this concession could escape the conclusion, that to destroy the remedy would annihilate the *legal* right, and leave it a mere moral right—and that consequently, to postpone or suspend the legal remedy, would impair the legal obligation.

No one who understands the subject contends that the obligation of a contract consists in the *kind of remedy;* but in the right to have some remedy, or in other words, to have some legal means of enforcement. Those means can be modified or altered, so long as the change does not impair the right to coerce.—Now, if to abrogate all remedy would destroy, would not a suspension, postponement, or diminution of its power or efficiency, impair it? Undoubtedly.

The abolition of the *ca sa*, as it diminished or circumscribed the legal right of the creditor to coerce the debtor, would have impaired the oblibation, if no other means had been substituted which are as efficient. But the legislature have substituted for the right to act on the person the right of acting on equities, which is not only as efficacious, but more so. They did not therefore, by this modification of the remedy, impair the obligation, any more than they did by giving a petition and summons instead of an action of debt.

It was the duty of the convention to insert such provisions in the Federal Constitution, as would secure the union of the states, the great end of the Constitution. Nothing they knew c uld more certainly effectuate this object than to prevent collision of interests or of feeling as far as possible among the citizens of the different states. They knew from "experience" that if one state would suspend the collection of debts, others would retaliate, and that thereby irritation and alienation would

be produced. They therefore determined to avert such distracting legislation, by denying the power to the states; and the states, having surrendered it, cannot complain now that they cannot exercise it. It was yielded up on the altar of the general good—the union; and it is the interest of all the states that none should have this power. How would Kentucky feel, if after her citizens should sell on a credit their produce, to a great amount, to the people of New Orleans on the faith of a law in Louisiana when the contracts were made, enabling the sellers to coerce payment within three months, the legislature of Louisiana should pass a law, for the avowed purpose of affecting the Kentucky creditors, that no debt should be coerced in less than five years. This might, and probably would ruin the Kentucky creditors; and would the people of Kentucky be satisfied? Would they not pronounce such an act a flagrant violation of the Federal Constitution? Would they not insist that the clause, which has been the subject of debate, was inserted to prevent such unjust interference?—They certainly would, and justly; for if such legislation be not interdicted, it can avail nothing to prohibit any other interference in private contracts, because the unjust end can always be effected in this mode. The convention did not intend that their object should be thus defeated and their provisions eluded. They did not intend that their provision should be a blank. They intended it to have some practical effect.

Suppose after a debtor has replevied two years, you pass an act authorizing another replevin of two years longer, would it be constitutional? No! But if it were constitutional to extend the three months to two years, it must be so to extend two to four, and so on *ad infinitum*, so that the creditor would never get his debt.

Many members of each denomination in this legislature, seem desirous to pass a law to reduce the replevin to three months, on all contracts which shall be made after the 1st of May next. Suppose the law passed, and contracts made on the faith of it, could the next legislature extend the time of replevin to two years, so as to operate on such contracts? If you could, why pledge yourselves by declaring that on all contracts to be made after the 1st of May, there shall be a replevin of only three months? It would only delude.

Suppose A. trust B. for a large sum, on the credit of a large estate belonging to B., which at the time is liable to the payment of the debt by law; would not a subsequent enactment exempting all B.'s property from execution, before A.'s debt be paid, very much impair the obligation of the contract? No one can controvert it. But if the obligation consist in the *terms* of the contract, or the time stipulated for the performance, such an act would not impair it, nor would any other which only deprives the creditor of the legal means of collecting his debt! This would be the inevitable consequence of any other doctrine than that contended for in the argument: and hence a legislature might abolish all remedy, and leave the creditor in a worse condition than he would be in, in a state of nature, if the obligation of the contract do not consist in the right to use the agency of law to enforce the contract, and if impairing or postponing the action of that agency be not impairing the obligation. Such a construction of the constitution would render it ridiculous.

He thought, he said, that he had succeeded in showing that the legal obligation of a contract consisted in the right which the obligee has *by law* to force the obligor to make him reparation for non-compliance with his engagements, and not in the mode of exerting that force: that any law destroys this legal right or obligation which abrogates all means of using this force, and that any law which impairs the force, postpones its exertion, or affects the right to wield it, impairs the obligation. And he trusted that he had shown that these doctrines were in perfect consonance with all the decisions, in relation to right and remedy, and the power of the legislature to regulate and modify the remedial system.

The conclusion, he thought, must be felt as strong, plain and difficult to escape, that a retrospective law, suspending or postponing the right of legal coercion, is in direct violation of that clause in the Federal Constitution which has been mentioned, and also repugnant to the clause in the Kentucky constitution on the same subject. One interdicted any law "impairing the *obligation* of contracts;" the other, "any law impairing *contracts*." It would be difficult to shew how a law could impair a contract without impairing the obligation of a contract. He would leave it to those skilled in dialects and casuistry to shew how it could be done; he expected never to hear the solution. But however that may be, it is sufficient that the Federal Constitution has been violated: and if it was not violated it never will or can be. He had demanded of those who denounce the opinion of the court (and he would now reiterate that request) to imagine any legislation which will come within the scope of the prohibition, if the two years replevin in its retroactive operation does not? Such a case had not been stated, and he did not believe that it could be.

The constitution certainly means something: what then does it mean? If, said he, we consult cotemporaneous construction, the opinions of those who made the constitution, the acknowledged object of the provision in relation to the obligation of contracts, and the decisions of the Federal Court, and every other court that ever has adjudicated on it, we shall find all in harmony and establishing the very principle contended for in this argument; and should not this be sufficient to still even a lingering doubt? What principle can present a stronger mass of intrinsic argument, or a larger column of authority in its support? This must (he humbly thought) be unanswerable. Let him only who is lost in the mist of Phyrronism doubt longer. To such an one reason is lost, and to him it would be unnecessary to exhibit the additiou-

al authority of all writers on natural and political law in confirmation of the definition given of legal obligation.

While the Federal Constitution was in a state of probation before the American people, for their adoption, Mr. Hamilton and Mr. Madison, who were very distinguished members of the Convention, and Mr. Jay, afterwards Chief Justice of the United States, published a series of numbers signed "PUBLIUS," developing the principles and objects of the constitution; and answering objections to it. These numbers were then, and are still considered the best exposition of the constitution that ever was published, and are now appealed to as the text book. In the seventh number, Mr. Hamilton, in speaking of the causes of collision among the states under the confederation, says: "We have observed the disposition to retaliation excited in Connecticut, in consequence of enormities perpetrated by the legislature of Rhode Island; and may we not reasonably infer that in similar cases, under other circumstances, a war, not of parchment but of the sword, would chastise such atrocious breaches of moral obligation and social justice?" He here alluded to a law of Rhode Island, which (the people being very much indebted to Connecticut) provided that debts should not be collected for two years, unless the creditors would take a depreciated paper money. This provoked a retaliatory law in Connecticut, which prohibited the citizens of Rhode Island from suing in the courts of the former state, which produced a very angry contest between the two states.—And this is stated by Hamilton to have been one reason for that clause in the constitution, which prohibits laws impairing the obligation of contracts; to prevent the recurrence of similar legislative interferences between debtor and creditor, was the principal object. Mr. Madison, in commenting on the same clause in the 47th number, after shewing that the object of the convention in adopting the clause, was the same as stated by Hamilton, and that *experience* had shown the necessity of interdicting the legislatures of the states from passing laws impairing the obligation of contracts, observes: "The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen, with regret and indignation, that sudden change and legislative interferences in cases affecting personal rights, become jobs in the hands of the more enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding. They very righfully infer, therefore, that some thorough reform is necessary, which will banish speculation on public measures, inspire prudence and industry, and give a regular course to the business of society." How completely do the sentiments here expressed, apply to the condition of Kentucky and to her legislation for several years! But the language of Mr. Madison was not prophetic; it was the language of experience, and actual observation. He describes exactly such legislation as that of Kentucky, mentions its deleterious effects, and shews that the object of the people was to be forever afterwards exempt from its afflictions, by the insertion of the clause in the Federal Constitution which has been mentioned. He says, too, that *experience* had shewn the necessity of preventing the passage of laws impairing the obligation of contracts. He here alludes to the legislation of the states from 1782 to 1788, when the convention assembled. This legislation impaired the obligation of contracts; let this not be forgotten, and it will settle all dispute.

The only object, he says, for inserting in the constitution the clause in relation to the obligation of contracts, was to *prevent* the same sort of legislation in future. What was this legislation? It consisted of suspension laws, retrospective replevin laws, and laws indirectly to force the creditor to take depreciated paper, by compelling him to wait a long time for his debt, if he would not take it. This Mr. Madison characterizes as ruinous legislation, which impairs the 'obligation of contracts,' and therefore the words "obligations of contracts" were inserted in the constitution, as most appropriate to the object of preventing its recurrence. The conclusion is irresistible, that if the legislation of the states before 1788, impaired the obligation of contracts, the two years' replevin law of Kentucky must also impair it. There is no difference. Who can discriminate any? And what Messrs. Hamilton and Madison wrote on this subject was never contradicted. On the faith of it, the different states ratified the constitution, and therefore must have given the same construction to that clause, and have been satisfied with it. What better evidence of what was intended by the clause could be required or given, than the opinions of those who inserted it, and of those who afterwards ratified it? They meant what the court has decided, and whatever they intended to do is done.

But a further and stronger testimony in behalf of the same construction is furnished by Luther Martin, a distinguished member of the convention, who, in his apology to his constituents, for voting against the constitution, stated, as the reason, that he was unwilling that the states should surrender the power of interfering for the relief of debtors, and said that all interference is prohibited by the clause in question. Could he have been deceived? Could his constituents have been deceived? Such was his opinion and theirs', of the effect and object of the clause.

If, said Mr. Robertson, any further evidence could be necessary to show what Mr. Madison meant, in what has been quoted from him, and what those who adopted the constitution intended, it can be abundantly furnished by a recurrence to the history of the United States, immediately preceding the ratification of the states; and here will be seen, in striking colors, what sort of legislation the convention in

tended to prevent. Ramsay says, in the third volume, 77th page, of his history of the United States—"State legislatures, in too many instances, yielded to the necessities of their constituents, and passed laws, by which the creditors were either compelled to wait for payment, or to take property at a valuation, or paper money, &c."

To prevent similar legislation, this clause of the constitution was adopted; and is not the two years' replevin act a precise parallel of the legislation mentioned by Ramsay? And still it is contended that the constitution does not apply to it! Marshall, in his life of Washington, page 85, after stating that two great parties grew out of the efforts for relief, shortly after the revolution, says that the result of their various and bitter contests, were relief, delay and suspension laws, which produced great embarrassment, by the instability of the public counsels, and want of confidence in the government and individuals, still further says—"The hope and fear still remained, that the debtor party would obtain the victory at the elections; and instead of making the painful effort to obtain relief by *industry and economy*, many rested all their hopes on legislative interference. The mass of national labor and wealth was consequently diminished. In every quarter were found those who asserted that it was "impossible for the people to pay their debts, and in some instances threats were used for suspending the administration of justice, &c." This language is very explicit and apposite; nothing can be more true; it is verified by Kentucky. Those who formed the federal constitution had experience on this subject, which the people of Kentucky will ere long have, and resolved to prevent the evils depicted by the historian, from ever being produced in the United States, after the adoption of the constitution. Is not the extract just read, a faithful history of Kentucky, at this time? And can it be pretended that the constitution, which intended to guard against the evils so well portrayed, does not apply to them?

But these evidences are well fortified by judicial decisions. Since the late war, North Carolina passed a retrospective replevin law. Its courts declared it to be in violation of that clause in the federal constitution, which prohibits laws impairing the obligation of contracts, and the people acquiesced. Missouri passed a similar law, and the courts there gave a similar decision, which public sentiment sustained. In Tennessee was a similar law, and a similar decision. Chief Justice Jay presiding in the federal circuit court of Rhode Island, shortly after the adoption of the constitution, decided that a similar law in that state was unconstintional. This decision was never reversed. Every court in the United States, which has decided the question, has given the same decision, as far as there is any information on the subject, and it is not probable that any court will ever give a different one. Is it then fair, or just, or prudent, to assert so dogmatically as some have done, that the court of Kentucky has decided wrong? If the court be wrong, then those who formed the constitution and those who ratified it, did not know what they were doing, and failed to do what every candid and well informed man will acknowledge, they intended to do. The historians of the times were wrong, and the courts have all been wrong. This is strong and bold ground, especially for those who do not offer any substitute for the principle settled by the court. The court is right, and their opinion will never be reversed.

Retrospective laws, even when not prohibited by the constitution, are unjust and impolitic; and the most absolute despot in an enlightened age and civilized community, rarely, if ever, ventures to punish his subjects by "*ex post facto*" laws, or to divest them of vested rights, by retroactive ordinances. If the legislature have the power to divest a vested right to property, they must have the power to punish a citizen by an *ex post facto* law; a law which declares that to be illegal which was legal, criminal which was innocent, when it was done.

It is of the essence of constitutional legislation, that so far as it can affect vested rights, it shall be prospective in its operation. Men enter into society for the purpose of having secured to them, invariably and certainly, those rights to which they become entitled, by contract, or otherwise. The only legitimate object of legislation is to *enforce* the rights of individuals—not *destroy* them. What would be said of a law, which, on its face, should declare that it should be in force from and after ten years before its passage? Was such a provision ever seen in any law? But the two years' replevin act is intended in effect, to be in force, to operate on rights which may have been vested by law more than twenty years before its passage. By the constitution, the parties to contracts are to be entitled to *the legal rights*, when their contracts are to be *enforced* to which they were entitled when they were made.

He would, said he, conclude this part of his argument, by propounding three simple questions to those who are opposed to the view which he had taken of the subject: 1st. If the *legal* obligation of the contract is not the *right of the obligee* to enforce it by the *power of the law*, what is it? 2nd. If a retrospective replevin of two years will not impair that legal obligation, what will *impair it?* 3rd. If the legislature can constitutionally pass such an act, what can they not pass without violating the constitution? It is the duty of every one to answer these questions explicitly and satisfactorily, before he arraigns the decision of the court. Let him answer thus, who can.

He would next, and lastly, he observed, proceed to answer arguments used against the decision of the court—and this he would do by a cursory review of the preamble to the resolutions. That contained all that had ever been thought of on that side before, and a great deal more. He should not be able to examine it as much in detail as he desired, and had intended; he found himself too much exhausted, after having spoken three hours, to occupy the

floor much longer. He would therefore hasten to a conclusion of his argument, after a short examination of the preamble: and in reviewing it he had expected to justify what he had already said in characterising it.

In page 3rd, as printed in the journal, the author says, "The obligation which is denominated *legal*, results from, and is imposed by the laws of society. But the laws of civil society are but declaratory of the laws of nature; therefore, the obligation which results from the laws of nature, results also from the laws of civil society. When considered as resulting from the former, it is binding only in conscience, and is denominated a MORAL obligation; but when considered as resulting from the latter, it is denominated a LEGAL obligation, and is externally binding."

After using this language, could it have been imagined that the author could resist the doctrine that the legal obligation of a contract consists in the law and its binding efficacy? He says that legal obligation is that which "results from, and is imposed by the laws of civil liberty," and is "externally binding." How does it "result from the laws," when there is no law recognizing it or enforcing it? The law must be in operation or it cannot impose the obligation. How is it "*externally* binding" if it be not the law which makes it so? In this extract is given a very specific definition of both moral and legal obligation, in which it is admitted that moral obligation consists in the *binding force* of conscience, and legal obligation in the coercion of the *laws of society*. What else has been contended for in this argument, or in the opinion of the court? And how can the conclusion be avoided, that if there be no *law* to coerce, there is no legal obligation, and that if the coercion of the law, or the right to use it, be suspended or postponed by the legislature, the legal obligation is impaired? The author no where extricates his argument from this embarrassing difficulty, and it is only fair to reiterate, that he has sustained the only principle settled by the court. But there is an evident incongruity in the sentiments embodied in the extract. In another sentence, moral and legal obligations are confounded, for it is asserted that the "obligation which results from the laws of nature, results also from the laws of civil society." And is there no moral obligation, when there is no legal obligation, and no legal, when there is no moral obligation? Where is the legal obligation of a contract which is illegal? It does not exist, but the moral obligation does. Where is the moral obligation of a slave to serve his master. It does not exist: still the law compels the slave to be subject to the dominion of his master. It was stated in another part of this argument, that the definition given in the preamble, in coincidence with that given by the court of the legal obligation of a contract, escaped the author, without design. The reason of that statement is now apparent, for while it is admitted that there are legal as well as moral obligations, and that legal obligation is *imposed by law*, there is an attempt made to confound them, as has been shown.

In page 5, it is contended that perfect moral obligation results from the moral sense of the obligor, and not from the obligees's right to use coercive means. If this be true, what difference can there be between moral obligations, perfect and imperfect? An imperfect obligation results from the dictates of moral propriety. A perfect moral obligation results from something additional, or it would be as imperfect as the other. It is the right to coerce by physical force that creates a moral obligation perfect. When this right does not exist, the obligation is reduced to imperfect, but is still an obligation, because the conscience persuades, obliges. It cannot then be true that the right to use force is no ingredient of a perfect obligation; it is the very essence of it. If the author could have succeeded in this delusive idea, he would leave the reader to infer (for he was not willing to state it himself) that legal obligation does not result from the right to use legal force, although he admitted that it does in the extract which has been read; and that it does, has not only been clearly shown, but would be evident from this consideration—that if it does not, then there would be no difference between legal and moral obligations, whether perfect or imperfect, both depending, according to the argument in the preamble, on the moral sense.

In the same page it is asserted, that the right to use violence results from the obligation, and is exerted to enforce it. It should have been recollected, that it is not the obligation which is enforced, but the contract or duty; and that it is the right to enforce it which creates the obligation—is its very essence; it is absurd therefore to say that the *obligation* enforces the *obligation*. But in the next page the fallacy of the argument is shown by the author himself in a striking and ludicrous manner, by some illustrations of the principle contended for on which hang all the conclusions of the whole printed argument. He here asks whether if B, a *hunter*, procure furs from C, a *trapper*, and promise to return him skins in exchange, but fail to do it according to contract, does the right of C to exact reparation by force constitute the obligation of the contract, or does the right to use the violence result from the breach of the contract? And he answers himself, that the right to force results from the breach. This is only an exemplification of the idea which has just been attempted to be refuted. The right of C to exact reparation by force is the obligation which induces or forces compliance by B, and the object of *force* is not to coerce the obligation or binding, but the contract or its equivalent. But a better answer to this case may be found in the case itself. The author here states, "the obligation to pay them (that is the skins) is of a *perfect sort;* C has the right to exact reparation by force." The obligation it is admitted then is perfect, because C has a right to force; if he had not a right to force it would consequently not be perfect; and therefore it is the right to

resort to force, which alone constitutes obligation in the opinion of the author. After having thus admitted that the right to force constituted the obligation, could it have been believed that he would, in the next sentence, endeavor to prove that the obligation resulted from the breach of the contract, and that a violation of the contract was a violation of the obligation? But it may possibly be said that he intended only to say that the right to *use force* resulted from the breach of the contract. If he did his case proves nothing, except that the right to force is the essence of the obligation, as by the court decided; for conceding that the use of force is consequential to the breach, does not prove that the right to use force is not the obligation. The right to force is the obligation; the exertion of force is only the enforcement of the right or obligation. But on the same page the hunter and trapper figure in another and equally strange attitude. It is asked whether C could not, if he chose, have given B indulgence, and whether the obligation of the contract would thereby have been impaired? It is difficult to give a grave answer to this, and it should only be answered by another question. Could not the creditor have indulged the debtor in the case decided by the court? Could he not have forgiven the debt? And would that have impaired the obligation? The constitution did not intend to prohibit a creditor from being generous to his debtor, but only to deny to the legislature that privilege without the consent of the creditor. But B and C, before they retire, are exhibited in a still more extraordinary attitude. It is asked on the same page, whether, as C had a right to indulge B, society to whom C has yielded the right to use force, has not the same right to indulge him? Can any one believe that this question is asked seriously? Is not the author caricaturing his own argument? The doctrine which he is endeavoring to illustrate through his dramatis personæ, the trapper and hunter, is in plain English this: The gentleman from Jefferson has a right to give away his whole estate; therefore the legislature can give it, *nolens volens*, willing or unwilling. But the gentleman would not submit to such "usurpation." He would say, that although he had surrendered to society the right to compel his creditor by force, he had not yielded to them the right to elect for him whether it should be used, and that the constitution reserved to him the exclusive right to his own property, the right to give it, or to recover it, when he should think fit to demand the coercion of the law. Society has not the power, in these United States, constitutionally, to take away the vested right of the individual citizen without his consent, or without returning him an equivalent.

But the trapper and hunter illustrate the whole argument of the preamble, and if the principles in these exemplifications are unsound, the whole doctrine is radically wrong. Does any one believe that, because the hunter had the right to release the trapper from the obligation of his contract, the legislature in a well regulated community have the same power? If they have, they are more absolute than the Autocrat of Russia. If they have not, then according to the argument in the preamble, they have only the power of modifying the remedial laws so as not to destroy or impair legal obligation, which is exactly what is urged by the court. The arguments illustrated by the trapper and hunter are "obviously and palpably" fallacious, and consequently the great superstructure built on them must fall.

But in page 22, the author hints that the obligation of a contract consists in the time given by its terms for performance! Nothing is more absurd than this, as has been shown in this argument, and that of the preamble too; and it is alluded to now to justify the declaration that, if any definition be given of the legal obligation of a contract in the preamble, there are three, all different, and two palpably wrong, to-wit: that it is the moral obligation, and that it is the time; and one in exact consonance with that given by the court, to-wit: that it is the legal right to enforce the contract by legal means. On which of these definitions does the author rely? Only one will sustain him, and that is the one given by the court, and therefore he fortifies the decision of the court, while he is endeavoring to undermine it. But why did he not plainly and openly give some single idea of legal obligation, and show that it was inconsistent with the opinion of the court? The only answer is, because it could not be done.

If there was any attempt to show what is the legal obligation of a contract in the whole preamble, except those three which he had animadverted on, he desired, he said, that the author, or some other gentleman, would put his finger on it. It could not be shown. Where then is the long argument? It is vanished, is intangible, invisible, incomprehensible!

He might, he said, safely here leave the preamble, but he felt it to be his duty to notice it still further.

In page 8, it is stated that Montesquieu lays it down as political orthodoxy, that laws ought to be relative to the nature and principle of the government, and the climate of the country. This is a self-evident truth, a political axiom, and it is a strong argument against the doctrines intended to be maintained by the use of it. The principle of the government is justice, its nature equality of right, its object is to enforce, not to impair contracts. Conform to this fundamental principle of legislation recommended by Montesquieu, and there will be stability in your counsels and confidence in your acts, and the spirit of legislation will be wise and constitutional. But never permit the atmosphere, natural or political, whether torrid, temperate, or frigid, to dissolve the principles of your government; adhere to Montesquieu, and your constitution is safe. If the author of the preamble expected to prove anything by his quotation, it was, that when the political atmosphere is heated, the *constitution* must bend to it. If the quotation prove this, it proves too much; if it do not, it proves nothing,

except that the principles of the government, or in other words the constitution, must control its legislation, which is good doctrine, and decisive of this contest.

But on the next page, and in the same paragraph, we have, said he, a still more extraordinary idea. The author here says, "strange that in a republic the appellate court should have selected fear, the principle of despotism, as the motive to duty." What is the principle of all law, human and divine? Is it not to *compel*, by its sanctions, conformity to its provisions? Does the law persuade, or does it coerce? Why does the law denounce punishment on the criminal? Is it not to deter from the perpetration of crime? And does the law in this instance appeal to our fears, or our virtue? If the virtue of mankind were our only security, all government would be unnecessary. But it is the nature of all government to compel submission to its mandates by *force*—a legislative act would not be law unless it were compulsory. The obligation of a contract would be nothing unless the law should enforce it, whether the parties have virtue enough or not to comply. It is only when their own sense of justice will not prompt a compliance, that the law compels. This is the only object of the law, its only use.

On the next page, it is asserted that if the decision of the court be correct, the states "are in very deed *dwarf vassals.*" If because the federal constitution must control the states, they are vassals, amend the constitution, dissolve the union. The states have surrendered the right to impair the obligation of contracts, and cannot now complain that, without it, they are vassals. Besides, they have, by this surrender, only denied themselves the power to do wrong, to do injustice. The people will not believe that they are vassals, although the gentleman from Jefferson (Mr. Rowan) is so kind as to tell them so. They have never yet felt the yoke, nor heard the clanking of the chain. They know that they are free, and are determined to continue free. They know too that their liberty is constitutional—that it consists in the integrity and stability of their constitution, and as long as they shall revere that and their God as they should do, they will, they must be free. They are not vassals, because they have not the power to impair contracts; they are only the more secure, the more free.

In the next page the author asks, "can the *armor* worm conquer Kentucky?" To this it is only necessary to respond by retorting another question! Can the little spark which, by consuming the property of a citizen, involves him in inextricable ruin, conquer the sovereign power of Kentucky? Can the legislature restore the unfortunate victim by taking from his neighbors a portion of their superfluous property and giving it to him? If they cannot thus relieve him the author of the preamble would, according to his argument, infer that they are not *sovereign*. They cannot do it, and are, notwithstanding, as sovereign as it is proper that they should be.

But, said he, on the same page there is a threat in disguise. The author, in speaking of what may be the consequences of the decision of the court, makes this quotation from the Holy Bible: "And David therefore departed thence, and escaped to the cave of Adullam, and every one that was in distress, and every one that was in debt, and every one that was discontented, gathered themselves unto him, and he became their captain over them."

If there be a David here who wishes to hoist the standard of rebellion, round which may flock the desperate and discontented, let him be told that he is a traitor and not forget the traitor's fate. He who thinks that the people of Kentucky are prepared for sedition and revolution, will find himself, after experiment, as much mistaken as Aaron Burr was. But if there be a David in this House who wishes to retire with his followers to the cave, let him go; it will close on him and hide him from the light of virtue and patriotism forever. His name may thus acquire immortality, but it will be the immortality of infamy, such as that of Ærostratus, who burnt the temple of Ephesus.

On the next page, the author complains that, if the legislature cannot pass retrospective laws to operate on contracts made before their passage, they cannot administer relief until after it shall have become unnecessary. And this is the reason why the convention only prohibited laws impairing the obligation of contracts already made, because, as there would be no pressing motive influencing legislatures to pass prospective indulgence laws, it was only necessary to prohibit that which they might have strong temptation to indulge in—retrospective legislation. The obligation of a contract cannot be impaired by a law in force when the contract is made, for it is the law in force at the time which alone constitutes the legal obligation.

In page 16, the author complains that the third judge invokes to his aid, in construing the contested clause in the constitution, "the ephemeral effusions of the revolutionary period of the American History." Of all the objections which the most fertile imagination, or the most fastidious criticism, or the most malignant envy, could have conjured up against the reasoning of the court, a man in his sober senses never could have conjectured that a recurrence to the history of the events which immediately preceded the adoption of the federal constitution, and which alone induced the adoption of the clause in relation to the obligation of contracts, could be deemed by any one in quest of truth, to be improper or useless. When it is important to ascertain the import of any clause, what is a more sure mode of doing it than to recur to the causes which prompted it, and the objects of those who penned it? But the author is provoked with one of the judges, for adverting to these authentic sources for confirmation of his opinion, because they are authentic and decisive of the controversy. It would have been much better for him to have examined this history and endeavored to avoid

its illustrations. His not having done so is evidence that he could not, and that, therefore, the conclusions drawn by the court are just. But as he had already spoken in the proper place on this subject, he would not, said he, say more now; he had only referred to it to show the desperation to which the author of the printed book must be driven, when he attempts to make the use of it which he does.

But a still more striking destitution of resource is displayed by the author on the same page. He here quotes the 13th and 14th sections of the 10th article of the Kentucky constitution, which declare "that courts shall be *open*, and every person for an injury done him in his lands, goods, &c., *shall* have *remedy* by due course of law, and *right* and justice administered without sale, denial, or *delay*," and "that no power of suspending laws shall be exercised, except by the legislature or its authority," and then says that the "judges have not only repealed the laws of their state, but they have repealed the 14th article last above quoted, of the constitution of their state." What process of reasoning has conducted the author to this conclusion, it would be difficult to know. Does he suppose that the legislature of Kentucky can suspend the operation of any law, in defiance of the federal constitution, or even of the constitution of Kentucky? Does he suppose that the state constitution repeals the federal? He says that Kentucky was received into the Union with this clause in her constitution. True; but those who adopted her supposed, as every honest man in his senses now believes, that the legislature would only have power to suspend such laws, as they were not prohibited by the federal constitution and that of Kentucky from suspending. If the legislature pass a law which vests private rights, they cannot suspend or repeal it so as to suspend or divest the rights. The only meaning of the clause is, that there shall be no power to suspend laws, except by the legislature. It was not intended that the legislature should suspend any law, but only that such as could be constitutionally suspended, could only be suspended by the legislature. No power of repealing laws can be exercised except by the legislature. But the legislature cannot repeal laws so as to divest vested rights. It is only necessary to look at all the provisions of the constitution to ascertain the extent of the suspending power, if indeed any doubt can exist on the subject. The legislature alone can suspend laws; but the federal constitution declares that they shall not impair the obligation of contracts. Place the two provisions in juxtaposition, and the difficulty, if any exist, vanishes. The grant of power would then read thus:—"No power of suspending laws shall be exercised, except by the legislature or its authority."—"But the legislature shall not impair the obligation of contracts." Whilst there is a power to suspend laws, it is with the qualification that in its exercise the obligation of contracts shall not be impaired; and if by suspending a particular law, the obligation be impaired—the suspension is unconstitutional. Whether the legislature have power to suspend any particular law, is a question always to be determined by examining the entire federal and state constitutions; and if the suspension be contrary to any provision in either, it is unauthorized. Why the suspending power was alluded to in the preamble, it remains for some one of more than common acumen to discover.

The court in their decision have not repealed any law, as has been already shown, and it is equally, and if possible more certain, that they have not repealed or disregarded any constitutional provision or principle. If the legislature have the power to suspend all law, it would be difficult to perceive the efficacy or object of many wise and important provisions in the federal and state constitutions.

On the next page the author gravely asks this question: "How happened it that the enlightened state of Virginia has been violating the obligation of contracts since the year 1748, and that none of her statesmen or judges had the acumen to discover it?" Before this question was propounded, the author ought not to have forgotten that the federal constitution did not go into effect until the 4th day of March, 1789; and that before that era there was no constitutional prohibition of the passage of laws impairing obligations, and that to prevent such legislation in future was the only object of the clause in the federal constitution prohibiting it. The practice of Virginia, then, before 1789, proves nothing; and no evidence has been produced of her since passing retrospective laws extending replevies. If she ever did pass such since, they were soon repealed, and a question was never submitted to her courts on their constitutionality. If it could be shown that such a law had been passed, and decided to be valid by the courts, the case would present some shadow of argument; but until this be shown, there is nothing even plausible in the idea suggested and intended to be supported by the interrogatory.

In page 19, the author urges an argument more futile than any which have been noticed. He here seems to think, that if the two years' replevin act be void in its operation on contracts, made before its passage, there would be no replevin, because that act repeals all other replevin acts! Has he forgotten that if the two years' replevin act be void, it does not repeal the former acts? It would be difficult to suppose that a nonentity could destroy an entity. If the two years' act be void as to all contracts made before its passage, it results that the law which is intended to be repealed by it is still in force, so far as those contracts are concerned.

On the same page the author expresses the opinion, that if an extension of replevin be unconstitutional and injurious to the creditor, an abridgment of it would be equally so to the debtor. It is not necessary to discuss this point. But it may not be improper to observe, that if the constitution had been silent on the subject, the state legislatures would yet have the power which they so much abused when they had it, of impairing the obligation of con-

tracts. The constitution only withdraws the power to *impair*, it does not deny all other power, to make stronger and more binding, &c., and there was no necessity to extend the prohibition further than the convention did; for there was no danger of any other legislation in relation to contracts, than that which is prohibited.

In the next page it is urged that the legislature may, by a re-organization of the courts, postpone consequentially the enforcement of contracts; and that therefore they can do it directly. If the legislature make a convenient and reasonable change in the courts, for the purpose of improving them, the object being legitimate, the act is constitutional, because it is expressly authorized by the constitution. But a total occlusion of the courts, or postponement of their sessions, for the purpose of *delay*, would be an abuse of power—a perversion of it to an end interdicted by the constitution—and would therefore be unconstitutional. A perversion of delegated power to a purpose for which it was not only not intended, but which is expressly prohibited, is as unconstitutional and void as if the act were done without authority. If the legislature cannot directly postpone the remedy, or suspend it so far as previous contracts are affected, they cannot do it indirectly. Congress have power to declare war—death may be one of its consequences—yet Congress would not have the power to order the death of the people by a direct law for that purpose. So the legislature have the power to regulate the courts; delay may be one of the consequences of exercising this power: but the legislature have not therefore the right to legislate for the purpose of delay, or to produce it directly. It would be very absurd to suppose that because an accidental inconvenience may result from the honest exercise of a general power, therefore it would be lawful to effect the same consequence directly. *A* has the right to clear his own land; if, in the honest and faithful exercise of this right, a tree accidentally fall on *B* and kill him, *A* is innocent. But if the tree had been wantonly felled for the purpose of killing *B*, *A* would have been guilty of murder. In the one case he would be innocent, because the killing of *B* was an accidental consequence of *A's* exercising his right to fell his timber; in the other case he would be guilty, because he perverted his general right to cut down trees to an illegal purpose. These familiar cases are sufficient to illustrate the argument. It will not endure scrutiny.

The remainder of the book under review consisted principally of references to the decision of the Court of Appeals. He would not again notice these, he said, because he had before done it. He would therefore leave the book, after what he had said of it, to its fate. He had examined it freely, but he thought candidly and fairly. It was now public property—the state had paid for it—and every citizen had a right to think and speak without reserve of its demerits as well as merits. He had done so; and felt sure that he had been only prompted by a sense of duty to his country, and to the cause of truth and the constitution. He hoped therefore that any thing which he had said would not wound the sensibilities of its author, or of any one who may co-operate with him. Each is entitled to his own opinion, and is responsible only to his conscience and his constituents for its exercise; and it is the duty of all, so to act, as not only to *deserve* the approbation of the people, but to *ensure* the peace of sound conscience.

He would, he said, now, in a very few words, answer an argument he had heard in conversation. It is not to be found in the book. It is too fallacious even for a place there. It is this: If a man make a contract in Virginia under a three months' replevin law, and afterwards come to Kentucky where the replevin is two years, would he not have a right to replevy two years, and would that impair the obligation of the contract? He would certainly have a right to replevy two years, and that would as certainly not impair the obligation. And the reason is obvious; the legislature of Kentucky can only legislate over the citizens and soil of the state; and, in doing so, do not invade the rights of others; and when a citizen of Virginia comes to Kentucky, he must submit to the laws of Kentucky. In the case put, the contract is not impaired by the law of Kentucky. If it be impaired at all, it is by the obligor, in withdrawing himself from the operation of the laws of Virginia. The *lex loci* governs the construction of the contract—the *lex fori* its enforcement. The legislature of Kentucky can only legislate over contracts made in Kentucky, and they cannot impair the obligation of those contracts. They cannot legislate over contracts made in Virginia, and therefore do not, by any legislation, impair their obligation.

He had endeavored, he said, to sustain the decision of the court, by such arguments as had occurred to him; and he had taken the liberty of fortifying those arguments, by the printed preamble to the resolutions, which he thought he had done. He had perhaps manifested too much zeal. If he had, he hoped to be excused; it was an honest zeal in the cause of the constitution, and of the best interests of the people and their posterity. If the resolutions be adopted, a precedent will be established which will unhinge the constitution, and render the legislature supreme and above the constitution by which they are created.

The country may be thrown into commotion, and the public mind into great effervescence, but no relief will be administered. It had been stated that the principles which he advocated are not republican. This had no terrors for him. He cared not for party names or denunciations. His only aim and wish was to do right, and it would be very difficult to determine what some men meant by republicanism. If the constitution is republican—if justice is republican, the principles which he had endeavored to defend are republican. If to pin one's faith on another man's sleeve; if to act with the majority, right or wrong, Vicar of

Bray like; if to sacrifice conscience and judgment at the shrine of popularity; if to flatter the people and incite them and array them into parties, to mount to power and influence, whilst their real interests are disregarded; if to play the mock patriot and proscribe freedom of opinion, of conscience and of speech; if these constitute a republican, he disavowed republicanism emphatically and indignantly. But if to pursue the unbiassed dictates of conscience and judgment—if to think for one's self in defiance of the opinions of others—if to love the constitution and respect the people—if to do right, however unpopular, and abjure error, however popular—if to express opinion candidly, independently, and fearlessly—if to revere one's country, and feel solicitude for its permanent happiness and honor—if to love equality and despise demagogueism; if these are badges of an orthodox republican, he would, without egotism, claim the honor of being an undeviating republican, in the most sterling import of the appellation. His republicanism was not in professions, but in practice—not in words, but in deeds. It recognized the sovereignty of the people, but required their supremacy to be displayed conformably to their political compact. He believed that in its inviolability consisted not only the sovereignty of the people, but their peace, security, and happiness. Let them alone, they will do right. Do not entangle them in an unnatural and unprofitable contest among themselves; do not force them to deny the authority of their constitution, and perhaps the power of the general government.

Preserve the constituiion and the honor of Kentucky. This can only be done by rejecting the resolutions. Let me once more, said he, beseech you to appeal to your judgments, and let them control your votes. Refrain from an act at which your posterity may blush; transmit to them, as your best legacy, your constitution unimpaired, and consecrated by your veneration; this will ensure its longevity and their happiness. .

Every other state in the Union is now tranquil and prosperous. Why is it that Kentucky, the Delta of America, should be distracted and harassed! It is her legislation, her party and petty strifes and struggles. Bury them all—surrender them at the altar of your country's good. Return to a stable and constitutional policy, *and Kentucky will be regenerated, and her people once more rallied under the standard of Justice and the Constitution.*

PRELECTION.

On the 20th December, 1824, another long and fulminating preamble and resolutions for the removal of the Appellate Judges by address were adopted by the House of Representatives by the following vote:

Yeas—Mr. Speaker, Messrs. Booker, H. O. Brown, Buckner, Buford, Caldwell, Carter, Chenowith, Clarkson, Coleman, Cosby, Dallam, A. H. Davis, S. Daviess, Forrest, Fulton, Galloway, Garth, J. G. Hardin, M. Hardin, Hodge, Holt, Hunter, Joyes, Litton, Marksberry, Mason, Maupin, Mayo, M'Brayer, J. M'Connell, Middleton, Morehead, Morgan, Mosely, Mullens, Napier, J. Patterson, Porter, Prince, Riddle, W. Robertson, Rodman, Roundtree, Rowan, Samuel, Shortridge, Slack, Spalding, Stephens, Stone, Summers, J. Taylor, Thomas, Triplett, Wade, Watkins, Wilcoxen, W. C. Williams, W. Wilson and Wingate—61.

Nays—Messrs. Bates, Breck, Brents, G. I. Brown, Chapeze, Cox, Crittenden, Cunningham, Evans, Farmer, Ford, Gibson, Goggin, Gordon, Green, Gresham, B. Hardin, Kennedy, J. M. M'Connell, Miller, Morris, New, Oldham, W. Patterson, H. C. Payne, W. C. Payne, G. Robertson, Shepherd, Simpson, Sterrett, R. Taylor, Thruston, True, Turner, Wickliffe, L. Williams, Willis, T. P. Wilson and Woods—39.

Two-thirds, as required by the constitution, not concurring, the Judges were not removed. But the Senate, anticipating that result, had, on the 9th day of December, 1824, passed a bill to abolish the Court of Appeals, and organize a new court, under pretence of "*reorganizing*" the court.—The Senate's vote on that bill was as follows:

Those who voted in the affirmative, are, Messrs. C. H. Allen, J. Allen, Ballinger, Barrett, Beauchamp, Daniel, Dawson, Denny, Dudley, Ewing, Forsythe, Hughes, Lyon, Maccoun, Mayo, P. N. O'Bannon, W. B. O'Bannon, Selby, Smith, T. Ward, Worthington and Yancey.

Those who voted in the negative, are, Messrs. C. Allen, Beaty, Bowman, Carneal, Crutcher, Davidson, Faulkner, Flournoy, Hickman, Howard, Lockett, Muldrow, Stephens, J. Ward, White and Wickliffe.

And the House concurred in that bill on the 23d of the same month, at *Midnight*, in great *tumult*, by the following vote:

Yeas—Mr. Speaker, Messrs. Booker, H. O. Brown, Buckner, Buford, Caldwell, Carter, Chenowith, Clarkson, Coleman, Dallam, A. H. Davis, S. Daviess, Forrest, Fulton, Garth, J. G. Hardin, Hodge, Holt, Hunter, Joyes, Litton, Marksberry, Mason, Maupin, Mayo, M'Brayer, M'Connell, Middleton, Morehead, Mosely, Mullens, Napier, Porter, Prince, Riddle, W. Robertson, Rodman, Roundtree, Rowan, Samuel, Shortridge, Slack, Spalding, Stephens, Stone, Summers, J. Taylor, Thomas, Wade, Wilcoxen, W. C. Williams, W. Wilson and Wingate—54.

Nays—Messrs. Bates, Breck, Brents, G. I. Brown, Chapeze, Cosby, Cox, Crittenden, Cunningham, Evans, Farmer, Ford, Gibson, Goggin, Gordon, Green, Gresham, B. Hardin, M. Hardin, Kennedy, J. M. M'Connell, Miller, Morris, New, Oldham, J. Patterson, W. Patterson, H. C. Payne, W. C. Payne, G. Robertson, Shepherd, Simpson, Sterett, R. Taylor, Thruston, Triplett, True, Turner, Watkins, Wickliffe, L. Williams, Willis, T. P. Wilson and Woods—43.

The arguments against the bill were elaborate and exceedingly able. And, in that debate, Mr. Robertson delivered the subjoined speech.

SPEECH OF MR. ROBERTSON.

On the Bill to Re-Organize the Court of Appeals.

[Delivered in the House of Representatives of Kentucky, Dec. 23d, 1824.]

Mr. Robertson said, he did not expect to be able to add many rays to that flood of light which had already been poured on this momentous subject, by his friends who had preceded him in the argument. That light had not been extinguished; It is inextinguishable; it is the light of reason, and of truth. The unconstitutionality of the bill under consideration had been portrayed in the brightness of sunshine; yet, when he saw the constitution of his country about to be violated—when he saw the main pillar in the temple trembling, and tottering to its fall—when he saw the altar of justice about to be profaned, silence would be treason to his own conscience, and to the most sacred principles of free government. He should speak plainly, and with that freedom which the magnitude of the subject required, and which would become a freeman, the Magna Charta of whose liberty is endangered. And he only asked that attention to his argument, which the duty of every member to his oath and his constitution, requires him to give to all that can be said; and if he should fail to convince, or even bring to doubt a solitary mind, he should at least stay for a few moments the blow that is aimed at the constitution.

I had thought, said Mr. Robertson, that the thick darkness which had overhung the political horizon, was beginning to retire before the light of truth, and that I could see the dawning of a brighter and happier day for Kentucky. But never did she see so dark and portentous a day as this: this is her most eventful crisis. She is about to determine, not whether she will put down her judges, but that constitution, which is now under trial. In all the ragings of the political storm, although the flood of party had threatened to deluge much of the social and moral region, and leave scarce any monument behind its desolating career, yet I had hoped there was one consecrated spot on which the political ark might rest in safety; that spot is the sanctuary of justice. But even that is about to be overwhelmed; and whenever it shall be, the patriot may despair of the commonwealth. But I will not, said he, yet despond; the restorative is with the people; they will correct our aberrations, and prove that they are determined to defend their constitution, even against the attacks of those who assail it in the abused name of liberty.

Whatever may be the decision of this house on this bill, I shall not despair of the ultimate triumph of reason and justice over passion and violence. I shall have confidence in the intelligence and virtue of the people. They are the safest depository of our rights. They may be deceived for a while by the ambitious and designing, but after sufficient deliberation, the delusion will vanish, their fervor will subside into the calm of that right reason which they possess, and which seldom, if ever, errs. Before that august tribunal this question must come; and it requires not the spirit of prophecy to predict what will be their verdict; they will pronounce their judgment irreversibly, and in tones of thunder, unless I am a total stranger to their character. They will understand this bill; they will consider it as the desperate expedient of party and individual aggrandizement. They do not feel the influence of any of the little, personal or sordid motives which may sometimes animate the aspiring. They have no petty ambition to gratify. They do not envy their judges, nor covet their offices. All they desire is good, equal laws, steadily, wisely, and honestly administered. They are a magnanimous people, an intelligent people; and although some of them may be somewhat depraved, by the demoralization of unjust legislation, and the relaxation of some of the most consecrated ties, social and political, they are yet a virtuous and a just people. They despise whatever is stained with dishonor—they are the same people who assisted in achieving the civic victory in '98; when some of those who are now in the van of the multitude, crusading against the judiciary, were in the enemy's ranks—they are the same people who denounced the alien and sedition acts; whilst some of those who now swell the chorus against the judges advocated them—they are the same people who poured out some of their richest blood at Raisin, and conquered at Orleans; whilst many who are now patent democrats, were railing at their firesides against the justice of the war. Such a people will never sanction legislative stealth. They will tell you, sir, that if the judges deserve to be removed from office, they (the people) have prescribed to you the only modes in which they intend that you shall act; that to attempt to effect the end in any other mode, is treachery to them, and worse than treachery to ourselves. They will tell us, that if the judges must be removed, it should be done openly, fairly and directly, not insidiously, indirectly or sneakingly; that it must be done in such a manner as will be com-

patible with the character of a brave, frank, and lofty people; in short, as Kentuckians should do it. If we cannot break the judges, we are not to break the constitution. They did not send us here to take offices from one set of men, only to give them to another, nor to struggle for victory over each other, but to endeavor to harmonize in trying and settling a great principle, whether the judiciary is a co-ordinate branch of the government. They expect us to try the judges by the constitution, and either acquit them or condemn them, according to its principles.

There will be no peace until this question is settled fairly. You will only multiply difficulties, and increase the inflammation of the public mind, by passing this bill. It settles no principle. It establishes nothing, except that the judges cannot be constitutionally removed, and that therefore they shall be forcibly removed, to give place to some hungry expectants, who are unable to live without some nourishment from the treasury paps—the spring of whose patriotism is money—the object of whose outcry against the judges is to get their places. If Kentucky is prepared to sanction such a prostitution of her constitution, her public virtue is gone, and she is ready to receive the yoke of some modern Pisistrates, Cæsar or Cromwell. Whenever she shall be so far lost to a sense of justice and honor, she is prepared to surrender her altars and her gods, and is practically just as free as the Romans under Augustus, Tiberius or Caligula.

If we reject this bill, we shall once more meet together as brothers, united in behalf of the great interests of our state, our civil and criminal code, internal improvement, and the diffusion of knowledge by education. But if we pass it, we shall raise a storm that we may not be able to withstand; like a tornado, it may tear up every thing by the roots. You may force your judges from the bench by violence, because they are faithful to the constitution, and will not submit to be voluntary victims of its violation; but, sir, their cause will not, as that of the great Dewitt, go down with them; it is the cause of justice and truth—their country's cause—and will prevail; and it is consolatory to know, that in more sober times, justice will be done. However much they may be slandered, or persecuted, they may well say to each other as Latimer did to Ridley, when they were burning at the stake for the firmness of their religious faith: "Be of good courage, Ridley, our persecutors will be disappointed, for our sufferings will lead men to inquire into that cause for which we suffer; and the fire which consumes us will light up such a flame as I trust in God will never be extinguished." To the bar of enlightened public opinion they will appeal, and not in vain. At the same bar, the actors in this drama must sooner or later be tried. But we shall have to appear before still higher tribunals—the bar of conscience, and the bar of heaven—where equal and exact justice will be done to the motives and conduct of all.

Let not those who are called judge breakers forget the instability of human power, the vicissitudes of capricious fortune; let them not forget that the greatest men, the Cæsars of their day, have fallen; and that the proudest empires, and most splendid republics, even Athens, Carthage and Rome, have tumbled into ruins at her magic touch; above all, let not a few forget, that *Marius in exile sat on the ruins of Carthage;* and when these things are recollected, let us be humble in our hopes, and temperate in our acts. In passing this bill, gentlemen may triumph over the judges; but it will be a poor triumph; it will be a triumph over virtue—over the most consecrated principles—over the constitution. It will be the triumph of force over weakness—a triumph over the people—over ourselves and our children; a triumph over the feelings and rights of old men, grown grey in the honest service of their country—and over the feelings of their anxious wives and children. Nero had such a triumph; he wantoned on the harp on the housetops, when by his own incendiary hand Rome was wrapped in flames. The cries of the murdered Christians were music to his ears. Let us never enjoy such a triumph as this—such a victory would be our worst defeat. Let us pause before we cross the Rubicon. Let us appeal solemnly to our consciences, before we thus sacrilegiously invade the temple of our liberties—before we profane its altar of justice. We have Sampson's strength: we can shake—we can even pull down the Doric pillar of the political edifice; but let us be careful, lest we are crushed in its ruins.

Mr. Robertson said, that in the argument which he should submit to the house, he should endeavor to maintain two propositions—1st. That if it is intended by this bill to legislate the judges from office, the end is unconstitutional; and 2nd, that it is unjust and impolitic. But before he proceeded with the argument, he would answer some preliminary objections to the judges, which had been urged against them, and which, although they could not be made to apply justly to the main object, he deemed it proper to notice and get rid of. It had been urged as an objection to the judges, that they had not manifested sufficient respect to public sentiment, by holding their offices, when they could not doubt that a majority of the people had expressed dissatisfaction with their decision in the case of Blair vs. Williams. He said, that he would deny that there was any satisfactory evidence that a majority of the people were or are dissatisfied with that decision. Great exertions had been made to excite the prejudices of the people against the judges; and nothing which ingenuity could contrive, and falsehood utter, was omitted to be published against the court; motives and doctrines had been imputed to them, which those who were most active in their propagation knew were false; and a very dexterous and unjust use was made of epithets to rouse popular indignation, and to misdirect the honest zeal of unsuspecting and patriotic men. Those who defended the consti-

tution were denounced as "aristocrats—"court party"—"the rich and well born"—"Shylocks"—and "silver heels." These, and many other epithets as decent, were very liberally applied to them. The judges were called "kings"—"usurpers"—"tyrants"—"the people's masters," &c. &c. And the people in many counties were told that in the decision of what is called the *"judge question,"* they would determine whether they were freemen or slaves. In some counties, *"liberty* or slavery" was the watchword of party at the polls. The people were told, that the judges had denied to the legislature the right to make laws, and had attempted to arrogate to themselves the exclusive prerogative of wielding the whole sovereign power. They were told that the judges had decided, that there is *no* difference between right and remedy, and that the legislature cannot in any case change, or in any degree or for any purpose alter, or modify the remedy for the enforcement of antecedent contracts; and that this decision prostrated state rights, and struck at the very root of civil liberty. These, and many other fabricatious, were industriously circulated, to deceive and inflame; and many honest men believed all to be true, and consequently were arrayed against the court. But, undeceive the people: tell them honestly what the judges have done; what it was their right and duty to do; and who they are, and who are some of their prosecutors, and there can be no doubt that a majority of the honest yeomanry, who are called *"judge breakers,"* will desert the cause into which they have been seduced, and rally round the standard of their constitution, and sustain and applaud their judges, who are persecuted, slandered and proscribed, because they are honest, firm and virtuous, and have dared to defend the poor man's rights in defiance of the threats of the powerful. Tell them that the court had the right to decide on the constitutionality of the acts of the legislature, and that they are sworn to do so; and then let them know that all the court has done, was to decide that men must pay their honest debts, according to law and to contract, and that any attempt by the legislature, to prevent it, is prohibited by the constitution; and you will then be told, by an honest and high-minded community, that the judges deserve approbation; and that those who denounced them for having done their duty, are the enemies of the people. He said that he believed that a majority of the people who are opposed to the judges, are opposed to them, not for the principles which they had decided, but because they do not know that they have the right to pronounce a legislative act unconstitutional. Let this legislature tell them, as it ought to do, that the courts have this right, and that it is their official duty to exercise it, when properly called on; and they will tell you, that you surrender the contest, and that they have been grossly deceived. And although none of those who here denounce the Court of Appeals can deny, that in giving the decision so much complained of, there has been no usurpation of power, yet artifices were used to conceal this important truth from the people. He said, that he moreover did not doubt, that a majority of those who are called "judge breakers," had never read the opinion of the court; and that nineteen-twentieths of them had not carefully examined it. How was it possible, then, for them to know whether it is correct or not? Is it fair then to argue that a majority of the people, understanding the subject, are deliberately of the opinion, that the court has given an erroneous opinion, and that it has been guilty of usurpation.

The fact that a majority of the people are opposed to the court is denied. It is very doubtful, whether the aggregate majorities of the two parties in this house, at the polls in their respective counties, at the last election, will not show that the "judge breaking" constituents, are the minority of the state; and hence those who contend for the majority against the court, evade this calculation, and urge triumphantly the election of Gov. Desha, as a conclusive fact. One circumstance will show how delusory this calculation is:—Our present chief executive has been electioneering for the office which he now holds, many years —he has ridden over the whole state, and has become extensively acquainted with the people; and in some of the most decidedly anti-relief counties in the state, he has obtained decided majorities. He was voted for by the judge breakers and judge sustainers—he was so fortunate as to be claimed by both parties, in some counties. And sir, said Mr. Robertson, I do know, and can prove, that in more counties than one, he declared publicly, that he was "not in favor of removing a judge from office for an *honest opinion*"—that he had "ever been opposed to the relief system"—and believed "it, or at least some parts of it, to be unconstitutional!" With these facts, let gentlemen still insist, if they will venture to do it, that the governor's election proves any thing on this subject.

But if it be established, that the majority is against the judges, they ought not to have resigned; they would have been guilty of a pusillanimous desertion of their posts, and a culpable dereliction of their duty to the constitution, to have retired. The constitution has wisely required the concurrence of TWO-THIRDS, to remove the judges from office. If a bare majority can, by abuse and threats, effect the object, the intention of the constitution is frustrated, and this wise requisition is virtually and practically abrogated. And the example once set, two-thirds would never afterwards become necessary; but the same end would be effected by a simple majority, who would control and subjugate the judiciary, in subservience to their pride or ambition. For the purpose of sustaining the constitution, then, it was the duty of the judges to retain their offices, until they should be constitutionally removed. And if it had been otherwise proper for them to resign, they have been so much abused and threatened, that they could not have resigned honorably; because they would

not have had the merit of having done it voluntarily. Their resignation would have been considered an acknowledgment of the erroneousness of their decision, and of their want of that degree of energy which the judiciary should possess and display. These, and these only, are the reasons which influenced their conduct. They do not desire their offices; they would gladly give them up, if they were permitted to do so honorably, and consistently with their duties to the constitution, and the people's rights.

They have, therefore, as they should have done, "*nailed the flag to the staff*," and determined never to "*give up the ship:*" and for this they deserve applause; like the old Roman senators, when their capitol was attacked by barbarians, it was their duty to forego all personal considerations, and resolve either to save the sanctuary from pollution, or perish on its altar.

It is also objected to the judges, that they have pertinaciously adhered to their decision, in contempt of the will of the majority. He who makes this objection should not claim much respect for the strength of his mind, or the soundness of his heart. What! require a judge to prostitute his judgment, his conscience, and his oath, at the shrine of popularity, and bow to the nod of the leader of a dominant party? to change his *decision*, whilst his *opinion* is the same? Such a judge would be a curse to society—a monster on the bench—the minister of vengeance, and not of justice—the puppet of party—the mighty engine of power—and not the weak man's stay, or the poor man's hope—the supporter of innocence—the terror of vice. It is acknowledged that the judges of the Court of Appeals are not such compliant, subservient tools of faction: they are virtuous, firm, honest, and enlightened men. This is their crime—"the head and front of their offending." They do not, like some of us, change with the fluctuations of majorities. They are not so felicitous, like some others, as to be always on the strong side; their only power is the power of judgment; their only support is the ability of their decisions. They do not, as oziers, bend at every breeze; but like the sturdy oaks of the forest, they stand firm and erect, unshaken by the storms of party. Such judges do not suit the ambitious and the powerful; but such should be the people's judges—and such, I am proud to say, said he, are our judges.

In proceeding to speak of the bill, Mr. Robertson said he had some difficulty in determining its real character; it was a sort of *non descript;* its like had never been seen before. Some of its prominent friends, even the gentleman who presented it, denied that its object is to remove the judges from office. They admit, because they are compelled to admit, that the only legitimate effect of the bill will be to add four new judges to the bench, making the total number seven, instead of three; but say that they will give the present judges no salary, and this they have no doubt will induce them to resign. Whilst other advocates of the measure, not so well skilled in the artifices of legislation, really believe that this bill is to have the magic effect of repealing the constitution, and by the legerdemain of a bare majority, remove the judges. This discrepancy only shows how illicit is the real design, and how ridiculous are the subterfuges of those who are the main promoters of this new judge breaking expedient; and tends to prove that those master spirits out of this house, who have been charged with writing this bill, and making speeches in their caucus, to prove that it is constitutional, are endeavoring to dupe others, and induce them to do that, which they would not dare to do themselves, if they were here. If the object to be accomplished by this bill be fair and constitutional, why not disclose it? If it be to add a fourth judge, we do not object to it—but then one clause will effect that purpose as well as this long bill. If it be to add four new judges to the court, making it consist of seven, we do object; because it will be an unnecessary multiplication of judges, and an oppressive increase of public expenditure. But with all its disguises, it is evident that the sole object of the bill is to put one set of judges out of office, and put another set in office. This is palpably *unconstitutional*—and will not, cannot be sanctioned by the people. If the majority desire to prostrate the judiciary, they must resort to other and stronger measures. Let them come out boldly, and openly defy the constitution at once, and appeal to numerical power—to physical force—which has been hinted at more than once, and which is the "*ultima ratio regis*," and the ultimate and only argument which can enforce the objects of this bill. They have waged a long and violent war of words against the judges; and by their conduct, acknowledged that they could only remove them from office by a majority of two-thirds. They have tried them according to the constitution—they have failed—and now to cover their defeat, as they cannot "*break*" the judges, they are endeavoring to "*break*" the constitution. Desperate must be that party, and dangerous to the liberties of the people, when they can prostitute their power to such unhallowed ends. The party has been struggling to remove the judges from office; but they have now discovered a new expedient, by which they can remove *the office from the judges!* Two things are necessary to the tenure of office—1st. The existence of the office. 2nd. The incumbent appointed to fill it. If the legislature intend to act on the incumbent, for actual or imputed misconduct, they are required by the constitution, to proceed either by impeachment or address—to succeed in either of which, two-thirds are necessary. These are the only modes by which the judges can be removed. If the office become unnecessary or inconvenient, and the public good require its abolition, it may be abolished, (if created by law) not for the purpose of displacing the incumbent, but only to substitute, in good faith, a better system. And as the latter is to be effected by law, a bare majority is sufficient. But although the office may have been created

or established by law, and therefore can be repealed by law, yet if the object be to remove the officer, and not to abolish the office, it is unconstitutional. The object of this bill is not to abolish the court of appeals—that is not attempted, and could not be done; because it is established, not by law, but by the constitution. The plain and sole object is, to endeavor to remove the judges by an act of assembly. This is constitutionally impossible. The constitution declares, that "the judicial power of this commonwealth shall be vested in one supreme court, to be styled the court of appeals; and in such inferior courts as the legislature may, from time to time, erect and establish." It also declares, that the judges shall hold their offices during good behavior, and the continuance of their courts. If the court of appeals is established by the constitution, and must exist as long as that shall exist, the conclusion is inevitable, that the judges of that court cannot be removed by a legislative act. Their tenure of office depends only on the contingency of good behavior; and they can be removed only for misbehavior. The office can only be abolished by a convention.

That the office is created by the constitution, and is not repealable by law, is demonstrable by the constitution itself—and may also be shewn by an examination of the authorities and examples quoted by the advocates of the bill, in its support. And if I do not (said he) shew even to those gentlemen, to their utter confusion and clear conviction, that their own cases prove the unconstitutionality of legislating judges of the supreme court out of office, I will surrender the argument.

The government is divided into three distinct departments—the legislative, the executive, and judicial—and its powers are distributed among them. If either department be taken away, the constitution loses its equilibrium and its vitality; each is created by the constitution, and one as much so as either of the other two.

Is the executive department established by the constitution? The advocates of this bill admit that it is. Then must not the legislative and judicial be also established by the same instrument, and the same authority—the people in their primordial assembly? The constitution declares that "the executive power shall be vested in a chief magistrate, to be styled," &c. The same constitution declares, "that the judicial power shall be vested in a supreme court, to be styled," &c. The language is precisely the same: it must therefore, when used in the latter, mean the same thing as when used in the former clause: it establishes the executive in the former; therefore it establishes the court of appeals in the latter. The office of the executive is created by the constitution, although it is vacant until a governor is elected. So the court of appeals is established by the constitution, although the judges do not exist until commissioned. Laws are necessary in the first case, to provide for the election of a governor: so in the latter to prescribe the jurisdiction of the court,, and provide for its organization. But if, by a repeal of the laws authorizing and regulating the election, the governor cannot be legislated out of office; by a parity of reason, by a repeal of the act regulating the court, the tenure of the judges' office is not affected: the office cannot be abolished, in either case, and the reason is obvious—it is because the law does not create the office, but only provides the means whereby it may be filled. The heads of the three great departments are as fixed as the constitution.—In the case of the judges, the constitution provides that they shall hold their offices (unless removed by two-thirds) during the continuance of their *court*, and not during the existence of the law or laws providing for filling the court with judges; consequently it follows logically and irrefragably, that a repeal of such a law or laws, cannot have the slightest effect on the judges; they are, notwithing, still in office, because their court still exists, and cannot be abolished by law.

But from the words, "from time to time shall erect and establish," it has been argued, with as much vehemence as if there were plausibility in the idea, that the court of appeals, as well as the inferior courts, is established by law. A slight attention to juxtaposition, and to grammatical construction, will show the fallacy of this argument, independently of the conclusive considerations already suggested.—The words, "erect and establish," refer evidently to the inferior courts: a transposition will shew it. "The judicial power *shall* be vested in *a* supreme court—which the legislature *may* from time to time erect and establish," would be very nonsensical language.—The meaning of the clause is, that there *shall* be a court of appeals; and that in addition, there MAY be such other courts as the legislature may establish. There never can be an instant when there is no court of appeals, the constitution living. This is too plain to deserve argument.

The law does not create the court of appeals; it only provides means to create the judges of that court; and whenever they are commissioned, like the governor and members of the legislature, they are in office under the constitution.

Can the court of appeals be abolished? Every member of the house, and of the community, will answer, no. Why can it not be abolished by law, if established by law? If it were established by law, the same authority which created, could destroy it. But it cannot be abolished by act of assembly, because the constitution declares that there shall be a *court of appeals:* and therefore it is established by the constitution. Although all the judges may die or resign, still there is a court of appeals; the office still exists; and when new judges are commissioned, they are judges of the same court of appeals, although they are not the same men. The legislature, therefore, cannot abolish the court; they cannot take the office from the judges: and as the only constitutional modes of removing them from office are impeachment and address, this bill cannot

have the effect of removing the judges from office constitutionally.

But if stronger or more direct authority can be necessary to place this subject beyond even the hesitancy of skepticism, the debates on the judiciary bill in congress, in 1823, which have been quoted by the advocates of the bill, to prove its constitutionality, will furnish apposite and imposing arguments, to shew that the court of appeals is a constitutional court, and cannot be abolished or discontinued by legislation. The question under discussion in congress, was whether the *inferior* courts established at the close of Mr. Adams' administration, could be abolished by a repealing act.—It was contended by those who denied the power of congress to abolish the inferior courts, that the supreme court could not be abolished, because it was ordained or established by the constitution; and that the inferior courts, by analogy, when once in existence, became constitutional courts, and could not be abolished. The argument was able and ingenious; and the advocates of the bill conceded that the supreme court could not be abolished by law; but they denied that the analogy which had been contended for existed between the origin of the supreme and inferior courts by law: and that, as the same power that enacted the creative law could repeal it, the inferior courts could be abolished: and they were abolished. Every member, on each side, admitted that the supreme court could not be abolished by law: and the volume of debates which I hold in my hand, (said he) will prove it, if denied.—The authority of Mr. Jefferson and the republicans of 1802 is not in support of this bill, but most undeniably and conclusively against it. For let it not be forgotten, that the clause of the federal constitution, providing for a supreme court and such inferior courts as may be established, is in the same language as that which has been quoted as to our courts, from our state constitution: and therefore, if the supreme court could not be abolished, or "*reorganized*," so as to get rid of the judges, because that court was established by the constitution, for the very same reason, the court of appeals cannot be abolished, or so "*reorganized*," as to remove the judges. It was not to have been expected that gentlemen, who advocate this bill, would be so bold as to call to their aid, Mr. Jefferson and the republican party of 1802; when their authority is so explicit and unanimous against the power to abolish courts established by the constitution, as are the supreme court and the court of appeals. What would be thought of a member of congress, who, for the purpose of removing the judges of the supreme court, should introduce a bill in congress, *to reorganize the supreme court?* The act would stultify him. The law organizing the court could be repealed; but the effect would not be a removal of the judges; the supreme court would still exist, and the judges would still be judges.

The Kentucky act of '96, reorganizing or re-establishing the court of appeals, did not turn the judges out of office: such an effect is not permitted by the constitution; and any attempt to produce it is therefore unconstitutional.

If you pass your bill, have you not still a court of appeals? Is it not the same court of appeals as that which has existed ever since the adoption of the constitution? If it still be the court of appeals—if the court still continue, the judges are still in office; because they hold their offices during the continuance of their court. It is admitted by some of those who will vote for the bill, that the judges will be in office, if the bill pass; but they say that they shall serve without salary. They intend to have four judges well paid, and three, who shall have nothing for their services. The constitution provides that the judges shall have *adequate* salaries. Can any one, on his oath, say that nothing is an adequate salary? This subterfuge is too glaring an abuse of discretion to escape public reprehension.

If the legislature had the power to abolish the court, the bill does not do it; because a court is "*organized*" in the same bill; and the existence of the court is not suspended for one moment.

An additional consideration to shew that the bill can have no tendency to abolish the court would appear by a change of the title, so as to correspond with such object. Let it read, "A bill to abolish the court of appeals," and who is there so bold, as not to admit that it would be nugatory? And yet that should be its title; for such is its true character, and such its design.

But it is contended that the court of appeals has never been established! This is one of the arguments used by the caucus orators; and shows how desperate is the cause, which must be sustained by such a ridiculous resource.—I would be glad (said he) that those speakers had been invited to make their speeches at the bar of the house, that they might be answered, and exposed: they would not venture to make such an argument here, and would not dare to vote for this bill, if they were entitled to vote. The argument has been answered in the endeavor to shew that the court has been established by the constitution; and may be farther answered by a plain question: *Has Kentucky never had a court of Appeals?*

It has been asked emphatically, whether circuit, and other inferior courts, cannot be abrogated by law? The answer is, *yes, certainly*, because they are established by law. But the legislature has not the right to abolish and *re-create, simultaneously*, the circuit courts. If those courts become inconvenient—to improve the system by substituting other courts, or remodeling them—the legislature may pass a law abolishing or modifying them: but if the object be to get clear of the judges and not the courts, it is unauthorized, and is an abuse of power. And here the debates on the judiciary bill in congress, are direct and formidable authority. Mr. Randolph, who was the leader of the republican party, endeavored to prove that congress possessed the right to abolish the inferior courts, because they were unnecessary;

but admitted that, if the object were, not to get rid of the courts, but of the judges, the attempt would be a perversion of power, to an unconstitutional end; and, in his speech on that subject, used the following strong and explicit language: "I am free to declare, that if the intent of this bill is, to get rid of the judges, it is the perversion of your power to a base purpose; it is an *unconstitutional act.* If, on the contrary, it aims not at the displacing of one set of men, from whom you differ in political opinion, with a view to introduce others, but at the general good, by abolishing useless offices, it is a constitutional act. The quo animo determines the nature of the act, as it determines the guilt or innocence of other acts."

The object of this bill is not to substitute another and better court for the court of appeals; this cannot be done; but the object is to endeavor to legislate the judges out of office: and if the power existed to abolish the court, the authority of the republicans of 1802 in congress, proves that, to exercise it for such a purpose, would be a flagrant violation of the constitution. The conclusion is fair, and cannot be resisted, that, in every aspect of this bill, if the object be to remove the judges, it is unconstitutional.

If what had been said during the debate would not convince the friends of the bill of its inefficacy, or unconstitutionality, I doubt (said Mr. R.) whether they would believe "if one were to rise from the dead" and proclaim the truth in the language of inspiration. I will close the arguments which were promised on the provisions of the constitution, by propounding one question: If the judges can be removed by a bare majority, why did the convention require the concurrence of two-thirds? This requisition is unnecessary, if less than two-thirds can do what it requires two-thirds to effect. And if a majority of two-thirds can be dispensed with, why have such efforts been made for more than a year to obtain that majority? The answer is, that two-thirds are indispensably necessary. And the advocates of the bill knew it, or they would have made the effort which they are now making, at the last session of the legislature. Congress, although desirous of removing Chase from office, never attempted it by "*a re-organization*" of the supreme court; they admitted that he could not be removed by this miserable expedient: they tried him openly by impeachment, and failing in that, liberated him from further prosecution. The Virginian example is as unfortunate for the advocates of this bill, as that of the republicans in 1802. In Virginia, an act was passed, the effect of which, if acquiesced in, would have been to change the judges of the court of appeals: but the judges having resisted it, the legislature submitted, and thereby acknowledged that they did not possess the power to remove the judges by act of assembly. Thus not only the constitution, but the authority of the republican party in 1802, and of Virginia, is decisively opposed to this bill. It is certainly without precedent in the annals of any constitutional government.

If it be necessary to fortify this argument by bringing to its aid the principles of the government, it will be quite easy to shew that the right to legislate the judges of the court of appeals from the bench while the court exists, is repugnant to the theory, and subversive of the ends of the constitution.

The government of Kentucky is limited; fundamental principles are established by the constitution, which are beyond the power of legislation; and the powers of government are distributed among the three great departments, in such a manner as that each may operate as a check upon the others, and thereby produce an equilibrium. The third department, the judiciary, is necessary in every free government, to preserve the balance of power, prevent a dangerous concentration in either of the others, and to enforce the limitations of the constitution: this and the representative principle, are the great discoveries of modern times; they are the vital principles of free government, and no government can long enjoy freedom which does not adopt and adhere to them. Those who adopted the American constitutions were wise and good men; they had read the histories of ancient republics, and they had read the book of human nature; and from these sources had drawn the principles which they have incorporated into our constitution. They knew that, whilst it was desirable to leave men as free as the common good would allow, it was equally necessary to secure them against the passions of our nature, and the fluctuations of parties. They felt the necessity of establishing an independent judiciary, to protect the weak, and poor, and obnoxious, from the injustice and oppression of the rich, the strong, and the popular—to save minorities from the tyranny of majorities.

The right of the majority to control the minority is derived from nature, and is speculatively just and unexceptionable; but not always practically proper. In regulating the affairs of society, the majority has an undeniable right to control the minority, unless when prohibited by the terms of the social compact, or the constitution. But, as in a state of nature the weak man has no security against the violence of the strong, nor the minor against the unjust dominion of the major party, it becomes necessary that government should be established, with such organization as to guarantee the equal rights of all. Constitutions are made for the weak, not the strong; for minorities, not majorities: majorities can protect themselves. Hence the necessity of adopting principles which even majorities cannot violate. It is not only the sole object, but the essence of a constitution, that the stronger man, and the stronger party, shall be interdicted from encroachment on the guaranteed rights of the weaker man, and the weaker party. By what system of government this great end could be most certainly effected, without unnecessarily impairing the liberty of the people, has been the subject of

discussion and experiment for ages; and it has been reserved for modern times to discover the secret, which is developed in the American constitutions. In all of them, the same fundamental principles are consecrated: in all, we see the anxiety of our forefathers, to establish an independent judiciary; this they considered the anchor of the constitution. No people ever were long free without such a tribunal; none ever slaves with it. The factions of Athens and of Rome, which so much convulsed and degraded those republics, were unchecked, except by their own sense of justice: they had no independent judiciary, to which an exiled Aristides, or persecuted Miltiades, or a proscribed Marcellus, could appeal for protection and redress; the will of the majority was the supreme law; power was right. Persecution, proscription, revolution, despotism, and all the catastrophies incident to the unrestricted licentiousness of majorities—always subservient to some insidious demagogue, who professed, like Marius, Cæsar and Pericles, to *love the people*—were the deplorable consequences; until at last, liberty herself was exiled, and her institutions demolished, and her cause, for ages, surrendered by her votaries. And such must be the fate in all times and all countries where majorities are uncontrolled. Human virtue is not a sufficient security for right against wrong. Man is under the dominion of bad passions, and must be governed. Majorities often err. It was "the majority" that passed the "alien and sedition" laws—It was "the majority" that elevated Robespierre, and put down De la Fayette in France—It was "the majority" that lighted up Smithfield, in England; and established the Inquisition and Auto-de-fe, in Spain—It was "the majority" that drove Cato to suicide; subjected Socrates to the hemlock, and Aristides to ostracism—In fine, it was "the majority" *that scourged and crucified the Savior of the world.* And yet, we have been told, in a certain preamble, written by the gentleman from Jefferson, (Mr. Rowan,) that "it is a solecism in politics, to say that the majority can err;" and that "the minority have no rights!" This is the doctrine of tyranny. It was the language of Julius Cæsar, and of every demagogue who has, by flattery, seduced the people and trampled on their liberties. It was not the language of the patriots and statesmen of the revolution: the language of our Washingtons, Franklins, and Jeffersons, was, that liberty without law, was the most intolerable despotism; and that, to ensure justice, and secure the stability of free government, an independent judiciary is indispensably necessary. And this, too, is the language of the venerated De la Fayette, the patriot of two hemispheres, the friend of mankind.

It is not necessary to read Thucydides or Polybius to learn the importance of three coequal, co-ordinate departments; it is demonstrated by the history of England, and the development of its advantages in the United States. The sentiments of the most enlightened politicians of our country, shortly after the revolution, are exhibited in the letters of Publius, written by Hamilton, Madison and Jay; which are considered the highest authority in the United States. In page 44, is this language: "The science of politics, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known, to the ancients. The regular distribution of power into distinct departments—the introduction of legislative balances, and checks—the institution of courts composed of justices holding their offices during good behavior, &c., are means, and powerful means, by which the excellencies of republican government may be retained, and its imperfections lessened or avoided." In page 49: "Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overwhelming majority." Page 50: Speaking of the general distrust of public engagements, and alarm for private rights, the author says: "These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administration."—Again: "By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion or interest adverse to the rights of other citizens, or to the permanent or aggregate interests of the community." Page 52: "When a majority is included in a faction, the form of popular government enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good and private rights against such a faction, and at the same time preserve the spirit and form of popular government, is the great desideratum by which alone this form of government can be rescued from the opprobium under which it has so long labored, and be recommended to the esteem and adoption of mankind." In page 53, after speaking of a democracy where the majority governs without the check of an intermediate power, the author says: "There is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention: have ever been found incompatible with personal security, or the rights of property; and have in general, been as short in their lives, as they have been violent in their deaths."

These extracts shew, in strong and vivid colors, the value of a constitution which limits the power of the majority over the rights of the minority. A constitution is a covenant, or contract, between those who make it and for whom it is made: its limitations and guaran-

tees are intended to protect each from the the aggression of others, or of all united; to secure equal right to life, liberty and property to the weakest, poorest and humblest citizen.—Our constitution declares that the habeas corpus shall not be suspended in time of peace; that the liberty of speech and of conscience shall be held inviolate: that no man shall be punished without a fair trial by his peers: that trial by jury shall be preserved, &c., &c. This is all beautiful in theory; but it is in practice, a delusion, unless some power exist, independent of the majority, to defend those sacred rights from violation by the majority—to whom alone the prohibitions of the constitution are addressed. The humble individual would act very unwisely, to give up his natural liberty, and enter into a political compact with others more powerful than himself, unless he could have some security from the tyranny of a majority. The guarantees in his favor would be only nominal, unless some umpire should be created, with the capacity to decide between him and a tyrannical majority, who may encroach on his rights, disregarding the compact. The history of the world proves that no tribunal can accomplish this object so well as an independent judiciary; it is the best safeguard against the oppression of the tyrant, and the passions of the multitude. The authors of Publius, on this subject, page 419, say that, "In a monarchy, it is an excellent barrier to the despotism of the prince; in a republic, it is a no less excellent barrier to the encroachments and oppressions of the representative body; and it is the best expedient that can be devised in any government to secure a steady, upright and impartial administration of the laws." Again in page 420: "The complete independence of the courts of justice, is peculiarly essential in a limited constitution. By a limited constitution, I understand one which contains certain specified exceptions to the legislative authority; such for instance, as that it shall pass no bill of attainder, no ex post facto laws, and the like. Limitations can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing." Again, page 421: "It is far more rational to suppose, that the courts were designed to be an intermediate body between the legislature and the people, in order, among other things, to keep the former within the limits assigned to their authority. The interpretation of the laws, is the proper and peculiar province of the courts. A constitution is in fact, and must be regarded by the judges as fundamental law. The constitution ought to be preferred to the statute; the intention of the people, to the intention of their agents."

Again in page 423: "This independence of the judges is equally requisite, to guard the constitution and the rights of individuals from the effects of those ill humors, which the arts of designing man, or the influence of particular conjunctures, sometimes disseminate among the people themselves; and which, though they speedily give place to better information, and more deliberate reflection, have a tendency in the meantime to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community."—Again in page 424: "The benefits of the integrity and moderation of the judiciary, have already been felt in more states than one; and though they have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men of every description ought to prize whatever will beget this temper in the courts; as no man can be sure that he may not be to-morrow, the victim of a spirit of injustice by which he may be a gainer to-day. And every man must now feel that the inevitable tendency of such a spirit, is to sap the foundations of public and private confidence, and to introduce in its stead, universal distrust and distress." And again in page 420, after endeavoring to prove that the judiciary, from its constitution, is the weakest department, and that there can be no danger of oppression from an independent judiciary, but that the only danger is from dependent, servile judges, the authors say: "That as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that, as all the effects of such an union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that, as from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its co ordinate branches; that, as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore justly be regarded as an indispensable ingredient in its constitution, and in a great measure as the citadel of the public justice and public security." These extracts require no commentary: nor can it be necessary to multiply them.

Such are the sentiments of those great and good men, who achieved our independence, and established our free institutions. And similar were the opinions of those who formed the Kentucky constitution. They intended that the head of the judiciary department should not be dependent on the executive, or on a bare majority of the legislature, for the tenure of office; that it should be a check on the usurpations of those two departments, and should, therefore, have a will of its own, independent of a majority of the legislature, or of the legislature and executive united; and therefore, the constitution requires the concurrence of two-thirds to remove a judge. If the majority can constitutionally turn the judges out of office, by an ordinary act of legislation, all the precautions of the constitution are nugatory. It is in this view, that reference has been made to the opinions of the virtuous and enlightened votaries of liberty, to shew that it is necessary that a majority should never possess

the power to remove the judges. The independence of the judiciary is not necessary or proper, for the personal benefit of the judges, but for the security of the dearest interests of the people; for the defence of those who are unable to defend themselves.

If the legislature transcend the chartered barriers of their power; if they pass a bill of attainder, or *ex post facto* law, or a law depriving the citizen of the trial by jury, or punishing him for his religious or political opinions, it is necessary that there should be virtuous and independent judges, willing and able to save him, and refuse to enforce the unconstitutional and tyrannical act. Hence the judges are sworn to support the constitution; hence the constitution is declared to be the supreme law of the land; and hence, judges should not be afraid of the power of those who concurred in violating the constitution, and in usurping from the people powers expressly prohibited. But they could not be expected to have the firmness to resist the encroachments of a majority, if they are made dependent on that majority.

It is a solecism to admit, that the judges shall refuse to enforce the unconstitutional acts of a majority, and that they are, nevertheless, responsible to the same majority for doing their duty. If the judge have a right to declare a legislative act void, a majority of the legislature cannot possess the right to remove him from office for exercising that privilege; the two rights cannot co-exist. It is conceded that the judge possesses the right to decide on the validity of the acts of the majority. Consequently the majority has not the right to remove him from office for it.

Whenever the doctrine is established, that the judges are in the power and under the control of a bare majority of the legislature, all power is virtually absorbed by the legislative department, which Mr. Jefferson declares to be tyranny. And then the dominant faction can trample on the constitution, without restraint or control, and there will be no constitution except the will of the majority—that majority will be ever-changing, and consequently there will be correspondent changes in the judiciary, and in their constructions of the constitution—there will be no stability, no safety, no confidence, no morality, no justice—anarchy, the worst of all despotism, will reign—your judges must be partizans, the subservient engines of faction—they will be such judges as those who condemned Sidney and Russell; such as those of Revolutionary France, the tame and submissive instruments in the hands of an accidental majority—which majority will generally be the unconscious instruments, the blind puppets in the hands of some ambitious Robespierre, who loves the people for their own destruction.

During the French revolution, the forms of free government were preserved; but never was any country cursed with a more sanguinary despotism than France, under the reign of uncontrolled and *"unerring"* majorities. The constitution was a mere *"caput mortuum,"* as every constitution will be, unless there is some department so constituted as to possess the will, and the power to guard and defend it. The most shocking enormities were perpetrated, in the prostituted name of *"liberty;"* religion was banished, Deity was blasphemed, and the most sacred rights were prostrated at the shrine of a political Juggernaut. The character of the revolutionary courts is portrayed by Burke, in this emphatic language: "In them it will be in vain to look for any appearance of justice, towards strangers, towards the obnoxious rich, towards the minority of a routed party, towards those who in the elections supported the unsuccessful candidates; the new tribunals will be governed by the spirit of faction." Such have been the courts in all ages and countries, under every form of government, when subject to the "majority;" and such will be the Kentucky courts, if this bill be approved by the people. Your judges, like Themistocles, will never sit on a bench where strangers will have an equal chance with their friends. It is easy to excite prejudice against men in office, particularly judges; and it is the interest of those whose object is their own aggrandizement, to destroy judicial purity and independence. Pericles, *"the people's friend,"* could not mount to absolute power until he had prostrated the Areopagus; and, that being made subservient, in the name of *"the people,"* and of *"liberty,"* he governed *"the people."*

There is no danger of judges becoming tyrants; all history proves it. Tyranny always springs from another quarter. Whenever designing men conspire against the liberties of the people, they flatter them, and endeavor to put down the judiciary; and whenever honest judges are attacked by prominent and aspiring men, the people are in danger. They should protect such judges, if they intend to protect themselves.

If the power to remove the judges by this bill be acknowledged, there is no longer, in practice, a constitution; the *form* may remain, but the spirit of the living constitution is gone. It is not for the judges, but for the liberties of the people, for the constitution under which I have grown into manhood, that I protest against the passage of this bill. The stab which is now meditated, if not averted, may be mortal—and our rights will then be less secure than those of Englishmen. What is it that prompts the English tar, when going into action, to nail his country's flag to the mast, and shout for England? It is because, although in many respects he is depressed, his personal rights are secure from the encroachment of the crown, or even an omnipotent parliament, and he can appeal to independent courts for justice; as Wilkes did to Mansfield, against the outlawry of parliament. Pass this bill, and sustain it with the people, and you not only have an omnipotent legislature, but servile, dependent courts, unwilling or unable to support your constitution.

But, said Mr. Robertson, if the legislature possess the power to remove the judges in the mode proposed, why exercise it? What have

the judges done? Have they been guilty of any misdemeanor in office? No. Have they been guilty of any dereliction of duty? No. Are they unfit? No; all acknowledge their ability, virtue and firmness. Do you expect to supply their places by better judges? You will not, you cannot do it. If you remove the present, you will not have a court in which the country will, or ought to have confidence: their acceptance of the office under such circumstances will prove their unworthiness. Men combining all the qualities of these judges—their integrity, their ability, their morality, their experience, their impartiality--will not be easily found, or if found, will not accept the office, humble, dependent, and degraded, as it will be rendered

If it were admitted for argument, that the judges have given an erroneous opinion, would it be expedient or just to remove them for such a cause? No judge could then retain his seat. Will you remove your governor for improperly pardoning, or for refusing to sign a bill which a majority passed? But the decision complained of has not had, and will not have any effect; what end can then be effected by removing the judges? None, except to give their offices to other men.

But if the decision be erroneous, the error can be corrected alone by the Supreme Court. It is the federal constitution which has been declared to be violated, by the two years' replevin act. This is the constitution of twenty-four states, and must be the same in each. The Supreme Court, which is the court of all, must therefore control the decision of the state courts on the constitution of the nation. Kentucky has no right to dictate to the Union; she must submit to, and acquiesce in the decision of the organ of the national will. If the court of the Union affirm the decision of the state court, the question is settled beyond the power of the state. If that court should reverse that decision, the state court must submit, and conform to the paramount decision in future; the removal of the judges can then have no legitimate object, no practical effect on the question. If they shall be removed, and the Su-Court affirm (as they no doubt will do) their opinion, their successors will be bound to enforce that opinion, the opinion of the legislature to the contrary notwithstanding. How can it be evaded? If Kentucky has a right to interpret the federal constitution, for every other state, and to resist the authority of the Union, every other state has an equal right—and there is no Union. If the majority must govern, it is the majority of the people of all the states, and not of Kentucky, who must decide this question. No principle can therefore be settled, no object, allowable or honorable, can be effected by a removal of the judges; and the only effect will be, to destroy the purity, the honesty and independence of the bench.

I do not however admit, said Mr. Robertson, that the decision of the court is erroneous; I have no doubt it is correct, and never will be reversed.

Having on a former occasion argued this question in extenso, I will not now enter into all its details. But there are some considerations which should not be pretermitted. In all that has been written and spoken against the decision of the court, an intelligent definition of the obligation of a contract could not be found. Those who denounce the decision fail to show its errors; they cannot do it. They declaim on the subject of state rights, and charge the court with confounding right and remedy; this is the burden of the song; yet no state right has been violated; and the difference between right and remedy is left untouched by the opinion of the court.

They have decided that a two years' replevin law cannot constitutionally be applied to contracts made *before* the passage of the act; that it impairs "the obligation of a contract." The constitution of the United States declares, that "no state shall pass any ex post facto law, or law impairing the obligation of contracts." An ex post facto law is one which denounces punishment for an act which was not illegal when it was done. It is a law which acts retroactively on the conduct of the citizen. Is it not fair to suppose that the correlative member of the sentence has a correspondent meaning? that a law impairing the obligation of contracts, is one operating retroactively on contracts? The plain meaning of the clause is, that no criminal law shall operate retrospectively on acts; and that no civil law shall operate retrospectively and essentially on contracts. This construction gives a similar import to each branch of the prohibition, and harmonizes with the objects of the clause. It was intended that no ex post facto law as to crimes, nor any expost facto law as to contracts, should be valid. Such laws are unjust and impolitic, and contrary to the genius of the common and civil law. England does not venture to pass retrospective laws; nor does any European government of good standing attempt it. They are not restrained by constitutional inhibitions, but by moral interdicts—by the intrinsic injustice of such legislation. And shall we, under our federal and state constitutions, possess the power which the potentates of Europe do not dare to exert?

The legal obligation of a contract is certainly the law which *obliges* If the law will not enforce a contract, it has no legal sanction or obligation; as the moral obligation is the moral sanction, the legal obligation must be the legal sanction. The legal obligation of the contract is the legal right to enforce it; the mode of enforcement may be called the remedy. This mode or remedy may be changed by the legislature at discretion; provided that, by the change, the right is not essentially impaired. If all remedy be taken away, the legal obligation is destroyed; for that cannot be binding in law which the law will not enforce. If destroying the remedy destroy the legal right, any change in the remedy which impairs its efficacy, must necessarily impair the right or obligation. It it mockery to tell a man that you do not affect his right, when you

deprive him of all the legal means of asserting it; he will still have a moral right, but it is only the shadow—the legal right is the substance.

Those who assert that right and remedy are so radically distinct, that affecting the one does not affect the other, ought not to forget, that legislation can affect legal rights in no possible mode, except by acting on the remedy. Let any gentleman state a mode by which the right can be impaired by law, without acting on the remedy; it must be admitted that there can be none. Then the whole argument is surrendered; for the admission is an acknowledgment, that if, by law the legal right shall be impaired, it is impaired by postponing, or so changing the remedy as to affect the value of the right; and consequently, that if it be unconstitutional to impair or destroy the right, it is unconstitutional to deny the remedy, or change it so as to impair or destroy the right; because it is only by changing or destroying the remedy that the right is affected. The only question then is, whether by passing the two years' replevin act, the remedy is so far postponed as to affect the value of the right? No one can deny that it is. Indeed it was not remedy, but delay; it was not intended to give *remedy* to the plaintiff, but *relief* to the defendant. Away then with the known distinction between right and remedy; it proves nothing; it is a quibble—an evasion—a delusion.

If a contract be made between two persons cast away, like Alexander Selkirk, on an island, without civil rule, it would generally be legally obligatory; for they should be presumed to contemplate either the law of the government where they might first meet, or more probably the law of the country to which one or both of them looked as home; and the law to which they should be presumed to refer would regulate the civil obligation of their contract. The *lex loci contractus* does not fix the legal obligation, when the contracting parties contemplate the law of any other place, as they are presumed to do, when a contract made in one country is to be performed in another, in which case the *lex loci solutionis*, or the law of the place of performance will govern.

The response of the judges has discussed this subject so ably, that it is unnecessary for me, said Mr. Robertson, to dwell on it. It is clear that the court have decided correctly; they have given the construction to the constitution which those who made it gave to it. Luther Martin, who was a distinguished member of the federal convention, voted against the constitution, and in a letter to his constituents, assigned as one strong reason, the insertion of the clause in relation to the obligation of contracts. This is his language: "The same section also puts it out of the power of the states to make anything but gold and silver coin a tender in the payment of debts, or to pass any law impairing the obligation of contracts. I consider, sir, that there might be times of such great calamity and distress, and of such extreme scarcity of specie, as should render it the duty of a government, for the preservation of even the most valuable part of its citizens; in some measure to interfere in their favor, by passing laws totally or partially stopping the courts of justice, or authorizing the debtor to pay by instalments, &c. The times have been such as to render regulations of this kind necessary in most or all of the states, to prevent the wealthy creditor and the monied man from totally destroying the poor, though honest debtor. Such times may again arrive. I therefore voted against depriving the states of this power," &c. In pages 37 and 243 of the Letters of Publius, on the authority of which the states ratified the constitution, may be found in substance the same doctrine. What can be more irresistible authority? Those men were all members of the convention, and knew what they intended to effect by the clause. They had felt the evils which were produced by delay and relief laws, in the states, before the adoption of the constitution, and thought it necessary to prevent their recurrence. Those evils are depicted by the historians of the times; one or two extracts only will be necessary to show what they were.

"The effect of these laws interfering between debtors and creditors, was extensive. They destroyed public credit and confidence between man and man, injured the morals of the people, and aggravated the final ruin of the unfortunate debtor, for whose temporary relief they were brought forward."

Speaking of the adoption of the federal constitution, and the necessity and intent of the clause in relation to contracts, the historian observes: "Their acceptance of a constitution, which, among other clauses, contained the restraining one, which has been just recited, was an act of great self-denial. To tie up the hands of future legislatures, so as to deprive them of the power of repeating similar acts on any emergency, was a display both of wisdom and magnanimity."

Speaking of the effects of the new constitution, and particularly the clause which he had described, as intended to prevent any interference between debtor and creditor, the historian says: "Public credit was reanimated; the owners of property and holders of money freely parted with both, well knowing that no future law could impair the obligation of contracts."

Here are disclosed, in impressive language, some of the reasons which induced the adoption of that clause in the federal constitution, which forbids the states to impair the obligations of contracts. Experience had demonstrated, not only the injustice and inefficiency, but the demoralizing and distracting effects of legislating for the relief of the debtor, at the expense of the creditor class of the community. It was unjust, because it denied to the creditor the enjoyment of what he was entitled to fairly and honestly; it was inefficacious, because it produced more mischief than good; it did not eventually effect the benevolent purposes for which a misguided philanthropy intended it. It was very demoralizing, because it generated idle habits, destroyed confidence, and unhinged society. But the great objection to it

was that, if allowed to be practised by the states, without restriction, there was danger of its perversion and abuse, to such a degree, as to irritate the citizens of different states, and ultimately dissever the union, or at least very much impair the moral ligaments which alone can preserve it from disruption. It was therefore deemed better to deprive the states entirely of the power, than to jeopard the stability of justice, and the integrity of the union, by running the hazard of its abuse. Justice should be stable, and of unvaried tenor throughout the union; it is a national object One object of the federal union is declared to be, "to establish justice." The citizens of each state are protected in the security of equal rights, in all the states; this creates a national spirit—a fraternal feeling in the whole American family. And under this view, no clause is more essential to the union of the states than the one under consideration; none should be more pertinaciously defended from violation, by the sincere and enlightened patriot. It is one in which every citizen of the United States is as much interested as the people of Kentucky; and if the doctrine be orthodox, that a majority must govern, as it certainly is, with few exceptions, a majority of the states have the right to govern on this subject. There can be no doubt that a majority of the states concur with our Court of Appeals in the construction which they have given to this clause of the federal constitution. It may in safety be demanded of the opposers of that decision, to produce evidence that there is one state opposed to it.

Every state which has acted on the question, has expressed the same sentiment; Missouri, Tennessee, Mississippi, Vermont, North Carolina, have all decided that such an act as the two years' replevin act of Kentucky is unconstitutional. The Circuit Court of the United States, Judge Washington presiding, has settled the same principle, in the case of Golden vs. Prince. In Virginia, since the late war, an attempt was made in the legislature to pass a similar law, and after an able debate, it was decided almost unanimously that it would impair the obligation of contracts, and therefore would be unconstitutional, and the measure was abandoned. This information I have from a gentleman now in the lobby, who was a distinguished member of that legislature. The Supreme Court has virtually given the same decision in several cases; and no superior court in America has given any other decision. The opinion of the Supreme Court of North Carolina on this subject, in the case of Crittenden vs. Jones, is now before me; it is very able and elegant, and exhibits substantially the same view as that given by our Court of Appeals. Any gentleman can examine it; it would consume too much time to read the whole case; the following extract may suffice:

"If an act *postponing* the payment of debts be constitutional, what reasonable objection could be made to an act which should enforce the payment before the debt becomes due?" "The rights of both parties established by the contract, are in the eye of justice equally sacred: and whether those of the creditor are sacrificed to those of the debtor, or the subject be reversed, we are compelled to think that the constitution is overlooked. No unimportant part of the obligation of every contract, arises from the inducement the debtor is under to preserve his faith. In most cases he (the creditor) would reserve both money and property, in his own possession, were he not assured that the LAW animates the industry, and quickens the punctuality of his debtor, and that by its aid he can obtain payment in six or nine months. The act under review delays this assurance." "The right to suspend the recovery of a debt for one period, implies the right to suspend it for another." It is difficult to conceive how the law can otherwise impair an existing right, than by withholding the remedy, which is in effect to sespend the right."

In the face of such a formidable array of authorities—the opinions of those who made the constitution; of those who lived cotemporaneously; of every state in the Union which has expressed an opinion; the decision of the United States' Circuit Court for Pennsylvania; the clear intimations of the Supreme Court; the ability of the argument offered by our court, in support of their decision; the inability of those opposed to the court, to show what the constitution means, unless it means what the court has decided that it does; the evident design of the constiution, deducible from its terms by every rational mode of interpretation—in the face of all this, are not those who denounce the court for error, guilty of extreme temerity? Ought they not at least to doubt, and doubting, to acquiesce, and recoil from the attack which they are making against a co-ordinate department of the government? Even the elaborate replication to the response of the judges, when examined, is a virtual concession of the correctness of the opinion of the court. In all that long document, there is no attempt to explain the import and design of the clause of the constitution in relation to the obligation of contracts—it is *ad captandum*, metaphysical and evasive; it surrenders the argument. The author confounds the plain and acknowledged distinction between the moral and the legal obligation. He inquires what was the obligation of the contract or covenant entered into between Deity and Abraham! and answers it himself, by inquiring in what court Abraham could have arraigned his God for a breach of the covenant. This is irreverent, and is only alluded to, to show the evasions and miserable artifices of the book. Does the author of the book suppose that the covenant with Abraham had *any civil* obligation? Does he not know that its obligation was of a different and far more transcendental character? that it was divine—as immutable as the attributes of Deity? But if the author of this extraordinary production meant to prove any thing by this argument, it was to show that, as the obligation of the covenant did not consist in a legal right to enforce it by legal means, consequently the obligation of a con-

tract between A and B, does not consist in the right to enforce it by legal means. How fallacious the idea! But such are all the arguments in the long book. Let it go to the people with the response, and it carries its antidote. It is not comparable to that luminous and unanswerable vindication of the court. The response will be read by our children, as a *carmen necessarium*, when the replication will have sunk into oblivion—and when the reputation of its author shall have been swallowed up, like the Niger, in the great moral desert to which it is hastening, the fame of the judges, like the Nile, will flow on, full, perennial and refreshing.

An exasperated party may remove the judges from office, but they cannot disgrace them—they cannot soil their characters. The good and the wise will surround them with their confidence and their plaudits, when those now engaged in the unhallowed attempt to degrade them, are remembered only as were the blind and envious mob, who exiled Aristides, because he was JUST. The act which deprives them of office will only increase their claims to higher and better office; it will transmit their memories to posterity, hallowed by the recollection that they were martyrs in the cause of justice, of truth, and of constitutional liberty: it will extend the horizon of their fame, and imprint their merits in proud relief on their country's monuments.

How much more enviable is the fortune, and elevated the character of a virtuous man, punished for his incorruptible purity, than of him, who, to acquire a transient triumph, or an ephemeral fame, has helped to pull him down? Virtue will triumph—truth will eventually prevail. Men pass away and are forgotten, but principles are immortal. The day may not be far distant when the proudest of us may wish that he were a Boyle, an Owsley, or a Mills, and had been removed from office for his virtue and firmness. From my boyhood I have known two of these judges intimately, and it is with pride and confidence that I declare, that I never knew more virtuous, more amiable, more honorable men—purer men or better citizens, than John Boyle and William Owsley. They are ornaments to the bench. With the other judge I am not so well acquainted, but I know enough of him to believe that he is an honest and upright man, and able judge. To defend such men in such a cause cannot be criminal—to me it is the proudest act of my life. I consider myself in this humble and unpopular effort, as one of a small and proscribed band, who are the forlorn hope of the constitution. And although I have a foreboding that this bill will pass, I will not despond; for I recollect, that although the darkest day which England ever saw, was that on which Sidney fell, in less than five years she was cheered with the brightest that ever dawned on her isle.

In this unavailing effort, it is not the cause of the judges alone that I advocate, said Mr. Robertson, but the cause of order, of safety, of justice, of liberty—the stranger's cause—the poor man's cause—the cause of that constitution which is the boast of our country, and the panoply of its people.

If the people ratify the passage of this bill, the constitution is laid low at the feet of any ambitious man who may lead a majority; the judiciary will be humbled, all power engrossed by the other departments, and instead of being governed by the principles of eternal justice, fixed as landmarks in the constitution, we shall be under the dominion of the resentments, whims and passions of the leaders of ever varying factions. Instead of being blessed with stability, confidence, and security for life, liberty, and property, we shall be cursed with revolutions, distrust and licentiousness. For if the majority can effect their objects in passing this bill, there is nothing in the power of men, which they may not do. It will then be in vain that the constitution says to them, you shall not pass a bill of attainder; they will pass it, if they wish to do so. And to whom can the appeal be made? Not to the judiciary; they are no longer a co-ordinate department. They bow to the strong party—the very party that they were created to check. We may still have a paper constitution, but the principles which sustain and enforce it will be prostrated. We may still have the appearance of liberty; so had the Romans under Augustus. We may still have patriots, but they will be proscribed; their aspirations will be treason, and those who govern will be called the people's friends, and will tyrannize in their name,—like Clodius, who, after having caused the exilation of the patriotic Cicero, demolished his house, and erected on its ruins a statue to "*Liberty?*" If public sentiment sustain this bill, such may be the consequences.

This drama is about to close; we are in its last act. May its last scene be as honorable and as ennobling to Kentucky, as its preceding ones have been humiliating and alarming. May we yet behold the ark of our safety, after weathering the most frightful storm that ever threatened our ruin, ride in safety and triumph into its old harbor, the people's affections, with "*Liberty* and *Law*" inscribed on its floating banner. Whilst we are figuring on the stage in this eventful drama, we should know, that it is not so important what parts we play, as that we play them well; we act not only for ourselves, but for those who shall come after us and for the people of other states. The whole Union, as in an amphitheatre, are looking with deep concern on our deliberations, and are praying that Kentucky may be saved from degradation. And shall their entreaties, their opinions, be disregarded? Will not a just Heaven interpose, and prevent the reckless demolition of that political edifice, which was reared under the auspices of a divine Providence? Is there no Manlius, to give the alarm from the watch-tower? no Camillus, to save the citadel? no Ulysses, to steer our shattered ship from the whirlpool of party, and save the crew from those siren sounds, "civil liberty," "the ma-

jesty of the people," which are uttered to seduce and to destroy?

I have, Mr. Speaker, taken my passage in this vessel; my wife and children are on board. I will cling to her as long as she floats, and should she *sink*, I will seize her last plank, as my best hope!

In the humble part which it has fallen to my lot to bear in this great question, I expect not victory, I solicit not applause. My only wish is, that I may promote the welfare of the country which gave me birth, and entitle myself to the reputation of an honest man. I fear not responsibility—Heaven made me free, and I will not make myself a slave. I have not consulted men in power. Although not one drop of patrician blood runs in my veins, I am entitled to the humble privilege of obeying the dictates of my own conscience, and of fearlessly uttering my opinions. And I shall deem it one of the most fortunate incidents of my life, that I have had an opportunity of protesting against this ruinous and violent act, and of transmitting to my posterity, on the record, a memorial of my opposition to it.

If, by any exertion which I could make on this floor, I could avert the fatal blow that is aimed at the very heart of the constitution, my highest ambition would be fully gratified. But, sir, my efforts are lost—the die is cast—the constitution falls! and the only consolation is a belief that I have done my duty. Others may wear their crowns of laurels, for their victory over the great charter of the people's rights. As for me, I prefer the approbation of a sound conscience, even in obscurity, to the proudest station purchased at so dear a price; with this, the humblest station cannot make me miserable; without it, the most exalted could not make me happy.

"One self-approving hour far outweighs
Whole years of stupid starers, and loud huzzas;
And more true joy, Marcellus exiled feels,
Than Cæsar with a senate at his heels."

PRELECTION.

After the passage of the "*Re-organizing Act,*" Mr. Robertson urged the minority in the legislature to unite in a protest, appealing to the people of Kentucky, who were then the only arbiters between "*the old court*" and "*the new court,*" appointed under that act. But some of those who had voted against the act, apprehending that a further struggle would crush themselves, and seal the downfall and proscription of the constitutional party, preferred to ground their arms, and at once submit. It being the purpose of a manifesto to commiit the members of the legislative minority, and animate their party, unanimous co-operation was deemed important, if not indispensable to that end; and consequently the apparent hopelessness of such unanimity discouraged further effort to rally by that mode. In that state of suspense, Mr. Robertson, sick and in bed, was visited by *Robert Wickliffe* and *John Green*, who informed him that most of the minority would sign a protest if he would prepare one. Considering this as the last hope, and feeling sure, as prophesied in the foregoing speech, that the people, if properly addressed, would repudiate the act, he resolved (though that was the last day of the session) to try the experiment of a bold and condensed protest, for galvanizing his desponding party, and affording to all, who might desire honest investigation, a text for argument against the act. And accordingly the following protest was prepared by him, signed by the minority, and presented to the House of Representatives before 3 o'clock of that same and last day of the session.

On the presentation of it, Mr. Rowan, as leader of the majority, courteously moved a dispensation of the reading of it, and its admission to the Journals; and thereupon the House of Representatives unanimously voted to place it on the Journals. But the Senate having, just before that vote, rejected it, after hearing it read, *Jeroboam Beauchamp*, a Senator from the county of Washington, came to the lobby of the House and told Mr. Rowan what the Senate had done, and said to him, "*it is the devil, and if you don't kick it out of your House, it will blow us all sky-high.*"

Mr. Rowan immediately moved a reconsideration of the vote just given; and the protest was then *excluded* from the Journals. But it went before the people, and such a civic battle was never fought in Kentucky, as that which followed the promulgation of that small document. The result was the election, in August 1825, of a large majority of the House of Representatives, against the Re-organizing act.

PROTEST OF THE MINORITY,

Against the Act Re-organzing the Court of Appeals.

[December, 1824.]

The undersigned, composing the minority of the legislature, who voted against the act *"reorganizing the Court of Appeals,"* being about to separate, perhaps never to meet on this theatre again, cannot, consistently with a sense of duty to ourselves, our constituents, and the constitution of our country, close our official duties, without uniting together, and with one voice, respectfully, but firmly and solemnly, protesting against this unprecedented act, as unconstitutional, unjust and alarming.

The constitution declares, that "the Judges of the supreme and inferior courts shall hold their offices during their good behavior, and the continuance of their respective courts." While the court continues, the judge is entitled to his office, until removed for misbehavior. If he be charged with malfeasance in office, the constitution requires that he shall be impeached; but if, for any other reasonable cause, not sufficient for an impeachment, it be proposed to remove him, it is necessary that two-thirds of both branches of the legislature should concur in an address to the Governor to remove him. The constitution tolerates no other mode of removing the judge from the office; this is denied by none. If then the court cannot be abolished or discontinued, the attempt to remove the judges by its reorganization is "palpably and obviously" unconstitutional. We insist that the Court of Appeals is created by the constitution, and therefore can only be abolished by the people, in convention.

No stronger evidence of this is necessary, than the following extracts from the constitution: "The powers of the government of the state of Kentucky shall be divided into three distinct departments, and each of them confided to a separate body of magistracy, viz: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another." "The legislative power of this commonwealth shall be vested in two distinct branches," &c. "The judiciary powers of this commonwealth shall be vested in one supreme court," &c. Each department is created by the constitution, for wise ends—and must exist as long as the constitution endures. There must be a judiciary department, as well as legislative and executive. The ultimate powers of that department must be vested in one court of appeals. There must be an executive department. The supreme powers of that department must be vested in a chief magistrate. The Governor can only be removed from his office by two-thirds, on impeachment—the office cannot be abolished—it cannot be removed from him by any act of the legislature. The judges of the Court of Appeals can only be removed from their offices by two-thirds, either by impeachment or address. The offices cannot be removed from the judges by any act of the legislature. The court cannot be abolished; and the judges, unless removed by impeachment or address, are entitled to hold their offices during the continuance of their court. There *shall be* a Court of Appeals, and but one Court of Appeals. If the legislature can abolish, or discontinue it for a moment, there is nothing to prevent its abolition forever. But the convention who formed the constitution have not thought proper to leave to the legislature the power of creating, or destroying, or modifying, or changing the three great departments of the government; they are fixed by the constitution, and are as stable and immovable as that sacred and inviolable charter. Although the governor may die or resign, there is still an executive department, and it is the same department. And although the judges of the Court of Appeals may die or resign, there is still a Court of Appeals, and it is the same court. The officers, in each case, may change, but the office is the same—the executive still continues—the court still continues. This is the doctrine of the constitution—it is the doctrine of genuine republicanism—it was the doctrine of the republicans of 1802, with Mr. Jefferson at their head. The republican party in Congress, in 1802, acknowledged that the supreme court could not be abolished, nor the judges removed from office by an act of ordinary legislation; because the court was established by the constitution, and the judges hold their offices during good behavior, and the continuance of their court. The party were unanimous in this opinion, but insisted that inferior courts, which are established by law, may be abolished by law, whenever they become inconvenient or unnecessary.

Our constitution, like that of the nation, allows the legislature, from time to time, to establish the inferior courts; because, experience might prove the necessity of changing those courts, so as to adapt them to the condition of the country. But each constitution requires that there shall be *one* supreme court, and the

language of each is substantially the same. By each, a supreme court is ordained and established. The constitution of Kentucky does not require that the inferior courts shall be circuit or quarter session courts, but it does declare and require that there should be one Court of Appeals. Our circuit courts did not not exist until established by the act of 1802. But the Court of Appeals has existed from the date of the constitution. The first were created by the act of the legislature; the other was established by the paramount act of the *people* in convention. The same authority which creates, may destroy; therefore, the legislature may abolish the circuit courts—but the *people alone*, assembled in convention, can abrogate the court of appeals.

But this legislatue, as if above the constitution, have arrogated the right to abolish the Court of Appeals, by its "re-organization," and to remove the incumbent judges from office, by a bare majarity, whilst their "court continues!"

We consider this not only an unconstitutional and high handed measure, but one, which, if approved, will prostrate the whole fabric of constitutional liberty; *we do consider it a REVOLUTION!* We consider this unparalleled act, as an attempt, by the majority of the legislature, to consolidate their power, and perpetuate their supremacy, over the rights of the minority and the canstitution, by destroying the independence and purity, and impartiality of the judiciary. And if it be countenanced by the people, we believe that our courts will be subservient to the strong party, or party in power—that we shall be governed by factions—that "liberty and equality" will be empty sounds—that the ambitious and the powerful will hold in their hands the destinies of our state—that the minority will, indeed, have *"no rights,"* and will be proscribed, as we believe it has been resolved that WE shall be, during tne present administration—that the freedom of speech and of conscience, and the rights of life, liberty, and property, will depend on the caprices of a fluctuating majority of the legislature; that our courts will be servile and dependent, like those of revolutionary France, under Robespierre, and those of England, under the Tudors and the Stuarts; and that the legislature of Kentucky will become practically, as omnipotent as the British parliament.

These are not the depictions of vivid fancy, or the spectres of a puerile alarm; we fear that they may become sober and solemn realities. If the people sanction this act of the majority, where is our security? Their approbation of such an act would indicate a destitution of that reverence for their constitution, which is the soul of every constitution, and without which no people ever were or ever will be free. Ours is not the language of prophecy, all of whose predictions are yet to be fulfilled—as passing scenes will prove. Although we are not initiated into the *"arcana imperii,"* our eyes have seen and our ears have heard enough to enable us to understand "the signs of the times."—When we see new judges appointed to supersede the old ones, some of whom are known to have been active and clamorous in endeavors to prostrate the court; when we see, at the head of these new judges, the leader of the majority, who has been charged with exerting his influence in, and out of the legislature, in caucus and otherwise, whilst Secretary of State, to procure the passage of an act, to provide offices for himself and friends; when we hear, day and night, of our chief magistrate intermeddling, and endeavoring, with all his means of persuasion, to influence legislation; and when we are told that he has proscribed all, or most of those who voted against him—can we, as faithful sentinels on the people's watchtowers, tell them, *"all's well?"* We cannot, we will not; we would be faithless to ourselves and treacherous to them; we will tell them the truth, and are prepared for the consequences.

We will tell them, that the new judges are virtually pledged to support the party in power; that we do believe that they are, in every essential attribute of an enlightened, independent and incorruptible bench, inferior to the old judges; that such a court, organized under such circumstances, will not, we fear, possess, or even deserve to possess, the full and unhesitating confidence of the people; that, to provide for particular men, we believe new and unnecessary offices have been created; and to consummate the object, when the people are almost sinking under embarrassment and distress, the salaries of the new judges of the Court of Appeals have been raised from four thousand five hundred dollars to eight thousand dollars.

All this we have in our places faithfully and honestly endeavored to avert, but our efforts were unavailing. The judges had been fully and constitutionally tried, and acquitted—but that which shields the felons of the country could not protect them—they are not liberated after one trail—they cannot escape. "Power" is converted into "right"—and the constitution is under the feet of a triumphant majority, who, if not checked by the people, may hereafter exercise all power, legislative, executive, and judicial; which, Mr. Jefferson and other patriots of the revolution have denounced as the most intolerable despotism. Against this sort of tyrrany our fathers protested in the Declaration of Independence; against this sort of tyranny they fought, and bled, and conquered; and against it, those of their sons who cherish their principles, will ever PROTEST, whilst they have tongues to speak, or pens to write. And we now declare to this legislature, and to the people, that if this memorable act of a majority be submitted to, or enforced, liberty is in danger, justice is in danger, morality is in danger, religion is in danger, and every thing dear and sacred is in danger. We will have no living constitution, and against bad times and bad men there will be no security. This example will consecrate every encroachment that power can make on the rights of the poor and the humble, the persecuted and the virtuous.

The only privilege now left the minority, is to complain and remonstrate, by appealing to the people. We had thought when the fatal act passed, that we would retire from the hall of legislation, and leave the majority to act without obstacle or embarrassment; but on more mature reflection, we have deemed it most prudent to remain at our post until the last moment of the session, and to close it on our part by an united and candid expression of our unqualified opposition to a measure which, if supported, we believe, strikes the constitution of our country dead, and consigns our most cherished rights to the vortex of party strife and ambition.

Appealing, therefore, to our own consciences, and to the God of the universe, for the rectitude of our conduct and the purity of our motives, we do now, for ourselves, our constituents and our posterity, in the name of the constitution and of justice, enter on the Journal this, our solemn protest against the late memorable act of the majority, as most alarming and unconstitutional.

Members of the House of Representatives.

G. Robertson,	Charles M. Thruston,
John Green,	C. B. Shepherd,
Robert Taylor,	Samuel Brents,
Archibald Woods,	Robert Wickliffe,
Dabney C. Cosby,	Philip Triplett,
Daniel Breck,	John Sterrett,
R. B. New,	J. M. McConnell,
Bourne Gogging,	James Farmer,
James Ford,	G. I. Brown,
David Gibson,	William T. Willis,
C. M. Cunningham,	Clayton Miller,
Jas. Simpson,	Uriah Gresham,
James True, jr.,	Thomas Kennedy,
W. C. Payne,	W. Gordon,
B. Hardin,	John Bates,
H. C. Payne,	Silas Evans,
L. Williams,	H. Crittenden,
S. Turner,	G. Morris.

Members of the Senate.

John L. Hickman,	John Faulkner,
Thos. C. Howard,	Robert Stephens,
Chilton Allan,	Granville Bowman,
James Davidson,	Martin H. Wickliffe,
Martin Beatty,	James Ward,
Sam. W. White,	M. Flournoy.

PRELECTION.

Although the people, by a large majority, decided against the re-organizing act, in August, 1825—yet, as only one-third of the Senators were elected in that year, the Senate stood equally divided between the antagonist parties, with the advantage, to the Judge-breakers, of having on their side the casting vote of *Lieutenant Governor*, Robert B. McAfee.

On the 14th of November, 1825, which was the 8th day of the session, a bill to repeal the re-organizing act passed the House of Representatives by the following vote—

Yeas—Mr. Speaker, (Robertson) James Allen, Bainbridge, Blackburn, Breck, Breckinridge, Brown, Bruce, Bruton, Cowan, Cox, Crittenden, Cunningham, Davis, Duke, Dunlap, Dyer, Evans, Farmer, Ford, Gaines, Gibson, Gordon, Green, Grundy, Hansford, Hanson, Hardin, Harvey, Hutchison, James, Logan, Marshall, Mayes, McConnell, Morris, New, Owings, Owsley, Reed, Skyles, Slaughter, Sterrett, Street, Sichard Taylor, Robert Taylor, Z. Taylor, Timberlake, Thomasson, True, Turner, Underwood, Waddell, Walker, Wilson, A. White, Woodson and Yantis—58.

Nays—Messrs. J. J. Allin, Barbee, Carter, Clay, Chenowith, Coleman, Coombs, Daniel, Elliston, Fletcher, Fulton, Hall, Haskin, Lackey, Lee, Martin, Maupin, M'Clanahan, Miller, M'Millan, Mullens, Napier, Nuttall, Perrin, Porter, Prince, Samuel, Spalding, Stephens, Tarleton, Thomas, Wade, Ward, E. Watkins, Wilcoxen, Wingate, and S. White —37.

But it was rejected in the Senate by an equal vote, the Lieutenant Governor voting against it. On an amendment striking out the whole of the original bill, and substituting an amendment reducing the number of judges of the new court prospectively to three, and their salary to $1,200 the vote of the Senate was as follows:

Yeas—Messrs. C. A. Allen, J. Allen, Barret, Cockrill, Daniel, Daviess, Dudley, Ewing, Forsyth, Hughes, Mayo, P. N. O'Bannon, W. B. O'Bannon, Shelby, Smith, T. Ward, Wood, Worthington, and Yancy—19.

Nays—C. Allan, Beatty, Carneal, Crutcher, Davidson, Denny, Faulkner, Garrard, Given, Hickman, Howard, Locket, Muldrow, Pope, Stephens, J. Ward, White, M. H. Wickliffe, and R. Wickliffe—19.

The House of Representatives having disagreed, of course, to that amendment, the Senate at once adhered, and thus the bill fell. As both parties had deferred to the people at the polls, as the last and only umpire, this unexpected contumacy of the Senate produced unexampled agitation.

The Judges of the new court—Barry, Haggen, Trimble, and Davidge, having ceased to do business, and their clerk, F. P. Blair, who had, under their order, forcibly removed the records from the office of A. Sneed, the clerk of the old court, and having closed his office, and refused either to

surrender the records, or permit any litigant or counsel to have access to them, the House of Representatives, by a vote of 58 to 34, adopted a resolution declaring that it was the duty of the old court, through its sergeant, Richard Taylor, to regain the possession of its records. To prevent the restoration, Blair's office was guarded by men and guns, and notice was given that, if the sergeant should attempt to retake the records, he would be fired on. He, nevertheless, having been ordered to take them, had started to execute the order, but was induced to forbear by the intercession of *Mr. Robertson*, who met him on his way to Blair's office. Had he gone on, he would probably have sealed, with his blood, his fearless devotion to duty, and the consequence would have been much bloodshed at the capitol, and, not improbably, civil war throughout the State, then apparently trembling over the crater of a heaving volcano.

In that critical dilemma, the House of Representatives made the offer of another olive branch, by resolving that the Governor, Lieutenant Governor, and the judges of the old and the new court ought all to resign, so as to relieve the country from the anarchy and perils likely to follow the astounding recurancy of the Senate and the new court. But this also failed by the same party vote in the Senate, which body, at the instance of John Pope, and some others, hitherto of the old court party, passed a bill for "*Compromise*," by the appointment of six Appellate Judges, none of whom were to be entitled to any salary unless commissioned by the Governor. The mass of the old court party looked on this as a surrender —at the moment of dawning liberty—of the *principle* they had so long and in a manner so self-sacrificing, been struggling to maintain and establish; and, therefore they determined not to tamper with the bill, but to reject it as soon as offered in the House of Representatives. Accordingly, as soon as reported—as it was by Mr. Pope himself, in an unusual manner, by an introductory speech—it was repudiated by the following vote on the question: "Shall the bill be read a second time?"—

Yeas—Messrs. Barbee, Brown, Chenowith, Coombs, Crittenden, Fletcher, Fulton, Hall, Harvey, Haskin, Lackey, Lee, Logan, Martin, Maupin, Mayes, McClanahan, M'Cormas, Miller, M'Millan, Napier, Nuttall, Perrin, Porter, Prince, Samuel, Sanders, Spalding, Thomas, Thomasson, Wade, Ward, E. Watkins, Wingate, and S. White—36.

Nays—Mr. Speaker, (Robertson) Messrs. James Allen, Bainbridge, Blackburn, Breck, Breckinridge, Bruce, Bruton, Cosby, Cowan, Cox, Cunningham, Davis, Duke, Dunlap, Dyer, Elliston, Evans, Farmer, Ford, Gaines, Green, Grundy, Hansford, Hanson, Hardin, Hutchison, James, Marshall, M'Connell, Morris, New, Owings, Owsley, Payne, Reed, Skyles, Slaughter, Sterrett, Street, Robert Taylor, Z. Taylor, Timberlake, Turner, Underwood, Waddle, Walker, B. E. Watkins, Wilson, A. White, Woodson and Yantis—52.

No other measure of peace then remained but to appeal once more to the people, which the majority in the House of Representatives did in the following manifesto, written at their request by Mr. Robertson.

This last appeal was well sustained, and resulted in the election of old court majorities in both houses of the legislature, which, early in the session of 1826, repealed the re-organizing act, removed the obstructions thrown in the way of the old court, and restored peace and confidence to a long distracted community.

During the canvass of that year, each party had its newspaper or-

gan, established for the occasion; that of the new court was called "*the Patriot*," and that of the old court "*the Spirit of '76*." Among the arguments published in the latter were those contained in nine numbers, signed "*Plebean*," and which succeed the manifesto. These numbers were dedicated to the Governor, merely as the official organ and head of the new court party. The address was, through him, *to his party*, of which the writer considered him as the titular impersonation. No personal disrespect to him was intended. He and the author had been together in Congress on terms of cordial friendship. But such was the temper of the times, that every thing offered to the public, on that eventful occasion, must, to have much effect, be presented in a peculiar tone, corresponding with the hostile state of the conflicting parties, and the morbid condition of popular feeling. "*Plebean*," though high-toned and denunciatory, was not more so than the mass of the publications of that day, and not so much so as many on both sides. It was then understood, as intended, to be addressed to the new court party, and not to the Governor individually or personally.

TO THE FREEMEN OF KENTUCKY.

Fellow Citizens: After a session of six weeks and three days, the most eventful in the annals of our state, about to return to our homes, and surrender the trust which has been confided to us, it becomes our painful duty, as faithful sentinels, to announce to you that "all is *not* well." As the immediate representatives of your interests, and organs of your will, constituting, as we do, a large majority of the House of Representatives, it is our melancholy province to tell you, that those interests have been disregarded, and that will overruled by the influence of your Executive, and pertinacity of a majority of your Senate. Your prayers for our success in the great business of pacification in which we have been toiling, have not prevailed. Untoward fortune, whom we could not control, and who was deaf to your voice, has disappointed our anxious and reasonable expectations. Such was her magic spell, that with all her united exertions, we have been unable to re-invigorate our debilitated constitution, and restore our land to peace. The circumstances under which we assembled here were auspicious, and we were exilerated with the dawnings of a bright and happy era for Kentucky. But this was the vision of an ardent patriotism—the illusion of an honest confidence. The wild spirit of anarchy and of domination, which has so long presided over our destinies, still lingers in our councils, and controls their issue. The political horizon, which we were prepared to behold, ere now, clear and serene, is yet lowering and portentous—that cheering sun, whose light we were ready to hail, as the harbinger of blessings for our devoted land, is still in eclipse. The torch of discord, still unextinguished, threatens more extensive desolation. Your judiciary, which should be the shield of the weak, and the panoply of all, is still at the foot of its victors, disabled by the blows inflicted by a reckless majority, whose forbearance your remonstrances could not command—whose uplifted arm your constitution could not for one moment suspend. The "Pretenders" to office in the Court of Appeals, as if driven to desperation by some unaccountable influence of chivalrous patriotism, or excessive love of money and power, still hang like an incubus on the bosom of your constitution, stifling her voice, paralizing her judicial arm, and stagnating her most useful principles. The "new court," the spurious offspring of a caucus, still clings, as with the grasp of death, to the judicial column of your political fabric, resolved in its agony to tear it down, and either perish in its crush, or, surviving its fall, mount the ruins, and stand a monument of its unhallowed triumph, and the prop and idol of its co-operating party. And recent events indicate that this fungus excrescence of legislation is to be nourished not only by your treasury, which it has already robbed of about $6,000—but, if necessary, by the blood of those infidel citizens, who shall be so impudent as to deny its legitimacy, or so daring as to refuse homage to its usurped authority! This mock tribunal, defying public opinion, to which it boastingly appealed, and which has denounced it as des-

titute of all color of authority, manifests a fixed determination to decide your causes without your consent, or prevent a decision of most of them, by the constitutional court. Your records have been forcibly withheld from your legal clerk, and for weeks were carried off and secreted, so that those interested in them were denied the privilege of having access to, or inspecting them. Your Executive declares war against all who shall attempt to enforce your will and aid your court in doing your business; and as you will have seen, by a report of a committee of the House of Representatives, the Governor's son, and other kindred spirits, with the presumed connivance of his Excellency, have made military preparations to carry this horrible threat into fatal execution. After failing in an appeal to your reason, an appeal is now made to your fears—and if you dare to defend your opinion, you are menaced wiih brutal force—the ultimate reason of despots; and are notified that your decision shall be reversed by the royal argument of the bayonet. If you consider your constitution as worth preserving—if you value it as you should do, supremely—if you look to it as the palladium of your liberty—if you intend to govern yourselves and carry on your government, by moral and not by physical power—look around you and behold your impending danger—and by a prompt display of your energies, *right yourselves.* Do not be lulled by a delusive security. The danger is imminent and near your doors. Although it has not entered your dwellings—although you may not have felt its grasp or seen its footsteps; a gigantic power is stalking abroad, which, if not promptly and resolutely met, will soon undermine the foundations of your constitution, and impose on you a yoke, which, however gilded or light, will be to you and your children the yoke of moral and political bondage.

It is not to reiterate, with all its aggravations, the story of your wrongs and your sufferings, that we now appeal to you, but only to vindicate ourselves from the awful responsibility of this solemn crisis, and to call on you as the only supreme power in the commonwealth, to assert your rights, and by a proper exertion of your authority, to avert the calamities with which it threatens to visit and desolate our country. What you have already endured under the administration of politicians, who were self-styled republicans, and exclusive friends of the people, is seen by all and felt by all. You have observed the progress of the controversy, which has so long divided and paralized our once happy and distinguished state, and have but too deeply felt its demoralizing and ruinous effects—you have seen the two contending parties, the one struggling to preserve, the other to destroy our constitution, exasperated to an extremity, that to many was alarming, to all humiliating. You have witnessed the distraction of neighborhoods and of families—the destruction of confidence—the depreciation of the paper, and consequent occasional banishment of the metalic medium—the inconstancy, injustice and unconstitutionality of party legislation; you have seen with regret, that this unnatural and inglorious strife had so engrossed the public attention and enlisted the popular feeling, that the great interests of internal improvement and education have been totally neglected—and that the regulation of our currency and our revenue, and the amelioration of our civil and criminal laws have scarcely been attempted; you have seen men struggling for power and office, regardless of the means of attaining them—sanctifying all their claims by a seeming devotion to the liberty of the people, and the supremacy of their will, and verifying, by their conduct, the jesuitical maxim, that the end justified the means; you have seen them endeavoring to degrade your most venerable and long tried servants, only to supplant them and fill their places. You have heard them denounce your patriots as tories, your old soldiers as traitors. You have beheld them carrying on a fanatical crusade against your appellate judges, because they were pure, firm, and enlightened jurists—because they felt compelled by the obligations of their oaths, and the clearest convictions of their official duty, to defend the magna charta of your rights, and enforce private contracts, according to the law of the contracts; for deciding that if A should lend B $1,000 in gold or silver, on faith of a law which provided that all contracts for specie might be enforced in three months, B could not afterwards constitutionally withhold the payment for two years, without the consent of A—or discharge the liability in any thing of less value than $1,000 in specie—a decision which is sustained by the common sense and common justice of the whole Union—a decision which is enjoined by your constitution, and one which is fortified by the concurrent opinions of every state in the United States, where the question has occurred. You have heard the venerable judges of your court of appeals vilified and traduced—charged with designs on your liberties—called Kings—tyrants, triumvirs—arraigned for imputed hostility to the occupant—when their accusers knew well that they had ever been the occupants' most steadfast friends, and had sustained your occupant laws by about fifty different decisions, many of which have been rendered since Green and Biddle—and when some of their accusers were deeply interested in prostrating the occupant system, and as a fit means found it necessary first to bear down by awe, or expel by threats, those honest men who, in defiance of all consequences, were determined to defend this only rampart, which defended our homes and firesides. Humbly pursuing the noiseless tenor of their way, you have seen these persecuted judges arraigned, tried, and acquitted, by a political party; and then, strange to say, you saw the same dominant majority, in your last legislature, finding that the judges would not be subservient to their party interests, and that they would not be driven from the bench by abuse, and could not be removed by impeachment or address, (the only modes authorized by you in your constitution, and which they, by their previous

conduct had admitted to be the only modes) pass an act to abolish the "court of appeals," ordained and required always to exist by your written will in convention; the avowed object of which sacrilegious act was to remove the judges, who are entitled to hold their offices as long as the court of appeals shall exist—and the inevitable and ultimate effect of which, if sanctioned by you, would be to pull down one of the three great pillars which uphold your political temple—and subvert the very foundations on which it is reared, and on which all your security, and all your hopes and happiness are built. As a necessary consequence of this mad career, we shall have to deplore that Kentucky is not now, either politically or morally, what she once was—that with all her endowments—with all her pre-eminent resources, physical and intellectual, she has been retrograding, whilst her neighbors, with inferior natural blessings, have been progressing rapidly in their march to wealth and power. That she, emphatically "the land of the free and the home of the brave," has exhibited scenes of violence degrading to her honor—whilst *they* have been peaceful, prosperous, and happy. All this we foresaw, and have endeavored to avert, by warning you of your danger—by urging a reverence for your constitution, by recommending industry, economy, morality, inviolability of contracts, stability and justice in legislation; we believed that these were the only sources of your prosperity; but other men and other principles prevailed, and obtained a transient triumph over us and our principles: over the constitution and over you; which triumph, if not arrested, would have tended to the dissolution of society and the unhingement of all constitutional government. By the alarming act of last session, attempting to abolish your court of appeals, you were roused to a sense of your danger, and of the objects of those who so long amused you with professions of their love, and with expedients for your relief. With all your experience of the past and forebodings of the future, the great subjects of controversy, brought at last to a decisive issue, were by all parties referred to your final arbitrament. The peculiar character of the question rendered its decision ineffectual, by any other tribunal than that of the great body of the people, which must of necessity, from the structure of our government, be the ultimate arbiter of all fundamental political questions, particularly such as involve the powers and existence of two co-ordinate departments, and perhaps the active existence of the constitution. You have deliberately and solemnly given your decision at the polls, on the constitution which you yourselves made. That decision, whatever it might be, the constitutional party felt bound and had resolved to submit to; and we had a right to expect that all who regarded your interests, or their own personal good, would cheerfully acquiesce and sacrifice all pride, all selfishness, on the altar of concord, and re-unite cordially, as brethren of the same language, and religion, and country, in endeavors to re-establish sound principles and consolidate our common happiness.

We assembled here as your messengers of peace, to announce your will, tender the Olive Branch, and proclaim to those (if there were any such) who loved their own power more than your welfare, that there should be an amnesty for the past, and security for the future. We felt not as victors; we desired no triumph; cherishing the most fraternal feelings, we were prepared to make an offering on our country's altar, of all our resentments for our multiplied personal injuries, and to remember the scenes of the past only to profit by their afflictive lessons. Inspired with these sentiments, and backed by your will, to which the opposing party had always appealed as the supreme law, we had a right to expect that the storm of party would cease longer to rage, and that ere now our tempest beaten bark, having outlived the whirlwind, would have swung to her anchor and reposed on the bosom of the great deep, the people's enlightened and rectified will.

But our expectations have been disappointed and your will frustrated. At the opening of our session, our ears, instead of being saluted with the mild and mellifluous notes of peace, were shocked with the shrill clanguor of war, blown from the Executive trump; instead of hearing recommendations of order and submission to your decrees, we are left only to infer from the language and temper of his Excellency, in his late annual message, that he defied public opinion, the great lever of the republic, and that, as the guardian of the people's rights, he was resolved to resist by force the people's will, and maintain by arms his triumph over the people's constitution. We learn from this document, that, although you had decided against the re-organizing act of last session, still he determined, by the employment of all the means subservient to his station, to prevent your judges from doing your business, and to enforce this unconstitutional, void, and pestiferous act, until "the Senate" (not the constitution) should declare it void by *repealing* it; and he was even so bold as to intimate, in terms which cannot be misunderstood, that if the act should be repealed, he should still not suffer the judges of the court of appeals to adjudicate, unless they would surrender their commissions and *accept new ones from him!* Who was prepared for such a message? In what age and country were a free and enlighted people addressed in such a manner, from such a source, and on such an occasion? We believe it is not transcended in the annals of Henry the VIII, Charles the I, or James the II. What! the Governor of the people, to trample on the constitution of the people—menace by physical force, to resist the wishes of the people, and to denounce a war against the people!! Unawed by this war speech, we lost no time in making our decision, and asserting, in a becoming mannnr, your rights. On the 3rd day of the session a resolution passed the House of Representatives by a vote of 60 to 36, declaring that it was the

opinion of that house and a large majority of you, that so much of the obnoxious act of last session, as attempted to abolish the court of appeals and create another court, was unconstitutional and totally void—and that judges Boyle, Owsley, and Mills, are the only judges of the court of appeals, and should be so respected by the people and all their public functionaries. This was our response for you, and in your name, to the proclamation of the commander in chief. Here we might have stopped. If the "midnight act" be unconstitutional, it is not law—it is a nonentity, and it is not necessary to repeal it. The constitution is the supreme law, and all legislative acts contrary thereto are void. You have deliberately decided by more than sixty hundredths, that it is in conflict with the constitution; and to what power on earth shall an appeal be taken from your judgment? To the Governor or the Lieutenant Governor? To Senators, who disregard your most formal, written instructions? God forbid. But it is for you to determine whether you belong to them, or they to you: whether your government was instituted for your happiness, or their exclusive enjoyment. Supposing that it might be more satisfactory to many to repeal the reorgauizing act, than rely on a simple declaration of its unconstitutionality, the adoption of the resolution was immediately succeeded by a repealing bill, which passed the House of Representatives by a large majority, but in the Senate, by the casting vote of your Lieutenant Governor, was amended by substituting another re-organizing principle, and liable to all the same objections! and when the House of Representatives disagreed to this substitute, (as they were bound to do) the Senate, in the first instance, adhered, and thereby closed the door on all conciliation and conference on that bill, leaving the other house no other alternative than to adhere also, which they promptly did, and so the bill fell. The Senate, with an apparent reverence for your opinion, and submission to your instructions, professed a willingness by their conduct to repeal the act in obedience to your command; but, when brought to the test, would do so only on the condition that we, faithless to you, and treacherous to our oaths, would offer up our constitution as a propitiatory sacrifice, and co-operate with them in the unholy scheme of eluding your instruction, and enacting the very identical principle which you have proscribed as unconstitutional, and which you have elected us to extirpate.

The minority asserted (and it has been frequently re-echoed) that you have not decided at the polls, that any of this memorable act is repugnant to the constitution. They charge that you have been deceived and led away by improper influences. We know, as well as you do, that this charge is unjust, and we believe that such a subterfuge will be unavailing, and treated by you as it deserves. Are you not capable of free government? Did you not investigate the subject referred? Were not the elections tested by it? Can such a destitution of principle or of common sagacity be justly attributable to you, as to excuse the apology which is offered, by a portion of your public servants, for refusing to conform to your will, so emphatically expressed? If it be excusable to disobey your instructions now, on the ground that you did not understand what you did, when and how will it be ascertained that you are right and have not been deluded? Never, except when your opinions shall be in accordance with the interests of those who choose to doubt your capacity always to decide irrevocably on subjects fundamentally important to your welfare. You have heard much about the right of instruction, from the party who now virtually deny it. What do *"instruction men"* now tell you? Nothing less than this, that when *they* are not suffered to instruct *you* how to instruct them, they will not obey your instructions, because you are always wrong when you do not agree with them. This, when undisguised and nakedly exposed as it now is, by their late conduct, can be considered nothing less, practically, than an attempt to subvert the elementary principle of all popular governments.

We hold these principles to be fundamental, and thsse truths to be self-evident—that free government, being instituted by the people, and for their benefit, they are the final judges of all *political* questions, the only umpires who can adjust irreversably, collisions of the departments, which endanger the equilibrium of the constitution; that they alone can decide who are the constitutional incumbents of their supreme court, and their decision on such a question, whenever and however expressed, from political necessity, should have uncontrolable effect, and cannot be questioned or resisted by their functionaries or public agents, without disturbing the harmony and frustrating the benificent and republican ends of our government; that every attempt to elude or control the people's will on such ultimato question, by those to whom they have confided any portion of their power, is usurpation, and deserves their severest and most unqualified reprehension: That the court of appeals is ordained by the constitution, and can never cease for one moment to exist, as long as that charter possesses one principle of vitality; that the judges of that court are entitled to hold their offices during the existence of the court, or in other words the constitution, unless removed by impeachment or address, with the votes of two-thirds of both branches of the legislature; and, as necessary corollaries, that the court of appeals cannot he abolished by act of assembly, nor the judges thereof removed by less than two-thirds of the legislature; that the re-organizing act of last session did not abolish the court of appeals nor suspend its existence; that it is the indispensable and indisputable duty of the judiciary to pronounce acts of the legislature to be void, when the judges have a clear conviction that they are unconstitutional, and to enforce the constitution as the paramount, the people's law, against the opposing acts of their servants; that an act of the legislature contrary to the

constitution is not a LAW, and the citizen who gives it effect is a trespasser, and the Executive who enforces it by the sword or the bayonet is guilty of HIGH TREASON! that an unconstitutional act is invalid before as after its repeal, and that after the people have decided it to be unconstitutional, all who aid in endeavors to execute it should be considered public enemies of the people, and their constitution; that it is not necessary to repeal an unconstitutional enactment, but only desirable in order to take, from desperadoes and usurpers, all color of pretext for their wanton licentiousness under it; that Messrs. Barry, Haggin, Trimble and Davidge, have no judicial offices to resign—and that, if they attempt to adjudicate, since the people have decided that they are pretenders without right, they will be guilty of usurpation, and if they attempt to execute, by force, any of their assumed powers, they will be guilty of levying war against this commonwealth; that the inviolability of our constitution is essential to the life, liberty, and property of every citizen—and that if you sanction the invasion of any of its principles, you thereby endanger the whole structure; that each of the three departments is created by the constitution, and whenever either becomes the creature of another, the theory of the constitution is subverted, and the government revolutionized; that the essence of a constitution consists in this only, that it is obligatory upon all the people and all their agents—and that every act, by whomsoever done, contrary thereto, is void and can have no effect; that no one feature of the constitution can be changed, except by the whole people, in *convention*, and that the constitutional independence of each department on either of the others, is essential to the efficiency of the constitution, and indispensable to the liberty and security of the citizen. The foregoing is the outline of our doctrines on the great subject before us—it is the summary of our creed. We believe it will stand the test of time and the scrutiny of ages. It has been stamped with the approbation of the most enlightened statesmen; and for the cause of universal liberty, we pray that it may become universal. It will be defended by the real patriot to the last extremity, even to the stake; it contains principles which are the shield of the poor, the strength of the weak and weakness of the strong—principles which are the bulwarks of constitutional liberty and the best hopes of mankind; they constitute the text book of the real republican, and whenever they shall cease to exact your homage, you will cease to worship at the shrine of the true Goddess of Liberty, and the altar and the Goddess will sink together at the feet of the monster of anarchy and uproar. The most sacred of these principles are now arraigned by some as aristocratic, and are rudely and insidiously assailed. We call on you to reverence and uphold them. Defend your constitution, and it will protect you in every trial; to re-establish it on broad and permanent foundations is our first and only wish. For this alone we have struggled—for this we came here; and because we will not give it up to the winds which howl around it, they must still rave on, and you are not allowed to have PEACE.

On the first occasion, when the most vital of those principles have been brought to a practical and decisive test, some of those very men, who have declaimed loudest in their favor, and heretofore almost Deified them, shrink back from them, as the instruments of their destruction, and now, being fairly weighed in the balance, are found wanting. Such are, in our opinion, those of your servants who have been solemnly instructed by their constituents, that the "new court" is unconstitutional, and who, by defying those instructions, endanger the peace and safety of the state. They say by their conduct, that *they* are the organs of your will, and as you did not foresee the passage of the obnoxious act when you elected them, and instruct them to vote against it, they will not hear you until they call on you to elect them again! That an unconstitutional act, although void, must be enforced on the people, perhaps to their ruin, until, after successive elections, they have passed on a majority of the Senators, who aided in enacting it, and commanded a repeal of that, which in convention they have declared shall never have existence. Here you see a bold stroke at the very root of your liberty. They say farther, that although you have decided that the "new judges" are no judges, and although the message admits that they are odious, yet they shall go on "through scenes yet untried," and shall not forbear from further usurpations, unless the "old judges," alarmed by their threats or seduced by their offers, resign and "give up the ship." They even say that you have not decided that these worthy men are judges. Have you not decided that they have not been "legislated" out of office? Who are your judges, if they are not? If the act which attempted to remove them, be void, it follows as inevitably as the effect from the cause, that they are as much in office since, as before the date of that act. It was not men, but principles for which you contended; when you wish to remove judges from office, you will do it according to the constitution, by two-thirds; when you come to determine whether men in office, claiming to be judges, are in office, a majority alone must decide. It is not a judicial, but a great political question, which no other power on earth can settle; and the very hinge on which the whole government swings, is broken, if the decision of a majority at the polls be not final and controlling. But we have heard that, notwithstanding its unconstitutionality, the act of last session is law, and must be considered so until one or two Senators shall find it their interest, or feel it their duty to consent to its repeal. This is neither the doctrine of reason, nor the sentiment of republicanism. When an inexpedient constitutional act passes, it becomes the law of the land, and remains such until the whole legislative authority shall repeal it. But an unconstitutional act is never the law of the land. The "constitution is the supreme law of the land," and all acts "contrary thereto are

VOID." We have been admonished on this subject, to beware of the fate of the federal party in 1801. Let those who gave the admonition take it home to themselves—they might profit by it, before it be eternally too late. Let them recollect, that the downfall of the federal administration was provoked by the persevering attempts of the then dominant party, to enforce the alien and sedition acts, in defiance of the people's will, after they had been denounced by public sentiment as unconstitutional. The Governor and his friends should take care, lest by the same career, they are brought to the same end. And they should never forget that the strongest charge of the republican party, against Judge Chase, of the Supreme Court, was that he refused to declare the alien and sedition acts unconstitutional.

To decoy us from our allegiance to the constitution, many artful stratagems have been employed by the "new court" party. They have appealed to our fears and our hopes, to enlist us under their banner, and help to sanctify, in effect, their usurpation. It was proposed first by his Excellency, and then often reiterated in each branch of our assembly, that those who are the judges of the court of appeals by the constitution, and those who claim to be its judges by the void act of the legislature, should all resign; and we were assured that, if we would co-operate in the caucus business of making judges, and caucus the old judges out of office, the Governor would nominate four "new judges," two from each party. This we promptly rejected. We considered it inadmissible, for many reasons, which it is not necessary now to detail, but among which, we will repeat to you the following:

By agreeing, we should have recognized the validity of the new mode of breaking judges—the very thing which you sent us to explode. The four judges proposed would have been judges of the "new court," when you have said that there shall be no such court; they would have been judges under the late act of assembly, and not judges under the constitution. We had no power to make judges—the constitution devolves that duty on the Governor and Senate—the example would have been deleterious and unconstitutional in its tendencies; we had no right to control the will of the judges. Their resignation (to be a resignation) must be voluntary, not compulsory; we would not abandon them, because they had not obandoned the constitution—because they are virtuous, able, honest men—the friends of justice, morality, and of law. That to recognize a court, by forcing the judges to resign, is liable to all the objections urged against the new mode of last winter—that the judges could not, consistently with their own honor, or their duty to the great principle, for which they have so long stood on the watchtower, now desert their posts—that, before they should resign, justice should be done to their abused characters, and their department should be re-established firmly on its constitutional foundation—that, if they resign now, those who have so long persecuted them, and assailed their department, would thereby achieve the object for which they have employed so many unjust and unconstitutional means, and gain a triumph, when they are signally defeated, and their conduct condemned—that the unconstitutionality of the re-organizing act must be settled, and that any compromise would be inadmissible, which should tacitly recognize its validity—that a Governor, who is a devoted partizan, should not be trusted with the power of filling, *at this time*, offices so important to the welfare of the country; but if a change be desirable, the people alone should effect it, by a re-election of the appointing power, so that the appointments may be wise and satisfacto- to them, and so that no principle, moral or constitutional, may be violated; that, contending for principles, not men, those principles must be established in such a manner that the recurrence of another such attack upon them, as that which has long afflicted our country, will be discountenanced, before we could treat for compromise; that we could not compromise our constitution or oaths; that no lure of office or threat of force should ever tempt or alarm us to become recreant from the cause in which we have all so much and so long suffered—and, trampling down the constitution at the eve of its triumph, divide the spoils of its subjugation. If we had thus "compromised," then indeed we might be called ambitious and faithless. The proposition was moreover most unequal—there was no reciprocity; we were called on to give up every thing, and were offered nothing in exchange; the "new judges" have nothing to resign; and should we have been invited to take on ourselves the responsibility of purchasing, at so high a price, their submission to your will? Their party had no right to ask of us any sacrifice; all that was necessary for peace, was that they should acquiesce in your decision, on their own appeal. By repealing the act and submitting to you, they would have surrendered nothing but obstinacy. There would have been no sacrifice of principle. But if we had agreed to their proposition, we should have given up all that we had contended for, and all that you had decided. If they did not intend to submit to your award, why make the appeal? And when will they submit? Never. Then from our consciences and our doors be all the consequences of their resistance.

Their other propositions of compromise were, with only slight variations of form, of the same cast. and liable to all the same objections. That which was pressed most, was that the Judges should resign, and the bench in future be filled with six "new judges;" and would you believe it—a part of the proposal was that the old judges should be three of the six; Boyle, Chief Justice! Yes, fellow-citizens, it is true it was proposed to us, if we would only give up the question, compromise the constitution, and induce the judges, who have grown grey in your service, to reign at the bidding of the Governor—that those three old men, whom they have denominated

"Kings," might re-ascend the throne, and by his Excellency be crowned.

This is susceptible of no commentary; it speaks volumes which have not until now been unsealed. You see who are hunters for office, and lovers of the people. Sanction these things, and your constitution is not worth preserving; its title may stand, but its living spirit will be extinguished, and the right of suffrage, freedom of conscience and security of life, would all tremble on the interested and capricious will of a favored few. To prevent this catastrophe, the minority appealed to you last winter; to avert it, you pressed to the polls last August; and to warn you of its approach, we now address you in tones firm, and in language bold as becomes the momentons occasion.

Desirous to terminate this unnatural and unprofitable warfare, we have done every thing which our duty to principle and to you would allow. We reiterated the proposition which was made by the minority last winter, to save the country from the mischiefs of the *"midnight act."* It was then spurned; it is received no better now. Nothing will satisfy the other party short of a virtual acknowledgment of their right to remove the judges of the appellate court by a legislative act; and the admission of the judges, that they are indebted to their bounty for their offices. We then proposed, as our ultimatum, that the Representatives, Senators, Judges, Lieutenant Governor and Governor, should all resign, as the only mode of enabling you to settle all controversy without obstruction or delay. The resolution offered for this purpose passed the House of Representatives by a vote of 75 to 16. But the Governor, Lieutenant Governor, and their party, who profess so much anxiety to quiet the country; who are themselves the only obstacle, and who boast of so much regard for you and your rights, cannot consent that you shall exercise this salutary and necessary power. They are apprehensive that you will err and become distracted by commotion. Thus you see that the patriots who are so solicitous that the judges should resign, are unwilling to set the good example, although requested by an almost unanimous vote of your immediate representatives. Yet, these men say that they do not love office, that they are for the people and the people's will, while they will neither submit to that will, nor get out of the way, that the people may elect those whom they prefer, and who would do their will. Reflect on this; hear the response of the judges to the Senate's invitation to them to resign, and then doubt longer, hesitate longer, if you can. To dismiss the compromise—by analyzing all the propositions, you will see that the basis of ours was the recognition, that the "old judges" are in office; of theirs, that they are out of office. The precise question you have decided. Is this agony of the body politic never to be "over?" Is there any inherent defect in our social or political organization? Or whence this sad fate? Why does your governor in substance declare and declare again, at the opening and at the close of our session, that he will preserve peace by making war? Your guardians wrong you. It is time to escape from minority and assert the right of manhood. All that is necessary, is that your representatives shall tell you by their acts, not by their speeches.—"Your will and not ours be done." Then and not till then, we shall have peace. Then our state may re-ascend the proud eminence from which she has fallen? Then we shall be once more brethren—Kentuckians; and then the eye of philanthropy may soon see, emerging from the flood of party fury, the verdant summit of that region, which we hope is even yet destined to be the seat of science, reason, justice, liberty and law, inseparable companions.

But if, by acceding to any of the terms of compromise which have been offered to us, we had acknowledged (as we must have done) that your "old judges" are not in office; if, by thus uniting with the hostile party in forcing your judges from the bench, in any mode not permitted by your constitution; if, by aiding in imposing on you all the burthen and confusion of a "new court" of six judges, and also acknowledging, by requiring the old judges to be recommissioned, the constitutionality of the "act" which you have decided to be unconstitutional—thereby sanctifying the means employed so long to degrade your judiciary, and subvert its constitutional independence, and render it subservient to faction, and the plaything of ambition; if, by thus surrendering, at the moment of success, all the sacred principles for which you have been so long contending, for the petty and unworthy purpose of elevating to the honors and the emoluments of appellate judges, three of those who have denied the constitutional creation and inviolability of the Supreme Court, and thus crown them with victory, and consecrate their doctrines; if, by these means alone, we can make peace—there can be NO PEACE. If we had thus compromised your will and your constitution, we might proclaim peace, peace, but there would be no peace. Such a peace would be the peace of death—the death of your constitution—of the hopes which it inspires, and the liberty which it secures. Your government will never be guided by reason, until the head of your judiciary, placed firmly on the eminence raised for it by the constitution, shall be able to hold up JUSTICE to the rich and the poor, and, as if planted on the isthmus between conflicting elements, dispense her impartial awards, unawed by the storms that rage below, and unshaken by the waves that break at its base. To secure this great object has been our only aim—this is our only hope—and for our endeavors for success in such a cause, we have been charged by the organ of the opposing party, with "knavery and hypocrisy." We shall not degrade ourselves or insult your dignity by retort. We wish to be judged by our deeds, and not by our professions; and if our principles, and our characters and conduct cannot repel such accusations, give them your credence. One of

us, now 80 years old, fought in the revolution for his country's independence, and assisted in convention to establish the two constitutions of Kentucky, to secure that independence. Is not this some little pledge of his sincerity, and of the fidelity of those who are associated with him in endeavoring to save the constitution?

When did we ever attempt to violate the charter of your rights? When did we ever persecute distinguished and faithful officers, to supplant them in office? When did we organize plans for turning out of office your circuit court judges, and clerks, &c., to fill their places with our friends, to whom we had promised them? Let those whose consciences are not reproached with these things, charge us with ambition. We are ambitious, but our only ambition is to exalt the character of our state, and give quiet and security to her people; to inculcate habitual reverence for the principles of rational liberty; to give security to right, stability to justice, confidence to virtue; and as we hope to be immortal, the highest aim of our ambition, in relation to ourselves, is to deserve well of our country, to obtain the good opinion of the good and the wise, and ensure the approbation of our own consciences. Whatever may be the issue of this controversy, we shall enjoy the consolation of having, throughout, done our duty faithfully and honestly; and whatever others may be prepared to do, as for ourselves, we will defend the constitution, and cling to it as the plank which, in the wreck of every thing else, will save us and ours, in WAR as well as in PEACE.

But this constitution is yours; you made it; it is in your keeping. Do with it as you deem best for your welfare. But recollect, that it is the best guardian of that liberty which is your richest inheritance, and which it is your duty to transmit unimpaired, to those who shall come after you. Your judges, although they have received no compensation during this year, and expect to receive none during the next, instructed by your votes, and by their own sense of duty, will continue, without longer suspension, to do your business, unless overcome by the governor's army. Protect them by your countenance, and all is safe.

You can LOOK DOWN all opposition. Your voice can stay the paricidal arm, and redeem your constitution from the fiery ordeal, unhurt. Do your duty; stand to your integrity; do not be drawn from your ground; the "new court" will soon expire for want of NOURISHMENT, and your constitution will resume its sway, and good old times will soon return. But suffer yourselves to be alarmed or wearied into inaction; allow your constitution to be bartered away by your public agents—compromise the sacred principles which you have already consecrated, or leave them unsettled—and then you will have no safety, no peace, no constitution. On you hangs the fate of that constitution. Having done all that we could do, we submit the issue to GOD and the PEOPLE.

G. Robertson,	John M. McConnell,
James Allen,	Richard Taylor,
S. H. Woodson,	James R. Skiles,
Robert Taylor,	Alexander Bruce,
John Green,	Samuel M. Brown,
Samuel Hanson,	John B. Duke,
H. C. Payne,	Thomas C. Owings,
S. Turner,	John H. Slaughter,
C. M. Cunningham,	J. W. Bainbridge,
James True, jr.,	W. B. Blackburn,
J. R. Underwood,	R. B. New,
R. J. Breckinridge,	Alexander White,
M. P. Marshall,	Samuel Grundy,
J. W. Waddell,	John Cowan,
John P. Gaines,	B. E. Watkins,
John Harvey, jr.,	W. Gordon,
Z. Taylor,	B. Hardin,
James Ford,	James Farmer,
Alexander Ried,	John Yantis,
A. Dunlap,	Daniel Breck,
T. Hanson,	David Bruton,
J. J. Crittenden,	Jeremiah Cox,
Silas Evans,	Joel Owsley,
James Wilson,	John Sterrett,
G. Street,	David Gibson,
John Logan,	Thomas James,
Wm. Hutcheson, jr.,	Daniel Mayes,
Henry Timberlake,	Cyrus Walker,

TO THE GOVERNOR ELECT OF KENTUCKY.

NUMBER I.

"A subject's faults, a subject may proclaim,
A monarch's errors are forbidden game."

In presuming to address you in the uncourtly style of a freeman, I shall make no apology. I shall not attempt to propitiate your regard by flattering your vanity, nor shall I be deterred from my duty, by any false notions of reverence for your official title. I am a plain man, unacquainted with the adulation of courts. My speech is blunt, my course direct.

In regal governments, the dogma, that *"a king can do no wrong,"* is consecrated as a political axiom, and even as a tenet of religious faith. The inviolability of the king's person, the infallibility of his judgment, and his legal impunity, are the elements of his vast and gothic pile of prerogative. Homage is the exacted tribute of every tongue: none are allowed to censure. He is above the law. Public opinion expends its force on the ministry. The minister is made the scape goat of all the sins of a bad administration. When the subject feels the weight of oppression, he denounces the minister, but his mouth is loyal to his king. The galley slave, whilst he tugs at the oar, suffers no murmur against the crown to escape his lips—complaint would be high treason against majesty; and even whilst his heart is bursting with anguish, his tongue mechanically ejaculates, *"God save the King."*

But you, sir, are not *yet* a king—nor am I, thank God, your subject. You are the responsible servant of a free people; I am one of those people: and although one of the least worthy, yet, as you will find, not the least FREE.—The pre-eminence of your station secures to you no peculiar title to personal impunity. It gives you no claim to infallibility. It can neither make your heart more pure, nor your head more wise. It is a high station, and full of glory when well filled. Its incumbent may be either a blessing or a curse to his country. When he is virtuous and intelligent—firm yet wise—inflexible yet decent—When he is such a man as a Governor ought to be, he is honored—his administration is benificent, and his country flourishes and is happy. But when he prostitutes his patronage to selfish ends—when, by abusing his trust, he relaxes the law, and encourages vice, injustice, and crime—when, instead of being the venerable and august umpire between conflicting parties, and the pure minister of executive justice, he is the dupe and pander of a little, restless faction—he blasts his country and his own fame, and all his power, aided by the flattery of all his expectants and parasites, cannot stifle the voice of truth, nor stop his ears against its dread tidings. It is mighty, and will prevail. You may bribe the venal by promises of preferment; you may instigate the vicious, by the hope of impunity; you may alarm the timid, by the terrors of your authority; but a free and enlightened people will not always submit to oppression.

They are intelligent and will escape from delusion. They are virtuous and will put down vice. Your corrupt presses may groan with the falsehoods and slanders which they publish weekly—through these sewers you and your adherents may continue to throw off your feculence on the pure characters of the old soldiers of the revolution, and the most virtuous men of the age, but the day of retribution will come. It will come speedily and with vengeance. A free press will arraign you before the bar of public opinion, and your doom, which is now sealed, will be there proclaimed.

The law is above you. It can make a governor, as well as the most humble private citizen, feel its lash or its halter. You may talk of war and bloodshed—you may contemn the people's voice, and deride their opinions, but the time is not far distant when you *will hear* and *may* TREMBLE. You are responsible to public opinion. You shall feel at least the censorship of the press.

Do not be alarmed, sir. I am not about to become your biographer. My purpose is more humble. I propose only to preserve a few fragments, as memorials of your worth. I shall not draw the minute traits, and give the characteristic tints to your portrait. I shall only attempt to exhibit the outline. Even this I could not be induced to do, if you stood alone. But in sketching you, I shall necessarily associate with you on the canvass, a group not entirely uninteresting to the people of Kentucky. Your office entitles you to peculiar notice.

You have identified your name with "relief" and "judge breaker." You are the ostensible leader, though, as I know, only the "Automaton" of a desperate faction, whose aim is despotic power, whose means are licentiousness and anarchy, and the tendencies of whose principles are a dissolution of the union, and a destruction of all the ties of morality and justice. In your patronage, this party live, move, and have their being. Your office is prostituted to their ends. You are their organ.—Through you they speak and act. Therefore it is proper to address you, when my object is to expose the ambition and counteract the designs of your party. In your image they will

see their own. I address them through you as their official impersonation.

In a series of letters which I propose to address you, (not in a spirit of dedication,) I shall take an occasional notice of your official conduct: shall endeavor to expose the misrepresentations and fallacies of your late messages; and incidentally touch, as I go along, other topics—such as the origin of the relief system—the character and motives of its projectors—the means employed to sustain it, &c., &c. I shall attempt no method—my only aim is truth—and that I will tell, whatever may be the consequences. I shall deal with you plainly. I shall "naught extenuate, nor aught set down in malice."

My feelings towards you are not those of a private enemy—I cherish such feelings towards no human being. Your conduct has been such, that I consider you a public enemy to the constitution, and I shall treat you as one. I shall not intrude into your private concerns. I have no private grievance to redress—it is my country's wrongs of which I shall complain. I have no personal object. I have no hope—no fears for myself. I desire no office; you have none that I would accept. I am no landholder, stock-jobber, or money dealer. I owe no money: there is very little due to me; I am not rich; I inherited no fortune—my only legacy was a sound constitution, and (as I trust) a good conscience. I never had any agency in making or borrowing from a bank. I was born in Kentucky, and here I wish to die. All I ask of the government is security; all I desire of my fellow men is justice; I am no aristocrat—no patrician; I am the friend of equal rights and equal laws; of industry, fidelity, the inviolabilty of contracts; of moral honesty and constitutional liberty. I am a republican; poor, but not a bankrupt; the friend of the honest poor and of the honest rich; the friend of religion and of law; of order and of PEACE. I am, sir, (pardon the egotism) what you ought to be, an honest man; and what you affect to be, "THE PEOPLE'S FRIEND."

A PLEBIAN.

TO THE GOVERNOR ELECT OF KENTUCKY.—No. II.

"When the virtuous are in authority the people rejoice; when the wicked bear rule the people mourn."

The vices or virtues of an administration are known by its fruits. Whenever distress pervades any country; whenever vice predominates over virtue; whenever licentiousness and crime wanton with impunity; whenever the moral and industrious are discontented with their lot, and alarmed for their security; it is undeniable, that whoever may be at the head of affairs, or whatever the form of government, there is either some inherent defect in the constitution, or some perversion of its principles by mal-administration. The constitution of Kentucky is acknowledged to be a good one. It is inferior to that of no state in the union. The people of Kentucky are intelligent; their soil is prolific, their climate propitious: in all these particulars they are eminently blessed. Yet these people—so much favored by a benificent Heaven—so much signalized by their peculiar natural capacities—are oppressed with debt; their currency depreciated; their constitution disregarded; their laws powerless; their lives and their property insecure; themselves driven to the verge of civil war; industry deprived of its incentives and despoiled of its rewards; fraud sanctified by law; the improvident living on the provident; the idle fattening on the sweat of the laboring; dishonest bankruptcy considered honorable, solvency criminal; refusing to pay debts, a badge of patriotism; attempting to exact payment, called oppression; the punctual, laboring citizen, denominated aristocrat, tory; the lazy and dissolute, who live by fraud or stealth, lauded as patriots, whigs, republicans; travelers murdered for their money, and no punishment inflicted; citizens murdered weekly, and no murderer hung; the fines inflicted on those who support *"the powers that be,"* remitted; the honest alarmed; the upright miserable; the state degraded. This is a faithful, but very imperfect picture of the condition of our country. Who so blind as not to see the causes of all these effects, in an unjust and unconstitutional administration of the government? Principles are abstract, political liberty is speculative; civil liberty is practical. The best form of government, corruptly and foolishly administered, will be oppressive.

The English constitution under Charles II, had attained more theoretic perfection than it ever before possessed; but it was never practically less free or more oppressive. This is attributable alone to the vices of the king and his party. The constitution of Kentucky is theoretically one of the best the world ever saw; and during your reign, no people were ever more cursed with bad laws and obstructions of justice, than we have been.

Is it not because we have in Kentucky a Charles the II, and his "CABAL?" Charles and his party were called "THE COURT PARTY." The patriots who opposed their vices, their luxury and their perversions and denials of justice, were called "THE COUNTRY PARTY." The king's party were called "the court party," because they were courtiers; because they were the adherents of the king. They exercised a corrupt influence over the judges, and controlled the administration of justice. "The country party" were so denominated, because they advocated the independence of the judges and the purity of judicial administration, and were opposed to the king and his court. Your party in Kentucky is "the *court party*"—I, sir, belong to "the *country party.*" Your party advocate the doctrines of "the court party" in England—mine, those of "the country party." Your party are the adherents of the executive, and the enemies of a pure and independent judiciary; mine are the advocates of the people,

their constitution, and their constitutional judiciary. You call yourselves whigs! Your principles are those of the old tories of England. You call us tories. Ours are the true principles of genuine, old-fashioned whigism.

The whigs of England advocated the supremacy of the constitution and laws, and insisted on the judges being so far independent as to be able to uphold the principles of magna charta. The tories were the defenders of the supremacy of the king over the judges, and of the dependence of judges on his will. Such were the whigs and tories, court party and country party in England, and such they are in Kentucky.

You may steal the title of whigs, you may arrogate that of country party, and you may attribute to us what you will, but you cannot disguise the counterfeit; you cannot alter the essence of things. Yours are tory principles, your policy that of the court party of Charles the II, and you ought not to repudiate the name. You and your "cabal" have brought distress and disgrace on your country. The vice is yours and theirs, and not that of the great body of the people, or of their constitution. Had a more wise and upright man been at the helm of our affairs, we should now be blessed with "peace and plenty;" we should be one people, and a cheerful, moral, happy people. But it has been our hard fate to be under *your* sway; and your pestiferous principles have scattered discord and vice over the land. Like the tree of Java, your official breath is pestilence, and moral desolation surrounds you. You have had the power to do infinite good; you have done irreparable mischief. You might have been the father of the people and been blessed; you have been their worst enemy, and may be cursed.

Accident made you Governor; your temper has made you an active and frantic partizan. You have endeavored to intimidate the judiciary, and have persecuted its friends; you have endeavored to prostitute the judgment seat to factious interests; you have treated as enemies those who did not assist to make you Governor. You have appointed to office, men notoriously unfit and incapable. By an abuse and perversion of your pardoning prerogative, you have frustrated the ends of public justice, and encouraged disorder and crime. You have menaced war against the people for not submitting as "*faithful subjects*" to your will. You have denied justice, by obstructing the courts. You have endeavored to alienate the affections of the people from the general government, and disaffect them with the principles of the Union. You have employed your patronage to influence elections. You have made frequent and direct attempts to influence legislation. You have virtually denied the people the right of self-government, unless they do as you do, and think as you think. All this, and much more, have you and your "cabal" done and tried to do. Your object is self-aggrandizement. "RELIEF," "OFFICE," "MONEY," these are your watch-words.

Those who are unwilling to live by honest industry must live on the people's money; they must have offices, or rather pensions.—Those who have acquired splendid fortunes on credit, must live on the property and labor of other men; and the honest man who dares to think that the property should be enjoyed by those to whom it justly belongs, is called a "Shylock," an "aristocrat." Are these things right? Do you expect by such means to exalt yourself, or the state over which you rule? No, sir, no. You know you can do neither. Justice is the attribute of God, and shall be respected? No government ever long flourished, whose policy was not dictated by justice. No community can prosper, which loves not justice. No man can ever enjoy honest fame who does not do justice and revere its precepts. The government whose maxim is justice, is loved by its friends and respected by its foes. The magistrate who is just, like Aristides or Cato, is revered and canonized. But the public functionary who sports with justice, or prostitutes its ministry to the unhallowed purpose of his own or his party's advantage, is the scourge of society and the enemy of mankind.

A man may be celebrated either for his wisdom or his folly, his virtues or his faults. It will be your destiny to be very famous. You will long be remembered. Your name has already acquired very extensive notoriety.

In other states, and even here, your name has been signalized by associations with such execrable principles and unfortunate incidents, as to become synonimous with almost anything that is wrong or reproachful. You cannot be ignorant, sir, of this fact.

This has all grown out of the events of your eventful administration. Your party will be the burthen of many a future legend, the theme of a long-lived and garrulous tradition. In spite of you, it will go down to posterity. You are denied the consolations of oblivion. The official eminence to which you have *crawled*, denies you the refuge of obscurity. Your character is impressed indellibly on the face, and will be imprinted conspicuously on the history of Kentucky. Erostratus burnt the temple of Ephesus, and has emblazoned his name in the light of the conflagration. Nero's is written with the blood of the Romans whom he slaughtered, and is as immortal as the records of his crimes. Yours will be more humble, but not less memorably advertised; it will be inscribed on the broken columns of Kentucky's fame, associated with "relief laws!" 'judge-breakers'" and————.If your official portrait shall never be delineated by the pencil of a Titian, or the chisel of a Phidias—nevertheless, in the wasted strength of your state, in her violated constitution, in the triumphs of vice and injustice which mark your executive career, abundant materials will be furnished to give to the page of history the impress of your likeness. Out of the ruins of your country's peace and your country's honor will rise your fame. Like the Pyramids of Egypt, its base will be broad; its altitude tow-

ering. In a moral desert, without one green spot in the cheerless waste around, without one ray of intellectual light to irradiate the surrounding gloom of midnight darkness, will stand the monument of your administration. It will stand isolated and lonely. Your "WHIGS" may kneel around it and pour out their benisons, by anticipation; for such will be the mausoleum of your "COURT PARTY."

Your administration forms a new era in the affairs of men. It is replete with incidents—but what are they? Where will posterity find the memorials of the wisdom, or benevolence, or patriotism of the Governor and his "court party?" What good law, what public work, what vestige of wise policy will illustrate their memorable reign? Alas! nothing will be visible but the scars which you have inflicted on the constitution.

What a contrast will your administration present to the proud days of our Scotts and Shelbys? Oh, Kentucky! HOW HAST THOU FALLEN!

I shall not speak treason. Truth is poignant; but cut whom it may, it must come. When I see the prostrate condition of my state; when I see her despoiled of her fame and robbed of her peace, by you and your party, I cannot repress the tide of my indignation. No state was ever in a more deplorable or perilous predicament; none ever so much abused by her rulers. I should consider longer silence criminal. No good citizen can now be neutral. Each should act as if his country's fate were suspended on the issue of his single efforts.

We have suffered much and long. We can endure no more. We have given your experiments a fair and patient trial. They are empyrical. They will ruin us. They have brought us to a crisis which is pregnant with the destiny of our state and the prospects of our posterity. There must be no evasion. There can be no COMPROMISE. Moral or physical force, industry or idleness, justice or licentiousness, the constitution or your will must triumph; and with the success of the one or the other, your party or mine must sink to rise no more. A PLEBIAN.

TO THE GOVERNHR ELECT OF KENTUCKY—No. III.

"Our WISDOM formed a government and committed it to our VIRTUE to keep; but our PASSIONS have engrossed it and armed our VICES to maintain the USURPATION."

Kentucky, conscious of her worth, once stood erect and pre-eminent in the Union; she is now bowed down. She was proud, because she was great. She was honored, because she was brave, wise, and just. Her government was then the reflected image of her people. Her rulers were wise, and just, and patriotic men; they governed according to her constitution, and the people were free and highly distinguished. It was the most signal honor to be called "Kentuckian;" but now this title is, by many, when they are abroad, concealed, as a reproach. *"How has the mighty fallen!"*

Kentuckians are yet brave; they are yet intellectual; they are yet disposed to be just; and it rejoices me to believe that, ere long, they will prove it. The character of a people is identified with that of their rulers. The rulers of our state, for a series of years, have not been men "fearing God and hating covetousness." They have governed by expedients, and not by principles. They have addressed the passions, and not the reason of the people.

From the reign of a party thus created, and of which you are now the titular head, our misfortunes have sprung. This is demonstrable; and it will not be long when no one will doubt or deny it. You have invented a new kind of sovereignty—the sovereignty of the passions. You have discovered a new kind of liberty—the liberty of nature, not of society; of the savage, not of the civilized man. The liberty which our fathers fought for, was the liberty of doing right, not of doing wrong; of doing what we ought to do, not what we will to do; the liberty of security, not of anarchy. They gave us their precepts; they gave us a constitution, to guide us in difficulty and distress. But you are wiser than they. You have discovered that men need no government—no restraints of constitution or law. You have yielded to passion that supremacy which belongs alone to reason. You have given dominion to those tempers and impulses of our nature which government is instituted alone to control. You have discarded as tyrannical, those principles which the experience of ages has proven to be the only sure safeguards of social order and individual security. You have been endeavoring to prove that men are not bound by any political compact, and can be governed best without any constitution. Hence, you have given development and effect to the worst passions, and have not suffered the moral energies of the state to display themselves, and, consequently, the people have suffered all the horrors of discord and violence, and their character has been sunk below its just rank.

To explore all the meanderings, and expose all the errors of your party, since they have had sway, would be an Herculean task, which I have neither time nor inclination to attempt. I shall not attempt to cleanse your "AUGEAN stable;" but the people will do it. Although the principles of your faction have been pestilent and demoralizing, yet I am sure the people have intelligence and virtue sufficient for the renovation of both the moral and political constitutions of Kentucky. If I am in this mistaken, then I despair of the commonwealth. To contribute to the rectification of your errors, and to the restoration of the body politic to its natural and healthful tone, is my only object; and if I shall in any degree succeed, I shall have fulfilled my expectations.

I know that it is difficult to reason with prejudice or combat interest, and that inveterate error is almost invincible.

The long success of your party is a political phenomenon never before witnessed in any civilized age of the world. In defiance of all the lessons of experience; in opposition to all the maxims of political philosophy; in contempt of the suggestions of justice and the forecast of wisdom; you have gone on, step by step, in your career of experiment, until, emboldened by astonishing success, you light the torch of civil war, and open your batteries against the constitution of your country. In the initiative efforts of *"relief,"* you were more timid and temporizing; you then awakened the hopes of the debtor, and cajoled the creditor; you masked your designs, and promised that your expedients should cease with the emergency, to which you appealed for their justification. None hoped, no one feared that your system could be pushed to the extremity to which it has been forced. Even those who were most opposed to its inception, and predicted that it would be delusive and mischievous, did not foresee that, in its baneful progress, it would blight whatever is most sacred among freemen, and at last, after making you a Governor, dare to crown its triumphs on the ruins of the constitution.

When the infatuation which has accompanied and sustained your system, shall subside into the sobriety of calm reflection, and reason shall once more govern the opinions and actions of men, the long duration of the paper mania, and the wonderful success of the paper faction in Kentucky, will be looked upon with universal astonishment and regret.

Your party has been buoyed up by extraordinary exertions, and unworthy and insidious artifice. The unholy ambition of its leaders has been equalled only by the servile devotion and inexplicable delusion of their followers. The design of the leaders was POWER; and they have cloaked their selfish ends under the disguises of charity and patriotism. They have played on the worst passions of our nature, and have not failed to invoke to co-operation or forbearance the best sensibilities of good men. To the honest debtor they promised indulgence, and better times; to the fraudulent and improvident, they tendered the means of avoiding payment; to the extravagant, they offered facilities of enjoyment; to the lazy, they secured rest; to the cunning, they surrendered the ignorant as victims; they encouraged treachery by impunity, and fraud by legalizing its spoliations on innocence and industry; and thus they rallied around their standard the unproductive members of society, and gave up justice to passion.

By other means, they enlisted the active support of many good men, and secured the acquiescence of some who were wise and just. To such as these they exhibited false colors, and by artful stratagems, concealed their objects and the tendencies of their policy. To the benevolent, they exhibited moving scenes of misfortune; to the generous, pecuniary distress; to the merciful, the blessings of charity; to the chivalrous, fictitious oppression; to all, delusive hopes and expectations; and thus, by an unnatural union of the worst and some of the best elements of society, they have been able to go on and triumph, until they view as traitors those who oppose them.

Political quacks, like medical quacks, are apt, for a season, to succeed in passing off ignorance for wisdom, and vociferation for learning. With the greatest confidence and self-complacency, they amuse the fancy and sport with the credulity of an honest community. And never did quackery of any kind make such wonderful achievements as yours and that of your political doctors, during the last five years, in learning men to live without industry, to thrive without economy, to be happy without virtue, to *discharge* debts without *paying* them, to make fortunes without labor, to commit crimes without fear, and live free without law. You have a *nostrum* for every disease. *"Relief"* has been your PANACEA. This your empirics averred to be a sovereign remedy for every complaint. It opens the eyes of the blind, unstops the ears of the deaf, transforms old federalists into new democrats, and old tories into modern whigs. It can make fools wise men, knaves honest, rich men poor, and poor men rich. It can make great judges without knowledge of law, and great politicians without any knowledge at all. With this magical specific, this concoction of delay laws and depreciated paper money, you have literally drenched the people to satiety, until those who have not the stomachs of dogs, and the constitutions of mules, are beginning to nauseate.

Sir, you will kill more than you will cure. The doctor may thrive, but the patient must die. She exhibits even now every indication of decline and speedy dissolution. You have dosed her until she is lean and exhausted; her system has lost its healthy tone, and its whole action is morbid. MERCY alone can save her; ABSTINENCE and the "CONSTITUTIONAL" *Tonic* will alone restore her to health and vigor.

Your prescriptions have brought Kentucky to the brink of the grave. The health which once flushed her cheek is gone. The moral tone which once gave her such expression and animation, is almost exhausted. The very blood of life is ceasing to circulate. You must desist. Her constitution, although much shaken, is not destroyed. It is recuperative. Let it alone, and the *"vis medicatrix naturæ"* will restore it, until Kentucky is herself again. Let her alone, and she will revive, and her prospects will revive.

The course of your party has been selfish, unjust, and disingenious. By the party I mean only the head men. You made replevin laws which you intended only for the benefit of yourselves. You knew they would not benefit the poor and honest debtor. You knew that none would enjoy their advantages but the crafty and dishonest, and *rich* bankrupts. I say rich bankrupts, for such "gentlemen" we all know we have among us.

You made paper money, which you knew would sink in value, and answer no just or

honest purpose. It was your interest to depreciate it, and you did it. To enable a few of yourselves to live on fortunes purchased on credit, or on money borrowed from banks or individuals, and thus ruin many families disposed only to live honestly, you abolished the ca. sa. The effects have been what were intended. There are many (*they are all "whigs"*) who, by their credit, had accumulated vast estates, and exempt from all coercion, have refused to pay one cent to those to whom their property justly belongs; but enriched by their poverty, treat them with scorn and derision.—Even the wanton and malevolent are licensed to commit their depredations on property, and persons and character with impunity. A scoundrel may burn your house, shoot your horses or slander your daughters, and relief laws allow you no reparation, unless he chooses to give it. This is "*liberty*" with a vengeance.

The entire loss of depreciation in your paper, has fallen on honest industry—and thereby shavers and money jobbers have made fortunes. The poor have become poorer—the rich richer. And whilst industry has been relaxed by insecurity and unproductiveness of its rewards, keen-eyed speculation has preyed on the necessities of the unfortunate, and despoiled the ignorant and unwary. The common country people have been compelled to pay their debts: and relief laws, instead of facilitating payments, have only rendered them more difficult and oppressive. But the "rich bankrupt" has lived in splendor and security on the spoliations which your laws encourage by legalizing. You have made it the interest of men to violate their most solemn contracts, and live by fraud. Man has lost confidence in his fellow man; internal commerce is stagnant; foreign trade unequal and unproductive, agriculture despondent, virtue proscribed, patriotism in despair. To doubt the skill of relief doctors is heresy; to question their rectitude, aristocratic; to resist their prescriptions, usurpatiou; none are republican who do not think as they think, and act as they act; none free who are controlled by the obligations of law or conscience; to compel men to do right is tyranny—to allow them to do whatever interest or passion prompts is "Liberty!"

Here you see some of the fruits of your blessed system—licentiousness and anarchy reigning, reason dethroned, conscience stifled, industry and economy laughed out of countenance, old-fashioned republican virtue and simplicity spurned, the constitution mocked, and *your will* substituted in its place. "Passion has indeed engrossed the government, and armed our vices to maintain the usurpation."

If it had been agreed about five years past to pay the debts of a few men whom you know, and allow another large connection whom you also know, and to whom I shall hereafter allude again, to keep about $100,000 which they owed, we never should have been afflicted with your relief laws. I thought then, and now I know, that by paying or wiping off the debts of these men, and consenting that a *few more* should have offices, we should have made a good bargain. If we had done this, you would have left others (as indeed after all your noise, you have done) to shift for themselves and work out their own salvation. Then we should have gone on as other states have done. Like them, we should now be prosperous, rich, and happy; our character unsullied, our currency abundant and good, our liberties secure and our constitution unmaimed.

If your relief system had been intended as you pretended that it was, for those who most needed and best deserved its aid—the unfortunate and honest—then its enormities would have found some palliation in the plea of humanity. But it was intended for rich "bankrupts" and broken down politicians, and they have indeed been relieved.

You have been relieved, sir. The paper system has made you a Governor, who have not one quality, moral or intellectual, to entitle you to so distinguised a trust. It has made many other men great, who, without its influence, would have enjoyed the blessedness of obscurity forever.

It has made many honest men poor, and many mean men rich. It has robbed labor of its earnings, and given splendor and wealth to profligacy. These things we all know, and therefore details will be omitted.

What other relief has your system administered? None, I say; and the people will all say so too, before they are relieved of your "relief." The aggregate debt of the state is not diminished. It is only transferred. There may not be as many large debts, but there are more small ones. The "*big men*" have stepped out, and the common men must now shift for themselves.

How are the debts due your bank to be paid? How are your debtors to be relieved? You have seduced most of them to incur the debts which they now owe! Will you enable them to pay them? No, it is too late. Those for whom relief laws were passed, are relieved; and all others must get relief as they can.

The crisis of difficulty and distress is now just approaching. You have administered anodynes; but the disease is not eradicated; it is aggravated. Relief is more necessary now than ever it was. The paper system is winding up. It must cease; and convulsion must follow. Then, and not till then, you and your party will be justly appreciated. Then all will agree that the relief system was aristocratic, unjust and ruinous. Then will they ascertain that honesty is the best policy—that the only remedy for hard times is Dr. Franklin's remedy—industry and economy; to buy less and sell more; to avoid credit, and reduce the expenditure within the income. The people who live in conformity to these plain maxims will never want relief. They will prosper. Those who disregard them, and repose on politicians for relief, will never prosper; and all the relief laws that all the relief men in the world could enact will not avail. You may as well expect to make men happy without virtue, as rich without industry and frugality.

You cannot reverse the decrees of Heaven. Deity had united happiness with virtue, and wealth with labor. A community is an aggregation of individuals, and whatever contributes to the welfare of the individuals, advances that of the state. We will learn wisdom by experience, and profit by affliction. In the circumvolution of human affairs, your party will give place to wiser and better statesmen; and then our state will begin to look up, and the people to smile with peace and plenty.

A PLEBIAN.

TO THE GOVERNOR ELECT OF KENTUCKY—No. IV.

"The laws of a country ought to be the standard of equity, and calculated to impress on the minds of the people the moral as well as the legal obligations of reciprocal justice. But tender laws of any kind operate to destroy morality, and to dissolve, by the pretence of law, what ought to be the principle of law to support—reciprocal justice between man and man; and the punishment of a member who would move for such a law ought to be death."

TOM PAINE.

All attempts to make money out of paper have been abortive and mischievous. The German expressed a volume of experience, when he said, "*money* is *money*, and *paper* is *paper*." Paper may be sometimes a convenient and useful representative of money, but it can never be more than the effigy; and when it does not represent a metallic fund into which it may be instantly and certainly converted, it is a fraud on industry and a nuisance to society. The paper of Kentucky has not even the semblance of money. It represents nothing except the supposed credit of the state. This is too indeterminate and intangible to give it the quality of the value of money. If the people of the United States had not been severely afflicted with a paper mania, during and succeeding "the revolution," there might be some excuse for the paper system of Kentucky. Paper money had been proscribed, by the political economist, the citizen and the philanthropist. It will ever be deleterious.

Had you and your party forgotten the sentiments of American statesmen and patriots on this subject? Had you forgotten the history of paper money? Allow me to offer you some short extracts from an essay on this spurious currency, by one who, although he was an infidel in religion, was one of the revolutionary oracles in politics; whose pen was supposed to have done more for American liberty than the sword of any warrior, and who was supposed to have written what Franklin assisted in dictating. This man is no other than "Tom Paine." I give you the following: "One of the evils of the paper currency is, that it turns the whole country into stock-jobbers. The precariousness of its value and certainty of its fate, continue to operate, night and day, to produce this destructive effect. Having no real value in itself, it depends for support upon accident, caprice, and party; and as it is the interest of some to depreciate, and of others to raise its value, there is a continual invention going on, that destroys the morals of the country. It was horrid to see, and hurtful to recollect, how loose the principles of justice were let by means of the paper emissions during the war. The experience then had, should be a warning to any assembly how they venture to open such a dangerous door again." "There are a set of men who go about making purchases upon credit, and buying estates they have not wherewithal to pay for; and having done this, their next step is to fill the newspapers with paragraphs of the scarcity of money and the necessity of a paper emission; then to have it made a legal tender, in pretence of supporting its credit; and when out, to depreciate it as fast as they can, get a deal of it for a little price, and cheat their creditors; and this is the concise history of paper money schemes." "As to the assumed authority of any assembly, in making paper money a legal tender, or in other language, a COMPULSIVE PAYMENT, it is a most presumptuous attempt at arbitrary power. There can be no such power in a republican government; the people have no freedom, and property no security, where this practice can be acted; and the committee who shall bring in a report for this purpose, or the member who moves for it, merits impeachment, and may, sooner or later, expect!" "It was the issuing of base coin and establishing it as a tender, that was one of the principal means of fiaally overthrowing the power of the Stuart family in Ireland."

Such was paper money in former times—such will it be in all times. The same causes must produce the same effects. The wise men who adopted the federal constitution, intended to put it out of the power of visionary or bad men, ever to visit the people with the devastations of a depreciated paper currency. They had seen and felt what we have seen and now feel. And you have their sentiments, IN PART, in the foregoing extracts. Then it was patriotic to hate paper money and its projectors—now it is treason not to defend the one and idolize the other.

Your relief system has achieved just what might have been expected, and what it was intended to effect. It has revolutionized the state; it has ruined creditors; it has injured the honest debtors; it has enriched the fraudulent, and made small men great; it has made you a Governor, and John Rowan a Senator. Great and magical must be the engine which can achieve such wonderful results.

In your bold career, the constitution was no obstacle. "That is only paper" the breath of the people made; "the legislature can destroy it." But you met with a stumbling block in the judiciary. The judges of the court of appeals had some conscience, and they refused to co-operate with you in your work of injustice, and confusion, and constitution breaking. They then became tyrants and kings, and must be put out of your way, or the people

would be enslaved! To consummate your schemes of LEGISLATIVE SUPREMACY, you violated the constitution and convulsed the country. You have said that the "omnipotence of parliament" is freedom. Mr. Jefferson has said that it is despotism, and the Declaration of Independence proclaims it TYRANNY.

You say, that servile, dependent judges, are essential to the liberty of the people. The whigs of England and the whigs of America have said, that no people can be free without a pure and independent judiciary.

You say that honest judges are dangerous. Mr. Madison, and the wisest American statesmen tell you, the legislative department is that from which the people may apprehend danger, and against which they should exhaust all their vigilance and all their precaution.

The sovereign power is lodged in Kentucky, where it ought to be, in the body of the people. They are all equal in rights, and may be so in power. The great paramount law of a republic is the public good. The law of a despot is his WILL. And that government is a despotism in which the will of the sovereign is the supreme law, whether that sovereign be a king or a parliament. Will you pardon me for obtruding upon your attention another extract from Tom Paine? It is as follows:

"The administration of a republic is supposed to be directed by certain fundamental principles of right and justice, from which there cannot be any deviation." "The foundation principle of 'public good' is justice, and wherever justice is impartially administered, the public good is promoted, for it is to the good of every man, that no injustice is done to him, so likewise it is to his good, that the *principle* which secures him should not be violated in the person of another, because such a violation weakens his security, and leaves to chance what ought to be to him a rock to stand on"—"the people renounce not only the despotic form, but the despotic principle, of being governed by *will* and *power*; and substitute a government of *justice*"—"they renounce, as detestable, the power of exercising any species of despotism over each other, or of doing a thing not right in itself, because a majority may have strength sufficient to accomplish it;" "in this lies the foundation of the republic; and the security of the rich and consolation of the poor, is that what each man has is his own; that no despotic sovereign can take it from him, and that the common cementing principle which holds all the party of a republic together, secures him likewise from the despotism of numbers; for despotism may be more effectually acted by many over a few, than by one over all."

This is the language, not of Paine only, but of the patriots of the *"times that tried men's souls."* Sir, to be free, men must govern, and be governed, by principles settled by the mutual consent of the people. They must be governed by a CONSTITUTION. The written constitution is the compact between them, to which each looks for security. Why do men enter into such a covenant? It is because without it the weak may be oppressed by the strong—the few overrun by the many. If the many have the right, notwithstanding this compact, to do as they please, what is effected by the compact? Nothing, except delusion. It exhibits the shadow of freedom, whilst the substance is gone, and although there is a constitution, the government is the worst of all despotisms; so say all wise and good men.

The will of the sovereign, you say, is liberty. I say it is tyranny. You say that the will of the legislature is the supreme law. I say that the constitution is the supreme law. This constitution prescribes the landmarks of liberty, and whenever these are transcended by the legislature, or a majority of the people, the weak and the poor have no refuge from injustice but in *insurrection*.

Your relief system has been marked with many outrages on the principles of republican government. The doctrines which sustain it are subversive of every principle of constitutional security; they are the doctrines of despotism, and a despotism the more to be detested, because it is disguised in the garb of republicanism. "Hypocrisy is the homage which vice pays to virtue." Your whole system has been full of duplicity; it has been replete with aristocracy; it has turned Kentucky politics *"wrong-side out."* John Rowan and Joseph Desha are now the leaders of the *"whigs!"* and Isaac Shelby and Richard Taylor head the column of *"tories!"* By such profanation of the sacred principles of '76, your system is kept in being. It changes the names and very essence of things It has made old federalists excellent republicans, and the old republicans federalists. It has united the most discordant elements, and brought together the most opposite extreme of former political opinions. Men who have ever been virulent enemies, and now agree on no other subject, act in cordial concert, with a vigor that could not be exceeded if their eternal salvation were at stake.

Who could have believed, five years ago, that John Rowan, George M. Bibb, William T. Barry, Sam. Davis and Joseph Desha would ever be cordial personal friends, and belong to the same political school? Yet such we know to be historic fact; and we know, too, that they call themselves republicans! yes, all of them, good republicans!

This is most impudent and sacrilegious. But still, relief men profess to believe it all, and look to these oracles for precepts of democracy! From such democracy may the God of Abraham, and of Isaac, and of Jacob, deliver outraged and deluded Kentucky. John Rowan and Samuel Davis, of "alien and sedition law" memory, and their company of political managers, greeted as the apostles of republicanism! as whigs!! And the patriarchs of the political church—its Shelbys, its Taylors, its Bowmans, heroes of all our wars, founders of our liberty—the whigs of '76, the republicans of '98—these venerable patriots are denounced

as tories, aristocrats, federalists! Such are some of the achievements of relief, and such the infatuation which attends its career. Well might Jefferson have predicted that federalism would supplant democracy, by stealing its garb. Where are the principles of '76? Are they entombed with the sages who consecrated them by their wisdom, and the heroes who sealed them with their blood? Have we, their sons, so far degenerated in virtue as to despise those principles, or in intelligence, as not to understand them? If so, liberty is a phantom—free government an Utopia. Recent events in our state are alarming. Either the Declaration of Independence is not true, or these things must be the products of chance or mystery, and will not last.

You have amused the people with your new expedients; you have tempted their cupidity; you have played on their hopes; you have declaimed in indefinite terms about liberty, equality, supremacy of the people, the tyranny of judges, &c., while your principles are the opposite of your profession, as your acts and their fruits will prove. These have been the means by which all unworthy men have acquired power. Pisistrates preached liberty and equality—was the friend of the poor—denounced Solon, and other patriots and sages who were in his way, as enemies of the people—their vanity was flattered, and their credulity yielded—and their country was subjugated to despotism. So acted Julius Cæsar and Oliver Cromwell, and Robespiere and his Jacobin club, and so have done the Governor and his "CABAL."

Your conduct is not without example. History furnishes many such cases as yours. All ambitious men, whose merit will not sustain their pretensions, have reached the confidence of the people by the same avenues, and rewarded it with the like treachery. Read the following extract from an able work on the causes of the downfall of the ancient republics:

"As the lust of domination can never attain its end without the assistance of others, the man who is actuated by that destructive passion, must of necessity strive to attach to himself a set of men of similar principles, for the subordinate instruments. This is the origin of all those iniquitous combinations we call faction. To accomplish this, he must put on as many shapes as Proteus; he must ever wear the mask of dissimulation, and live a perpetual lie. He will court the friendship of every man who is capable of promoting, and endeavor to crush every man who is capable of defeating, his ambitious views."

"The man who aims at being the head of a faction, for the end of domination, will at first cloak his real design under an affected zeal for the service of the government. When he has established himself in power, and formed his party, all who support his measures will be rewarded as his friends, all who oppose him will be treated as enemies to the government. The honest and uncorrupt citizen will be hunted down as disaffected, and all his remonstrances against maladministration will be represented as proceeding from that principle." "The faction will estimate the worth of their leader, not by his services to his country, for the good of the public will be looked upon as obsolete and chimerical; but his ability to gratify and screen his friends, and crush his opponents. The leader will fix implicplicit obedience to his will as the test of merit to his faction; consequently all the dignities and lucrative posts will be conferred upon persons of that stamp only, whilst honesty and public virtue will be standing marks of political reprobation. Common justice will be denied to the latter, whilst the laws will be strained or overruled in favor of the former."

How perfectly descriptive is the foregoing of your faction? If it had been prophetic, it could not fit you better than it does. It was the language of experience. It is a portrait drawn by a master, from all the history of the world. It represented the demagogues who have, from time immemorial, deceived the people and ruined them; and it will represent all such vermine as long as human nature shall be depraved. All republics have gone the same broad road to ruin. And whenever the resemblance of the foregoing picture is seen in any combination of men, under any mask, it may be known for a certainty that that party is leading their country to the precipice.

When I call your party a faction, I wish not to be misunderstood, and mean not to be misrepresented. That it is a faction, a desperate faction, its acts prove, when compared with the following approved definition of faction:

"By a faction I mean a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." PUBLIUS.

All who belong to your party are not animated by factious motives; many are allowed to be honest. They are deluded by the wily artifices of the leaders; but still they are a faction, *"a paper faction."* Pardon me for obtruding on your notice, from the pen of another wise man, a sketch of the delusion and desperation of "a paper faction."

"In spite of national beggary, paper money has still its advocates, and probably, of late, its martyrs. In defiance of demonstration, knaves will continue to proselyte fools, and keep a paper money faction alive. They (the people) will remain as blind, as credulous, as irritable as ever; ambitious men, and those whose characters and fortunes are blasted, will not be wanting to deceive and inflame them openly or by intrigue."

This was written of the continental paper, and in particular reference to the debtor faction headed by Shays. And why should it not apply to your paper and your faction? It does exactly. What should be in that Shays? Why should that name be sounded more than yours? Write them together—yours is as fair a

name; sound them, it doth become the mouth as well; weigh them, it is as heavy; conjure them, Desha will start a spirit as soon as Shays" But the constitution was too strong for Shays. It will overcome the Governor. The people put down him, and they will subdue you. He led an insurrection against his government to enforce paper relief. You propose to lead to insurrection against our constitution, to effect the same purpose.

I know, sir, that *you* have denounced the paper system, and the relief system, as ruinous and iniquitous. I know that *you* have claimed merit (as you said) for being opposed to them. You have said that they were unconstitutional! Yes, sir, you have said publicly, "the relief system, or at least some of it, is unconstitutional," and will not dare to deny it. If you do, I am authorized to say, there is abundant proof of the fact. I know too, sir, that you have said, "I am no judge breaker. The judges of the court of appeals have a right to declare legislative acts unconstitutioual; and it is their duty to do so, when they belive so; and for an honest opinion they should not be removed from office." This too, I say on authority, can be proven. Indeed, you have been publicly charged with these things, and they have not yet been denied. Still you do all you can to enforce this unconstitutional system, and degrade these honest judges. For this you were elected; and, whatever you may say, I am disposed to judge you by your deeds. I never believed that you were, at heart, friendly to relief, or relief men. You have not the benevolence or the sensibility for distress which dignifies the errors of a cordial relief man. Whose misfortunes did you ever alleviate? Whose distress did you ever relieve? What widow's tears did you ever dry up? What orphan's cries did you ever hush? What poor man ever blessed your bounty? What occupant holds his fireside by your favor? Your fortune is ample; but to none has it administered relief. Yet relief elected you, and you you are pledged to enforce it "through scenes yet untried."

If you are opposed to the paper system, what is your object? What do you mean? Why so much noise—so much violence? I will tell you, sir. Your ambition craved the office of Governor. It was impossible for you to succeed, unless you could be taken up by one party, or the other. It is said that you offered yourself to the constitutional party, and that they (as a matter of course) rejected you. This I do not know, but have often heard, and do believe. You then gave in your adhesion to the other party, who are ever ready to make, and to receive proselytes, by any means. You then became the bosom friend of men whom you had hated, and who had denounced you publicly. The whole party voted for you; and many of the other party supported you because you told them that you were no relief man, no judge-breaker; and thus you became a governor. To consolidate your new party, you have spared no pains. You have done everything which they could desire, and even more than they approve. You and they have slandered the judges; you have traduced the old patriarchs of the age; you have profaned the name of Jefferson, and Patrick Henry, by prostituting them to your unholy purposes, and subscribing them to doctrines which they have been eminently distinguished for combatting and decrying. You have kept up a tornado ever since your election; and, I repeat it, the government is given up to the passions of men. All this has been done, and is doing to secure money, office and power, to those who, by fair and honest means, could never enjoy either. And yet you call yourselves republicans, and those who will not do you homage, tories! Do you know what you are doing? Every state in the Union is opposed to your party, and astonished at its success. And have the people of the whole United States become tories? Have they all become traitors to the principles of '76? Are they all enemies to popular government and to liberty? No, sir; it is you that are the apostates from the old school—you that are the enemies of equality and freedom. The people of the Union look on your course as one tending directly to anarchy and confusion—as subversive of order and security, and therefore they deprecate vengeance on your ambitious leaders. They know the value of liberty, and they know how alone it is to be preserved, and they know that you are driving us on the high road to ruin.

Suffer me to offer you one more extract from the productions of a wise man, on the delusions and distractions of a debtor faction in the U. States, shortly after the revolution:

"To a philosophical observer, the present confusion will afford an inexhaustable fund of astonishment and concern. He will behold men who have been civilized, returning to barbarianism, and threatening to become fiercer than the savage children of nature, in proportion to the multitude of their wants, and the cultivated violence of their passions. He will see them weary of liberty and unworthy of it; arming their sacrilegious hands against it, though it was bought with their blood, and was once the darling pride of their hearts; complaining of oppression, because the law which has not forbidden, has not also enforced cheating; endeavoring to oppose society against morality, and to associate freemen against freedom."

The party here portrayed were such precisely as yours—their objects the same, their arguments the same. The liberty which they opposed was the liberty of the constitution; that which they vindicated was their own arbitrary will—the liberty of doing whatever they pleased. Paper relief, legislative relief, was more necessary then than now, and would have been more excusable. But it was denounced, and its advocates silenced, by the virtue and intelligence of those who were wiser and better than we—by men who have given us freedom—and some of whom you now slander, by employing your name in support of your wild doctrines.

Other states are going on prosperously,

without a Desha or his republicanism. They are much happier, and freer too, than Kentuckians. But they have not discovered your new mode of making great men—of living without work, of happiness without virtue, of liberty without law.

You may go on careering over the constitution; you may enjoy your ephemeral power, and riot over the rights of the people, and the character of your state; but I tell you, the patriot's and the poet's malediction awaits all those who rise on the ruins of their country's constitution and peace—

"Oh, is there not some chosen curse,
Some hidden thunder in the store of heaven,
Red with uncommon wrath to blast the wretch
Who owes his greatness to his country's ruin!"

PLEBIAN.

TO THE GOVERNOR ELECT OF KENTUCKY—No. v.

"Innocence shall make false accusation blush, and tyranny tremble at patience."

Your relief system, conceived in the spirit of injustice, has been nourished by the sweat of the laborious, and plunder of the honest.

To consummate its ambitious ends, it became necessary to slander and degrade the judges of the court of appeals; and in the work of defamation, you and your "cabal" have proven yourselves worthy of your vocation. In calumny and falsehood, Rivington, Callender and Cobbett, have been outstripped.

You have had the hardihood and impudence to charge on the judges, sins of which yourselves were guilty, and the pernicious effects of which they and their friends were endeavoring to counteract. You hated them because they were honest, and dreaded them because they would not be intimidated and could not be bought. You saw that *they* must be crushed, or *you* and your leading coadjutors must sink to that infamy to which you have striven to reduce them. Your crusade against the judiciary has no parallel in the civilized world. It can plead no apology of misdirected zeal for the public welfare, or of honest infatuation.—It was barefaced ambition which prompted you, and your reward was to be the delight of standing on the ruins of your own hands, and domineering over the constitution and its friends. But the drama is winding up; and you may feel perturbation for your own safety. The graves which you have been digging for the judges must be tenanted by yourselves; and you must swing on that gallows which you have erected for the virtuous and innocent. REMEMBER HAMAN and MORDECAI. Know, that however much you have tyrannized and strutted, and puffed with a little brief authority, there is a power above you, and that that power WILL RULE; malice will be disappointed of its victim, envy of its reward.

You have subjected the judges to the ordeal of fire. Because they refused to bow to you and idolize you as the true oracles, they have had to pass through the furnace; but like Shadrack, Meshack and Abednigo, sustained by the justice of their cause, they have come out unhurt and triumphant. Their motto was, "*Be just and fear not.*" In them virtue and justice were persecuted; and in them virtue and justice have triumphed, and will continue still more to triumph. In the closing sentence of your famous message, at the close of the late legislature, you call them "perverse" judges. To *you* they may well seem "perverse." They have checked you in your desolating career. Their firmness has resisted your strides to power, and their purity has conquered and baffled all your corrupting expedients. They have stood at their posts, and warned the people of the savage enemy's approach. They have saved the temple from rapine, and have laughed at your threats, and spurned your *offers*. Cæsar called old Cato "perverse." Charles and his minions denounced Hampden, and Russel, and Sydney, for being "perverse." The Washingtons, and Franklins, and Jeffersons, and Adamses, of '76, were most "*perverse.*" And so are John Boyle, William Owsley, and Benjamin Mills, "perverse." They defend their own purity, and the people's constitution, fearless of all consequences; and in this they have indeed been "perverse." They are not like your "new judges," suppliant and subservient. They are such men as should ever fill the supreme bench. May our liberty forever have such champions, and our constitution forever have such guardians. May the poor always find such friends, and the tyrant and the knave always meet such adversaries.

By your calumnies and cruel and unrelenting persecutions, you have given these men a fame that will endure for ages. They are even now viewed as living monuments of a virtue and patriotism worthy of the admiration of the best men. Posterity will feel for their memories the gratitude due to benefactors. Whilst you and your colleagues in conspiracy against the constitution, will be execrated as the Pisistratedi, the Clodii, and the Catalines of Kentucky, those abused judges will be revered as the Solons, the Bruti, and the Catos of the age. They have enemies now; so has had virtue in all time. They will have enemies while they live; so had Cato, so had Brutus, so had Washington—even so had Jesus Christ. Vice and envy will hate virtue and merit. But the time will come when all will marvel that these "old judges" were not respected and applauded by all. Even now, sir, their "INNOCENCE" is beginning to make your "*false accusation blush,*" and your "TYRANNY" is beginning to "*tremble at their patience.*"

What is your ultimate hope? What is your real object in your unprecedented, "perverse," and calumnious warfare against the judiciary? You say that you were never an admirer of the relief system. Your party say that there is no relief party now in the state; and the relief laws having been found to be either unconstitutional or unjust, or both, have been revealed. Why then this interminable and virulent controversy about the judges?

That the old judges are honest men, you dare not deny. You have offered to re-commission them! That they are able men, their decisions prove beyond cavil or doubt. The chief justice has been an ornament of the bench for 17 years. He is a tried patriot—a republican of the old school. He is modest, pure, moral, wise, experienced, firm, just, and incorruptible. What more do you want? What more do you expect? If you expect any judge in Kentucky to possess more or higher qualifications for his station, you expect more than is attainable. You will not find the man. Do not such men as Boyle suit your interests or your places? They do not; and here is the secret. You have no such men among your partizans. It would be an insult to common sense and a mockery of virtue, to draw a parallel between your Bibbs, your Barrys, and your Haggins, and JOHN BOYLE. They are his equal in no one quality that is good or great. He and they are antipodes. What does your great oracle, John Rowan, now say of John Boyle? I will tell you, sir. He says that *"Boyle is a virtuons man,* and a splendid judge, and that he *always thought so."* If you all had succeeded in your aims, as Rowan has done, you would speak the same language. But he found his way to the Senate of the United States by calumniating Boyle, and you and your ambitious co-operators are following his example, expecting similar success by like means. You will fail. You have presumed too much on popular ignorance and credulity. You have calculated too much on the efficiency of epithets. The people are virtuous, and they are wiser than you suppose. They begin to understand you, and your race of popularity is run—your days are numbered, and Tekel is inscribed on your front. Your pharisaical hypocrisy and pretensions will not longer avail you. You love the people too much!

John Boyle is above the reach of your calumny; your breath can never blast him. He has lived too long, too usefully, too nobly, to be the victim of your detraction, or of your persecution. As a man, he is, in all the social and civil relations, irreproachable; as a politician, he has ever been patriotic and undeviating; as a jurist, he is learned, upright, and eminent, and his fame is extensive and honorable to him, and creditable to the state of which he is a distinguished citizen. His whole character, sir, is above reproach. The viper that strikes at him, gnaws a file. By his own unassisted merits, he has earned an enviable pre-eminence. He inherited no fortune; no patrician blood ennobled his veins; no ancient heraldry emblazoned his name. Self-dependent and self-taught, he has carved out his own fame. A *"novus homo,"* he has, by merit of no common cast, won distinction. His unpretending talents and unostentatious virtues, have drawn around him the confidence and esteem of wise and good men.

When in Congress, he was the friend of Jefferson, whilst your Rowan was his reviler; and Jefferson then was, and now is, Boyle's friend. He knew his worth, and as a testimonial of his high opinion of it, he was desirous in 1807 to appoint him a judge of the Supreme Court of the United States. In March 1809, Mr. Madison, unsolicited, tendered to him the office of Governor of Illinois, one of the most responsible and most honorable under the general government. On his return home, he was invited by Gov. Scott to the Court of Appeals' bench. His attachments to Kentucky overcame his judgment, his sense of interest and his ambition, and he gave up his governorship, (which the then chief justice of the state resigned his office to accept,) and consented to be a judge, with a salary inadequate, and with duties to perform which were appalling. Without a competent reward, influenced only by a wish to serve his state, he has ever since toiled on the bench, (the most toilsome of all official stations,) until he has become poor, and has literally grown grey in the service of his country.

His virtues have adorned this bench; his talents have thrown a lustre around it. His name is identified with its history and its fame. If, as others have done, he had consulted his interest or his ease, he might now have been in comparative affluence, and exempt from the annoyance of a Governor and a party, who dread his inflexibility, and some of whom covet his office and sicken at his just fame.

And shall such a man be prostrated by the Governor, and Rowan, and Bibb, and Barry? Shall HE be blasted by their envy, or supplanted by their ambition? JUSTICE says NO!—Kentucky says NO!

He never sought office, he never shrank from duty; and shall his country give him up to his and her enemies? Let such folly never mark her counsels—let such ingratitude never sully her escutcheon. He stands in the breach which ambition has made in the constitution; and whenever he falls a victim to your rapacity, his country's cause and his country's welfare will fall with him. Whenever he is immolated to satiate your vengeance, the incense which ascends from the altar of his sacrifice will be mingled with the smoke of a consumed constitution. Around his destiny, in this crisis, that of the constitution is indissolubly entwined. He stands on the last rampart which protects the constitution from your Vandal assaults. If you can strike him down and pass this barrier, you at once enter the citadel and give it up to violence. Your will is then the constitution. At such a catastrophe, the patriot might indeed exclaim, "O tempora, O mores!" And then it would be but right and natural for a Boyle, like Scipio Africanus, in the fervor of a holy resentment, to bequeath his curses to the ungrateful country which he had so faithfully served and so long illustrated, and his ashes, to strangers, in the memorable epitaph, "O, UNGRATEFUL COUNTRY! THOU SHALT NOT HAVE MY BONES!" But he will never be driven to this sad extremity. Kentucky will not be reproached with the ungrateful neglect of a Bellisarius, or the exile of an Aristides. Boyle and the constitution will hold out to the last, and signally triumph over the Gov-

ernor and his faction. They are placed on a rock which you cannot shake. Your arrows fall at its base. They will yet recoil on the heads of those whose parricidal arms aimed them at the PEOPLE'S PANOPLY.

Of William Owsley, either as a man or as a judge, no one, without falsehood, can utter any thing reproachful or derogatory. He is amiable and moral, prudent, just, exemplary in all his conduct, private and public. He is an enlighted and faithful judge. He would adorn any bench. This is "multum in parvo;" it is saying a great deal in a few words; but not more than those who know him well, will approve. None of your party deny that Mills is an *able judge*, and very few doubt that he is a Christian. You know, sir, he is *"ortus a quercu, non a silice"*—a bough from the oak, and not from the willow.

These are the men against whom you have been waging war. They are shielded by virtue; they are supported by merit; they protect and are protected by the constitution; and however much you may laugh at these defences, you will find them too strong for your cunning or your force.

In all the fury of your warfare, what has been the burthen of your war-song? This, and this only—that these "old" judges, these "perverse" judges decided, that "no citizen can be compelled to accept paper money in discharge of a specie debt;" that "nothing but gold or silver shall be made a tender;" that "justice shall be administered without sale, denial or delay;" that "no *ex post facto* law, or law impairing the obligation of contracts, shall be passed;" that "the people are above the legislature;" that "the constitution is the supreme law of the land;" that "all legislative acts contrary thereto are void;" that "debtors may be compelled to pay their debts according to contract;" and that "the constitution will protect all freemen in the enjoyment of their rights."

And is not all this just? Is it not all right? You dare not say that it is wrong. You admit that it was the duty of the judges to decide on the constitutionality of the acts of the legislature. What crime then have they committed? Did they decide wrong? I say no. The people in every state in the Union say no. Every Supreme Court in America says no. Those who formed the constitution say no. Justice says no. Reason says no. NO is echoed from every quarter, except from you and your party; and if it were not your interest to say yes, you too would say no. On this topic I shall touch more, and more fully, in a subsequent number.

But suppose the decision is wrong; are not the judges honest? Has the decision been enforced! Has not the relief system, which it affected, been repealed? Whether the decision was right or wrong, would not the opinion of the Supreme Court confirm or reverse it? Why then all your clamor about the judges? Why has "Ocean been into tempest tost, to waft a feather or drown a fly?" Sir, this decision has been only a pretext; power was your end; fraud and hypocrisy have been your means.

You opened your war by misrepresenting the decision of the court; and without attempting to deny the correctness of its principle, you endeavored, by perverting and distorting it, to excite prejudice against the court. You have been fighting a windmill, Quixote-like. You made a monster, and then valorously encountered it, with all your artillery and small arms. You talked about the soverignty of the people, that is, the *omnipotence* of the legislature. You spoke of usurpation. There was as much vociferation about right and remedy. All these abstract notions had no application, and you knew that they had none. But you hoped to be able to amuse and delude a majority of the people.

Fearing that this artifice would fail, you resorted to opprobrious names; you called the judges "KINGS," and those who defended them "TORIES."

You expected to overawe your opponents and intimidate the judges. Your attempts were abortive. They have only produced confusion, and will end in your own discomfiture and degradation. The judges have not resigned. They will not resign, until they can do so voluntarily, and honorably to themselves and *safely to the constitution*. They do not desire to continue in office. Why should they? They receive no salary; and you have degraded the court until its honors are threadbare. But you have not suffered them to resign. You have been striving to force them from office by abuse, and by unconstitutional legislation.

Through them you have done violence to the constitution; and if they succumb to you, the principles of that charter are, by them, surrendered.

They have given a pledge that they will resign as soon as the constitutional question is settled, and a governor is elected by the people to whom they can confide the appointment of successors.

But this will not satisfy you. You wish to enjoy a triumph over them and the principles which they uphold, before you retire from the arena. You are impatient to fill the judgment seats with your creatures and your parasites. They, too, are impatient. They can wait no longer. And they fear that when the people shall have an opportunity to elect another governor, he will be an upright and enlightened man, who will not countenance their doctrines, nor promote their selfish and ambitious ends.

Whenever the "old judges" retire from the bench, it will be difficult to fill their vacant seats as they filled them. *You* will not live to see it done. We have not the men who WILL do it, nor who, if they *would*, CAN do it. It will be long before we shall see another Boyle on the bench; another chief justice with his urbanity, his learning, his purity, his inflexibility, and his EXPERIENCE. But I assure you, sir, that WHENEVER THE CONSTITUTION SHALL TRIUMPH, OR THE PEOPLE SHALL BE ALLOWED TO ACT, these venerable judges whom you have so much traduced, will retire from a service in

which they have wasted their strength, and been compelled patiently to endure the vilest slander.

When they retire, the approbation and applause and gratitude of an injured and insulted people will follow them; the constitution will be renovated; and they will enjoy that reward which you will never feel, and know not how to value—the consolation of having done their duty with purity, constancy and fidelity. Their's will be a reward which you can never give nor take away.

"What nothing earthly gives or can destroy,
The soul's calm sunshine, the heartfelt joy,
Is VIRTUE'S prize"

A PLEBIAN.

TO THE GOVERNOR ELECT OF KENTUCKY.—No. VI.

"Nec luisse pudet sed non incendire ludem."
HORACE.

("Once to be wild is not a *foul* disgrace:
The blame is, TO PURSUE THE FRANTIC RACE.")

"Dat veniam corvis, vexat censura columbos."
JUVENAL.

(Censure pardons the crows, whilst it harasses the doves.")

The first censures which your party denounced on the judges, might have been forgiven and overlooked. They might have been attributed to the occasional ebullitions of partisan resentments; they might have been provoked by the collision of honest opinions, believing, as some no doubt did, that the judges had erred. Your party, before you were initiated, rebuked the judges very freely; they animadverted boldly, and even virulently, on the supposed principles of their memorable decision. But they did not venture to profane the constitution. They vented their feelings in VERBOSITY. Their steam was conducted off by resolutions and preambles, &c., and evaporated without endangering the safety-valve of the political machine. But you are more daring. As soon as you were placed at the head of the party, new scenes open—scenes of violence and licentiousness. You sacrilegiously invade the constitution; and yours is not a war of words, but of deeds. You organize your party; tell them that the Rubicon is passed, and resolve to be "AUT CÆSAR AUT NULLIUS" (either Cæsar or nothing.) You endeavor to prostitute the judges by threats and by obloquy. You acknowledged by your acts that the judges cannot be constitutionally removed from office, without the concurrence of "two-thirds." But, disappointed in obtaining this majority, you then insidiously resolve to deprive them of salary and jurisdiction; expecting that they would be compelled to surrender. You announced that the constitution was made by the people, and they can violate it if they think fit; that the popular will is the constitution; that the constitution is nothing but parchment; that the legislature are the people, &c., &c., &c. All this was preparatory to your attack on the constitution. You concluded that if a majority could be prevailed on to pass an act, whereby they could have a pretext to say, that the judges were out of office, the same majority would persist; and that this in effect would be tantamount to a decision of two-thirds. By this course you hoped that you would virtually remove the judges; that *your* people-loving senators would refuse to repeal your act, and thus you would harrass the judges and alarm the people with anarchy, until it would be their interest to submit and acquiesce in your usurpations. And if unexpectedly, the majority should decide against you, and refuse to give up the constitution, as a last resource, you supposed that by proposing a compromise, and talking about war, and anarchy and bloodshed, *you must certainly prevail.* You charged the judges with being opposed to the occupant, and with being under bank influence; all which you knew was false. By such means as these, you succeeded in producing a monetary effervescence, and obtained a majority in the legislature. You then tried the judges for their "CRIMES." They were acquitted; and in despair, you then determined to disregard the constitution and the public peace, and passed the re-organizing act. This was the catastrophe. You could conceal your principles no longer. The people awoke from their slumber, and denounced your act as unconstitutional and void. Thus detected and convicted, you ask for "COMPROMISE." You ask your adversaries to give you *what you have been contending for, and what you passed the re-organizing act to achieve!* Modesty! where is thy blush! Hypocrisy! where is thy mask!

When you first conceived the famous act of 1824, did you not believe that it was unconstitutional? But you had abused the confidence, and sported with the credulity of the people so long, and so miraculously, that you had no fear of defeat.

You appealed to the people with great confidence, declaring that the majority must rule in all cases whatsoever. Those opposed to your unconstitutional act—knowing that in this extremity the majority was the last resource, and the only umpire, and believing that the people were not so lost to a sense of their obvious danger, as to sanction your usrupation—joined in your appeal. The people decided the issue against you. They said that your act was VOID. Do you submit to this unerring majority? Do you conform to your own test of political infallibility? Do you acquiesce in the people's decision? No, no; this you never intended to do. The majority is right when it is subservient to *you;* but when it is against you, it is wrong. You say that this majority who must govern in all cases, was deceived, BRIBED; and therefore you will not submit to the award. Well, if the people were deluded or bribed last year, may not the same things occur this year? And when shall we

know that they understand what they do, and do right? If they ratify their decision next August, will they be bribed again? But suppose they should decide in your favor, what evidence will you give us, that they are not bought up, as you charge them with having been bought? This is a poor, pitiful subterfuge. It is a slander on the people, and a disgrace to your party.

As soon as the result of the last election was known, you were busily employed in devising ways and means to avoid the effect of the public will; to frustrate that will to which you had appealed as the supreme arbiter. Did you and your judges not write letters to certain senators urging them to disregard the will of their constituents, and promising them indemnity for that resistance? Still you cry, the public will must govern; all functionaries are responsible to the people! It is then resolved, (I suppose in caucus,) that your party shall unite all their forces, and throw out in your message all the inflammatory matter which they could jointly produce; and that they should give up the new judges and call on the people for "compromise." Accordingly, the message appears full of slang and gall. You did not write it, and I am not sure that you know what is in it; but being its putative author, you are responsible for its contents. It is evidently the production of some disappointed, broken-down man, driven by envy and debt, to desperation.

In this document you are made to use the following language: "Coming from the bosom of the people, you are necessarily better acquainted than I can be, with their wants and their interests." Speaking of the act of 1824 you say: "To end the controversy and rid the country of these erroneous and dangerous principles, the majority now deemed it necessary to resort to their constitutional power of ABOLISHING the court, and ESTABLISHING ANOTHER consisting of other men," &c. "I have applied the best efforts of my understanding to learn the public interest and will," &c. Alluding to a suppression of the *"old* judges" as disturbers of the peace, you say: "I need not inform the legislature how *unpleasant* will be the duty, which such a course of conduct on the part of the FORMER judges will impose. Nor need I tell them, that, *painful* as it may be, the executive will not shrink," &c., &c. "AND WERE THE RE-ORGANIZING ACT REPEALED, the same doubts would extensively hang around all the acts of the former judges, UNLESS THEY SHOULD RECEIVE NEW APPOINTMENTS," &c., &c.

Patriotic governor! Heroic governor! you have taken pains to ascertain, that you *may do the people's will!* But nevertheless, whatever it may be, the old judges shall not enforce their decrees; and if they attempt it, you will call out the militia! This is your meaning. The obvious import of your language is, that unless the re-organizing act be repealed, the old judges SHALL NOT ACT; and if it be repealed, they *shall not act*, UNLESS THEY SHALL BE RE-COMMISSIONED BY YOU. Thus you tell us that whatever the people think is immaterial, for *you* are resolved to consider this odious act constitutional, and therefore the old judges as removed from office; and that you will feel bound to enforce the *"law."* In other and plainer words, without any circumlocution, you mean to say, governor, that THE PEOPLE SHALL NOT DECIDE THIS QUESTION. This is undisguised TYRANNY. But you will be disappointed; your threats and your artifices will all be unavailing. WE, THE PEOPLE, HAVE DECIDED, AND WILL DECIDE THE QUESTION AT ALL HAZARD.

Your conduct is like that of all men who aim at unholy power. It was the conduct of the popes and the kings of priest-ridden, king-ridden Spain.

In Spain there was a controversy, in the 11th century, between the Musarabic Liturgy and the Holy See. The Spaniards contended for the ritual of their ancestors: the popes urged theirs. It was proposed to decide the contest by a single combat. The champions met and fought, and the Musarabic Liturgy was victorious. The queen and the popes were not satisfied; they insisted on another trial. The ordeal was selected. A fire was kindled; a copy of each ritual was thrown into it; the book which stood this test untouched, was to be the established ritual. The Musarabic triumphed again. But lo! the queen and popes were not yet satisfied, and refused to submit; and all were denounced as heretics who would not forsake the Musarabic and conform te the papal ritual!

I will not attempt the parallel between this and your case; nor between the papal party of Spain, and your party in Kentucky. The analogy is striking, and requires no deliniation.

After you have thrown the country into uproar and the government into anarchy, YOU *conplain of* CONFUSION AND STRIFE, and demand a "compromise!" What, sir, is left for compromise? Do you suppose that the people are so weary of the loathsome contest, as to compromise their constitution? You do their intelligence and virtue injustice. They will not compromise with you on your terms. The old judges are either in office or out of office. The re-organizing act is either constitutional and valid, requiring repeal; or it is unconstitutional and void, without repeal. This is the question. Can it be compromised? NO, NEVER. Much easier would it have been to compromise the right to levy ship money, in the reign of Charles I. Much easier would it have been for our fathers to have compromised the tea tax and stamp act in '76. These abstract rights were not *sensibly* very important, but the principle was comprehensive and radical. It was a question of freedom or vassalage. So here, ours is a question of constitution or no constitution; and it must be settled by the people. Your party are suddenly very much afraid of the people. They are very desirous to have a call of the legislature, to prevent another decision by the people. They say that there is

no court, and anarchy must be the consequence. WHOSE FAULT IS THIS? Who produced this anarchy? Those who passed the re-organizing act, you and *your* judges, and the senators who, disregarding the will of their constituents, refused to repeal it. But there *is* a court in existence which *will* do the people's business. That court was never abolished. It is the court of the constitution—of the PEOPLE in CONVENTION—and not the court of a FACTION in CAUCUS. Be quiet, sir; the people have taken the matter into their own hands, and all will be well.

There is great impudence in your proposition of "compromise." A. takes forcible possession of B.'s land, and finding that he cannot hold it, offers to *compromise by each claimant surrendering to the sons of A.* This is as modest and just as your "compromise."

If you can get clear of the judges, you will have attained your ultimate object in relation to the court: you will have put down the men, and established the precedent. You desire the control of the judiciary, and the expulsion of its faithful incumbents; and it will suit you as well to succeed by "compromise" as in any other way. You want to remove *all constitutional checks to your will.*

This department of the government, like each of the others, is ordained by the constitution, and is not the creature of legislative will. This is all we contend for, and this must now be settled by the people. The question has already cost us too much and is too important, now to be "compromised."

When you announce in the message, that "the people are dissatisfied with the *arrangements* of last session," you virtually admit their verdict against your re-organizing act. When they said that it was unconstitutional, did they not also say, that the old judges are in office, and your "new judges" no judges at all? And what was your plain and imperious duty? It was, to recommend submission to the people's will, and the observance of order. Having failed to remove the judges by address, and defeated in your attempt to abolish their court, the court still exists and they are still the judges and only judges. But because you have been thus so signally defeated, must the judges resign, or must their friends abandon them and unite with you in prostrating them? This is your proposition.

Why did *you* not resign when invited by seventy-five hundredths of the people's representatives? They held you as a nuisance which ought to be abated.

Why did not your refractory senators resign, and give their constituents a right to be heard in the Senate? If you and they had done this, we should have no difficulty, no more turmoil. The only difficulty which exists has been produced by yourselves, by resisting the people's will. And now you say, drive the old judges from office and we will be peaceable!

If you have the right to remove them by a legislaiive act, they are out of office; if you have not this right, they are in office and can only be removed by two-thirds of both houses Suppose your compromise agreed to, how will you get clear of these "perverse" judges? This will puzzle you. I suppose you will answer, "CAUCUS THEM OUT."

If the court of appeals stands on a constitutional basis, no compromise can effect it. If its base is legislative, there is no necessity for compromise. Whether it depends on the one or the other, the people alone can determine.

Many were for compromise with King George in '76. By that compromise we might now be colonists. If your compromise be accepted, we shall in effect and in practice, have no constitution, and no rule of right, except the WILL of those who govern. After such a compromise, will not others hereafter follow your example, encouraged by your success?

AND WHAT INTERPRETATION WILL BE GIVEN TO THE CONSTITUTION? The question is now again submitted to the people. Let them decide it. Let that decision be carried into effect, and peace will be restored, the constitution will be re-established, and the "judge question" settled for ages.

But why does your party require a convocation of the legislature? Is it to prevent a decision by the people? If *your* senators have relented, and are now willing to vote the will of their constituents, why does not your *half* of a "new court" surrender, and be peaceable citizens? If they and you will do only this much, there is no necessity to impose on a community whose treasury is already exhausted by your prodigality, the expense of a called session of the legislature. For, the re-organietng act having been decided to be void, if you and *your* judges will surrender the records and forbear your interference, the court can proceed without any difficulty or obstruction. If the refractory senators are determined still to be refractory, what can be done by a called session? The people are as competent to decide as their servants, and they will once more decide at the polls, IF YOU WILL PERMIT THEM TO DO SO; and then, if you desire a restoration of order, you can call the *new* legislature. But we protest against any unnecessary convention. You have wasted too much of our money already, in unprofitable warfare with the judiciary. Thousands have been thrown away in this humiliating contest.

Is the principle of the controversy important? How then can *you*, after expending so much time and money, compromise it? How can *we* compromise it? If it be not very essential, why do you not avert the calamities which you seem to apprehend, by acquiescing in the people's decision? By doing this, you sacrifice no principle; you do not admit the invalidity of the re-organizing act, but only admit the people's right to govern. If, last winter, the senate had united with the other house in repealing the act, they would not necessarily have compromitted principle. If they had the right to pass the act, they had the right to repeal it. To do so certainly would not have been unconstitutional. And its repeal would

not have been considered as evidence conclusive of *their* conviction of its unconstitutionality, but only of its inexpediency, and the wish of the people that it should be repealed

But on the other side, there can be no compromise, without the surrender of the tota principle—of everything in controversy. We insist that the act is unconstitutional. We can never, even indirectly or tacitly, acknowledge its efficacy to any extent or for any purpose, as we must do if we agree to the expulsion of the old judges and the construction o a new court. We contend that the judiciary i one of the departments of the government ordained by the constitution, when it declare that there shall be three departments. We insist that this department cannot be abolished by the legislature; nor the judges of the cour of appeals removed from office in any othe modes than one of those prescribed in the constitution. These are vital principles, which we can never compromise. If it was important to construct the government on three pillars, it is equally essential to preserve the whole three, in their proper places, and with all their strength.

Is the re-organizing act unconstitutional? Then the old judges are in office. If they are in office, it is because they can be ousted only by a majority of two thirds of the legislature If they can only be removed in this way, how shall we "COMPROMISE" them out of office? And if we can remove them by compromise now, why could we not have done it before your *great* act was passed? If there was any other mode of removing the judges than those defined in the constitution, your party ha been right and mine wrong. If mine has been right, and there is no other mode, how can w "compromise," and thereby create a new mode unknown to the constitution? I should consider this kind of compromise more unconstitutional and dangerous, (if any thing can be more so) than the re-organizing act. If you intend this much by your compromise, it is evident that we cannot agree to it without giving up all for which we have struggled.

But do you intend only to re-commission the old judges? Why should this be done? If they are in office, your commissions will be void; and any oath administered under them, or other act done, of no effect as derived from or attached to them.

They cannot accept your commissions. They never will accept them. If we agree with you that they shall receive no salary until they shall accept and qualify, do we not thereby surrender every principle in controversy? And have you not gained a complete triumph?

The question is at last resolved into one simple proposition. Are there three, or only two departments instituted by the constitution? Is the court of appeals constitutional, or legislative? To compromise such a question, or leave it unsettled, AT THIS TIME, would be the greatest calamity that could afflict Kentucky.

England, in 76, had repealed her stamp act, and offered to repeal her duty on tea; and thus proposed a compromise with her former colonies. They rejected the offer with indignation. It was not the paltry tax of which they complained; it was, that England did not possess the right to tax America whilst unrepresented. If they had compromised, England might, by abusive exercises of the taxing power, have subjected them to abject oppression. Direful war, with all its horrors and devastation, stared them in the face. But, holding their lives in their hands, the patriots of '76 rejected the compromise, and appealed to the only umpire—the god of battles.

We care not for men: we contend for sacred principles, as dear as the consecrated principles of '76. Like England, you propose to repeal your stamp act, but you will not surrender the right of *your* "PARLIAMENT" to rule the humble judiciary *"in all cases whatsoever"* Like our fathers of '76, we reject your offer, and appeal to *our* only arbiter—the PEOPLE.

But you menace violence. You hold up to our view all the horrors of gorgon headed anarchy. If these threats can alarm us into "compromise," we do not deserve the good constitution with which we are blessed; and will never enjoy its benefits. The constitution is strong enough to resist your violence and prevent your anarchy, or it is not a constitution worth a conflict.

If a robber break into the treasury and rifle it, will you, because he draws his dirk and resists, "compromise' with him, by suffering him o retain the stolen money and go abroad unpunished? If the culprit sentenced to die for murder, shall defy the commonwealth and declare war against the community, would society, to avoid bloodshed or a little civil war, surrender to him and remit the sentence? But such is your compromise! You have violently attempted to abolish the court of appeals, and, resisting the people at the polls, you denounce anarchy and war unless they compromise with you, by allowing you to enjoy your triumph, and riot over the constitution with impunity! You have gone too far. The Rubicon is indeed passed. The ground of compromise is far behind you. You must now either conquer or retreat.

THE TENURE BY WHICH JUDGES HOLD THEIR OFFICES MUST BE ASCERTAINED AND PERMANENTLY SETTLED BY THE PEOPLE.

Suffer me to offer you the sentiments of Virginia statesmen and patriots, on an analogous subject. You will find them very forcible and apposite.

The Virginia judges were reduced to the dilemma of submitting to an unconstitutional act of their legislature, of resisting, or of resigning. They could not submit; they *would* not resign; they *resisted*, as our judges have done. Their vindication is long and able. I will only trouble you with the following extract:

"The following alternatives presented themselves to the court, either to decide those ques

tions, or resign their offices. The latter would have been their choice, if they could have considered the questions as affecting *their individual interests only;* but viewing them as relating to their office, and finding themselves called by their country to maintain *an important post as one of the three pillars on which the great fabric of government was erected,* THEY JUDGED THAT A RESIGNATION WOULD SUBJECT THEM TO THE REPROACH OF DESERTING THEIR STATION AND BETRAYING THE SACRED INTERESTS OF SOCIETY ENTRUSTED TO THEM; and on that ground, found themselves compelled to decide, however their delicacy might be wounded, or whatever temporary inconveniencies might ensue, and in that decision to declare, that the constitution and the act are in opposition and cannot exist together, and that the former must control the operation of the latter." "To obviate a possible objection, that the court, while they are maintaining the independence of the judiciary, are countenancing encroachments of that branch on the departments of others, and assuming a right to control the legislature, it may be observed, that when they decide between an act of the people and an act of the legislature, they are within the line of their duty declaring what the law is, and not making a new law. And ever disposed to maintain harmony with the other members of the government, so necessary to promote the happiness of society, the court most sincerely wish that the present infraction of the constitution may be remedied by the legislature themselves, and therefore all further uneasiness on the occasion be prevented. But should their wishes be disappointed by the event, they see no other alternative for a decision between the legislature and judiciary, than an appeal to the people, whose servants both are, and for whose sakes both were created, and who may exercise their original and supreme power whenever they think proper. To that tribunal, therefore, the court in that case commit themselves, conscious of perfect integrity in their intentions, however they may have been mistaken in their judgment."

To this impressive address, the following well known and revered names are subscribed, viz: Edmund Pendleton, George Wythe, John Blair, Paul Carrington, Peter Lyons, Wm Fleming, Henry Tazewell, Richard Carey, James Henry, John Tyler. (*Judges.*)

NO RESIGNATION HERE.

Such was the spirit of an American judiciary; such were the sentiments of American statesmen, whose wisdom and whose patriotism none dare question. And such, I trust, will ever be the cherished spirit and applauded sentiments of the judges, the statesmen, and the people of all free countries. These are the principles of '76. They are the principles for defending which, you have branded the judges with usurpation, and their advocates with federalism. They are the principles of our government—the principles of liberty. They are our principles, and we will never surrender them to force or to "compromise."

A PLEBIAN.

TO THE GOVERNOR ELECT OF KENTUCKY—No. VII.

"If an honest, and I may truly affirm, a laborious zeal for the public service, has given me any weight in your esteem, let me exhort and conjure you, never to suffer any invasion of your political constitution, however minute the instance may appear, to pass by without a *determined, persevering resistance.*"

JUNIUS.

Liberty, without restraint, would be anarchy. Security, without the guardianship of fundamental and inviolable laws, would be an unexampled anomaly. It would be a prodigy, which never yet appeared in the world, and which never will be seen until man is renovated, and restored to his pristine purity and primeval innocence. As long as frailty and vice belong to our fallen nature, government will be indispensable to our mutual safety and welfare. Natural freedom is unqualified tyranny. We are bound to surrender a portion of our original liberty, to secure the enjoyment of the remainder. If we wish to participate in the benefits of society and civilization, we must, as the only price of the enjoyment, give as much as we exact. We must surrender our individual wills to the paramount will of the community of which we are constituent parts. That united will, to be just, and stable, and authoritative, must be rightful. It must not be arbitrary and capricious. It must be regulated by elementary principles—principles growing out of the nature of man and the organization of society—principles approved by impartial reason, and tested by long experience—principles which are just, because they are suitable, and eternal, because they are just. These elements of government, however incorporated, constitute the political stamina, which, when established, make what is called the constitution. These organic laws of the body politic are either settled by compact, or by long usage and general acquiescence. They are either written or traditionary. In whatever form they exist, they will be respected and upheld, by all who know the difference between regulated and unregulated power, between disciplined and undisciplined force, between reason and passion, between a cultivated enclosure and a dreary wilderness of power.

In despotic governments, the despot's will is law; in republics, the people's will is law. In either form of government, the law, without constitutional control, would be arbitrary, and the subject would be wholly insecure in his life, liberty and property. Under an absolute prince, the only safeguard of individual right, is the power and the probable success of physical resistance, or the benignity of the prince. No written constitution defines his powers, or guarantees the rights of others. No organized principles of checks and balances control his authority or prevent its abuse. Every one is every moment insecure.

Equally insecure are individual rights, in a government in which the will of an ascend-

ant party is in all cases the supreme law. No government can be free or stable, unless the principles of justice and morality overrule the passions or interests of factious bodies. A truly free government is one in which justice predominates over power, and right over might. No government is free or equal in which power is justice, and might is right, although that power is the authority of numbers, and that might is their physical force.

If the people wish to be secure, and to enjoy liberty without the alloy of anarchy, they must establish, by common consent, the principles of justice and universal right, and so organize their government as to secure these principles from violation. How to do this, is the great desideratum in politics. It never was done, and never will be, without a written constitution, which shall define the rights of those in authority, and provide the means of keeping all the departments in proper equipoise. Without three coequal and counteracting departments, there can be no stability in government, and no permanence of right. Fewer than three cannot preserve the harmony of justice. And when they are properly balanced, with the power and the inclination to co-operate with, or counteract each other when the public good requires, faction has no terrors, and every citizen feels secure. In this equilibrium of power lies the value of a constitution; and it is the ultimate aim of all political experiment. This secret was never revealed until within the last century; and the promised land of Columbus was the theatre of its development.

The republics of ancient times were turbulent factions, and generally short-lived. They were aristocratic, and frequently intolerably unjust. This was because there was no third power, to balance the two great inherent and rival powers of society. When the two elementary powers are left to combat each other, the one strives to subjugate the other, and in their conflict and alternate triumphs, commotion is produced, and private right trampled down. But introduce the third power, and harmony pervades the whole constitution Limitations on the legislative power are useless, unless a judiciary can enforce them.

The American constitutions, unlike any which preceded them, are formal and solemn written compacts of the people with each other. They contain the principles of justice and equality, regulated and adjusted by the deliberate and enlightened will of all the people—which can alone be changed by the people, and which are supreme and uncontrollable whilst in force. The constitution of Kentucky is a monument of liberty. The people alone have a right to repair its dilapidations, or alter its proportions. The power of the departmental agents of the people is not only preventive; it is conservative.

To secure this beautiful edifice from the violence of faction or the rashness of innovation, the people have implanted in it the principles of its own renovation, and of its own conservation or destruction. The people themselves have not the political or moral right, to alter or abolish their constitution, otherwise than according to its own principles. This it is, that renders the fabric durable and stable, and will render it venerable.

If the majority could violate or alter the constitution how and when they please, it would be unstable and worthless. It would then not be a constitution, but only legislative will. If the legislature can control or violate it, whenever ignorance or interest may prompt them to do so, it is only a snare for the unwary and the honest; it is a cobweb.

The legislature are not the people; they only represeut the people in the faculty of making laws, as the judiciary does in that of expounding and administering laws. The constitution is the will of the people; an act of assembly is the will of the legislature. And no act can be law, unless it is in consonance with the constitution. The constitution is the authority by which all the departments are governed, and from which they derive all their authority.

This constitution establishes justice and guarantees civil liberty. Its power is altogether moral. Its efficiency consists in the public sentiment of its inviolability. The soul which animates it is the people's reverence. The cement which holds its parts together is the people's virtue and intelligence. The citizen should hold the constitution as the Christian does the decalogue, sacred and inviolable. It is worthy of his most sincere homage, and requires his most resolute and persevering support. Every violation will encourage recurrent violations; and thus its value will be diminished, and its principles rendered inoperative. As long as the people and their functionaries venerate the constitution in all its parts, justice is secure and liberty is safe; the poor man may live in peace, and work with the buoyancy of hope and the confidence of security. But only sanction or connive at one violation of the constitution, and it inspires hope and confidence no longer. While it exists, its motto is "*nolo me tangere.* (touch me not.) Like virgin purity, once sullied, it loses its chaste odor and its charms, and invites its own prostitution. Extinguish only one spark of the vestal fire which burns on its altar, and the desecrated flame is no longer holy; it degenerates into the common element, and is no more sacred or enduring. Listen to the warning of "Junius," on the necessity of guarding the fundamental law from every violation, however minute or transient:

"One precedent creates another. They soon accumulate and constitute law—what yesterday was fact, to-day is doctrine. Examples are supposed to justify the most dangerous measures; and where they do not suit exactly, the defect is supplied by analogy. Be assured that the laws which protect us in our civil rights, grow out of the constitution, and they must fall or flourish with it. This is not the cause of faction, or of party, or of any individual, but the common interest of every man."

Excellent sentiment! It should be engraven

on the heart of every true friend of justice and right government. The inviolability of our constitution is the security of every citizen. If any infraction be sanctioned to the prejudice of one, the example endangers the right of all. Let not the strong exult in their imaginary security, and feel indifferent to the violation of principles, which are necessary to the defence of the weak. He who is strong to-day may be weak to-morrow. He who is up to-day may be down to-morrow. He who is now in a dominant majority, may soon feel the necessity of a refuge to the constitution, which he has impaired so much, that it can afford him no protection against the injustice of another triumphant majority. No prudent man will ever be provoked by passion, or stimulated by momentary interest, to prostrate the barriers of his own security. Let no one think that any violation of his constitution, under any circumstances, or for any purpose, is sufferable. If one violation be tolerated, another is justified by the example; usage ripens into law; and the whole constitution is superseded; it becomes passive and exanimate.

In questions of private right, the judiciary is the only, and from necessity, the ultimate arbiter. If the court in the last resort should err on a constitutional question, the decision is valid between the parties. But public sentiment may, whilst it cannot reverse the decision, reverse the principle. There may be constitutional questions which can be decided only by the people; and their only mode of deciding them is at the polls. Such is the great subject of controversy now pending, in relation to the court of appeals. No judicial tribunal can decide such a controversy. It is not a judicial matter—it is political. Whether the "court of appeals" is constitutional or legal, cannot be definitely determined by "the court of appeals." Whether the old or the new court is "the court of appeals," cannot be effectually settled by the old or the new judges. Who then, must decide these momentous and anomalous questions? The legislature? Certainly not The controversy has grown out of an act of the legislature. There is a collision between the legislative and judicial departments. Shall the legislature decide its own cause—adjudicate on its own acts? Attempt to prostrate another and equipollent department, and then gravely sanctify its own encroachments?

The people who made the constitution, and for whom it was made, are the only umpires. And when they act on such a subject, they act in their original popular character, and not in a delegated, legislative capacity—they act as sovereigns, not as legislators; and the act is popular, not legislative. If their decision be not final, their only resource is to submit, or resume the exercise of their inherent sovereignty. When a constitutional question is referred to the electors at the polls, their decision can be announced by those only whom they there elected. If senators who had been elected before will not acquiesce in such a decision, their pertinacity can have no legitimate effect in frustrating the public will.—That will being the last resort, and being ascertained by the only means by which it is ascertainable, and communicated by ther immediate representatives, in the only mode by which it may be communicable, must be supreme in its authority and inevitable in its results. Who are deputed, in such a case to express the people's will? The senators whom they had not the power then to elect, or the representatives whom they did elect for the sole purpose of representing and declaring their will? If an unconstitutional act were valid until regularly and formally repealed, it would be conceded, that before it should be disregarded, the whole legislative department must concur in repealing it. But we are not left in this dilemma. Every legislative act repugnant to the fundamental law being void, whenever the people pronounce it repugnant, it is considered a nonentity, and its repeal is not necessary. And after such a decision by the people, bold must be the man, and desperate the faction, that would dare to enforce the unconstitutional enactment. The man and the party that would thus presumptuously and perversely act, would deserve to be called enemies to the peace and liberty of their country, and to be considered traitors to its sacred cause.

You say that the people have not decided the "judge question." What right have you to say so? How do you know that they have not decided it? Did not their own representatives solemnly declare, that their constituents had decided that the re-organizing act is unconstitutional? And who else can know as well as they should know? How else will you ever be informed on this subject?

Yes, sir, the people have decided the great controversy and you know it. You in substance admit it in your message, and employ low cunning and despicable artifice to elude that decision. You certainly presume too much on the ignorance and gullibility of the people. They are intelligent, sir, although in electing you, they have encouraged you to persevere in the belief that they are not. Their right to settle the construction of their constitution (in the only way in which they can do it, by voting at the polls,) they will not suffer you to deny or "compromise."

Your political sins cannot be expiated by artful or deceitful professions; nor can the wound which you have inflicted on the constitution, be healed by the balm of "compromise." The people have displayed a "determined and persevering resistance" to your violation of their constitution, and in that resistance they will triumph. The rational and patriotic temper lately manifested by them, is encouraging to the friends of order, and justice, and morality. It is ominous of a long and bright career yet to open for Kentucky, of prosperity, happiness, and just renown. It is a satisfactory and consoling proof, that the constitution is strong, because it shows that that popular sentiment of reverence for its principles, which alone fortifies them and gives them activity,

is unshaken by the political illuminati, who have lately been endeavoring to undermine the republican's faith, by exhibiting to his passions "a Circean liberty"—and to invert the moralist's creed, by tempting him with the sensual allurements of an epicurean philosophy.

To insure the longevity of our excellent constitution, popular virtue and popular intelligence are indispensable. These are the bases of the whole political structure of a free government. Sap these broad foundations, and the superstructure must fall. With the purest virtue and highest intelligence attainable by degenerate man, he cannot live in society securely, without the protection of a good constitution—and no constitution can be called good, or can accomplish its ends, unless the people revere and defend it and every part of it, as the Palladium of their rights—the citadel of their safety. When they manifest this disposition, they show themselves worthy of the boon which constitutional liberty holds out to her votaries.

Our constitution is emphatically the ark of our political salvation. The principles which it preserves are to us civilly, what spiritually Sinai's law was to the ancient Jews. All our virtue, all our wisdom can never enable us to live as freemen without their supreme guardianship.

The statesman who would propose to live without a constitution, or under one which should be subject to the control or execlusive construction of the law making power, would be obnoxious to the ridicule and derision which Plotinus incurred, by proposing to Gallienus, to establish a city of philosophers to be called Platonopolis, where the citizens might live free, under the guidance of reason and philosophy, without the restraints of government.

Sir, to be free, we must have a free constitution, and that constitution must be supreme. It is the people's recorded will, and their servants cannot resist or change it. If a legislative act violate it, a legislative act is not necessary to restore it. The people can check the usurpation, and wipe off the pollution without legislative aid. And they do both, effectually, whenever they decide at the polls that the act of their agents is in conflict with the paramount law.

"A constitution is a thing antecedent to government, and a government is only the creature of a constitution. It is not the act of the government, but of the people constituting the government. It is the body of elements to which you can refer, and quote article by article, and which contains the principles on which the government shall be established, the manner in which it shall be organized, the power it shall have, &c.

"RIGHTS OF MAN."

"The constitution of the state ought to be fixed; and since that was first established by the nation, which afterwards trusted certain persons with the legislative powers, the fundamental laws are excepted from this commission. In short, these legislators derive their power from the constitution. How then can they change it, without destroying the foundation of their authority. "VATTEL."

"The omnipotence of Parliament" is European—it is English. It is not American; it is an exotic, which will not take root or flourish in the soil of liberty. Against this transatlantic principle our fathers fought, and conquering, they have extirpated it. The great principle of America is the appropriate distribution of the functions of government, among three coequal departments. The reciprocal checks of each department preserve an equilibrium, which prevents either from encroachment or consolidation. For the want of this principle, the people of Europe have been subject to unremitted oppression and frequent revolutions. For want of it, all the republics of ancient and modern Europe have been factious and turbulent, and have sunk into anarchy and eventual despotism.

A judicial department, co-ordinate and coeval with the others, and to a proper extent independent of them, has never been known except in these United States. It does not even yet exist in England. THERE, there is no written constitution. Prescription, usage, precedent, coustitute the English constitution.—It is invisible, and exists only in the memory and the heart of England. There, an act of parliament is the supreme law—and hence the judge scarcely ever ventures to say that any act of parliament is void.

But here the judiciary is interposed as an intermediate check on the legislature. The judges are bound, "ex-officio," to declare "the law"—and the people in the constitution have announced, that their will therein expressed is the supreme law, and that every thing in opposition thereto is null and void. In controversies between individuals in courts of justice, the constitution must govern. It was for this end that it was made, and for this end that judges were commissioned. The judges are the agents of the people, not of the legislature, and therefore must enforce the constitution, which is the people's law, in opposition to an unauthorized act of their agents. Your re-organizing act admits that this is the duty of the judges, when it provides that, in pronouncing an act unconstitutional, they shall be unanimous. To pronounce unconstitutional acts void, has been the practice of the federal and state judiciaries ever since the organization of the respective governments. A fearless, impartial, and upright exercise of this important function is necessary to the liberty of the citizen. A constitution limiting the sphere of legislative power, cannot be maintained and enforced without it. And such a texture and temperament of mind as will enable judges to act in this respect properly, should be cherished and encouraged.

If English judges had possessed and exercised this salutary power, Sidney and Russell would have lived to enjoy that freedom for defending which they fell as martyrs. If this conservative engine of free government had been employed in Revolutionary France,

her guillotine would have fallen only on the guilty, and her soil would not have been washed with the blood of her innocent and most worthy citizens. Had its value been known, Aristides would not have been exiled, nor the Gracchi murdered. But the politicians of ancient, as well as modern times, reasoned as many of your party now do. They identified the legislature and the people—they considered legislative acts as paramount law, and viewed the interposition of judicial checks as inconsistent with the genius of government. They reasoned delusively, as their melancholy history proves. And their history would in time be our history, if the same error should prevail among us. There is no liberty where there is not an independent judiciary. There is no security—no living constitution where that judiciary has not the power to rescue the humble or persecuted citizen from the oppression of an ambitious and rapacious faction, whether in the legislature or elsewhere. Without such a judiciary, vested with such a power, in vain would the constitution declare—that the habeas corpus shall not be suspended—that justice shall be administered without sale, denial, or delay—that no man shall be punished without a fair and impartial trial by a jury of his peers—that private property shall not be taken for public uses without just compensation—that the obligation of contracts shall not be impaired—that ex post facto laws shall not be passed—that there shall be no attainder or corruption of blood—that there shall be no titles of nobility—that all men are free and equal—that there shall be no established religion—that no man shall suffer for his faith or be bound to support any sect—that the liberty of the press and of conscience shall be secure. These elements of freedom would all be abstract and speculative, if there were no judiciary to arrest the legislature in their attempts to violate them—and you and your "cabal" might then go on, "conquering and to conquer."

"It is urged that the power which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. But there is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid. To deny this would be to affirm that the deputy is greater than the principal; that the servant is above his master—that the representatives of the people are superior to the people themselves. It is far more rational to suppose that the courts were designed to be an intermediate body, between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and particular province of the courts. The constitution is in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as that of any act of the legislature. If there be an irreconcilable variance between the two, that which has the superior obligation and validity, ought of course to be preferred, or in other words, the constitution ought to be preferred to the statute; the intention of the people to the intention of their agents.

Nor does this conclusion, by any means, suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both, and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental law, rather than those which are not fundamental. It can be of no weight to say that the courts, on the pretence of a repugnancy, may substitute their own pleasure for the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes, or it might happen in every adjudication upon any single statute. The courts must declare the sense of the law. The observation, if it proved any thing, would prove that there ought to be no courts distinct from the legislative body," &c. PUBLIUS.

Such were the sentiments of the Washingtons, the Hamiltons, the Madisons, the Jeffersons, and the Patrick Henrys of the revolution. How different they are from the spurious doctrines of *your* "Jefferson," and *your* "Patrick Henry," who denominate judges "Kings" for declaring a legislative act void. All are "Kings" or "Tories" who oppose you or your relief legislatures.

By an independent judiciary, we mean a judiciary independent of the will of less than two-thirds of the legislature, Without such an independence, you might torture, and imprison, and murder with impunity. No judge dependent on the whim of a bare majority, would dare to resist the unconstitutional acts of that majority.

How would you like to apply the doctrine of legislative supremacy to Congress, and of tame subserviency and absolute dependence, to the supreme court of the Union? Would not state rights be in danger? Might they not soon be engulphed in the vortex of unhallowed power? And would you apply to the supreme court your principles of unanimity on all constitutional questions? What then might become of state rights and the federal constitution? Might not ambitious men pass acts which would eventuate in dissolution or consolidation.

The qualified independence of the judiciary is the most important feature in the constitution. Without it, the constitution would be an inert mass, destitute of life, or form, or comeliness. It would be a chaos of power. But with this feature in it, it lives and reigns—it is beautiful and beneficent. It is this which gives it harmony and solidity, and endears it to the republican statesman, and will endear it to the poor tenant of the humble cot. It is this which

will cheer the innocent and console the persecuted—which gives confidence to our industry and security to our hearths.

It is this strong arm of justice which you and your party have been striving to paralyse.

It is this great anchor of the constitution that you are now endeavoring to barter by compromise.

The people love their constitution and will never, I hope, give up, or "compromise," one word or syllable or letter of it. They will guard it from all violation, whether the attack be open or insidious; whether it be in the form of re-organization, or of "compromise."

Although they have pronounced the re-organizing act unconstitutional, and although you ought to know it, as you have been so anxious to ascertain their "*will*," you still resist the people and spurn their constitution. I have very little hope of convincing you of your duty or your interest. If you were not convinced last August, you are an incorrigible sceptic. In my next number, however, I shall attempt a short argument on the re-organizing act; and I shall expect to shew you, if you are not blind, that it is "OBVIOUSLY and PALPABLY" unconstitutional.

PLEBIAN.

TO THE GOVERNOR ELECT OF KENTUCKY—No. VIII.

"The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it in different depositories, and constituting each the guardian of the public weal; against invasions of others, has been evinced by experience, ancient and modern."

WASHINGTON'S FAREWELL ADDRESS.

The lessons of experience and the maxims of wisdom, have been wantonly disregarded by your party, in "*the re-organizing act.*"—Flushed with victory and instigated by ambition, they looked only to their own selfish ends. The act was passed in a whirlwind of power. The "night scene" was riotous and humiliating. You, and Barry and "Patrick Henry" and other kindred spirits, were placed in the midst of your party in the house of representatives, to exhort them to courage. You were seen plying them most earnestly. Many of them seemed to be shaken to the centre of their souls, by the appeals which had been made and were then making to them, by the friends of the constitution. They faultered; many hesitated; some, unable to stifle conscience, abandoned you. They had been addressed in caucus by the federal attorney and your "*would-be*" chief justice. They had there taken the oath of fealty and given their adhesion. But as the fatal moment approached, when the constitution was either to triumph over your "cabal," or to fall by your scalping-knives and tomahawks, the timid and conscientious turned pale, and felt horror at the deed. To strengthen the weak and console the contrite, you stood by them in the hour of trial; you and your minions placed yourselves, like sentinels, on the floor, to watch the suspected and prevent their desertion. Yes, sir, incredible and disgraceful as is the fact, it is believed to be but too true, that the governor of Kentucky, some of those parasites who were to be judges of the legislative supreme court, he who was to be reporter of their rescripts, and other expectants, were earnestly employed on the floor of the representative hall, among the members, in midnight session, by your countenance and conduct, consoling and stimulating those whose judgments had been convinced, and whose consciences were awakened by the reiterated warnings of the constitutional advocates.

The scene resembled a camp night-meeting, in confusion and clamor; but it lacked its holy impulse. Heaven approves the one; Satan himself, it is thought, presided over the orgies of the other. An honest member, who had gone with you as far as he could, and who felt it to be his duty to follow the dictates of his conscience and judgment, was hissed on the floor, for declaring, when his name was called, that he felt bound to support the constitution, and that *his conscience would not allow him to violate it;* as he had become convinced he should do by voting for your bill. This honorable man had made a speech, and the best (it has been said) which was made in favor of the act; but afterwards he was convinced of his error, and had the magnanimity and firmness to desert you. This he did not wish to do. He postponed it until the last moment when it was possible. He then paused, and told you publicly, that he could go with you no farther; that there, he and you must part; he with his constitution in his hand, you with yours under your feet. How much more noble was his conduct than yours! Obedient to instructions, most of the re-organizers were in the habit of going out whenever a speaker on the other side rose to address the house. COL. MORGAN, of Nicholas, whose seat was next to Mr. ROBERTSON'S, was in the act of going out when Mr. R. was rising to make his speech against the act—but at Mr. R.'s request he remained in his seat, as an act of personal courtesy—observing, at the time, that argument, *to him*, was useless. That was on the forenoon of the day on which the final vote was taken. He listened, and was convinced. This was the man who was hissed by his party for having a conscience. If others, who felt as he did, had possessed the energy and self confidence necessary for an escape from the fear of your vengeance and the trammels of party, what calamities would they have averted from our devoted state! But the fate of your bill had been sealed in caucus, and all efforts to defeat it, or even retard its progress, were unavailing. It was hastened with a precipitation unbecoming so grave an occasion. The previous question was moved, lest the friends of the constitution should be able to break your caucus spell, by the native force of argument. You all became disconcerted and alarmed. You

were afraid to hear more. And it has been published, that *you* prompted the call for the previous question! What say you—guilty or not guilty? If you will not answer, I will answer for you—guilty beyond a doubt.

The member who made the call did not understand its objects or its effects; and as soon as he was notified of them, he promptly withdrew his motion! You encouraged your party to oppose an adjournment, and to *force* the bill through the house, contrary to the usual forms of legislation. You were afraid that remonstrances from the people would come in on the next day. They did come, in tones of thunder. But, lest a reconsideration might be called on the next day, you had signed "*the long bill*" before the house was, next morning, organized. How was this done? Was the bill examined and enrolled before it passed? And did you approve and sign it without reading it? Why this haste? Why this management? Why this shuffling and intriguing? You were about to consign to the tomb, the constitution of your country. Your triumph was like that of an Attila, a Ghengiskan, or a Tamerlane. Your party resembled a conquering army. The sardonic grins and bacchanalian revels, which graced your triumph, showed that your victroy was Vandalic, and your spoils piratical.

The constitution which you supposed you had laid low, has risen with power. Its resurrection portends your doom. It is redeemed and regenerated by the voice of the people. That same voice will salute your ears in accents of thunder. The mangled constitution stands up in judgment against you. I now hold it before you. Look at it. View its wounds—if you are still an infidel, "*feel the side which you have pierced*," and then acknowledge that it was slain, but lives again—was buried, but has risen, to bless and to save.

The constitution either ordains the existence and defines the duration of the court of appeals, or it is silent and inoperative in relation to that tribunal. The supreme court either depends on the will of the people in convention, or on the will of their agents in the legislature. If it be of constitutional origin the legislature cannot abolish it. If it be the offspring of legislation, your act of assembly is valid. The conclusion thus drawn from these hypothetical premises is logical and inevitable. And consequently the judges are either in or out of office, as the fact shall be ascertained to be, whether the "court" originates from the constitution, or from an act of assembly. For that which is purely legislative, is under legislative control—and that which is generated by the constitution, is above legislative power.

The court of appeals is the head of the judiciary department. The governor is the head of the executive department. The constitution declares that "the powers of the government of the state of Kentucky SHALL BE divided into THREE DISTINCT departments, and each of them confided to a separate body of magistracy, to-wit; those which are legislative to one; those which are executive to another; and those which ARE JUDICIARY TO ANOTHER." It also declares, that "the legislative power of this commonwealth SHALL BE vested in two distinct branches"—"the supreme executive power of the commonwealth SHALL BE vested in a chief magistrate"—the judicial power of this commonwealth, both as to matters of law and equity, SHALL BE vested in ONE *supreme court*, WHICH SHALL BE STYLED THE COURT OF APPEALS—and in such inferior courts as the GENERAL ASSEMBLY may, from time to time erect and establish." The language which has been quoted is plain. It is susceptible of only one rational construction. There can be no diversity—no unintentional misrepresentation.

The functions of government are distributed among three departments of agency. Each department is designated by the constitution—its province defined—its duties devolved. Each class of agency is ordained, or in other words, required to exist, by the constitution. It declares that there shall be three distinct departments. Then there must be three. It declares that the legislative power shall be vested," &c.—"that the executive power shall be vested," &c.—"that the judicial power shall be vested in a supreme court." &c. The language is similar—the import and effect must be the same. This is undeniable.

Does the constitution ordain or establish the legislature? Then it ordains or establishes the executive. If it ordains or establishes the legislative *and* executive, by a parity of reason, it ordains *and* establishes the judiciary. The men who shall fill either of those departments are not designated by the constitution. They are otherwise appointed. The departments, the offices, exist without the incumbents; the former are created by the constitution; the latter by election or appointment, under and according to the constitution. The legislative department existed, before the members who have filled it were elected—the executive existed before a governor was elected—The supreme court, as the head of the judiciary, existed before judges were commissioned. The departments were all established by the constitution. They were co-eval with it, and are all co-ætaneous and co-existent This, too, is indisputable.

The office or station of a legislator, and *the* member of the legislature, are two distinct things—so is that of the executive and the governor who fills it; and so is that of the judiciary and the judge who is appointed to administer the laws. If there are no members of the legislature, there is still a legislative department. If the governor dies, the office lives. If the judges die or resign, or shall be removed, the court of appeals survives that by which its bench has been vacated. The legislature may remove the incumbents of either department from office, but they cannot abolish either of the departments—and they have as much power to abolish one as another, and no more. Any attempt to destroy either would be unconstitutional. The reason, and the on-

ly reason, why they are all three ordained by the constitution, is that the people assembled in convention, were unwilling to confide the organization of their political machine to their legislative department; they knew that three departments, with the power and the *will* to check and countercheck each other, and thereby produce harmony and prevent violence, were indispensable to the enjoyment of liberty and security. And they therefore constructed and balanced against each other, three organs of government; and have interdicted the destruction of either by any power inferior to that which gave them being.

The constitution organizes the government, and hence is called the organic law. It constructs the entire machinery of government, and leaves to the people and legislature the discretion amd power of giving it impulse and supplying the means for continuing the concord of its movements, and the unison and effectiveness of its operations. It can never move until the people give the impetus. Each department must be put into operation, by the act of the people, either at the polls or in the legislature. Although the executive department is created by the constitution, there can be no governor without an election by the people. The legislative department exists in the constitution, but until an election by the people, there can be no legislature. The *court* of appeals is created by the constitution, but there can be no judges of that court, until the people, through their legislature and executive, shall designate the number of judges who shall fill the court, and shall give them commissions.

But when a governor is elected, he is in office under the constitution, and his office cannot be abolished by the legislature, nor himself removed except by impeachment. So when a member of the legislature is regularly elected, he holds his seat under the coustitution. His station or office cannot be abolished, during his term, by the legislature. He may be expelled, but his vacant seat will be again filled—it was only vacated by the expulsion of its incumbent, not annihilated. So too, whenever judges are commissioned for the supreme court, they are in office according to the constitution. The court is ordained by the constitution and cannot be abrogated, and the judges can be removed from the court only by impeachment or address. Are there any other modes known in the constitution?

The number of members who shall at any particular time constitute the legislature, is not fixed by the constitution. The legislature, from time to time, may regulate the number of its members, so that it be not less than the minimum nor more than the maximum prescribed in the constitution. When the legislature declares, by an act of their own, that their body shall consist of a certain number, (for example, 75 in one branch, and 25 in the other,) and when the people have elected that number of representatives, the power which was necessary to fill the legislature has been, for the occasion, exhausted, and no repeal of the act regulating the number can affect the right of those who had been elected under it, to their seats and their privileges.

When the legislature have designated the number of judges who shall occupy the supreme court, and the governor and senate shall have appointed men to fill the offices, the appointments cannot be revoked by the governor; nor can the offices be abolished while they are filled. The constitution devolves on the legislature the duty of giving facility and full effect to the court of appeals—but not the power of its creation or abolition; this the people have wisely reserved to themselves. A repeal of any act or acts of Assembly regulating the court of appeals, can have no more effect on the existence of the court, or the tenure of its offices, than the repeal of an act regulating the election of members, would have on the existence of the legislature, or on the seats of the members elected in pursuance of the act. In each case the legislature would have the right to repeal its own acts, but in neither would the repeal operate retroactively, so as to affect private or official rights acquired under the repealed act or acts; these are vested and secured by the constitution.

The constitution requires that there shall be a legislature; that there shall be a governor; that there shall be a court of appeals. Must they then not all exist as long as the constitution shall exist? Can either be abolished by the other two? Can the legislature abolish the executive? Can they abolish the court of appeals? If they can destroy the one, they have the same power to abrogate the other.

The legislature or the executive may, by perverseness, produce an interregnum. By refusing to pass laws, or to execute them when enacted, the legislature or governor may suspend the operation of the constitution, but they cannot destroy its existence. They may, jointly or separately, prevent the appointment of judges for the supreme court; but they cannot abolish the supreme court.

As the judges, when appointed, are entitled to their offices during good behavior, "and the continuance of their court," and as the court of appeals cannot be abolished by act of assembly, it follows irresistibly, that whilst the constitution shall continue to exist, the offices cannot be taken from the judges; nor can the judges be removed from the offices, except for misbehavior, and then only by impeachment or address by two-thirds of both branches of the general assembly. So says the constitution.

Is it the constitution, or is it an act of assembly, which requires that there *shall be* "one supreme court, to be called the court of appeals?" Is it the constitution, or an act of assembly, which declares that there shall be a legislature and an executive? Is it the constitution, or an act of assembly, which devolves on these three depositories of power their respective portions and kinds of authority? Even you, sir, will admit—you are bound to admit—that these are all fundamental principles, which constitute the very essence, and life,

and organization of our republican government.

The constitution establishes three distinct departments. What are they? Is the legislature one? Is the executive two? What is the third? Is it not the judiciary? And how can it be pretended, that one of the three is derived less from the constitution than the others? If there be one which does not depend for its existence on the constitution alone, and which may be suspended or destroyed by the others, then it is a sophism to say that there are three departments; there would be only two constitutional departments; the third would be legislative.

The legislature cannot change the "framework" of the government. They derive their authority and existence from the constitution. They cannot derange the organization of the departments. They can neither create nor destroy them. These are all three as permanent as the constitution itself; otherwise, they are not established by it, and are not the departments which it ordains and creates.

Can the legislature abolish their own department? Can they abolish the executive? To propound such questions seriously to a man of common sense, would insult him. It would argue the suspicion that he was either a fool or a knave. What then *must* be thought, and *may* be said of him who insists that the legislature can abolish the court of appeals, the very head and soul of the judiciary, which is declared to be the third department? Such a man could not maintain his title to common sense, nor to common honesty, until he could prove that *three* departments meant *two*—that the judiciary is the legislative and *vice versa*.

Why does the constitution create three departments? Is it that each may be so far independent of the others as to check their aberations, and yet so arranged relatively as to preserve their mutual rights, and the harmony of all. The legislature and governor may concur in passing unconstitutional acts; for instance, acts establishing a religion; for destroying jury trials; for muzzling the press; for disfranchising citizens who are not freeholders. These usurpations will be harmless, if the judiciary be honest and faithful. The acts of assembly can only be enforced by the courts. It is therefore necessary that they should be so far independent of the legislature, as not to be afraid to resist their encroachments on the people and the people's constitution. For this, and this alone, the people established a third department.

The history of the world proved the necessity of this third department. Liberty demanded it. And if the people in convention had not felt the necessity of establishing it, and rendering it as stable as either of the others, or as the constitution, they would have left to the legislature the power to establish a supreme court or not, as they should deem expedient, and the power to abolish one when created, as in the case of inferior courts.

But they have said that "the judicial power *shall be* vested in one supreme court, and in such inferior courts as the legislature may, from time to time, erect and establish." They have thus confided to the legislature the creation of whatever inferior courts their wisdom and experience may point out as proper. They may erect circuit courts, district courts, chancery courts, quarter session courts, or any other subordinate courts. They may substitute one system of inferior courts for another, without control or limitation. But there shall be one supreme court called the court of appeals, with the power and will to revise, and correct, and control the legislative and inferior courts. This shall be, whether the legislature approve it or not.

If the convention had intended that the court of appeals should be subject to legislative control in every respect, they would have left the legislature as free in relation to that, as they have left them in relation to the inferior courts. But they intended that there should be one court not dependent on a majority. The legislature established circuit courts; the constitution established the supreme court. The constitution requires that there shall be a court of appeals—it does not require circuit courts. The one must exist; the other may or may not. The reason why one must, and the other may exist, is, that the constitution ordains the one, and therefore it cannot be abolished, and the legislature creates the other, and therefore can abolish it.

Allow me to present to you the sentiments of Virginia on this subject. I will do so by giving you the opinions of Judge Tucker, which were the opinions of the judges, lawyers, legislators and people of his proud and enlightened state. They are as follows:

"These departments, as I have before observed, our constitution declares shall be forever separate and distinct. To be so, they must be independent of one another, so that neither can control or annihilate the other. The independence of the judiciary results from the tenure of their office, which the constitution declares shall be during good behavior. The offices which they fill must, therefore, in their nature, be permanent as the constitution itself, and not liable to be discontinued or annihilated by another branch of the government. Hence, the constitution has provided, that the judiciary department should be so arranged, as not to be subject to legislative control. The court of appeals, court of chancery and general court, are tribunals expressly required by it. These courts can neither be annihilated nor discontinued by any legislative act; nor can the judges of them be removed from their offices for any cause except a breach of their good behavior.

"But if the legislature might at any time discontinue or annihilate either of these courts, it is plain that their tenure of office might be changed; since a judge without any breach of good behavior, might in effect be removed from office, by annihilating or discontinuing the office itself.

"The judiciary can never be independent so long as the existence of the office depends up-

on the will of the ordinary legislature, and not upon a constitutional foundation. Hence arises a most important distinction between constitutional and legislative courts. The judges of the former hold an office co-existent with the government itself, and which they can only forfeit by a breach of good behavior. The judges of the latter, although their commissions should import upon the face of them, to be during good behavior, may be at any time discontinued from their office by abolishing the courts. In other words, constitutional judges may be an independent branch of the government; legislative judges must ever be dependent on that body, at whose will their offices exist.

"If the principles of our government have established the judiciary as a barrier against the possible usurpation or abuse of power in the other departments, how easily may that principle be evaded, by converting our courts into legislative, instead of constitutional tribunals?"

Such are the sentiments of the most enlightened jurists and republican statesmen; such are Virginia doctrines, and such are American principles. To multiply arguments on this subject waould be useless. The principle for which I contend is almost self-evident. He that doubts might as well, with Hume, doubt the existence of a God; or with Berkley, deny the existence of matter. Like them, before he can doubt, he must distrust the elements of all reasoning, intuitive sentiments of his mind, the evidence of his five senses. The constitution is so plain, its objects so manifest, that it would be difficult, if not impossible, to elucidate this great principle by argument. I have only attempted a very crude and hasty outline. I shall add but little to it, lest by multiplying words I should darken counsel.

If you had intended only to add four judges to the court, so much of your act as was necessary for that purpose, although inexpedient, would have been constitutional. But this was not its object. You designed by it to remove the "old judges." Your party could not agree during the pendency of the bill, on any precise construction of it. Some admitted that it could not have the effect of removing the judges; others insisted that it would "reorganize" the court, and thereby expel from it those who then filled it. The senator who introduced it in the senate conceded that it would not remove the "old judges," but declared that by withdrawing their salary and placing over them four others to control them, they would be compelled to retire. After the legislature adjourned, your party had not agreed on what construction they should give the act. Seeing that the court of appeals could not be abolished, many of them argued that the court was only "re-organized," and that by this magical process, the judges were reduced to the stations of private citizens. Even the act itself does not purport to be an abolition of the court. On its face it only repeals certain acts of assembly regulating the courts, and all acts allowing salary. This is a tacit admission by yourselves, that the court could not be abolished.

But finding that the constitution provides that the judges shall hold their offices during good behavior, "and the continuance of their court," you were compelled either to admit that they were still in office, or that their court had been abolished. And then you were driven to a dreadful alternative. In this extremity, you chose to contend that the court was abolished. Yes, sir, in your own message you have taken that bold and alarming ground. The following is your language:—"The majority now deemed it necessary to resort to their constitutional power of abolishing the court, and establishing another composed of other men. That they had this power they could not doubt, because the constitution had not brought any such court into existence, but the first legislature of Kentucky had established it, because the power of changing, and even re-organizing it, had been once before exercised by the legislature. Because the supreme court of the United States, as avowed by the judges themselves, was created by congress, and because the ablest statesman in the latter body had declared that the supreme court was as much the creature of legislative power, as the inferior courts." Thus you argue before the face of the world, and in the very teeth of irrefragable testimony, to convict your argument of falsehood, and yourself of wanton misrepresentation. Your main position is indefensible, and you know it. Your reasons are all perversions of the truth, and you cannot deny it.

What, sir, did *you* abolish the court of appeals? Did your re-organizing act dare to intimate such a monstrous import? Suppose it had said in plain English, "the court of appeals is hereby abolished," would not all America have been astounded? If you can abolish the court for one moment, can you not abolish it forever? And where then will be the third department? Where, and what then will be your constitution? Your legislature will be omnipotent; your courts will be their servile tools and the instruments of their ambition.

You may change your courts and your judges every year, and give to the judicial office a legislative instead of a constitutional tenure. Then, sir, in the language of Mr. Jefferson, would "all the powers of government, legislative, executive and judiciary, result to the legislative body." And he warns us that "the concentrating these in the same hands, is precisely the definition of despotic government." He tells us also, that "it will be no alleviation, that these powers shall be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism is not the government we fought for, but one which should not only be founded on free principles, but in which the powers of govern-

ment should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits without being effectually checked and restrained by the others."

Mr. Madison admonishes us that "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny." He notifies us also, that "the legislative department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex."

In the celebrated letters of "Publius," we find the following political lesson: "The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution, I mean one which contains specified exceptions to the legislative authority; such, for instance, as that it shall pass no bill of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing."

Now you see some of the reasons why the convention established *three* departments, and why they declared that "there should be a supreme court," &c. And yet, sir, you boldly declare that this court has been abolished by act of assembly! The simple fact that this court is established as a check on the majority of the legislature, would, of itself, unanswerably prove, that it is not responsible to or dependent on that majority. You say, in defence of your act, that the legislature have heretofore set us precedents. I deny it, and challenge you for the semblance of proof. You know that no act of assembly ever turned a judge of the supreme court out of office.

You say that the supreme court of the Union has acknowledged its establishmeht by act of congress. Do you believe this? Do you not know that in the late case of Osborne vs. the United States, the supreme court decided that "the constitution establishes the supreme court, and establishes its jurisdiction."

You say, that congress has removed from office federal judges, by ordinary act of legislation. True; but what judges? Were they judges of the supreme court, established by the constitution, or were they judges of inferior courts, created by act of congress? You are not so stupid as not to perceive the distinction between the two cases, nor so ignorant as not to know that it was these inferior courts which congress abolished. Who ever attempted to abolish the supreme court? The man who should ever propose to do it would be disgraced. Mr. Jefferson, whose private letter your party published, and grossly perverted, expressly declares therein, that judges of the supreme court can only be removed by impeachment.

You say that the ablest statesmen in congress declared that the supreme court was as much the creature of legislative power as inferior courts. Who were they? Giles was (I believe) the only man who ventured to utter such an absurdity. The federal party resisted the right to abolish inferior courts, by assuming an analogy between them and the supreme court. The argument was imposing, and the republican party combatted it, by admitting that judges of the supreme court could not be legislated out of office, nor their court abolished, because it, (like ours, and by the same language) was ordained by the constitution; but at the same time insisting that there was no analogy between the inferior and supreme courts. They said that the supreme court, being established by the constitution, could not be abolished by congress; but that the inferior courts, being created by congress, could be repealed. All this you know; and yet you publish to the world in your message, that congress has exercised the same power which your party has attempted to exert, and that the ablest statesmen have contended that congress can abolish the supreme court!

You say that the constitution did not bring the court of appeals into existence, but that this was done by the first legislature of the state. Does the act of the legislature create the court? Does it not acknowledge its anterior existence? Do not its provisions pre-suppose its constitutional creation? What legislative act established the court of appeals under the constitution of '99? This constitution recognizes and confirms in office the former judges of that court. And by what legislative legerdemain can they be removed, without being convicted by two-thirds, of misbehavior? The constitution did not bring YOU into being as governor, but it brought your office into being.

But lastly, to cap the climax of your blunders and mistakes, you assert that the majority abolished the court and established another composed of other men. Here you admit that it was not the court, but the men who were abolished. You confound the court with the judges of the court. The majority established another court, composed of other men! that is, the judges constitute the court, and by removing them the court is abolished, and by establishing another court they are removed.

In this precious confession, you either betray your inexcusable ignorance, or show the cloven foot of *"re-organization."* You have surrendered the question, sir. The court is not abolished, and consequently the judges are now in office. And so say the people.

"The power of king, lords and commons is not an arbitrary power. They are the trustees, not the owners of the estate. The fee simple is in us." This is the opinion of Junius; and I hold it to be orthodox, the opinion of Willis Alston to the contrary notwithstanding. When the people who know who this Willis Alton is, and how you exerted his puerile

and fulsome letter, they will know how to appreciate his statements. And when they learn that he is almost the only man in the union, out of Kentucky, who holds those wild opinions; when they hear of the innumerable letters from other, and wiser, and better men, contradicting his assertions, and expressing the opposite opinion, they will know how to estimate your folly and your motives for publishing his rodomontade. Mr. Alston's puny assaults will not shake our constitution, nor change our opinions. The one is stable; the others are derived from higher sources than Alston's *ipse dixit*. We derive them from God, from Washington, from Madison, from Jefferson, from our fathers of the revolution, from our experience and our constitution.

Were I a Lycurgus, I would swear the people by their religion, their household gods and the graves of their fathers, never to violate one letter of their constitution. I would enjoin on them as a sacred duty, to treat as their enemy every man who would attempt the invasion of its principles. Our fathers ventured their lives for the privilege of making it, and we would be degenerate and apostate sons if we would not offer up ours in its defence. If we suffer its degradation, we are unworthy of its blessings; unworthy of the patriots who gave it to us as our richest inheritance, and unworthy of the millions now living, and the generations yet unborn, whose prayers are ascending, and will, ages to come, ascend to heaven, invoking the smiles of Providence on the cause of constitutional liberty throughout the world. A PLEBIAN.

TO THE GOVERNOR ELECT OF KENTUCKY—No. IX.

"In wisdom, steadiness and judgment, the people have greatly the advantage of PRINCES. For this reason, the voice of the people is compared to the voice of God."

Whatever you may say, or whatever you may think of the people's constitution, you are only one of their servants, and should submit to their superior judgment, and obey their voice. The governor who shall contumaciously defy the people's deliberate will, and arrogate the right to control it, would, if he could, be a tyrant.

The people who made the constitution, and for whom alone it was made, ought certainly to be presumed the best judges of the ends for which it was designed. They ought to know, whether by that constitution, three departments of government were established or not. They certainly do know whether each department was instituted as a check on the others, or whether two of them were created only to overrule and subjugate the third. And, sir, they do know, and it is their interest and duty to know, whether the third department is theirs, or the creature and property of their governor and legislature. Yes, sir, they know better than you, or *little* Willis Alston, whether their court of appeals is the sturdy offspring of their will in convention, or the rickety bantling of executive and legislative procreation.

You have endeavored to adopt this court as your own, and to subject it to your tutelage and dominion. But the people have detected you in the stealth. They have caught you *filagranti delicto*, and after a patient and impartial trial, they have passed sentence of condemnation on you and your accomplices in the illicit deed.

They say that the court of appeals is, and shall continue to be, under their paternal care, and that you shall have no control over the court, and no other control over the judges of the court than what they have given you in the constitution. If you are not satisfied with what is thus given, you must wait until the people revoke their letter of attorney, and by a new or amended grant, confer on you more power.

If you have no respect for the patriarchal counsels of Washington; if you will not yield to the concurrent opinions of Jefferson, of Madison, of Hamilton, of Henry, of Mason, of Jackson, of Nicholas, and the host of patriots and statesmen who achieved our independence, and consolidated our liberty, and the blended effulgence of whose names fills up the "milky-way" of our political hemisphere; if you regard not the sentiments of other states; if you will not listen to your Shelby, your Bowman, your Taylor—all of whom were soldiers of the revolution, and the last of whom having been a member of the two conventions of Kentucky, observed, in an apostolic address, last session of the legislature: "Mr. Speaker, some gentlemen have said, they *believe* the re-organizing act is unconstitutional; sir, I KNOW IT TO BE SO." If you will not respect the opinions of the soldier or the statesman, of the living or the dead, there is a tribunal before whose august bar your stubborn neck must bow, and your stiff knees must bend; the people of Kentucky will be respected; their voice has been heard, and it *will* be obeyed. For although you are high in office, you are but man, weak man, frail and fallible. Emperors and governors are often very weak men, and are seen to be so when stripped of the factitious glare of power:

"Unbounded power and height of greatness, give
To kings that lustre which we think divine;
The wise who know them, know they are but men,
Nay, sometimes weak ones, too."

Motives of ambition may prompt you; the people feel none such. It may be your interest to do wrong; it is always theirs to do right. This is proven by the nature, and very existence of our free institutions, and is fortified by our experience. If these evidences of popular rectitude are not satisfactory to you, allow me to add the authority of a great name. In Cato's letters, you may find on this subject the

following just and enlightened sentiments:

"It is certain that the people, if left to themselves, do generally, if not always, judge well. They have their five senses in as great perfection as have those who would treat them as if they had none. And there is oftener found a great genius carrying a pitchfork than carrying a white staff.

"The people have no bias to be knaves. No ambition prompts them; they have no rivals for place, no competitors to pull down; they have no darling child, pimp or relation to raise; they have no occasion for dissimulation or intrigue; they can serve no end by faction; they have no interest but the general interest."

This language is forcible, and applies well. You might even yet profit by it, if you will consider it seriously and apply it justly. For not heretofore having done so, you have blundered and wandered far from the path of duty, of honor and of patriotism. Come back; relent; submit to the people, and assist (as it is your duty to do) in carrying their will into effect, and you may do something towards lessening that weighty burthen of responsibility, which your boldness, and vanity, and temerity have thrown upon your shoulders. But only yield to your temper; persist in your opposition to the people; disregard the warnings of wisdom and the suggestions of duty—do this if you choose, but recollect that you are now told, that if you do, your mad career will sink you, not perhaps as low as Lucifer fell, but as justly and as hopelessly. And then could you complain, if the political historian should say of you, as Isaiah said of the prince of evil—

"How art thou fallen from heaven, O Lucifer, son of the morning! How art thou cut down to the ground, which did weaken the nations! For thou hast said in thy heart, I will exalt my throne above the stars of God; I will sit also upon the mount of the congregation, in the sides of the north. I will ascend above the heights of the clouds; I will be like the Most High. Yet thou shalt be brought down to the grave, to the sides of the pit. They that see thee shall narrowly look upon thee, and consider thee, saying, 'Is this the man that made the earth to tremble?'"

Such would be the fate of any governor, who should ever presume to set himself up above the people who made him, and exalt himself and satellites above the constitution, which was made to guide and govern him and them. We will have no dictator. We are the masters; you the servant. We have the right to govern, and we will govern. You shall not, with impunity, resist our construction of our constitution.

We, the people, have declared, that we, and not you or your legislature, spoke into being the court of appeals; that it is constitutional, not legislative; that its origin is coeval with the constitution; that its existence was from that date actual, not potential; that it has depended on the stability of the constitution, and not on the vacillations of legislative will. In fine, sir, we, the umpires of your own choice, and the arbiters of the last resort, have decided that the court of appeals cannot be abolished, except by a new convention, and that necessarily, your act of reorganization has no effect on the judges of that court. And if our opinion were destitute of the auxiliary support of the plain import of the constitution, and of the almost unanimous concurrence of the politicians and people of the whole union —if it stood alone, unpropped, it is enough that it is our opinion—the decision of the people on the meaning of their own form of government. This ought to close all controversy. It is stronger than argument; it is overwhelming authority.

Determined, however, to pursue your career of self-aggrandizement, and to convince the people that you, and not they, ought to rule, in the extremity of your madness, you import foreign aid. You invoked and have obtained the assistance of Willis Alston, of North Carolina. You hope, with his assistance, to revolutionize Kentucky, and overturn her constitution.

If we are yet to learn our political catechism, I pray you, sir, for the honor of Kentucky, for your own dignity, give us a tutor in our own borders. If you cannot do this, I beseech you, most kind governor! to import one from Virginia or Pennsylvania; from Missouri, any where, sooner than from "the North State." Or, if we must have a North Carolinian, then, sir, I implore you, to employ any other preceptor than Willis Alston. I have an insuperable repugnance to learning politics, or any thing, from Willis Alston. In this I may be too fastidious; but I revolt at the idea by instinct. I do not know that I could explain to your satisfaction, the reasons of my invincible hostility to Mr. Alston's tuition.—With me it is an affair of sentiment, more than of reason; it is a sort of *"je ne sais quoi,"* I feel it strongly, but cannot describe it. Lest, however, you may ascribe improper motives to my remonstrance, I assure you that I am not influenced by a recollection, that Mr. Alston submitted to a horse-whipping by John Randolph; nor by any suspicion that he may be the son-in-law of Aaron Burr, or a relative of Aaron Burr's son-in-law. In whatever degree of propinquity he may stand to Burr's son-in-law, he might still be honest, because it has been said, that the son-in-law of Burr was an honorable and accomplished man. But I will not be instructed on my own constitution, nor lectured on my political duties by Willis Alston.

Mr. Alston is certainly very pragmatical. What right has he to obtrude his arguments, his censures, or his advice, on Kentucky? What right had you to employ him as our dictator or instructor? Are *you* not sufficiently dictatorial? And have you not around you many idle men, who are far better qualified to be your assistants, than Willis Alston? Sir, to be plain with you, we have "set up" for ourselves, and do not intend to be ruled by you, nor taught by any foreign or domestic impostor. We have been under your guardian-

ship too long already. "We have paid dearly for the whistle?"

In sober seriousness, sir, pardon me for inquiring how you procured from Willis Alston, his "set speech" on our goverment, our parties, and your message? Did you ask him to make a speech for you? You would gratify the curious by publishing your letter to Mr. Alston, which brought forth his long and silly letter. Did you publish his letter without his authority. If you did, he ought not to complain, because he might have known, that there was danger of its exposure by you, unless you could have believed that it contained *"cabinet secrets."*

I am disposed to believe that the letter was written for publication; it carries on its face evidence of careful preparation for the public eye. If it were written for publicatien, Mr. Willis Alston has been guilty of an impudent intrusion on the people of this state, and deserves castigation. When he becomes political knight-errant, he must expect nothing but derision and contempt. Was Mr. Alston's letter the only one which you have been able to procure in all North America? I suppose so, for if you had another, you would have lost no time in giving it publicity.

Mr. Alston has rendered himself very ridiculous, by the letter which he has written; and you are no less so, for extorting it, and exposing it by publication. So far as he has dealt in assertion, he is evidently and notoriously incorrect. When he attempts to reason, he is not more successful. He has shewn that he is in total ignorance on the entire subject of his letter.

Our judicial controversy is not like that which was agitated in congress in 1802. The principles involved in the two cases are entirely dissimilar. Congress abolished inferior courts, which had been created by act of congress; they did not attempt to abolish the supreme court, which is engrafted in the constitution. Why did they not? Because they knew they could not. They had the will, but lacked the power. Was not John Marshall then the chief justice of that court? And was he not obnoxious to the resentments of the republican, and then dominant party? Were not other judges of the supreme court equally as obnoxious as the chief justice? Why, then, were they not expelled, by an abolition or a reorganization of the supreme court? Why did not congress pass an act, declaring that "the supreme court is hereby abolished," or that "all laws in relation to the supreme court are hereby repealed, and the same are hereby re-enacted?"

The wise republican statesman of that day, never had thought of your hocus pocus mode of judge breaking. It was too shallow an artifice, too low for grave statesmen. They knew that it would be perfectly ridiculous. Such a project was, therefore, not even hinted at. It would have been scouted as the offspring of a deranged mind, or a wicked heart.

The constitution of the union, like that of Kentucky, declares, that "the judiciary power shall be vested in one supreme court, and such inferior courts," &c. It gives to congress the power to establish inferior courts, but none to create a supreme court; that is ordained imperitavely by the constitution And any and every court which shall be established by congress, or by our state legislature, must clearly be an inferior court. If, therefore, your famous act be valid, if it establishes your new court, that court is an inferior court, and its decisions, like those of other inferior courts, must be subject to the revision and correction of the supreme court or court of appeals. The legislative court is *"ex vi termini"* inferior and subordinate to the constitutional court. The power of the legislature to erect inferior courts is unlimited, and is illimitable, except by a sound discretion. They may, therefore, establish a Desha court, a Barry court, or any other court however anomalous or nondescript; and they may christen it *"the* court of appeals;" or, *"a* court of appeals;" or, "the court of the star chamber;" 'the governor's court;' "the people's court;' or give it any other name in the reorganizing nomenclature; but it is, after all, an INFERIOR court. There can be but *one* court of appeals, and that you cannot abolish. The constitution only gives you power to erect and establish *inferior* courts; and, therefore, all courts erected and established by you, must be inferior courts.

Circuit courts may be abolished, 1st. Because they were created by an act of assembly; 2d. Because they are inferior courts, which the legislature may "from time to time erect and establish;" 3d. Because experience may prove that other systems are more suitable. The circuit judge holding his office, during good behavior and the continuance of his court, must, although he behave well, go out of office when his court ceases to exist—because, there being no circuit court, there can be no circuit judge—there cannot be a judge without a court, although there can be a court without a judge. To exemplify this, suppose a former judge of a district court should now claim to be district judge, every man would at once say that he cannot be judge, because there is no district court. But there are circuit courts; and suppose that Judge Shannon, one of the circuit judges, should resign his office, is there not still a circuit court in his circuit? The court exists, whether there is a judge or not.

But none of these considerations apply to the court of appeals. It can never be abolished by the legislature; nor can any other be substituted in its stead. And therefore a judge of this court can only forfeit his office by misbehavior—pass what law you will, there is still a court of appeals—its identity is never lost—its existence can never, for one moment, be suspended. And consequently he who was once a judge of the court of appeals, and who has not resigned or been removed by impeachment or address, continues to be a judge of the court of appeals; because the court is still the court of appeals, and because he is entitled

to his office while the court of appeals shall continue to exist.

He who cannot perceive this plain difference between the supreme and inferior courts, must be incapable of discrimination or analysis. Nothing, to my mind, could be more palpable, than this radical distinction in the origin and duration of the two courts, and the tenure of their offices. In every essential attribute of existence, the courts differ *"toto celo"*—as far as the heavens from the earth.

But none are so blind as those who *will* not see. You are resolved to shut your eyes, that you may not have even a twilight view of the subject. And employing as you do all your resources to find apologies for confounding the two courts, it is not wonderful that some of your party have convinced themselves that the court of appeals is as destructible as the inferior courts. For we are informed by Terence, that

"Verum putes haud acgore, quod valde expectas."

"You believe that eagerly which you hope for earnestly."

But many of you have had too much light to plead this apology. You do see. You know that you are resisting the effulgence of solar light; but your pride and ambition will not suffer you to acknowledge your errors. You have gone so far as to consider retreat perilous and ignominious. In this, however, you deceive yourselves, and if you persist, time will open your eyes when it will be too late to retrieve what you will have lost, and forever.

Then Mr. Willis Alston's puff will afford you no consolation. Sir, it is more magnanimous to acknowledge, than to persist in an error. It is better to forsake "your way" than to pursue it to destruction. It will be much more glorious, and eventually more advantageous to you, even now to repent, than to die in your sins. To such as have committed the "unpardonable sin," there is no hope. These are few, and "have sinned against light and knowledge." They have fanned the flame of discord and prevented its extinction. Whether you are one of these, your own conscience may decide. Whether you are or not, I am bound to say to you, as well as to them—

"You have not, as good patriots should do,
studied
The public good, but your particular ends;
Factious among yourselves; preferring such
To offices and honors, as ne'er read
The elements of saving policy;
But deeply skilled in all the principles
That usher to destruction."

To exalt yourselves, you have endeavored to bear down every barrier which checks your ambition, and opposes your absolute dominion. You tremble in the presence of a pure and independent court. You want a subservient court. One, the judges of which will be dependent for office and for bread on your bounty. And if you could succeed in subjecting the supreme court to your will, you might certainly attain your objects. You might then have Beotian judges whom Hesiod calls "devourers of presents," You might then have the ancient English courts, in which suiters paid fines to the king for his favor or fobearance. Such courts as those of Edward III, where his mistress (Alice Pierse) exerted so much influence, that it became necessary to forbid her interference under pain of banishment; such courts as those of Charles II, in which a Kentucky Charley may employ his purchased influence for the party whose purse is longest; such courts as those once so much prostituted by Bishop Laud, as to kindle a flame which could only be extinguished by blood; such courts as those of revolutionary France, by whose sentence all were decapitated who would not bow to the ruling faction. Does your ambition require such engines as these? Such you might have, if you can convert the court of appeals from a constitutional into a legislative court. It would then not be the court of the people, but the servile instrument of faction.

But thanks to the tutelar genius of our country, we have a constitution, which, while it lives, can secure us from such anarchy. That constitution is confided to us, the people, and we will, I trust, do whatever is proper for vindicating its integrity and sustaining its supremacy. We have the power, and it is our duty to do it effectually and promptly.

"In the situation in which we stand, I see no other way for the preservation of a decent attention to the public interest, in the representatives, but the interposition of the body of the people, whenever it shall appear by some flagrant and notorious act, by some capital innovation that the representatives are going to overleap the fences of the law, and to introduce an arbitrary power." BURKE.

"Whenever the legislatvre shall, either by ambition, fear, folly, or corruption, endeavor to grasp themselves, or put into the hands of another an absolute power over the lives, liberties, and estates of the people; by this breach of trust, they forfeit the power the people put into their hands for quite contrary ends. What I have said here concerning the legislative in general, holds true also concerning the supreme executor, WHO ACTS CONTRARY TO HIS TRUST, WHEN HE EITHER EMPLOYS THE FORCE, TREASURE OR OFFICES OF THE SOCIETY TO CORRUPT THE REPRESENTATIVES, AND GAIN THEM TO HIS PURPOSES." LOCKE.

The foregoing sentiments are re-echoed in our ears by Mr. Madison, in his preamble to the celebrated Virginia resolutions of '98. And in that memorable document, he moreover tells us, that WHENEVER THERE IS A CONTEST BETWEEN THE DEPARTMENTS OF GOVERNMENT, THE PEOPLE ALONE CAN SETTLE IT, AND THAT THEIR DECISION, WHATEVER IT BE, OR HOWEVER GIVEN, MUST BE FINAL AND IMPERATIVE.

You are mistaken, sir, if you suppose that you will promote your own interest or happi-

ness, by your crusade against justice, order, and the constitution. Look around you, and behold your situation. Listen to Fenelon and learn wisdom; this is his language: "Of all men, that king is the most unhappy who believes he shall become happy by rendering others miserable. His wretchedness is doubled by his ignorance—he is indeed afraid to know whence it proceeds, and he suffers a crowd of sycophants to surround him, that keep truth at a distance. He is a slave to his passions, and an utter stranger to his duty. He has never tasted the pleasure of doing good, nor been warmed to sensibility by the charms of virtue. He is wretched, but the wretchedness that he suffers he deserves, and his misery, however great, is perpetually increasing."

Here is a faithful picture of an arrogant, self-sufficient, ignorant ruler. Does your conscience tell you, that in you may be seen its original? If it does, you may yet profit by its exhibition. If you will still continue blind to your condition, and cling to your idols, I trust that the people next August, in their majesty, will proclaim to you and them, in the language of Cicero:

"Obruat illud male partum, male retentum, male gestum, imperium:

"Perish that power which has been obtained by evil means, retained by similar practises, and which is administered as badly as it was acquired." This shall at least be the prayer of A PLEBIAN.

PRELECTION.

THE friends of "the American System" in the United States having resolved to hold a National Convention at the Capital of Pennsylvania, in the year 1827, for consulting as to the most prudent platform of protection by a tariff, a local Convention in Kentucky, in July of the same year, appointed JOHN HARVEY, THOMAS C. HOWARD, JAMES COWAN, RICHARD H. CHINN, and GEORGE ROBERTSON, as delegates to represent Kentucky in the *Harrisburgh Convention*. All of them, except Mr. HOWARD, attended that Convention, and, after its adjournment, made the following report to the people of Kentucky. The principles therein illustrated—had they not been superseded by the Compromise of 1852–3—would, as many statesmen believe, have established, before this time, a degree of national prosperity and independence which would have commended, to general approval, the proper policy of protection prudently applied to *Young America*. The report presents an outline of the principles and policy of Mr. ROBERTSON, who—though he always advocated the power and expediency of protection, properly discriminating as to subjects, and time, and degree—never voted for any tariff bill while he was in Congress, only because all of them were, in his judgment, so framed as to operate unjustly and rather destructively to the proper ends—that is, national wealth, economy and equality.

Reviewing the past and contemplating the present, many wise men believe that the compromise with nullification was barren and unfortunate to conservatism, and still more think that had any *Compromise* been proper, a paralysis of *American protection* was too high a price.

TO THE PEOPLE OF KENTUCKY.

FELLOW CITIZENS:—

In undertaking to fulfil the expectations of those by whom we were appointed to represent Kentucky in the convention lately held at Harrisburgh, we were certainly influenced by no other consideration, than a sincere desire to contribute, as far as we were able, to the advancement of a cause, which is essentially identified with the future welfare of our country. To ameliorate the condition of the farmer and excite domestic industry generally, were the only objects of the convention. It was an able and venerable body of 100 men, from 13 states of the Union, who had assembled on the 30th of July, and adjourned on the 5th of August. One of our colleagues, (Mr. Howard) did not attend.

We were not insensible of the honor conferred on us, nor unmindful of the responsibility incurred by its acceptance. If longer time could have been allowed for a more general expression of your approbation of the objects of the convention, and the choice of your delegates, we would have been gratified. But feeling the necessity of a representation from our state, and believing that you could not be otherwise than favorable to the invitation of Pennsylvania, we did not hesitate, at the hazard of personal inconvenience and pecuniary loss, to repair, without delay, to the scene of deliberation, and co-operate with distinguished fellow-citizens from other states, in devising and recommending such measures, as should be deemed most suitable for the relief of our

suffering industry, and the useful application of our vast and dormant resources.

The power to protect agriculture, commerce and manufactures, the three great elements of national prosperity, has been exercised by congress and acquiesced in by the people, ever since the first session of the national legislature in 1789. And the policy of its application to many of the branches of those three interests, had not been questioned. Gen. Washington, Mr. Adams, Mr. Jefferson, Mr. Madison, Mr. Monroe, Gen. Hamilton, and most of our distinguished statesmen, have urged the exercise of this protective power, and the beneficial results of its judicious application, are practically exemplified. To the provident exertion of this benificent power of protection by a tariff, the United States are indebted for the prosperity of many branches of American enterprise—naval, agricultural and manufacturing.

Our tonnage has been protected by a discriminating duty of 700 per cent. The growth of cotton and tobacco, and the manufacture of sugar, have been encouraged by high and (to the consumer of the latter particularly) singularly heavy duties, with the avowed object of protecting the domestic article. The manufacture of glass and salt has been encouraged by duties unusually high; and to the wholesome protection of a tariff our success, in many manufactures in which we are now unrivalled, is justly ascribable.

Our cotton manufactories have attained their present maturity and surprising success, in a few years, under the cover of "a judicious tariff;" and now supply not only our own consumption with better and cheaper fabrics, by at least 50 per cent., than we ever bought from abroad, but export to foreign countries to the amount of $4,000,000; thereby, to that extent, enriching our own people, and advancing our own commerce.

Deplorable indeed would be the condition of the Union, if after the people of the states have forbidden their local legislatures to impose duties on imports, or to regulate commerce, either foreign or among the states, and have delegated those powers to congress, there should be no lodgment of power anywhere, to protect their agricultural and manufacturing industry and capital, by laws regulating the importation of foreign products, and counteracting foreign legislation.

The states have only surrendered, they have not annihilated this power. It is inherent in every government, and has been translated by the people, in the federal constitution, to congress, a safer depository of such power than the state legislatures, because its legislation will be more uniform, comprehensive and effective. Congress is expressly vested with the power to regulate commerce, and to lay and collect taxes, and to impose duties. "Regulate commerce" for what purpose? No other or more circumscribed than the general welfare, subject only to the qualification of uniformity among the ports of the respective states. Has not congress all the power on that subject which each and all of the states possessed before the adoption of the federal constitution? And did not each of them ever have the plenary power to regulate commerce, by duties, in such a mode as to protect their own industry and capital against foreign monopoly, or even competition? The general government is now the trustee of all that state power. And the people have a right to expect and require that the great trust will be faithfully fulfilled to the full extent of their interest and proper independence.

The legislature of our parent state (Virginia) however, at its last session, influenced by sentiments inexplicable by us, but animated, as we believe, by a misguided patriotism, denied to congress this necessary and familiar power, and denounced its exercise for the last 37 years, by every congress and under every administration, as usurpation and tyranny. The chamber of commerce of Charleston, as if by concert, cotemporaneously, or nearly so, announced similar sentiments in a manner intended to rouse the opposition of the south to the *principle* of a domestic tariff. And about the same time a distinguished senator of the south, and others of his party, spoke of the probable success of the Woollen's bill, as *"a calamity more afflictive than war;"* and to defeat the passage of the bill, or if ever passed, "to RESIST" its enforcement, they recommended conventions in the south, to defend what they seemed erroneously and unfortunately to regard as *"southern interests."*

The friends of the woollens and other domestic interests in Pennsylvania, (than which no state is more peaceful or patriotic,) surprised and somewhat alarmed at all this unexpected procedure, considered it proper to endeavor to adopt some pacific and rational measures for counteraction and self defence. And for this purpose, and this only, the people of Pennsylvania recommended and solicited a convention, at their capital, of delegates from such of the states as were favorable to what, by a new and appropriate nomenclature, is styled "the American system." Such portions of Kentucky as had time to deliberate on this invitation, determined to accept it, and chose us to represent your interests.

We neither solicited nor desired this employment. The only compensation which we have received for six week's service, has been the individual pleasure and improvement which we derived from the interesting incidents with which our travel was replete, and the advantage of a cordial intercourse with men distinguished for their intelligence and love of country, from twelve of our sister states. And all the reward we expect or would receive, is your approbation, and our own consciousness of having faithfully endeavored, at the expense of some toil and money, and much domestic comfort, to promote your best interests. We have no fear that we have been guilty of any incivism. The objects of the convention were those only which have been avowed by its

friends. And those objects have been fully accomplished—as far as the moral influence of the unanimous opinion of such a body of men, can be expected or should be allowed to operate on public sentiment or national legislation. Our time, while in session, was sedulously and exclusively devoted to the consideration of the best means of relieving national distress, and advancing national industry. Our deliberations were characterised by moderation, liberality and harmony; and marked, as the result will shew, by no local interest or predilection. They were —as they should have been—in their manner temperate and decorous, and in their aims, impartial and national. Whatever was done, was done openly; and the best vindication of the convention would be a publication of all that was said and done, and attempted to be done, by the body collectively or its members individually.

We will not commit our own dignity, nor insult yours, by noticing (for the purpose of gravely defending ourselves from their application) the opprobious epithets which have been uttered and published in reference to the convention, by some individuals of morbid sensibility and of more morbid taste. Nor will we notice, for any other purpose than to shew, that they have not escaped our observation, the reckless prophecies of dire calamity, with which others, not more enviable for their temper or sagacity, have essayed to alarm your fears and awaken your prejudices. If such names as Jeremiah Morrow, Hezekiah Niles, Mathew Carey, Joseph Ritner, the venerable Judge Huston, the patriarchal Tibbets and Payne, and others which might be mentioned, cannot rescue the convention of which they were members, from unjust reproach, we could offer nothing to still the tongue of slander. We shall only add, on this subject, that we have done nothing but what every citizen of the United States has the constitutional right to do, peaceably and without annoyance or rebuke; and we have done what we were called to do, in a manner becoming the dignity of the American people, and free from just exception.

It is not treasonable or even presumptuous, to petition congress for a redress of grievances. And we shall only ask those who have ventured to question our candor or purity of motive, to be careful lest, by the temper and object of their denunciations, they subject themselves to a more just and disastrous recrimination.

The convention, as many of you will have heard, concurred unanimously in a memorial to congress, soliciting additional protection to the growth of hemp and flax, and to the manufactures thereof—the manufacture of iron, and fine cottons, and the growth and manufacture of wool.

The capacity of our country to produce hemp and flax, is almost infinite: and no statesman who will carefully examine the statistics bearing on this subject, can doubt that, with a very little additional protection, a domestic market will be secured, which will enable us to increase the growth and manufacture of hemp and flax to an extent which will be singularly advantageous to the soil and agriculture of our country, and, as in the case of cottons, far beyond our own domestic and naval uses.

During the fiscal year 1826, the following amounts of hempen and flaxen fabric, were imported into the United States, viz:

Articles not subject to the duty of 25 per cent., - - - -	$2,757,080
Those subject to the duty of 25 per cent., - - - - - -	929,946
Other hempen articles, excepting cordage, - - - - -	48,900
Total, - - - -	$3,764,781
Cotton bagging, 3,436,460 sq yds, valued at - - - - -	1,781,188
Twine, pack-thread, and seine twine, 326,640 lbs, - -	60,827
Cordage, 1,613,604 lbs - -	06,599
Total, - - -	$1,928,614

In the same year, raw hemp and flax were imported as follows:

Hemp 9,869,000 lbs, - -	$551,757
Flax, about 600,000 lbs, - -	72,000
Total, - - -	$623,757

For the manufacture of hempen and flaxen articles imported, 21,880,615 lbs. of hemp and flax would be necessary—which would be worth $1,500,000—requiring for their growth about 51,500 acres of land, and giving employment, in manufacturing them alone, to at least 700 persons, and indirectly to a great many more.

Within the last six years manufactories have been established in the United States, which already supply one half of our sail cloth; but it is believed that they cannot be sustained much longer, against foreign capital and competition *and legislation*, without some further support from government. The duty now imposed on the raw material is 15 per cent. ad valorem, and is no higher on the manufactured article. Add to this the fact, that England grants a bounty of 25 per cent. on the exportation of linen.

How easy, from these facts, would it be for us to supply ourselves with the hempen and flaxen fabrics from our own factories? A small additional duty on the raw material and on cordage, canvas and cotton bagging, would secure to us our own market; the necessary effect of which would be, a greater diversity and productiveness of labor, some relief to our depressed agriculture—and more security, and independence to our citizens in seasons of scarcity and of war.

The house of representatives of the United States in 1824, passed a bill to allow a duty of 4½ cents on cotton bagging, but by the unlucky secession of a western senator, of high name and pretensions, it was unfortunately reduced to 3¾. It is believed that the immediate representatives of the people spoke their

will in passing this bill, and that it will not be long, under favorable auspices, before it is reiterated with more success, and shall become, as it should have done in 1824, the law of the land.

The prosperity of the grain growing states, has been declining ever since the peace of 1815. We are deprived of our accustomed foreign markets, and have not substituted others at home. The consequences, as might have been foreseen, are languor and distress in the fairest and most prolific regions of the middle and western states. The remedy is obvious and natural. It is two fold.—1st. Increase the ratio of the home demand to the supply, by encouragtng home manufactures, which will certainly multiply the number of non-producing consumers—augment the demand for breadstuffs at home, the only sure and steady market—and, in a corresponding degree, reduce the relative number of grain-growers, now oppressively redundant, and enhance the value of their productions. 2d. Increase the duty on imported spirits, so as to make it the interest of our people, as it should be their inclination and pride, to consume less of foreign, and consequently more of our domestic liquors distilled from grain.

The foreign demand for our breadstuffs has, since 1818, not only been very limited, but injuriously precarious and fluctuating. The enforcement of "the corn laws," virtually interdicts the sale of our corn and flour in England; and by her recent policy England menaces the occlusion of her colonial ports against the admission of our vegetable products. Before the colonial interdict (viz:) in 1825, the exports of flour from the United States to all the British colonies did not exceed 223,000 barrels,—*none could be sold in England!* During the same year, our grain growing population bought of England manufactured articles to the amount of $7,500,000! And it should not be forgotten, that in the same year, the New England manufacturers bought and consumed 625,000 barrels of American flour, and large quantities of our corn. Here is a domestic market already opened to us, 100 per cent. better than that of England, before her new colonial system was announced, and this market is created by the growth of American manufactories under the genial and vivifying influence of "*a judicious tariff.*" This is an important fact, when it is recollected that the grazing and grain growing states contain about three-fourths of the population of the United States.

In 1793 our entire population was about 4,500,000; in 1824 it was 12,000,000. Yet in the former year the value of our animal and vegetable exports exceeded that of the latter year—thus: 1793, 1,074,639 barrels of flour; 1824, 996,762 barrelf of flour, 75,106 barrels of beef, and 38,563 barrels of pork. In 1824, 66,074 barrels of beef and 67,229 pork. In 1791-2-3, we exported 373,352 tierces of rice, and in 1822-3-4, only 301,683 tierces. The money value of the foregoing exports in 1793 exceeded that of 1824 as 100 to 50. The value of exports was not given at the treasury before 1803, since which, we are enabled by the treasury reports, to exhibit the following tabular contrast: 1803, flour exported $9,300,000; 1824, flour exported $5,759,000; 1803, beef and pork, $4,125,000; 1824, beef and pork $2,628,000. The intermediate years exhibit a ratio of progressive deterioration in the value of our exports, while our population has in the mean time increased 100 per cent.

The foregoing facts are sufficient to show the consequences of depending on a foreign market, which we neither control nor regulate: and they indicate the necessity of a home market, stable and sure. We should not depend, as much as we have done, on foreign caprice and British legislation. We should buy more from our own citizens, and that will enable them to buy more of us in return. This kind of interchange will be mutually advantageous. It will make us feel (what we really are, or should be,) as one people; and will promote our prosperity and real independence.

The capacity of the United States to supply their own market with iron, is indisputable. Iron ore is abundant in the east, west, north and south, and immense quantities of it are useless, for want of a demand, whilst we import largely from abroad. The convention, therefore,—influenced by the same doctrine which governed all its determinations, (viz) that when we can supply the raw material ourselves, we should also supply the manufactured the article, in all grades, even to its highest elaboration,—recommended a slight additional duty on foreign iron and steel. If this duty should be imposed, and have its contemplated effect, it will augment our intrinsic resources in peace and in war, and in a short time diminish to the consumer the price of articles which to all classes of society are indispensable.

The complete and signal success of our manufactories of coarse cottons, and the conviction resulting from satisfactory information, that the like protection by the government, will produce the like success to the efforts now making to manufacture the finer cottons, influenced the convention to ask the attention of congress to this branch of domestic enterprise. We can now buy at a New England or Pennsylvania factory, cotton cloth for ten cents a yard, of finer texture and more durable than the imported cotton, which, before our factories existed, cost us at least thirty cents. And we can now buy a very useful article of American manufacture, to-wit, good casinetts, for fifty cents, better and nicer than any coarse British cloth at $2. Yet we know that, when the last duty was imposed on the importation of coarse cottons, many plausible objections were vehemently and honestly urged against it, by speculative cosmo-politico-economists; such as the following: "Let trade regulate itself—we are taxing the many for the benefit of a favored few—you will enhance the price of the manufactured article—diminish the revenue—encourage monopoly." But the experi-

ment refutes all such abstract doctrines. "The many" have been benefitted as well as "the few"—the price to the consumer has been wonderfully diminished—there has been no smuggling—and the *revenue has been augmented.* These objections were then more imposing than now. They were sustained by mutilated scraps of authority from Adam Smith, Say, and Ricardo, who wrote for Europe, and were unfortunately misapplied, by our theoretic politicians, to America. But if there were no other facts to shew the fallacy of these old-fashioned abstractions of closet economists, (and there are many more) the cotton experiment is most triumphant. In the success of that, we find theory overturned by practice—and speculative opinions refuted by an array of simple facts which are irresistible in the confirmation of the maxim of our Washingtons, Hamiltons and Jeffersons, expressed in the following oracular language:—"When a domestic manufacture has attained to perfection, and has engaged in the prosecution of it, a competent number of persons, IT INVARIABLY BECOMES CHEAPER. The internal competition which takes place, soon does away everything like monopoly; and by degrees reduces the price of the article to the minimum of a reasonable profit on the capital employed. This accords with the reason of the thing and with experience."

The chief object of the convention, and that which was, more than any other, the occasion of its meeting, was to encourage and protect the growth and manufacture of wool. And the result was an unanimous recommendation to congress of the following rate of duties, viz: on all foreign wool over the value in a foreign port of 8 cents per pound, a duty of 20 cents per pound, with the addition annually of 2½ cents, until it shall reach fifty cents.

On the woollen goods (with the exception of worsteds and bombazetts, flannels and blankets,) 40 per cent., with the addition of 5 per cent. annually, until it shall reach 50 per cent. —with this additional qualification, to-wit: that in estimating the ad valorem, all woollens (subjected to the above duty) of less value than 50 cents the square yard, are to be valued at 50 cents; those between 50 cents and $2 50 at $2 50; those between $2 50 and $4 at $4; and those between $4 and $5 at $6.

There is no essential difference between the rate of duties here recommended, and those proposed in the Woollen's bill of last session of congress, except in the article of wool. We inclined to the opinion that it would be better to invite the attention of congress generally to the subject, without any specific recommendations. But a large majority of the convention being of a different opinion, and insisting that it would be proper to suggest, respectfully, the rates which the convention deemed most suitable, leaving congress, when possessed of the advantage of such suggestion, to adopt such a system of protection as its superior wisdom, on a more extensive survey of facts, might ascertain to be most fitting, we concurred cheerfully in uniting in the entire memorial as it was presented. To such as may say—"the rates are too high"—we reply, congress can make them lower; and to such as may insist that the subject should not be touched, we answer: we shall acquiesce, very cheerfully, (as we hope all others will do,) in whatever course the wisdom and patriotism of congress shall finally adopt. We did not expect nor desire that our opinions should have more than their just share of influence.

In regard to the propriety of increasing the duties on wool and woollens, however, there were some prominent considerations influencing the convention, which should not, even in this imperfect outline, be entirely pretermitted.

By the tariff of 1824, the duty on foreign woollens was raised from 25 to 33⅓ per cent. This was found necessary to sustain the labor and capital employed in the woollen manufacture, and was deemed sufficient. In faith of the law of 1824, investments were made by some of our fellow-citizens in other states, in buildings, machinery and materials for woollen manufacture to the amount of at least $20,000,000.

These investments promised to be productive for some time, and no doubt would have been, if they could have been protected from the disatsrous effects of two unforseen causes: 1st. The distress of the manufactures in England in 1826, induced them to export large quantities of their woollens to the United States, and sell them at reduced prices, to avert the ruin which hung over their own heads, and to crush our rival establishments, so as to keep open the usual demand in this country for their fabrics. 2d. To aid in relieving their own manufacturers, and in prostrating ours. England reduced the duty on wool to be imported for their manufactories, from 6 pence sterling per pound, to one penny, and on the coarser wool of less value than one shilling per pound, to a half penny per pound! and on other articles to be imported for the manufacture of cloths, there were corresponding reduction; for instance, that on olive oil was reduced from £15 13s the ton (252 gallons) to £7; on rape seed from £10 to 10s; on logwood from 9s 4d sterling, to 1s 6d; and on indigo there was a reduction of 20 per cent. All which were estimated to reduce the cost of manufacturing 16⅔ per cent., (viz:) the reduction on wool 14⅔—and that on the other articles 2 per cent. The avowed object of these reductions, was to enable the British manufacturer to undersell the American, in our own market, and thereby, in the parliamentary declaration in favor of the reductions, open to England in North and South America, "an immense market for our (English) low priced cloths!" And shall this announcement be prophetic? It must be so without some countervailing regulations by our own government. The British Parliament has virtually reduced our duty of 33⅓ per cent. to 16⅔—more than one-half less than it was before the tariff of 1824! These

facts speak plainly. There is nothing speculative in them. They are, and have been to us, most actively practical. Our manufactures have been severely stunned by their operation, and must sink under the blow, unless our government interpose, and resist the assaults of the British Parliament, by securing all the protection promised by the law of 1824, which Parliament has reduced, and in effect more than repealed. Shall we submit to England, as her colonies, or shall we enforce our own legislation, and protect from foreign aggression our own capital and our own industry; and from ruin, our own citizens? Shall we adhere to the law of 1824—or shall we suffer it to be mocked and trifled with by England?

There can be no doubt that we can supply the wool for all the cloth necessary for our own use—nor can it be seriously questioned that we can, with the advantage of security from government, in a short time, make as good cloths as any ever imported—and afford to sell them at home, much cheaper than we can buy those of foreign countries. The cottons will prove this, without the trouble of an analysis of the facts which, to the merely speculative mind, would make so obvious a result manifest. The parallelism of the wollens and cottons is obvious, and may be made com plete.

The consumer cannot buy in Kentucky a yard of London cloth, which cost $6 at the manufactory, for less than $12. This duplication of price is produced by the profits of intermediate venders; by insurance, transportation, impost, &c. And thus a Kentuckian must pay $12 per yard for the honor of wearing a British coat; for it is confidently believed that, with adequate protection, American manufacturers could be able in a very short time, to sell cloth of the same quality as cheap at their own doors, as those of England can in the mart of London or York. And if, instead of buying at half price, we should give even more for an American than an English coat, would it not in the end be a saving, not only to the purchaser, but to our country? Would it not be better to buy from our own neighbors, who will buy from us, than of England who will not purchase our hemp, or whisky, or flour, or corn? Would it not be wiser, to provide a market for those articles at home, than to have none at all? And would it not be more profitable and patriotic to keep our money at home, than to send it abroad to "that bourne, whence no traveler returns?"

The number of sheep in the U. States are estimated at 18,000,000, of the value, at $2 each, of $36,000,000; and of which the fleeces estimated at 2½ lbs each, and at the price of 40 cents per pound, would be worth annually $18,000,000. It is supposed that it would require 40,000,000 of sheep, to supply wool to manufacture the wollens necessary for the consumption of the existing population of the United Stares, if no foreign woollens were introduced among us.

The United States, in climate, soil, and topography, are generally well adapted to the growing of wool—and it is believed that no portion of them is more eligible for this purpose than parts of Kentucky; portions of which might, by raising sheep, be made productive, which are now in wilderness and waste. If we could get only 40 cents a pound for wool, our agricultural capital would be rendered more productive than it otherwise can be, by a transfer of a portion of it to the raising of sheep. Wool, which readily brought $2 75 during and shortly after the war, will not now command more than 50 cents. Such as sold for 95 cents and 18 cents in 1826, before the impulse given by the Tariff of 1824 was checked by the selfish policy of England, is now dull at 50 cents and 12½ cents. And for want of demand, the business of raising sheep is rapidly declining. Without some stimulus to the domestic manufacture of wollens, there will not be a demand sufficient for the wool now grown in the United States—so that even a prohibitory duty on foreign wool would not benefit the owners of sheep in our country, without the creation of a more extensive home market. The rejection of the Woolen's bill last winter sunk wool more than 25 per cent. This fact is well authenticated.

During the last year, there were about 60,000 persons, large and small, employed in woollen manufactories in the United States. The provisions (to be bought from the agriculturalists) necessary to subsist these laborers, would cost at least $2,500,000—which is about 40 per cent. of the total value of the agricultural productions exported from the United States; and if stimulated by a domestic market for their fabrics, so as to have full employment, they would purchase (also from the agriculturalists) wool of the value of about $1,000,000—83 per cent. of our population are agriculturalists, and the market even now furnished to them by our own manufacturers for provisions and raw materials, is ten times as great as that of the world besides.

The woollens imported from England annually, may be estimated at $10,000,000; and from the grain growing and grazing population of the United States, England will not buy of their horses, cattle and breadstuffs, to the value of one *cent!* The balance of trade with England is against the U. States at least $10,000,000, the whole value of the woollen importations. Whilst the United States enjoyed the carrying trade, their commerce flourished. That great source of prosperity is now closed against us. During the continental wars, the population of Europe, absorbed in the concerns of armies and battles, necessarily neglected, in a considerable degree, the employments of peaceful life and productive labor—hence their agriculture declined, and they looked to us for a sufficient supply of such vegetable articles of consumption as they had not the leisure or the means to produce. Our agriculture then flourished, and our farmers were buoyant with hope, and prospered. Since the pacification of Europe, its people have resumed the puruits of agriculture, with

renovated vigor and alacrity; the consequence of which is, that they supply their wants by the cultivation of their own soil, and will not purchase from us. And hence our agriculture has been gradually declining, and our farmers are becoming despondent. In 1818 England interdicted the importation of our breadstuffs—and she determined, at any hazard, to enforce her corn laws. She begins to talk about growing tobacco. She invites to her ports the cotton of Hayti, free of duty, whilst she enforces a heavy impost burthen on that of the U. States! Indeed, she will not buy cotton from us whenever she can be conveniently supplied elsewhere.

In the south of Europe—in Germany—in Poland and in Sweden, tobacco is now grown, and may be produced to still greater extent. By these causes and others, which it is unnecessary to enumerate, our vegetable exports have decreased in quantity and value, and our producers and exporters have suffered severely, and many even to hopeless bankruptcy; although we are favored with a better soil and form of government, and with more physical resources than any other nation on the globe We want a *home market*—and a greater diversification and distribution of labor. This is the natural, the obvious, and as the experience of the world undeniably proves, the only sure remedy within our control. We must learn to depend on ourselves, and shake off our colonial habits. We must do as England, as Russia, as Germany, have been forced by necessity to do; and as France is learning to do—protect our own industry, and secure for its products a certain and steady market. If we cannot, or will not do this, we may, without prophecy, read our destiny in the history of Spain, Portugal and Ireland, who have followed the popular doctrine of anti-tariff politicians, blindly and perseveringly.

No nation has ever been long prosperous, without manufacturing for itself, articles of necessity in peace, and of valuable uses in time of war—and all other fabrics of which it might, by its own labor, supply the chief materials. All history proves this, and it also shows us the important fact, that manufactures never flourish and maintain their ground, without the aid and protection of government. Infant manufactories pass through a probationary ordeal, which many cannot survive, without being propped and nourished by the fostering care of a paternal government. They seldom attain vigor and maturity, without assurance of safety from the fluctuations of foreign policy, and the overwhelming attacks of foreign power and capital. And when they survive the dangers incident to their infancy—their improvements in skill and in machinery, their augmentation of capital and their rivalry among themselves, have never failed, and never will fail, not only to enable them to maintain themselves, but to reduce their fabrics to the minimum value, which is always less than the same kind of fabrics, when imported, can be sold for. These are not speculations. They are the practical lessons of all times and countries; and they accord with the opinions of our most illustrious statesmen, living or dead.

It is not expected or desired by the rational friends of the "American System," that manufactures should ever predominate over agriculture. The latter is the basis of our power and prosperity, and should ever command our supreme regard. But, to give it full effect, manufactures and commerce must also flourish. These are three sisters, whose destinies are indissolubly intertwined. And commerce and manufactures must be so far encouraged as to invigorate and reward the hands of agricultural industry. That manufactures have not been thus far promoted, it is believed confidently a fair induction of recent facts will demonstrate.

Prohibition is not contemplated at this time. The work of advancing *"pari passu,"* the three leading interests, must be progressive, to be tolerable or successful. Active, and eventually successful competition in the fabrication of some of our own most valuable raw materials, into such articles as our necessities require and our habits render comfortable, is all that it would be prudent now to attempt. If we should feed, why should we not endeavor to clothe ourelves? Why should we disregard the invitations, and waste the rich bounties of Heaven? Why not make a prudent use of the means of wealth and power which are strewed over our land? Why not develope, and by the judicious employment of machine power, and proper distribution of labor and capital, multiply our resources and increase their natural productiveness? England, since the age of Edward the III, has augmented and sustained her vast power, by manufactures. Many raw materials, when elaborated by her manufactories, are increased in value ten, some an hundred fold. And by this process, too, she gives employment to thousands of men, women, and children, who could not otherwise exist on her soil; and thus she makes many good and productive subjects, who would, without this great resource, be idlers and vagabonds. Her cotton manufactories alone, give employment to more than 500,000 families, averaging at least four persons each, and constituting in the whole upwards of 2,000,000 of souls. Out of raw cotton, costing her only $22,500,000—and of which article she does not raise a pound; she produces $180,000,000; whilst the United States, that raise two-thirds of what is consumed in Europe, and export five-sixths of their crops, receive therefor only from 20 to $25,000,000. This is only one, out of many examples.

The extension of our home market, by multiplying our manufactories, will not only directly promote agriculture, but indirectly it will produce a more extensive effect on "the general welfare." It will cause the improvement of our roads and rivers—the construction of canals and railways, which will facilitate our inter-communication, strengthen our sympathies as one people, engaged in one common cause, and thus tend to cement the

discordant and erratic elements of the Union, into one indissoluble fraternity. For this object, and to this extent only, we desire to cherish manufactures. We would not blindly follow the example of England. We are essentially agricultural. And it is our interest and should ever be our pride to retain so enviable a pre-eminence. To aid in doing this, was the object of the convention, and they have ventured to suggest humbly, the measures which, in their opinion, are best suited to accomplish the desirable end. All acknowledge that some remedy for the agricultural distress, which is seen, and felt, and heard in every neighborhood of the middle and western states, is indispensable. The convention have recommended that which they honestly hope will be most efficacious and least exceptionable. And they would venture their reputations on its signal success, if it is permitted to make a fair experiment.

It is not local; all parts of the Union, if not equally profited by its immediate effects, will eventually derive a common benefit from its success, and none more than the west. And the south will soon feel its beneficent operation, not only in the general prosperity, but in some peculiar benefits. They will find a steady and profitable demand in America, for their cotton, and rice, and indigo, or for greater quantities of them than have yet found so advantageous a market. They will be able, very soon, to buy their cotton bagging from Kentucky cheaper to them than from Scotland, and *better;*—American casinetts and linseys will be cheaper, and suit their black population better than coarse imported cloth. And this is the opinion of many of the most enlightened, patriotic, and liberal men of the south. The following is the language of one of them: "There is a perfect coincidence of opinion between us on the subject of protecting home manufactures. Bad as the times are for cotton planters, (of which I am one in a small way) they would be much worse, but for the demand of our manufactories for the raw article. I should like to see more effectual protection extended to the growth and manufacture of wool. These, and such like measures will, in time, make us independent." The lamented Lowndes entertained the same rational and liberal sentiments.

The cotton and sugar of the south and southwest have been protected by a duty of 3 cents per pound, now equal to about 50 per cent. *ad valorem.* . These articles are indispensable to the poor as well as rich, especially the article of sugar. The poor man or sick woman must pay three dollars on a hundred pounds more, in consequence of the protection extended to the home manufacture of sugar. And this is indirectly a bounty of 16 dollars to every individual of the entire population of Louisiana. The whole quantity consumed in the United States may be safely estimated at 120,000,000, of which about 76,000,000 are imported. The duty on the latter is about $2,300,000, which is paid by the consumers. Should those who monopolize the benefits of such protection, of such an article, object to a duty of 30, 40, or even 50 per cent on wool and woollens; whereby the latter article, of indispensable necessity, will, in time, be rendered cheaper to them, and improve the market for their own peculiar and much favored products? The duties proposed by the convention will not injure commerce, nor essentially diminish the revenue. The coasting trade, and that in the small articles necessary for our manufactures, which we cannot produce, and the export of our manufactures, will more than equal the value, fiscally and commercially, of all the foreign commerce in the articles to be protected, even if that protection should amount to a prohibition. But prohibition is not intended or expected. The manufactures exported, in 1826, exclusive of gold and silver, amounted to 5,595,130 dollars; exceeding the export of tobacco 1,000,000 dollars, and all other vegetable and animal exports 800,000 dollars.

Nor will the measures proposed materially affect the foreign market for the cotton of the south, except so for as it will be improved by reducing our exports of that article. England will buy our cotten when she needs it, and cannot buy a sufficient quantity from the Indias, Egypt or Hayti, at the same price; for necessity is a law, even to her. If she can be advantageously supplied elsewhere, she will not buy our cotton, whether the proposed tariff be adopted or not. Greece and her islands are more suitably adapted, in soil and climate, to the culture of cotton, than any portion of North America. Whenever peace and security shall be established in those delightful regions, the Greeks will grow more, and better, and cheaper cotton, than we can or will raise. And there is no doubt that the Mediterranean can supply all Europe with raw cotton. Late signs are auspicious of the partial emancipation of Greece. Whenever this shall come, England will find the means of supplying her manufactories with cotton, and will not fail to do it.

Will not the south see these things, and consent to prepare for the crisis, by submitting to the only expedient which, in our opinion, can alleviate the distress of the times, and avert the impending danger! Her ancient patriotism, her acknowledged sagacity, her deep interest at stake, give assurance that she will forego party pride, and old prejudices, and seeing her common interest in the common cause, will acquiesce cheerfully and co-operate in the common endeavor, to re-establish the prosperity, and consolidate the happiness of our common country. Except in gardens, cotton was not raised in the United States before 1789; since which time the quantity produced has increased to an astonishing degree. To show the rate of progressive increase in the production, the two last years only will be selected. In 1825 the estimated quantity was 550,000 bales. In 1826 it was 750,000. 85,000,000 pounds exported in 1819 were nearly as valuable as 125,000,000 pounds in 1820. And in 1823, 173,000,000 sold for $1,500,000

less than 142,000,000 pounds did in 1824. These facts shew the fluctuations and uncertainty of the foreign demand, and that the demand may be now, and often is exceeded by the supply. What will follow when Greece and the Archipelago engage in the production of cotton? It is believed that the American factories will shortly consume 40,000 bales of American cotton, of which 12,000 bales will be manufactured for foreign markets. Even now, large quantities of American coarse cotton goods are exported, and sold profitably. Stop the American cotton factories, and the price of raw cotton must fall, nearly, if not quite 20 per cent., and cotton goods must rise in more than a correspondent ratio—and 'thus make a double loss to the American people, and a double gain to foreigners."

To Kentucky, exhausted by incessant drains of her specie to the East, to buy dry goods, and to the West, and North, and South, to buy land, and cut off from a profitable foreign market, the proposed measures of relief cannot be otherwise than most salutary. They will have a tendency to revive our drooping agriculture, and give life and animation to our villages. They will stimulate, and enable us to improve our roads and our rivers, and draw frrom our earth its abundant resources. On the rocks of the Schuylkill, five years since uninhabited, manufactures have reared a flourishing village, (Manayunk) containing upwards of 1500 manufacturers, moral, industrious, useful and happy people. Similar results have been effected by similar means, at Lowell, in Massachusetts, and at Weare and Somersworth, and many other places. Such improvements are always the necessary cause or effect of canals or turnpike roads—for cheap, sure and speedy transportation and travel.

The foregoing are a few (and only a few) of the considerations which prompted the recommendation of the Harrisburgh Convention. We have neither the leisure nor the inclination to enter into elaborate argument in favor of this recommendation, nor a minute analysis of the facts which would sustain it. By order of the convention, an address to the people of the United States is in preparation, and will shortly appear. This will be full, and, we hope, satisfactory. We will endeavor to lay it before you as soon as it shall be published. We had hoped that its earlier appearance would have rendered this hasty and imperfect address unnecessary. But as we have been disappointed in this, we feel it out duty to submit to you this immethodical statement of some of the statistical facts, which, with others, influenced our opinions, and which, we trust, will not be without their effect on yours, when you examine them carefully and make right deductions from them.

The recommendation is liberal and national. We have reason to expect that the Eastern members of Congress will generally favor the whole system, and if the western and middle states co-operate through their delegations, the objects recommended will all be effected. Some of the members from Pennsylvania, and no doubt some of those from Kentucky, voted against the Woollen's bill last winter, because it did not embrace some of the other subjects noticed by the convention. We should be pleased to see all these interests united in one fate, and triumph together; but if all cannot enlist, in their favor, the support of a majority—GIVE US A PART. We are deeply interested in each branch, although our interest is more direct and immediate in some than in others. And if we can only sustain one now, that success will enable us, by its effects, the sooner and more certainly to gain all the other objects which they have solicited. But if all fail, we have the consolation to believe that it will not be our fault. We have endeavored to do our duty, and in this endeavor we have been animated by no other motive than an honest zeal for the welfare of our state and our nation. There are many honest men who do not concur with us in opinion on this subject. If our opponents are in the majority, we shall quietly yield and patiently wait for the current of events to operate on the reason of the people. But if, as we believe, the convention are engaged in the cause of the people, we only ask, from our adversaries, the same temper of patient resignation. Our cause is the cause of our country, and must prevail. We only ask for ourselves the charity which we are willing to manifest for those who oppose us. We know that the subject is a delicate one, and well calculated to produce diversity of opinion among speculative men. Theory has been long tried. We invite attention to the practical lessons which are pressed on our attention by our own history.

All except the few who deny the power to protect manufactures by legislation, profess to be in favor of a "judicious tariff." What is judicious at one time may be injudicious at another. What may suit one country may not be adapted to the circumstances of another. But the time has, in our opinion, arrived, when hemp and flax, and their manufactures—Grain—Iron, and Wool and Woollens, demand further protection in the United States; and we have united with others in urging their just claims to public consideration. This is what we call, at this time, and in this country, a "judicious tariff"—and if there is an organized party, which is determined to oppose this domestic system as thus presented, and internal improvement, its handmaid, we trust that this party will learn that this is the *"American System,"* well approved by the American people.

Respectfully,

G. ROBERTSON,
JOHN HARVIE,
JAMES COWAN,
R. H. CHINN.

PRELECTION.

On the 18th of November, 1822, *Mr. Robertson*, then a member of the Kentucky Legislature, after having resigned his seat in Congress, offered to the members of the Assembly, convened in the Representative chamber, at his instance chiefly, resolutions recommending *Henry Clay* for President of the United States, and urged their adoption by a speech which has not been preserved. They were unanimously adopted, and a committee was appointed to correspond with other states on the subject. His colleagues, of the committee, having imposed on him the duty of preparing an address to the members of the Legislature of Ohio, he wrote the following letter, which they all signed, and copies of which were sent to the leading members of that body, and were responded to by the vote of Ohio for Mr. Clay. This was the first time he was supported for the Presidency. He was then in the 46th year of his age; and the day of his said nomination was the 32d anniversary of *Mr. Robertson's* birth.

The letter to Mr. Clay, which succeeds that to the citizens of Ohio, is now published in this volume, because it contains some evidence of personal knowledge on a subject which malice had made unjustly annoying to Mr. Clay and his friends: and the address by the people of Garrard follows for a like reason.

The salutatory and valedictory addresses which follow, are deemed worthy of a place in the same volume, as slightly illustrative of the character and fame of Mr. Clay. The first was delivered on the 9th of June, 1842, on the occasion of a magnificent festive assemblage of more than 10,000 of his fellow-citizens, male and female, on the ground now used as the Fair Ground, near Lexington, convened to meet Mr. Clay on his return home, after resigning his seat in the Senate. And the last was delivered on the 9th of July, 1852, on the arrival of his dead body in Lexington, and the delivery of it to the committee of reception, by the Senate's committee, who attended it from the National Capitol.

And it was thought best to disregard chronological order, and group all these little addresses together. As connected with the last address, that of the Chairman of the Senatorial Committee, with an extract from the Observer & Reporter of the 14th of June, are also here re-published.

TO THE LEGISLATURE OF OHIO.

FRANKFORT, Ky., November 20, 1822.

At a joint meeting of the members of the two Houses of the General Assembly of Kentucky, informally convened at this place on the 18th instant, Henry Clay was unanimously recommended to the people of the United States, as a proper person to succeed James Monroe as President thereof, by a resolution, an enclosed copy of which we take the liberty to submit to you. A committee of correspondence was also at the same time appointed, composed of the undersigned, and we beg leave now to address you on this occasion, in discharge of the duty thus imposed.

It is perhaps a source of deep and general regret, that there is not any mode, perfectly unexceptionable, of collecting and proclaiming public sentiment on the very important question of Presidential succession. Congressional caucuses, which have been generally used as the organs of popular opinion, are liable, certainly, to many and serious objections. The substitution of the state legislatures, although not entirely free from all objection, is not so obnoxious to public reprehension as any other mode which has been adopted or devised.

Some one or more of the gentlemen in the executive department at Washington, seem to be considered ex-officio candidates for the Presidency. In regard, therefore, to an individual in the private walks of life, as he does not challenge public attention by the glare or patronage of office, if it be thought proper to present him to the Union as a fit person for the chief magistracy, there seems to be a peculiar propriety in bringing him forward under the auspices of respectable portions of the community at large. Difference of opinion may, and probably does exist, as to the most proper time when this should be done; but the members of the general assembly of Kentucky were impressed with the belief, that if, on the one hand, it was unadvisable to exhibit a premature anxiety, on the other, it was important that there should not be a culpable procrastination, indicating a careless indifference about the object.

It was believed, moreover, that if they permitted the present occasion to pass without any expression of their wishes, it would be too late, hereafter, to have any effect on the formation of the general sentiment.

Indulging the hope that there may be a concurrence of opinion between Ohio and Kentucky on this subject, it was the sincere desire of the members of the general assembly of the latter, that those of the former should have preceded them in the declaration of their wishes. But as the session of the legislature here will terminate probably before or about the commencement of yours, it was not supposed probable that, if you should choose to make any expression of your opinions, it could reach here prior to our adjournment; and therefore it was not deemed proper longer to delay the adoption of the enclosed resolution.

It will be extremely gratifying to us, if the state of Ohio should coincide and co-operate with that of Kentucky on this interesting subject. The weight and influence to which your state is justly entitled from her position in the Union, her patriotism and her population, must and should give to any public manifestation of her opinions and wishes on any subject, but more especially on that of the next Presidential election, a most controlling and extensive effect.

Whilst we frankly admit the possibility of a bias on our part, towards a fellow-citizen whom we have long and intimately known in private as well as public relations, unless we are very much deceived, the many pledges he has given his countrymen of a capacity and disposition to promote the general welfare, are as notorious, as numerous and as strong, as any which have been furnished by either of the distinguished individuals towards whom public attention is now directed. It is not our purpose, nor is it necessary to pronounce an eulogium, nor to dilate upon, or even enumerate the many and signal services which he has rendered to our common country. They speak for themselves in a most emphatic language, and are identified with the most important transactions of the Union during the last fifteen years. We might recall your recollection to the impartial, dignified, and universally satisfactory manner in which he presided, for a series of years, in the House of Representatives of the United States, during the hottest contentions of party; to the efficient and distinguished part which he bore in the declaration and prosecution of the late war; to his agency in the negotiation of peace, and in the convention of London, the basis of all our subsequent foreign connexions. We might remind you also of the zeal with which he ever espoused the cause of internal improvement, and that which he successfully displayed in the extension and completion of the Cumberland road. We might point you further to the deep solicitude he exhibited in the support of home manufactures, so essential to the prosperity of the United States; nor can the friends

of liberty ever forget the ardent and intrepid perseverance which he evinced in the cause of Spanish America, so dear to every Western bosom. Even on the memorable occasion of the proposed restriction on Missouri, although we know that you differed from us, we are persuaded that you will be ready to do justice to the motives by which (if mistaken) he was animated, of preserving the constitution from what he believed would be a violation, of maintaing the general tranquility, and of upholding the rights of the several states to judge separately, and for themselves, on that delicate and difficult question. We apprehend that no mistake could be greater than that which would impute to him the wish to extend the acknowledged evils of slavery; for we are persuaded that no one entertains a stronger sense of its mischiefs than he does, or a more ardent desire, by all prudent and constitutional means, to extirpate it from our land. We believe that it is his deliberate opinion, that in any state, in which, from the relative proportion of the slave to the free population, the experimet may be *safely* made—a *gradual* emancipation ought to be encouraged and effected. And some of us happen to know that, more than twenty years ago, when the present constitution of Kentucky was adopted, *conceiving that such a comparative proportion then existed here*, he exerted himself in favor of a gradual abolition of slavery.

While Mr. Clay has employed, in the national councils, his best exertions to advance the general weal, he has not been an inefficient or careless advocate of our peculiar interests in the West. His exertions to obtain relief to the purchasers of the public lands, in consequence of the extraordinary and unforseen embarrassment of the times, are well known. Many years ago, in the Seuate, he yielded his best support to a measure, having for its object the removal of the obstruction, at the falls, to the navigation of the Ohio river; and lately, at his instance, an appropriation of public money was made to explore, by skillful engineers, that river and the Mississippi, with the view to the improvement of their navigation. When abroad, far distant from us all, we have much reason to believe that he made every effort in his power to liberate the Mississippi from an odious and arrogant pretension, and to prevent the exertion of a pernicious foreign influence on the Indian tribes, by an interdict of British traders from among them. He has, as far as we have understood, uniformly supported every measure in Congress, calculated to increase among us the expenditure of public money on legitimate national objects, and thereby to diminish the evil of an unremitted drain eastwardly, of the circulating medium.

Is it desirable to have a Western President, who, while he will not be unmindful of his duty to the whole, is well acquainted with our peculiar interests, and is capable of an advantageous exhibition of them? Is it desirable that the West should fairly participate in the executive government of the Union—that initiatory department, without whose favorable countenance nothing can be achieved? There can, we would hope, be but one answer to these questions in the West. If there be a coincidence of opinion between us on this subject, and also as to the person who should be selected, should we not endeavor, by all fair and honorable means, to effect the common object?

The western states are distant from the seat of the general government, and from the mass of the population of the Eastern states. If they display an indifference on this interesting subject—if they fail to manifest their wishes by an unequivocal declaration of them, their sentiments may be unknown or misunderstood, and their weight unfelt. But when our opinions shall be known, if *united*, we have every reason, from our attachment, invariably displayed toward the Union, to anticipate, from the justice and magnanimity of the other parts of the confederacy, a kind and favorable hearing and a just decision.

For the purpose of drawing the attention of Ohio to this subject immediately, and of soliciting her serious examination of the considerations which we have herein ventured to offer, we have thought proper to address you, not in your official, but private character, hoping and requesting that you will make such use of this letter as your good sense may recommend as most proper to effect the object, by animating Ohio, if possible, to an immediate co-operation with Kentucky and Missouri, which has made a similar recommendation. If Ohio can be induced to act in unison with Kentucky, you cannot fail to see the great importance of her doing it without delay. Hoping that you will receive this communication in the spirit in which it is made, and that you will use it advantageously, we beg leave to subscribe onrselves your

Friends and Fellow-citizens,

W. T. Barry,
R. C. Anderson,
J. Cabell Breckinridge,
J. J. Crittenden,
G. Robertson,
John Rowan,
B. W. Patton.

INVITATION OF MR. CLAY TO A GARRARD DINNER.

At a Barbecue, near Lancaster, on the 4th of July, 1827, the following resolutions were unanimously adopted, by a large company assembled from different neighborhoods, in the county of Garrard:

Resolved, That as a testimony of the confidence of the people of Garrard, in the patriotism, talents, and integrity of their distinguished countryman, *Henry Clay*, he be invited to a public dinner, to be given him at Lancaster, at such time as may be most convenient to him.

Resolved, That George Robertson, John

Yantis, Elijah Hyatt, Robert M'Connell, Wm. B. Parrow, Thomas Kennedy, Thomas Millan, Simeon H. Anderson, John Rout, Daniel O'Bannon, John Faulkner and John B. Jennings, be appointed a committee to communicate to Mr. Clay, the desire of the people of Garrard to welcome him to their simple hospitality, in thier own county.

LANCASTER, 5th July, 1827.

SIR:—

I am instructed by the committee, appointed in the 2d of the enclosed resolutions, to invite you to a Public Dinner, proposed to be given you by the county of Garrard, at whatever time shall be most convenient to yourself during your sojourn in Kentucky; and I am also instructed by the committee to assure you of their individual respect and undiminished confidence, notwithstanding the calumnies of factious and disappointed men.

Allow me to add that, in making this communication, it is peculiarly gratifying to me, at this eventful conjuncture of our affairs, local as well as national, to be the organ of the good wishes for your welfare, and for the success of your cause, which are felt and have been most signally manifested by my county—a county which, if distinguished for nothing else, has some acknowledged claims to a good name, for the constancy and disinterestedness, and (*I will say*) consequently, the general rectitude of its political opinions; and my gratification is in no small degree increased, by the fitness of the opportunity which this occasion offers me, to bear my humble testimony in your behalf, against the calumnious charges of Gen. Jackson, and some of his disappointed friends.

Associated with you for years in a public service, then full of peril and difficulty, I have ever found, in your political conduct, unquestioned purity of motive, elevation of sentiment, undisguised frankness, and invincible intrepidity. But these claims (strong and undeniable as they are) to the approbation and gratitude of your country, are multiplied and enhanced by the incidents connected with the last three years of your life.

The late Presidential election placed you in a situation singularly delicate and responsible. Unawed by threats, and unseduced by promises or hopes, you obeyed the dictates of a sound mind and a pure conscience, and fearlessly contributed, by your vote, to the election of an individual eminently qualified in every way for the high trust—one who had served his country at home and abroad, for forty years, faithfully and successfully—one who enjoyed the confidence and friendship of Washington, Jefferson, Madison and Monroe—one who concurs with you in the policy best adapted to promote the prosperity and ensure the union and harmony of these states—who cherishes and advocates, and will encourage to the limit of constitutional power, the American system of roads and canals, of domestic industry, and of a diffusive education—one who has administered the government, thus far, in a manner which could not be disparaged by a comparison with any preceding administration—who is national and liberal in his principles, impartial in his favors, honest and patriotic in all his purposes—who was the choice of a large majority of the people of the United States, as a fair induction of acknowledged facts will demonstrate—the choice of General Jackson himself (*next to himself*)—the choice of your own district—and, as I have never doubted, the choice (in preference to the "Hero") of the people of Kentucky. Your knowledge of the disparity of the rival candidates, in fitness for so high a station—your devotion to the cause of internal improvement and domestic manufactures—your regard for the welfare and the constitution of your country, left you no safe, or consistent, or honorable alternative. Even your enemies cannot deny, that theyhad no right to expect, from a knowledge of your principles and your opinions, that you would vote for Gen. Jackson; and many of them candidly admit that you could not have done so consistently. And if you had suffered yourself to be tempted or provoked to such a suicidal and parricidal act, it would be quite easy to show that you could not have made him President. I have personal reasons, too, for knowing, if any man living can *know*, that in voting for Adams, and accepting the station you now hold in his Cabinet, your motives were pure and patriotic, uninfluenced by any selfish aim or expectation.

I never doubted that you would act as you did. I never doubted that the vote of Kentucky would not be given to Gen. Jackson, *under any circumstances:* or that the votes of Illinois and Missouri would not be given to him, *whatever your course might have been.* And for the people of Kentucky, I will say, that I do not believe they ever were in favor of electing Gen. Jackson President of the United States—although, in his famous Harrodsburg letter, he intimatss that you and Mr. Adams are corrupt, and are engaged in a crusade against the people, and that *He* is their great Atlas.

Go on as you have done—"be just and fear not"—and that Government which is the best, and that administration which is the cheapest in the world, will continue to prosper more and more, until their complete triumph. In ordinary times, it would not be proper, or consistent with my self-respect, to address you in a style so unusual, and which, by some might be deemed adulatory. But I felt it due to truth, and to a just magnanimity, recollecting, as I do, that our public intercourse and personal acquaintance commenced under circumstances not the most propitious to the interchange of kind feelings or favorable opinions. Believing that the same intimate knowledge which I have acquired of your character, by long and scrutinizing observation, will produce the same effects on others that I am happy to avow it has had on me, I cherish the expectation that, ere long, many of those who, from prejudice or delusion, are counted your enemies, will be numbered

among your friends, and feel regret and surprise that they ever doubted the *integrity* of your conduct.

Accept, sir, for my colleagues of the committee, and for myself, our most respectful salutations. G. ROBERTSON.

Hon. H. CLAY.

GARRARD ADDRESS ON PRESIDENTIAL ELECTION.

At a very large and promiscuous assemblage of the citizens of Garrard county, at the court house, on the 19th of November, 1827, county court day for said county, Gen. John Faulkner being appointed chairman, and Joseph Hopper secretary, after suitable explanations of the objects for which the meeting was organized, the following preamble and resolutions were adopted with striking unanimity, only two or three voting in the negative:

The *"Signs of the Times"* are visibly portentous.

Upheld by the virtue and intelligence of the people, our blessed government, essentially moral in its structure, has passed through many trials in peace and in war. But it is not indestructible. Whenever the majority fail to exercise the reason and stern virtue necessary to the conservation of such a moral system, the wreck of their liberty will rebuke their degeneracy, when it may be too late for repentance to expiate the errors of the past or repair their ravages. Wise men feel that a fearful crisis is now before us, which will, more than any other, try the principles of the people and fix the destiny of the constitution.

The approaching election of chief magistrate of the Union, is pregnant with either blessings or calamities, which will be extensively felt and long remembered.

Involved in the issue is safety or peril. It will subject to a test, novel and eventful, the value of free suffrage; and will evince whether, in the exercise of the elective franchise, reason or passion—judgment or feeling, shall predominate.

In the decision of this important issue, the people are called on to determine, not merely what individual shall fill the Executive chair; this is personal and comparatively immaterial. But they must incidentally decide other and more momentous questions—such as these—whether the President shall be an able and experienced statesman, well-tried—or a lucky and blazoned warrior, self-willed and impetuous, and inexperienced in the practice or duties of the office? Whether the first civil station in the world shall be conferred for the benefit of those who gave it, or for the gratification of him who asks it? Whether, if it shall be bestowed as the reward of service, it shall be a just tribute to the distinguished Civilian, or the pension of the valiant Soldier? Whether civil or military pretensions should be preferred for civil office? Whether the principles consecrated by the approved administrations of Washington, Jefferson, Madison and Monroe, shall be upheld or trampled down by perilous innovation? Whether the "American System" shall be sustained and prudently extended, or condemned as mischievous and unconstitutional? And last, "though not least," whether, by sanctioning the unjust means employed to degrade and supersede those now at the head of affairs, an example shall be set which will encourage the indulgence of the worst passions, and render the Presidential election in future the occasion of incessant crimination and commotion, apt to result in the triumph of force, falsehood and vice? or whether, by discountenancing the premature haste and rancorous spirit of the opposition, the people will assert their own dignity, and show that the canvass shall be, as it has heretofore been, an honorable competion in a decorous appeal to the intelligence oi freemen? These vital considerations and many others, minor and consequential, are presented in the pending controversy between Mr. Adams and Gen Jackson; and in the influence which they shall be found to have, it will remain to be seen, whether we shall have a new assurance of the stability of our free institutions, or a plain indication of their tendency to decay and dissolution.

The political doctrines and the principles of policy foreign and domestic, which characterise the general tenor of the administrations which have preceded that of John Quincy Adams, and under the operation of which our government has attained an elevated rank in the opinions and affections of mankind, are hapily exemplified in the unusual degree of prosperity which is daily resulting from the wisdom and prudence with which his administration is giving more extensive developments of their soundness and beneficence. We are at peace with the whole world. Our treasury is ample. We pay no taxes. Our country is steadily progressing in improvement, physical and intellectual. The government, so far as the President is responsible, is administered as providently and economically as it ever was in the hey-day of republican simplicity. No citizen is oppressed by federal authority; and we only feel the general government in the blessings which it confers.

Since his induction, Mr. Adams has done nothing, in which he is not sustained by the example or opinion of all his predecessors and by the authority of the people who continued to ratify and approve for thirty-six years, measures which, when attempted by him, are denounced by Jackson politicians as daring usurpations. For desiring the extension of the Cumberland Road through the western states, he has been abused for encroachment on state rights. For favoring the protection, to a prudent and necessary extent, of our domestic industry, agricultural and manufacturing, he has been charged with a wanton violation of the constitution. For treating our South

American neighbors respectfully, he has incurred the imputation of a design to unite our destinies with theirs. For being willing, with the majority of the Commissioners at Ghent, to continue in force the article of the treaty of '83, in relation to the Mississippi, the people have been told that he attempted to sell the navigation of that great river. When the opposition frustrated the colonial negotiation by espousing the side of England, they endeavored to make the responsibility of the failure recoil on him and his cabinet. All his acts are misrepresented; his meaning perverted; his motives questioned; his language distorted, and himself falsely charged with prodigality and corruption. Many are made uneasy with visions of chimerical danger—and the American people, more highly favored than at any former period, are divided into two anomalous parties, in which all ancient badges and feeling, are buried in the all absorbing question—shall Andrew Jackson and his partizans be elevated to supreme power on the ruins of Mr Adams and Mr. Clay? So acrimonious are many of the complainants, that they employ all the resources of opprobious epithets and vulgar defamation. Such rudeness and injustice to such men, are not only inconsistent with the personal respect due to them as gentlemen, but with the forbearance which their stations should exact; and are ominous, if approved, of the degradation of exalted worth, and of official dignity. "If such things are done in the green tree," what may we not expect "in the dry?", The persecutors of either of these honest men, may be earnestly asked, "what evil hath he done you?" The answer must be, like that of Aristides on a similar occasion, "*thou art just.*"

Before Mr. Adams had taken the oath of office, a party, formidable for number and accidental influence, composed of disaffected and disappointed men of discordant feelings and principles, was organized for the avowed purpose of prostrating him and Mr. Clay, and denouncing their conduct, whatever it should be, "right or wrong." They adopted the appropriate watch-words—"They must be put down if they are as pure as the angels at the right hand of God;" and true to their purpose, they have left no means untried for effecting their unworthy design. Judged by their acts, it would seem that their first maxim is, "the end justifies the means." They had learned from history, sacred and profane, that, during transient paroxysms of popular excitement, the multitude, roused to phrenzy by the arts of the designing, had proscribed their benefactors and most virtuous men. And boldly experimenting on the credulity and presumed aptitude of the body of the people to believe indefinite charges of delinquency against men high in office, "the Combination" have endeavored to excite public indignation against Mr. Adams, and the Secretary of State of the United States, by charges as false as they are foul. By a dexterous use of these, many honest men, unacquainted with the artifice and resource of disappointed ambition, have been deluded almost to fanaticism; and seem to suppose that their liberty is in danger, unless by exalting the idol of military enthusiasm, the administration can be revolutionized. The malcontents are invited to the standard of a venerated and laurelled soldier, valiant and glorious, but in every other respect totally unfit for the cabinet. —a soldier, the accidents of whose eventful life, public and private, manifest the unreasonableness of his claims to the civil eminence, to which, unfortunately, for the peace of the country and for his own posthumous fame, he now aspires.

It is not because he is well qualified, that his leading adherents prefer Gen. Jackson to Mr. Adams, but because he is the only individual of their party who has any chance to succeed. His civil qualifications are not only greatly inferior to those of Mr Adams, but certainly very unequal to those of many of his own party. But it was not the fortune of any of the latter to command at Orleans; the accidental circumstance of doing which, is the sum total of the General's recommendations.—Without this event no human being would ever have thought of electing him to the Executive Chair of the U. States.

This his partizans know. But they know too the spell of a military name on the popular affections—and that it covers a multitude of glaring defects: and hence they use the battle of Orleans alone, as the talisman for effecting their contemplated revolution. The 8th of January, the anniversary of Kentucky's disgrace, is therefore vociferated as if it entitled the renowned Hero to everything. If Andrew Jackson has any other than martial claims to the office which he anxiously seeks, let his friends present them. There has been no attempt to recommend him by an address to the understanding. Every effort in his favor has been directed to the passions. This alone is an admission of the insufficiency of his civil pretensions, and, with rational men, should be decisive.

He has admitted his own unfitness. Not only does his civil history show that he never rose above the grade of mediocrity, but he has magnanimously acknowledged his want of qualifications for a seat in Congress, or on the judgment Bench—and is he who is unequal to the duties of these comparatively humble places, competent to guide the affairs of a whole nation? If it be intended that he shall be only the nominal President, we say the pension is too high, and the hazard too great.

The most memorable act of the General's political life, is the vote which stands against him on the country's record, in opposition to an expression of approbation by Congress, of the public life of the Father of his Country, when on the eve of retiring forever from the public service. Washington had enemies, and his administration too met with opposition and reproach.

The same spirit is yet alive, and instigates the violent outcry against the present administration. Nothing but the name of Washing-

ington saved him from overthrow: may his example save those who, for followiug his precepts, are subjected to the same persecution which he outlived.

The claims of the Hero of Orleans to civil preferment are certainly not increased by this inexplicable vote; nor by the contemptuous terms in which he ridiculed Mr. Madison's pretensions to the presidency; nor by his threat to chastise a Senator in the Capitol, for enquiring into his public conduct; nor by the injury which he recklessly endeavored to inflict on the State of Kentucky, by unjustly charging her volunteer soldiers with "inglorious flight" at Orleans, and by refusing to do justice when convicted of injustice; nor by the indelicate manner, in which in his Harrodsburgh letter he meant to speak of Mr. Adams as the enemy of the people, and of himself as their friend and candidate; nor by his artful efforts to destroy the reputations of Mr. Adams and Mr. Clay, by insinuating that he could convict them of "bargain and management," when his own boasted witness acquits them, and proves that, if there was any tampering, it was on the General's side.

Next to the 8th of January, with which some declaim very handsomely who were opposed to the war, the friends of the General have profited most by asserting, that he was the People's President, and that he and they were corruptly cheated out of their rights. This has been so often and confidently reiterated that many honest men believe it, and for this reason alone, incline to espouse his cause.

That he was not the object of a majority of the people's preference, plain facts will indisputably prove to all who have eyes to see or ears to hear, and the faculty of addition and subtraction; and this must have been well understood by those who gave the first impulse to this wide spread delusion. The Gen. was not only not chosen by a majority of the people, but, as is evident, Mr. Adams received a large plurality of votes given by the people, and would have gone into the House of Representatives with a correspondent plurality of the electoral votes, had the majority of the people of each state controlled the whole electoral vote of the State, and had not Mr. Adams been the victim of "intrigue, bargain and management. Of the free votes represented in the electoral colleges, Mr. Adams had about 4,000,000, and Gen Jackson had only about 2,000,000. By the constitution the slave states are entitled to the electoral weight of 3-5th of their slaves who do not vote: add these, and still Mr. Adams has a decided majority over the General's number, of bond and free, black and white. But in some States where Mr. Adams had a majority of the whole popular vote, the General obtained a majority of the electors. This resulted from the organization of the districts.—And in some other states where Mr. Adams was stronger than any other candidate, the friends of the others combined on the General, supposing there was no danger of his election. Thus this candidate of the people received, nominally, 99 electoral votes and Mr. Adams only 84—when, if the will of the people had been consulted Mr. Adam's vote must have been at least 93, and that of his competitor not more than 85. It is not denied, that Mr. Crawford's friends preferred Mr. Adams to the General, and there is do doubt, that a majority of Mr Clay's felt the same preference.—Hence it is evident, that Mr Adams was preferred to Gen. Jackson by an overwhelming majority of the American people, and was, therefore, the people's candidate.

Equally fallacious, but far less excusable, is the plea of "bargain" in the election by the House of Representatives. This is a second "Popish Plot"—and its informer, whoever he may be, a second Titus Oates, and should meet with execration in common with those who concocted a plot so diabolical. They have the hardihood to ask honorable men to accredit the imputed corruption of distinguished citizens who have been their country's pride for many years, and to degrade them, not only *without* proof, but *against* the proof of the accuser. Gen. Jackson well knew that Mr. Clay could neither be bribed nor awed to vote for *him*—and he also knew that, if he could be guilty of such a suicidal act as to give in his adhesion to him, he could not have elected him. The General with Mr. Clay's assistance could not have obtained more than nine states, and Mr. Adams on the final ballot must have had at least 15. Therefore, there was nothing to be gained by bargain, and no motive to enter into it. Mr. Clay did not desire the place of Secretary; but neither his friends nor his enemies allowed him to refuse it. Unable to induce Mr. Clay to enlist under the military banner, the disappointed are provoked to attempt by calumny to put him out of their way. They cannot succeed until they put him down; and it is plain, that the prime object of their warfare is to prostrate *him*. If he had not become Secretary of State, there would either have been no combination, or if any, it would have been of a character very different from the Jackson party. The General was brought out first as a candidate for the purpose of frustrating Mr. Clay's prospects and of electing Mr. Adams, who was the General's first choice until he had hopes for himself, and afterwards his second choice. And now he and Mr. Clay are hunted down, by a party whose motto is, *"Jackson and Reform,"* or proscription and expulsion of all who will not enlist in their service.

The west is obviously and peculiarly interested in sustaining this administration. Do we desire the continuation of the Cumberland Road, commenced under the auspices of Jefferson, and the opening of the Chesapeake and Ohio Canal, projected by the benevolent mind of Washington? And do we wish to participate in the incalculable blessings, political, commercial and fiscal, which these great improvements would produce? Do we feel the necessity of protection to domestic manufactures and to our agriculture? The opposition denounce the present administration for favouring these measures: and General Jackson has

not found it convenient to disclose his opinion of the "American System." He conceals it, and suffers himself to be declared in favo r of the system where it is popular, and against it where it is not acceptable. Let him come out upon this subject explicitly, and his hopes of election will be blasted. If he is friendly to the system, nothing can be gained by preferring him to an abler and surer friend. But if, as almost certain, he is hostile to it, what may not its friends, and its enemies too, lose by his success? It is earnestly to be desired, that the people may consider this subject dispassionately, and act wisely and prudently, regarding measures, not men. In electing Gen. Jackson there is great peril—but in re-electing Mr. Adams there is safety. He is unexceptionably moral; he is a plain and temperate republican; he is fully competent; he is the man of whom Washington said in 1797, that he was the most useful functionary in the foreign service; the man who enjoyed signal evidences of the confidence of every President of the United States, and of the admiration of General Jackson until it became his interest to crush him.

By approving the conduct of this gifted and much wronged citizen, the people will do justice to him and to themselves, and will rescue the country from the consequences of electing a General, with the transient apprehension of whose success Mr. Jefferson, Mr. Madison, and other patriarchs, trembled for the safety of the Republic.

It is respectfully submitted to the patriotic and considerate among those who disapprove the leading measures of Mr. Adams' administration, whether they reasonably expect any advantage, by electing General Jackson, equal to the permanent injury which such an event may inflict.

Military renown has been fatal to liberty. It overran the freedom of Greece—of Rome—and of every other republic that has ever suffered itself to be spell bound by its fascinations.

Bonaparte and Cæsar won more battles than General Jackson ever achieved, and were certainly his superiors in general knowledge.—But what free people would be willing to confide their destinies to such rulers?

Washington was "a military chief"—But there has been only one Washington. The name of our dead Washington is worth more to us, than all the living Washingtons in the world. He was not only "first in war" but "first in peace and first in the hearts of his countrymen." It was not his victories in the field, but his victory over himself, that lifted Washington above all other men. He was honored with the Chief Magistracy not for being a successful warrior, but for possessing those pre-eminent moral excellencies, the known destitution of which is an insuperable objection to the Hero of New Orleans

We delight to confer *appropriate* honor on our distinguished Hero. But we should overleap the boundary of gratitude and prudence, by making him President. We do not believe that Gen Jackson would wish to destroy the liberty of his country—nor that, if he should the people are yet prepared for such a catastrophe. But we would deplore the example, as well as fear many of the consequences immediate and remote, of his election to the Presidency; and deem it wise to profit by the histotory of the world, and avoid the rock on which the liberty of past generations has been wrecked.

Wherefore, Resolved,---1st. That it is the duty of the friends of order and good government, to employ all practicable and honourable means to promote the re-election of John Q. Adams; that we approve, as preparatory to this end, the convention proposed to be held at Frankfort, on the 17th of Dec. next, to select an electoral ticket, favourable to the present administration, and that Francis P. Hord, Daniel Obannon, Tyre Harris, Thomas Kennedy, Benjamin Mason, Simeon H. Anderson and Alander Sneed, be appointed Delegates to represent us in that convention.

SPEECH AT CLAY FESTIVAL.

As the organ of the neighbors of our distinguished countryman and guest, to whom they have dedicated this Kentucky Festival as a tribute of their respect for him as a man and of their gratitude for the eminent services of his long and eventful public life, I now propose a crowning sentiment, which, as we believe, will be echoed by the united head and heart of this vast multitude, of both sexes, and of all ages and denominations.

We have assembled, my countrymen, not to worship an installed idol, nor to propitiate patronage by pouring the incense of flattery at the feet of official power, but to greet, with heart and hand, an old patriot returned to the walks of private life with a consciousness of having, through all the vicissitudes of inconstant fortune, always endeavored to do his whole duty to his whole country, and with the memory also of deeds of which the proudest on earth might well be proud. [Cheers.]

By the good and wise of all parties, who feel as they should ever feel, such an occasion as this must be approved as the offspring of emotions which should be cherished by every enlightened friend of his country's institutions, and by every disinterested admirer of the noble of his species. We should honor those who honor us. Distinguished services, by whomsoever rendered, should be gratefully remembered, and exalted talents are entitled to universal respect. But, when one of our own countrymen, by the force of his own genius and virtues, has risen from poverty and obscurity, and not only ennobled his own name but illustrated that of his country, no personal jealousy or political prejudice should chill the homage of that country's undivided heart. And when, as now, we behold him, a plain citizen, grown grey in the public service, and retired to his farm to live and die

among us, what Republican, what *Kentuckian*, can rebuke the sympathy and respect here this day manifested towards him, in a manner unexampled, and far more grateful to his heart than the offer of the highest official station on earth? On such a day and at such a place, all, of every rank and name, might honorably unite in this common offering of cordial respect for a fellow citizen whom, perhaps, we shall never again see and hear as we now see and shall hear him, and who honors us as much as he can be honored by us. To the thousands here present the scene around us is peculiarly imposing, and suggests reflections both encouraging and ennobling.

Not more than half a century has elapsed since the Indian, with his tomahawk, lurked in the cane-brakes of our pioneer fathers. Within rather less than that eventful period, a beardless stranger was, for the first time, seen on the streets of the then little village of Lexington. Like Franklin when he first visited Philadelphia, a poor and friendless orphan boy had left his native Virginia and come forlorn to this land of promise, to seek his fortune and fix his destiny. He leaned alone on Providence, a widowed mother's prayers, and the untutored talents with which God had been pleased to bless him. Those prayers prevailed—and that Providence and those talents sustained him in all his trials, and soon pointed him to a high and bright career, which none but the good and great can ever run with honor or success. That career he has, so far, run with a lustre unsurpassed. The Forum and the Senate have been adorned and exalted by the graceful displays of his rare genius, and the overwhelming power of his Demosthenian eloquence. His name is identified with the forensic, political, and diplomatic history of the United States for the last thirty-six years; and his mark is legible on every important act of national legislation or American policy, which has been either adopted or discussed in this Union, within that period. He has always been the friend of the honest laborer—the champion of domestic industry, and a sound currency—the advocate of equal rights—and the defender of the constitution, which, though excellent as it is, might, in his judgment, still be improved by the prudent modifications of experience. His voice has been heard and his thunders felt, in the cause of civil and religious liberty, in every clime. And always and everywhere, the *Kentuckian* has been distinguished for lofty and comprehensive patriotism, republican simplicity, practical wisdom, and self-sacrificing independence. The whole reading world knows and admires him as the American statesman and orator, whose moral power and self-devoting patriotism, more than once, saved his country from impending ruin. And when, like *Washington*, he determined to retire forever from the theatre of public action where he had won so many civic victories for his country, and plucked so many green laurels for his own head—when he resolved to exchange the toils and troubles of public life, for the repose of retirement, the verdant lawns, the roving herds, and domestic sweets of Ashland—when, for the last time, he stood before the Senate, to make the solemn announcement, and take his everlasting leave,—not an eye was dry—not a heart unmoved; and let his political opponents say what they may, that parting scene was felt there, and here, and everywhere, as the separation of the soul from the body. [Great cheering.]

The measure of his fame is now full—and ripens for posterity.

Thus, while the infant Kentucky has grown to a great and renowned State, and the small village of Lexington to a beautiful and classic city, their adopted son has also risen to an eminence in the judgment and esteem of enlightened men, which few on earth have yet attained, or can ever hope to reach; and now, surviving almost all of those who witnessed his humble advent, he reposes, in health or body and health of mind, on the blooming honors of a political patriarch. And here we may all behold a striking and beautiful exemplification of the hopeful tendencies of our free and equal institutions, and of the inestimable value also of talents faithfully employed and rightly directed.

Resisting the syren voice of vulgar ambition, *Kentucky's* adopted son faithfully served his country for that country's sake; and now, after steering the constitution from the whirlpool of consolidation on the one side, and dissolution on the other, the Ulysses of America has laid aside his heavy armor, and come home with an untarnished shield. He wants no Homer to exaggerate or embalm his deeds—Already stereotyped, they will tell, in all time, for themselves, without the aid of poetry or of song.

His public life illustrates the difference between the *statesman* and the *politician*—between the enlightened patriot who goes for the welfare and honor of his country, in defiance of all considerations of personal ease or aggrandizement, and the selfish demagogue, who, always feeling the people's pulse or looking at the weathercock of the popular breath, counts, as the chief good on earth, his own exaltation, by any means, to some office or trust, which he is not qualified to fill with honor to himself, or advantage to the public. Whilst a swarming tribe of selfish placemen, and vulgar aspirants after ephemeral popularity, like common birds, have been skimming the earth and amusing the people with their versatility, their colored plumage, and their mock notes—the orphan boy of Lexington—the self-made man of America, poised on eagle's pinions, has soared to the pure sky, with his eyes fixed on the sun—until fatigued at last, by his airy height, he has rested on the uplifted arm of that great commonwealth, which is emphatically styled "the land of the free and the home of the brave." And there, on that strong right arm, let him rest in peace, until, if ever, he may choose, once more, to try his strength in the loftier and less peaceful scenes of political life.

He has encountered the envy and obloquy inseparable from exalted *living* merit. So did *Socrates*, and *Cicero*, and even our own God-like *Washington*—and so must every honest patriot, who lives and acts for his country and for truth. The pathway of such a patriot will ever be beset with the *Cleons* and *Clodii* of the day. But remember that his straight and narrow course is the only one which could secure for him honorable renown, or the grateful remembrance of an age to come. Such has been the conduct, such the aim, and such, of course, the doom of our distinguished neighbor and friend. Ambitious, we know, he has always been. But he has been ambitious—not of office, nor of fleeting popularity—but of that sacred fame which follows and hallows noble deeds. His ambition, totally unlike that of the unprincipled egotist, has resembled rather that nobler mould of *Cato*, or of *Curtius*. And this, more than triumphal scene, is only the dawn of that light with which time and the approving judgment of mankind will encircle his name. Already, this day, he enjoys, in retirement, a reward which no earthly place or title could ever confer.

Men will differ in politics as in other things. But let them honestly differ, like christians and republicans, in a spirit of toleration and charity—and not, as untamed savages, with the brutal ferocity of hungry tigers. When we explore his whole public life, the unrelenting crusade, so spitefully and perseveringly prosecuted by some leading men against this venerable and unbending statesman, might remind us of the saying of *Tacitus*—that, by murdering *Helvidius*, and *Thrasea*, and *Seneca*, *Nero* expected to cut up public virtue by the roots. Could the ostracism or ruin of such a man advance the glory or promote the happiness of that country which he has so much honored and helped to save? Faultless, we admit, he has not always been. Who on earth ever was, or will ever be? But, had he been even perfect, *imperfect men* would either not have known, or knowing, not acknowledged it. Blind allegiance to party is not only the canker of liberty, but the murderer of character also. Those who look through the *microscope* of a party or a faction, instead of seeing for themselves, in the open sunlight of heaven, will never behold anything as it is. Many have only seen our guest through this false medium: and they cannot, therefore, know or appreciate his true character. It is not our purpose, here, or elsewhere, to vouch for the rectitude of all he ever did, or said, or thought. But we may be allowed now to say that even those, whose estimate of him is most unfavorable, generally concede that he is high on the roll of the most distinguished men of the age, and acknowledge, moreover, that he has, through a long public life, stood steadfastly by his principles and maintained them, on all occasions, ably, boldly, and manfully. Let them then judge him by the *golden rule*.

But whatever may be thought of him now, or whatever may be his future destiny on earth, his posthumous fame, at least, is secure. When the rival passions, which have assailed him, shall have been buried at his tomb, his character as a patriot, orator and statesman, will shine forth, clear and refulgent; and like the setting sun of a stormy day, it will pass the horizon cloudless, spotless, and full-orbed. [Great applause.]

Identified with his country's fortune, his memory will live in the history of that country's glory—and with *Washington's*, and *Hamilton's*, and *Madison's*, *Marshall's* and *Patrick Henry's*, it will be embalmed in the hearts of the virtuous and the wise, as long as eminent talents, signally devoted to the welfare of our race, shall be revered among men.

And, in some future age, when the young *Kentuckian*, with curious eye and palpitating heart, shall explore the *Pantheon* of illustrious *Americans*, soon attracted by the most honored group, he will there at once behold a graceful and majestic statue of granite, and casting an anxious glance at the sculptured pedestal, he will read, with unutterable emotions of gratitude and pride—

HENRY CLAY, OF KENTUCKY.

Without detaining you longer, I will announce the sentiment, to which the hearts of millions, now and for ages, will approvingly respond.

HENRY CLAY—*Farmer of Ashland—Patriot and Philanthropist—the* AMERICAN *Statesman and Unrivalled Orator of the Age*—illustrious abroad, beloved at home. In a long career of eminent public service, often, like *Aristides*, he breasted the raging storm of passion and delusion, and by offering himself a sacrifice, saved the Republic; and now, like *Cincinnatus and Washington*, having voluntarily retired to the tranquil walks of private life, the grateful hearts of his countrymen will do him ample justice; but, come what may, *Kentucky* will stand by him, and still continue to cherish and defend, as her own, the fame of a son who has emblazoned her escutcheon with immortal renown.

[From the Obsv. & Reporter, 14th July, 1852.]

BURIAL OF HENRY. CLAY.

Saturday last, the 10th of July, was a day ever to be remembered in our city. It was the day consecrated to the last solemn funeral rites to the remains of our illustrious friend and neighbor, HENRY CLAY, and will be remembered by all who had the honor of participating in the mournful exercises of the occasion, not only because of the consignment then to their final place of repose of the remains of our great fellow-citizen, but as having been the occasion of a larger assemblage of people than was ever before congregated in the limits of our city, and of having been one general scene of mourning and sorrow. The pageant was, probably, never surpassed on any similar occasion in the United States, and the testimono of respect and affection furnished by every

outward indication was such as no man save HENRY CLAY could have commanded.

We scarce know how to begin a description of this great and melancholy occasion. It was such a display as we are not in the habit of witnessing in the West, and the like of which we have never before been called on to portray. Were we to write a week, we could scarcely begin to do justice to the subject, and must crave the charity of our readers for falling so far short of that which we would have liked so much to have accomplished.

On Friday evening, the committee of the Senate, consisting of Messrs. Underwood, Cass, Houston, Jones, Fish and Stockton; the committee appointed by our citizens to escort the remains, accompanied by a committee from the city of New York, a committee from the citizens of Dayton, Ohio, the 'Clay Guards' of Cincinnati, and a deputation of seventy-six young men from Louisville, together with several military companies from the latter place—arrived at the railroad depot in this city, in charge of the remains. The Hon. JOSEPH R. UNDERWOOD, in behalf of the Senate's committee, there addressed the committee sent from this place to receive the remains, in a few feeling and appropriate remarks, formally surrendering their precious charge to the care of the Lexington committee. His address was replied to by the Hon. GEORGE ROBERTSON, in an eloquent and touching manner. We are gratified to have it in our power to lay before our readers the remarks of both gentlemen, as follows:

JUDGE UNDERWOOD'S ADDRESS.

Mr. Chairman, and Gentlemen of the Lexington Committee:

Mr. CLAY desired to be buried in the Cemetery of your city. I made known this wish to the Senate after he was dead. That body, in consideration of the respect entertained for him, and his long and eminent public services, appointed a committee of six Senators to attend his remains to this place. My relations to Mr. CLAY as his colleague, and as the mover of the resolution, induced the President of the Senate to appoint me the Chairman of the Committee. The other gentlemen comprising the Committee are distinguished, all of them for eminent civil services, each having been the Executive Head of a State or Territory, and some of them no less distinguished for brilliant military achievements. I cannot permit this occasion to pass without an expression of my gratitude to each member of the Senate's Committee. They have, to testify their personal respect and appreciation of the character, private and public, of Mr. CLAY, left their seats in the Senate for a time, and honored his remains by conducting them to their last resting place. I am sure that you, gentlemen of the Lexington Committee, and the people of Kentucky, will ever bear my associates in grateful remembrance.

Our journey since we left Washington has been a continued procession. Everywhere, the people have pressed forward to manifest their feelings toward the illustrious dead. Delegations from cities, towns and villages have waited on us. The pure and the lovely, the mothers and daughters of the land, as we passed, covered the coffin with garlands of flowers and bedewed it with tears. It has been no triumhpal procession in honor of a living man, stimulated by hopes of reward. It has been the voluntary tribute of a free and grateful people to the illustrious dead. We have brought with us, to witness the last sad ceremony, a delegation from the Clay Association of the city of New York, and delegations from the cities of Cincinnati and Dayton, in Ohio. Much as we have seen on our way, it is small compared with the great movement of popular sympathy and admiration which everywhere bursts forth in honor of the departed Statesman. The rivulets we have witnessed are concentrating, and in their union will form the ocean tide that shall lave the base of the pyramid of Mr. CLAY's fame forever.

Mr. Chairman, and gentlemen of the Lexington Committee, I have but one remaining duty to perform, and that is—to deliver to you, the neighbors and friends of Mr. CLAY, when living, his dead body for interment. From my acquaintance with your characters, and especially with your Chairman, who was my schoolmate in boyhood, my associate in the Legislature in early manhood, and afterwards a co-laborer for many years on the bench of the Appellate Court, I know that you will do all that duty and propriety require, in burying him whose last great services to his country were performed from Christian motives, without hopes of office or earthly reward.

JUDGE ROBERTSON'S REPLY.

Senator Underwood, Chairman, and Associate Senators of the Committee of Conveyance:

Here, your long and mournful *cortege* at last ends—your melancholy mission is now fulfilled—and, this solemn moment, you dissolve your connexion with your late distinguished colleague of Kentucky.

With mingled emotions of sorrow and of gratitude, we receive from your hands, into the arms of his devoted State and the bosom of his beloved city, all that now remains on earth of HENRY CLAY. Having attained, with signal honor, the patriarchal age of '76, and hallowed his setting sun by the crowning act of his eventful drama, a wise and benevolent PROVIDENCE has seen fit to close his pilgrimage, and to allow him to act—as we trust he was prepared to act—a still nobler and better part, in a purer world, where life is deathless. This was, doubtless, best for him, and, in the inscrutable dispensations of a benignant Almighty, best for his country.—Still it is but natural that his countrymen, and his neighbors especially, should feel and exhibit sorrow at the loss of a citizen so useful, so eminent, and so loved.

And not as his associates only, but as Kentuckians and Americans, we, of Lexing-

ton and Fayette, feel grateful for the unexampled manifestations of respect for his memory to which you have so eloquently alluded as having, everywhere, graced the more than triumphal procession of his dead body homeward from the National Capitol, where, in the public service, he fell with his armor on and untarnished. We feel, Mr. Chairman, especially grateful to yourself and your colleagues here present for the honor of your kind accompanyment of your precious deposite to its last home. Equally divided in your party names, equally the personal friends of the deceased, equally sympathising with a whole nation in the Providential bereavement, and all distinguished for your public services and the confidence of constituents,—you were peculiarly suited to the sacred trust of escorting his remains to the spot chosen by himself for their repose. Having performed that solemn service in a manner creditable to yourselves and honorable to his memory, *Kentucky* thanks you for your patriotic magnanimity. And allow me, as her organ, on this valedictory occasion, to express for her, as well as for myself and committee, the hope that your last days may be far distant, and that, come when they may, as they certainly must come, sooner or later, to all of you, the death of each of you may deserve to be honored by the grateful outpourings of national respect which signalise the death of our universally lamented CLAY.

Unlike *Burke*, he *"never gave up to party what was meant for mankind."* His intrepid *nationality*, his lofty patriotism, and his comprehensive philanthropy, illustrated by his country's annals for half a century, *magnified* him among Statesmen, and endeared him to all classes, and ages, and sexes of his countrymen. And, *therefore*, his name, like WASHINGTON'S, will belong to no party, or section, or time.

Your kind allusion, Mr. Chairman, to reminiscences of our personal association, is cordially reciprocated—the longer we have known, the more we have respected each other. Be assured that the duty you have devolved on our Committee shall be faithfully performed. The body you commit to us shall be properly interred in a spot of its mother earth, which, as *"the grave of* CLAY," will be more and more consecrated by time to the affections of mankind.

How different, however, would have been the feelings of us all, if, instead of the pulseless, speechless, breathless *Clay*, now in cold and solemn silence before us, you had brought with you to his family and neighbors the *living* man, in all the majesty of his transcendant moral power, as we once knew and often saw and heard him? But, with becoming resignation, we bow to a dispensation which was doubtless as wise and benificent as it was melancholy and inevitable.

To the accompanying committees from New York, Dayton and Cincinnati, we tender our profound acknowledgments for their voluntary sacrifice of time and comfort to honor the obsequies of our illustrious countryman.

In this sacred and august presence of the illustrious dead, were an eulogistic speech befitting the occasion, it could not be made by me. I could not thus speak over the dead body of HENRY CLAY. *Kentucky* expects not me nor any other of her sons to speak his eulogy now, if ever. She would leave that grateful task to other States and to other times. His name needs not our panegyric. The carver of his own fortune—the founder of his own name—with his own hands he has built his own monument, and with his own tongue and his own pen he has stereotyped his autobiography. With hopeful trust his maternal Commonwealth consigns his fame to the justice of history and to the judgment of ages to come. His ashes he bequeathed to her, and they will rest in her bosom until the judgment day; his fame will *descend*—as the common heritage of his country—to every citizen of that Union of which he was thrice the triumphant champion, and whose genius and value are so beautifully illustrated by his model life.

But, though we feel assured that his renown will survive the ruins of the *Capitol* he so long and so admirably graced, yet *Kentucky* will rear to his memory a magnificent mausoleum—a votive monument—to mark the spot where his relics shall sleep, and to testify to succeeding generations that our Republic, however unjust it may too often be to *living* merit, will ever cherish a grateful remembrance of the *dead* Patriot, who dedicated his life to his country and with rare ability, heroic firmness, and self-sacrificing constancy, devoted his talents and his time to the cause of *Patriotism*, of *Liberty*, and of *Truth*.

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The remains were then placed in a hearse, and followed by the various committees, and a large concourse of citizens, were taken to Ashland—the home of the deceased patriot for fifty years, and now the spot whither many a pilgrimage will be made by the admirers of true genius, public virtue and unselfish patriotism. The body was there placed in state, and a vigil kept over it during the night by a committee of young gentlemen selected for the purpose.

The morning of Saturday rose clear and brilliant as the fame of him upon whose eye its light fell all unheeded; and the stately pines, planted by his own great hand, looked less like mourners, than green remembrancers of his immortal glory.

At an early hour the city was astir. Before sun-rise thousands of vehicles had arrived, and continuous and unbroken streams of carriages, equestrians and pedestrians, poured through every avenue to the city up to the hour fixed for the funeral. The streets—the windows—the house-tops—every place where the human foot could stand and the human eye could see, seemed to be taken hold of. And yet, it was all gloom and sadness. The mournful music—the muffled drum—the veiled colors of the soldiery—all conspired to render more solemn the imposing rites.

At 9 o'clock, the Committee of the Senate;

the various Committees from other States; the Committee of Arrangements; the Committee of Escort sent to receive the body; a Committee from the Masonic Fraternity and the Pall-Bearers, repaired to Ashland to receive the body. On a platform covered with black, in front of the main entrance to the mansion at Ashland, the body was placed. Over it were strewn flowers of the choicest description. Upon the centre of the burial case was placed the wreath, fashioned by the hand of one of the most gifted and distinguished of our countrywomen—Mrs. Ann S. Stephens—from a rare flower—the "*Immortelle.*" The wreath presented by the Clay Festival Association of New York ornamented the top of the case; and in rich profusion around it were placed bouquets from Washington and Baltimore, and a laurel wreath from Philadelphia.

The funeral services were then performed by the Rev. Edw F. Berkley, Rector of Christ (Episcopal) Church in this city, of which Mr. CLAY was a member. The solemnity of this ceremony, so imposing on even the most ordinary occasions, was infinitely heightened by the occasion of its present solemnization. The funeral discourse of Mr. Berkley was eloquent and feeling in the highest degree. He spoke of the character of the great deceased—his talents—his public virtue—his justice—and his matchless career. That portion of his address in which he alluded to the sacrifice of life by Mr. CLAY, in his efforts to procure the passage of the measures of Adjustment, thrilled every heart; and the effect of the entire discourse upon his audience fully attested the powers of the speaker.

PRELECTION.

Address on behalf of the Deinologian Society, of Centre College, delivered at Danville on the 4th of July, 1834.

CENTRE COLLEGE, July 4, 1854.

Dear Sir:—

Permit us, in our own name, and that of the Society which we represent, to expresss the high satisfaction that we have enjoyed this day, in listening to your excellent address, and earnestly to request that you will comply with the solicitation of the Society, contained in the following resolution, viz:

Resolved, That the thanks of this Society be presented to the Hon. *George Robertson* for his able and interesting address, delivered this day, and that he be solicited to grant us a copy for publication.

Very respectfully, your friends,

ROBERT M'KEOWN, WM. M. RIDDLE, WILLIAM W. HILL, } *Committee of the Deinologian Society of C. C.*

DANVILLE, July 4, 1834.

Gentlemen:—

Although, as you must know, the address, a copy of which you have requested for publication, was prepared in very great haste, and, as I assure you, without any expectation that it would ever have any other publicity than its delivery this day gave it; yet I cannot refuse a cheerful compliance with your request. With all its imperfections it is now yours—do as you please with it.

Respectfully, your friend,

GEORGE ROBERTSON.

ADDRESS.

Another year is gone—and with it have gone forever many of our countrymen, neighbors and friends. A memorable and eventful year has it been—a portentous era in the affairs of men, and a season of peculiar trial to us and to our civil institutions. But in the allotments of an all-wise Providence, our beloved country is yet permitted to stand forth united and free, and we too have been preserved to hail the light of this hallowed day, and in health and in peace, once more upon earth, to make the accustomed offering of our thanksgiving.

This is no common day; it brings with it remembrances, and obligations, and prospects peculiarly interesting and impressive. The 4th of July, 1776, opened a bright and glorious scene in the great drama of human affairs. The declaration of North American Independence was the offspring of the purest patriotism and of the most enlightened reason; and already it has been the parent of events which must, in all time to come, have a great influence on the destiny of man. The time will never come when the balmy noon, whose 58th anniversary we now commemorate, will not be remembered as one of the purest and brightest that ever beamed upon the moral world. Then it was that Franklin and Adams and Jefferson and their compatriot representatives of the will and intelligence of the people of these states, then colonies, proclaimed to the world these fundamental truths—that all men are by nature entitled to be free, and to enjoy equal rights to life and liberty, to the acquisition and security of property, and to the pursuit after happiness, now and forever; that the free and deliberate will of the people is the only legitimate source of all human authority; that all just government is administered for the greatest good of the whole body politic; that man is not accountable to man for his conscience or his opinions, and should not be disturbed by any human means, in the free exercise of either the one or the other, and of course that no freeman should forfeit any civil right or privilege in consequence of his actual enjoyment of perfect freedom of judgment, or of conscience. This was the first formal and authoritative announcement ever made by any people of the true elementary principles of free government or of social organization. It was the united voice of sound philosophy and pure religion, asserting, for the first time, the natural rights of an intelligent, moral and christian people. But the simple creed thus announced, God-like and ennobling, as all must feel it to be when considered as a speculation of philanthropy, would nevertheless be deemed but the illusion of a golden age unless its principles, so just and so beautiful in the abstract, can be satisfactorily exemplified in the actual condition of society and the practical operations of government. The value and application of those principles to any people must depend altogether on the moral character and conduct of the majority. Their truth and value have been, so far, happily illustrated in this land of promise; and the successful progress of the great American experiment is ascribable to the pervading intelligence and the predominant habits and virtues which have hitherto signalised the great body of the people of these states. Our Declaration of Independence was but the reflected image of the principles and sentiments of those by whom it was proclaimed, and by whom it was triumphantly maintained. The moral light, which then dawned in the hearts of our countrymen, guided them successfully through the perils and sacrifices of a protracted and bloody struggle for independence, and having led them to a still nobler achievement—the establishment of wisely constructed institutions for preserving liberty and equality—has already cast its cheering rays over distant lands, and unless extinguished or eclipsed in this new world, will shine brighter and brighter, until, with the effulgence of perfect and universal day, it will enlighten and bless all mankind, of every color and every clime.

Let us then rejoice that our lots have been cast in this land of liberty, and this age of light. And let us all endeavor to feel and to act as a moral people should feel and act on this our great day of national jubilee—a day ever to be remembered with pious gratitude, and worthy to be consecrated, through all time, to the enjoyments and the duties of a reflecting patriotism and a comprehensive benevolence.

Generation after generation will pass away and be forgotten, but when, in the lapse of ages yet to come, the monumental columns and Pyramids of nations shall have mouldered to dust, and the names of tyrants and of demagogues shall have sunk into oblivion or contempt, the immortal principles of our Declaration of Independence and the virtues of the patriots who, to maintain them, pledged their *lives*, their *fortunes* and their sacred *honor*, will still shed a mild and melow light which will never fade away as long as liberty has an altar, or God has a temple upon earth. But whether in after times, here or elsewhere, those principles and those virtues shall prevail among men, or shall be remembered only as the historic

glories of a meteor age, may depend much, very much, on the conduct of those of this generation, who, under Providence, have been made the recipients for themselves and the depositors for all mankind of one of the best boons ever vouchsafed by God to man.

This then is an occasion peculiarly proper for a dedication of our hearts to our country, and of our minds to sober contemplations on our duties to ourselves, to those who have gone before, and those who shall come after us, and to that Being who stood by our fathers in the great day of their fiery trial, and by whom we will be held accountable for the manner in which we shall discharge the sacred trust committed to our keeping.

Standing as we do, on an isthmus connecting the dead and the unborn—the fathers of our liberty who have gone before us, and the sons who are to come after us in joy or in sorrow—it is our duty this day, like the ancient Greeks during their Isthmian and other national commemorations—to observe an universal amnesty and, glancing at the past, the present and the future, to banish all passion and prejudice, personal, partizan or national, and, as one family, unite in the noble resolution, that we will henceforth, as long as we live, do all that we can to cherish the virtues, and to preserve, improve and hand down the moral and civil institutions, without which liberty is but licentiousness, and free government but an empty and delusive name.

In the history of the old world the philosophic observer can find but few incidents gratifying to the philanthrophic mind, and no satisfactory evidence of the capacity of the mass of mankind for the maintainance of a just and stable democracy. Greece, the cradle of letters, and the nursery of the arts—the land of Homer, of Solon, of Herodotus—the theatre of Thermopylæ, of Leuctra, and of Marathon—classic Greece, in the heyday of her glory, beguiles the scholar with her minstrelsy, her eloquence and her arms, and fires his genius with illustrious examples of devoted patriotism; but a calm survey of her history exposes lamentable scenes of disorder and injustice, the natural effect of the ignorance of the multitude. Under the spell of a momentary inspiration, the superficial inquirer may be deceived with the semblance of popular freedom, but the illusion will vanish when he beholds the army of demagogues and their triumphs: when he sees Pisistrates putting down Solon—a deluded mob subjecting Aristides to ostracism because he was called "the just"—and the same potent, but inconstant engine, taking the life of Socrates because he ventured to intimate the immortality of the soul, and the existence of one, and only one God—when he beholds the insecurity of virtue, and the instability of justice, and the final degeneracy and desolation of the once far famed Greece, he will feel that the populace, like its own fabled Polyphemus, was a *blind giant*, incapable of self-direction, and as apt to destroy as to preserve.

Rome, once mistress of the world, was, in her best days, the great arena of contending factions. She too had her demagogues, and the "*Majesty of the Roman People*," was their watchword. And though she had her Fabricius, her Regulus, her Cato, her Cicero—she had also her Clodius, and her Sylla, and her Cæsars, honored in their day as the friends of the people; and whether Marius or Sylla, Cæsar or Pompey prevailed, the victory was in the name of liberty, the *Republic* was honored with a triumph, and a clamor of approbation echoed from the Forum to the Capitol. Even Augustus Cæsar, absolute as he was, preserved the forms of a Republic, whilst, by the perversion of his vast patronage to his own aggrandisement, he made an obsequious and prostituted Senate the Registers of his will, and, in the name of liberty, fastened a heavy yoke forever on an *applauding* populace.

The fast anchored Isle—the natal land of our fathers and the mother of our common law—has done much for mankind. But she too has had her scenes of civil strife and of blood—her Wakefield, her Smithfield and her Bosworthfield; she has had her Tudors, and her Stuarts, her Jeffreys, her Bonner and her Cromwell, as well as her Sidney, her Cranmer, and her Hampden; and, after ages of reformation in Church and State, her aristocracy still governs, her Hierarchy still prevails, and the harp of Erin hangs tuneless and sad on the leafless bow of her blasted oak.

The French Revolution had its Dantons and its Robespierres—and after the bloody idol of licentious liberty had, like the car of Jugernaut, crushed its thousands and overturned the Temples of the true God, a Pretorian band of Grenadiers delivered over the "*Republic*" to the safekeeping of a Bonaparte.

After contemplating such scenes, well might the philanthropist doubt the capacity of man for self-government, and exclaim in the language of Madam Roland under the guillotine—"Oh liberty! what crimes have not been perpetrated in thy abused name!" But when, from the waste around him, he casts his eye on this green spot, he feels that there is yet hope for man upon earth

The discouraging failure of the experiments which had been made of popular government among the most enlightened nations of ancient and modern Europe must be attributed, not to any invincable incapacity for such a government, but to the predominance of ignorance and its consequential vices. Universal liberty and universal light are inseperable. All mankind have capacities for the one as well as for the other, and were created for the enjoyment of both; and as sure as there is a wise and immutable Providence, man will ultimately be elevated to the full and undisturbed fruition on earth of those great ends of his moral being. Will that God, who preserved Christianity through the gloom and desolation of the middle ages, suffer liberty, its offspring, to perish? Both, we trust, have taken deep root in American soil. They were planted by our forefathers, under circumstances peculiarly propitious.

The mariner's compass, the printing press,

the discovery of America, "the Reformation," and other subsidiary agencies having opened light on the black cloud of ignorance and superstition which hung over Europe for ages succeeding the overthrow of civilization by the barbarians of the north, man, long subjugated and degraded, began to understand and to assert his imprescriptable rights. But still borne down and oppressed, many of the most intelligent and resolute sought an asylum in the solitude of this virgin land, and brought with them all that was most excellent of the improved habits and institutions—moral, social and civil—of the Transatlantic world which, with all its charities of home and of country, they exchanged forever for the hope of happiness in the new world. Here was then, for the first time, exhibited an infant community in the maturity of social organization—a people *at once* intelligent and virtuous—nascent colonies of equals who, though still dependent on the King, Lords, and Commons of England, enjoyed the protection of the common law, worshipped their own God in their own way, and far surpassed the mother country in the actual enjoyment and prevalence of civil and religious liberty.

When, after the lapse of nearly two centuries, such a people, wonderfully improved by their intermediate trial and experience, determined to set up for themselves, they were able, in full manhood, to stand alone, and did stand up as one man, in the dignity and strength of their united moral energies; and they were not alone—God stood by them; because, *as they were qualified for freedom*, THEIR cause was HIS. Thus panoplied, success was sure; and a common struggle ended in a common blessing.

The American Revolution, unlike any that preceded it, was altogether a work of intelligence and virtue. It was a sober and solemn appeal by a moral and christian people in behalf of the rights of all. The *people* began it—the *people* carried it on—and the *people* ended it, for *themselves* and posterity; and it was begun and carried on, and ended as became rational and just men, struggling, as equals, for all that was most dear to each.

National independence was not the only object, and was far from being the only effect of that great appeal; and, had nothing else or better been achieved, the revolution would have been unprofitable—perhaps pernicious. But the ends of the momentous contest were announced in the Declaration of Independence; and those ends were accomplished. Equal rights, security—justice—crowned the final triumph; and for these we are indebted less to the valor than to the virtue of our ancestors.

The close of the war of independence opened new dangers. A government was to be established, and history, with all its lights, did not furnish a safe model. Thirteen independent states were either to be confederated or consolidated; and in the one form or the other, it was yet to be tried whether the many or few—one man or all, should rule. But the same moral power which presided over the Revolution, still presided, and out of the chaos which ensued, brought forth a new creation, orderly, beautiful and harmonious. All desired the greatest good of all. There was no Cæsar to seek a crown—no Cromwell to claim a protectorate. No Plebian envy—no Agrarian passion—no religious fanaticism produced the Revolution, or armed with power an ambitious leader—WASHINGTON had led our armies to victory, and *his* highest ambition was to be a free and useful American citizen. The American people, now liberated from foreign dominion, were prepared for freedom. Feeling this, they were determined to enjoy the great boon themselves, and to establish it for us on a new and broad foundation of *equal rights, popular intelligence* and *public virtue*. And have they not done so? The work of their hands, is it not good? It is as perfect as the capacities of the age could make it. It was the fruit of compromise; a compromise of diversified interests and opinions; and presents an illustrious example of that liberal enlightened spirit of moderation and concession, without which the Federal Constitution could never have been established, and cannot be preserved. That constitution was the first organization of government (excepting some of our State Constitutions, and the articles of confederation) which any people in their primary assemblies ever originated and established. Doubtless it has defects; being the workmanship of man's hands, it could not be faultless. But, with such occasional alterations and repairs as experience shall recommend, and patriotism may adopt, it may do all that a form of government can do, and will last as long as public virtue shall prevail. It establishes the union of the States as the anchor of safety—it defines and distributes political power in such a manner, as to give to deliberate public opinion its just operation, and to secure justice against the passions of functionaries or factions; and it guarantees to every citizen the liberty of conscience, of opinion, and of speech. For nearly half a century it has been tried, and, so far, has been equal to the purposes for which it was framed, and to the expectations of those by whom it was adopted. Under its benign protection, not a drop of blood has been shed in civil war. Justice has been administered *"without sale, denial or delay;"* our population has increased from four to thirteen millions, and our country has not only acquired great wealth and strength, but has established for itself, among the nations of the earth, a bright and distinguished name. No title is more honorable, or, among sensible men, more honored, than that of *"Citizen of the United States."*

And the valley of the Mississippi—this Hesperian land of ours—is it not, with all its enchanting wonders, one of the fruits of that liberty and security which have been assured to us by our institutions? A wild wilderness when Independence was declared—it already blooms in all the beauty and maturity of the most civilized nation. Its population exceeding three millions, and increasing beyond

example, in numbers, in wealth, and in moral power—its dwellings, its farms and its churches —its cities, its colleges, its Steam Boats and its Rail Roads—altogether exhibiting a landscape, now and in perspective, never surpassed, if ever equaled in physical beauty and moral grandeur.

But this should be a day of candor and of truth. Our country's, escutcheon surpassing though it is, cannot appear altogether spotless. We have owed, and yet owe, with augmented and continually increasing obligations, a sacred debt of justice and magnanimity to the aboriginal Red Men, whose homes we occupy, and whose council fires we have extinguished. Helpless, hopeless, and forlorn, a miserable remnant only remains of the once powerful lords of this continent. And shall the last melancholy relics of those vast tribes also perish? The honor of our country forbids it. The efforts hitherto, to meliorate their condition, though well intended, have not been always the most congenial, or appropriate, nor sufficiently earnest and persevering. They *can be yet* civilized—they can yet be reclaimed, and made useful and happy. Let it be done. America should do it—America can do it—and America, we trust and believe, will do it; and, if she shall accomplish it, though too long deferred, the tablet, on which the achievement shall be recorded, will be one of the fairest in all her bright annals.

The philanthropist has still also to lament, that a curse imposed on our ancestors when in colonial subjection, still lingers among us. Domestic slavery cannot be suddenly abolished in all the States, consistently with the welfare of either the black man or the white. A premature effort of inconsiderate humanity, might be disastrous, and would certainly tend to defeat or retard the ultimate object of every good and wise man—universal emancipation. But we feel that public sentiment, public policy, and individual interest, are all conspiring to extirpate the great household evil, and will, in convenient time, and in some just and eligible mode, satisfactory to all, banish it forever from our land.

It must be admitted too, that, in the progress of our affairs, the effervescence of party has sometimes disturbed our tranquility, and that faction has, more than once, dared to raise its Cerberean head. But these evils will accompany liberty in its best estate. No unmixed good belongs to earth. Popular freedom cannot exist without the occasional agitations incident to the collision of different interests and opinions.

"Faction will freedom, like its shade, pursue,
"Yet, like the shadow, proves the substance true."

In every free State, there must be conflicting opinions, and rival interests, which will produce parties fired with emulation, and, not unfrequently, armed with passion and prejudice. And where there are such parties, there will be demagogues—light and protean newspaper politicians, hollow-hearted and deceitful —who, floating on the bubbling tide themselves have raised, excite every prejudice, pursuade every suspicion, and address every passion of the credulous, the ignorant, and the unprincipled. These eruptive disorders cannot be prevented without destroying the vitality which produces them. But as long as the heart of the body politic is sound, they will be but as pimples on the skin, and with the *animalculæ* which live in them and feed on them, will be carried off by the healthy circulation of the pure blood of life. Hitherto we have been saved by the ultimate rectitude and energy of public opinion—a resource that will never fail whilst soundness abides with the body of our people. Popular virtue and intelligence are the only firm foundations of popular liberty; and until these foundations have been sapped, the superstructure will never fail. Perhaps the most radical defect in our political organization, is the disproportionate power and patronage with which the national Executive is armed. And whenever our liberties shall fall, they will sink under the combined action of a perverted Executive and a licentious press. But should it ever be our lot to behold one of the most alarming trials to which our rights can be doomed—an unworthy Chief Magistrate, elevated and sustained by a selfish and ambitious party, perverting his great patronage, and abusing his power by rewarding his sycophants, proscribing all who dare to think honestly for themselves, and prostituting the public press—and a mercenary band of placemen and expectants, like the degenerate Romans in the days of the Cæsars, only because the supremacy of their master's will is indispensable to the attainment of their personal ends, vindicating those abuses and acting out the detestable doctrine of Hobbes, that the king cannot be guilty of perjury as long as the people can be prevailed on to sanction or can be compelled to endure his usurpations; then, even then, if virtue and intelligence still abide with the great mass, though we shall lament the loathsome scenes, we need not tremble or dispair; the rightful sovereigns will, at last, assert their supremacy, and "come to the rescue" of their violated institutions;—they may come slowly—but come they will, and with power.

But these slight blemishes at which we have just glanced—what are *they* in the sublime prospect which this day opens to our view? They are but the spots on the sun; and though the microscopic vision of misanthropy may magnify them, they are lost in the great panorama which our country presents to the eye of an instructed and comprehensive patriotism. Could Boone and Harrod and Logan —when, in this once "land of blood," they first trod in the tracks of the Indian and the Buffaloe—have dreamed that what we now behold in this smiling West, would so soon have succeeded their adventurous footsteps, how would such a vision have cheered them amidst the solitude and perils which they encountered in aidiug to plant civilization in the wilderness! But oh! the pilgrim band of Plymouth Rock; the offcast germ of the once leafless,

sapless, tree of light—what holy joy would theirs have been, had their last lingering glimpse of the green fields of their childhood been gilded with a hope, that the then houseless solitude of their refuge would, so soon, or ever be transformed into a vast cultivated garden, the abode of that liberty, religion and law, for which they had abandoned forever the comforts and endearments of the homes of their birth?

Here let us pause, and contemplate our actual condition—its peculiar and pre-eminent blessedness, its hopes, its fears, its duties, and its responsibilities. All that our noble sires hoped for, and all that rational man could expect, is now ours. This fair country is ours; and that liberty, that religion, and that just and equal law, for which the hardy hunter and the pious pilgrim longed and suffered, are all ours—ours to enjoy—ours to uphold—ours to improve, and exalt and transmit. We are indeed the heirs to rich blessings—the price too of virtue, of blood, and of tears that greatly enhance their sacredness and their value. To prove ourselves worthy of these blessings is a sacred duty we owe to those who secured them for us—to ourselves who hope to enjoy them and to our children, who will have a right to claim them, unimpaired, unjeoparded and improved. Shall this threefold obligation be fulfilled? Let this solemn question never be forgotten; and may each of us be faithfully answering it by our conduct, as we should, as long as we live.

To enjoy and preserve we must maintain, by just and proper means, the union and the harmony of the States; we must guard with all our vigilance, and defend with all our energies the Federal Constitution, and should never permit, or connive at any infraction of its provisions or evasion of its principles under any pretence, or for any purpose whatsoever; we must never permit a Manlius to escape the sentence of public justice by pointing to the Capitol which he once saved—nor even a Scipio Africanus, when properly arraigned, whether guilty or innocent, to elude a fair and full trial by appealing to the battles he had won for his country; the public law must be inflexibly supported by all, because it is the only support or security of all; we should always give our suffrages to those who are most worthy and capable; we should never trust or sustain any functionary, high or low, who adopts any other rule of official conduct than *the public good;* we should approve and encourage all efforts and institutions which tend to moral improvement, or to the establishment of useful principles, or habits; we should ever remember, and strive to imitate the virtues of our Revolutionary worthies—and whenever we feel doubt respecting our civil duty, it would be well for us to consider what, under the same circumstances, Washington or Franklin would have done; and it should ever be a leading maxim of our lives, that, *"above ourselves our country should be dear."*

The proposition that man is capable of self-government presupposes, necessarily, that he is virtuous and intelligent. This truth, so self-evident, is exemplified by the history of every age.

Much has been written about the most effective social organization, and the best conservative principle of States. But all the wisdom of the most learned Philosophers, and all the artifices of the most experienced politicians, never did nor ever can project any expedient which can supply the want of a general diffusion of moral light. As a free moral agent, man in the social and civil state, must be regulated by moral principles. It is the dictate of reason as well as a law of nature that, among equals, the majority should govern; and, among equals, the majority will govern. But, unless the majority understand their rights, and their duties too, and possess the virtues essential to the maintenance of those rights and the proper discharge of those duties, they will not long govern, and, whatever may be the form of government, they will, *in fact,* be governed. This is equally the dictate of reason and the law of nature. When the numerical plurality are incapable of just self-control, those who are *virtute majoris,* and not those who are *numero pluris,* constitute the actual and efficient majority, and the only one that can govern wisely or safely. As *"Knowledge is power,"* those who do not possess an equal degree of intelligence and virtue, should not, and cannot exercise an equal degree of moral influence. It is worse than mockery to declaim about *"liberty and equality,"* when the great lever of moral power is held by a comparatively few members of society, who must govern as long as reason predominates; and when that does not prevail, passion, like a volcanic eruption, overruns every opposing barrier. And either dilemma—the one being oligarchy, and the other anarchy or mobocracy—is inconsistent with liberty and safety. The best organized government must be *practically* the one or the other, unless the great body of the people possess a *pervading* and *preponderating* moral power. The genius of the government should be adapted to that of the people; and the practical government will be the image of those by whom it is administered and controled. It is political quackery to attempt to preserve republican institutions among a corrupt or ignorant people.

"What is a free State?
"Men, high minded men.
"Men *who their duty know,*
"But (also) *know their rights.*
"And, knowing, *dare maintain*—
"THESE constitute a State."

The stability of a constitution depends not so much on its structure, as on public opinion. The principles of the people, however bad, will prevail over those of their constitution, however good. The constitution can afford no security, unless it be revered as inviolable by those whose will must govern. Unless the mass of the people be enlightened, vigilant, and true, those who may be intrusted with power, may not be such as are worthy of the trust, and may do as they please and still be

sustained by a misled majority, even in trampling down their constitutional bulwarks, and forging their own chains. No vassalage is so complete as that of the will—no servitude so hopeless, or degrading, as that of the mind. That mind which is under the dominion of any other mind, is not free; it is a slave, though it may wear gilded chains. And a mind under the dominion of passion, ignorance, or vice, is not, whilst thus enslaved, a free agent, or fit to be free. A community of such minds cannot enjoy civil liberty.

When the people are truly enlightened, tumults and encroachments can do no permanent mischief—and, without such guardian intelligence, the best constitution, and the wisest laws cannot, in a popular government, secure either tranquility or justice.

A stable democracy is the natural offspring of the maturity of society, when the people are good and wise. In such a community, neither aristocracy nor monarchy—the necessary fruits of the immaturity of society—can be maintained. A striking illustration of this self-evident truth, may be seen in the Lilliputian Republic of *San Marino*; where all the citizens, being, by a common discipline, as nearly equal as possible in moral power, maintain, in practice, as well as in speculation, equal and just institutions, and laws which have a moral force far more efficacious than physical and merely political power combined. There the law supports all, because it is supported by all; every infraction of any law is deemed an attack on the security of every citizen, because it is, by the integrity and inviolability of their laws, that their rights are secured, or felt to be secure. And thus they happily exemplify the maxim of Solon—"*Force* is the lot of some, LAW is the support of *all*."

Though the perfectability of man in his probationary state is but the vision of a vain and benevolent fancy, yet the infinite improvability of the human mind, and of the moral character, is as certain as it is ennobling. Dominion over the earth was granted to man in the great charter of his being, which endowed him with a rational and immortal mind. This elemental spark is the *puncum saliens* of human power; nourished and expanded by proper culture, it can be made as resistless in its influence as it will be wonderful in its developments. Behold the disparity between the civilized and the savage man—between the Christian and the Pagan world. Remember Athens in the days of her glory—the conquest of Mexico by Cortes, and of the kingdom of the Sun by Pizarro. Look at the mariner's Compass, the Telescope, the Printing Press, the Cotton Loom, the Steam Boat—observe the magic march of improvement in this wonderful age—the arts, the institutions, the laws of these our days; and behold a Newton measuring the sun—a Herschel scanning the stars, and viewing the mountains of the Moon—a Franklin drawing Lightening from Heaven—and then, even then, we have but a glimpse of the capacities of the human mind, or of the power of human knowledge. The power of knowledge is not only sure and comprehensive, but attractive and happifying. It is the power of being good, and of doing good—it is the power of being happy, and of making happy—it is the power of being all that man should be, and of doing all that man should do for his own happiness and the welfare of his country. It is the chief source of true happiness. It purifies the heart, whilst it exalts the mind. It is incompatible with dissolute habits, sordid appetites, and vulgar ambition. As it elevates and expands the intellectual and moral faculties, it affords resources for enjoyments, both rational and useful, and aids in preventing licentious habits, and in destroying the contagion of idleness and vice. An enlightened mind alone can enjoy "*the feast of reason and the flow of soul;*"—it communes with itself, and draws aliment from every thing it sees or hears—it finds

> "Tongues in trees, and books in flowing brooks,
> "Sermons in stones, and God in every thing."

The true patriot will strive to enlighten the popular mind, and will endeavor, by proper means, to propagate truth, dispel error, and eradicate vice. By such efforts he will help to meliorate the condition, exalt the character, and secure the rights of his fellow men. The citizen who will not thus act, is not the people's friend, or his country's friend; nor, whatever he may say or think, can he be, *at heart*, in favor of universal liberty and equality.

Does the philanthropist wish to promote the welfare of his race? Let him aid in the diffusion of knowledge. Does the American patriot hope that the liberty which he enjoys may become universal and indistructible? or do we, who are fathers, hope that our children may be free and happy, and be able to transmit those blessings, unmarred, to *their* children? Those hopes are vain and delusive, unless the light of true knowledge be properly and effectually diffused. We must instruct one another—we must educate our children—educate them in the habits and principles in which, as freemen, they should live, and in which; *to be* freemen, they *must* live.

One of the most comprehensive definitions of education, is that given by Agesilaus—"Children should be taught that which it will be proper for them to practice when they reach mature age." He, whose habits, principles, and taste are not established when he reaches manhood, is in great danger of never having good or fixed habits, or principles, or taste. The stamina of intellectual and moral character are formed in the plastic season of youth. Nothing is more ductile than the infant mind; it may be moulded into almost any shape. The lives of Herodotus, of Demosthenes, of Alexander, of Hannibal, of Franklin, and of many other illustrious men, exemplify this truth. It has been said by a wise man, that the reason why an old man, while he remembers scarcely any thing recent, retains a vivid recollection of the incidents of his boyhood,

is, because the interesting scenes of his youth became *identified* with *his soul*. Hence the evident importance of early and proper instruction; and especially that which may be given on the mother's lap, and under the paternal roof. Lessons and examples then imprinted and principles thus implanted, will grow with the mind, and forever influence its tone and character. How responsible then is the parental charge? and how important is it, that parents should be wise and prudent and vigilant? A mother's tutelage—how sacred, and how eventful! She it is, who, more than any other human being, may create or destroy the germ of virtue. Remember the *"mother of the Gracchi,"* and the mother of Washington. Parents remember these immortal mothers, and try to imitate their maternal examples.

That which is taught in primary schools and colleges is called science, which is nothing but knowledge reduced to system, so as to be easily acquired, well retained, and promptly applied to its proper use in the business of life. All human science may be comprehended in a threefold generalization—1st. Mathematical, or science of number and quantity; 2nd. Physical, or the science of external nature; and 3d, Moral, or the science which teaches the moral nature, and obligations of man in the natural, social, and civil state. In each of these classifications, many subordinate departments of knoweledge are included. We will repeat some of the more elementary and essential only. Pure mathematics, comprehends arithmetic or the science of numeration, and geometry, or the science of mensuration. Physical science embraces mechanical philosophy, or the sensible motion and action of bodies—Chemistry, or the inherent qualities and laws of matter—Anatomy, or the animal structure—Physiology, or the functional economy of animal life—Zoology, or the nature of irrational animals—Botany, or the properties of the vegetable kingdom—Minerology, or the nature of the mineral kingdom—and Geology, or the structure and composition of the earth. Moral science includes Ethics, or the duties of man, as a rational and accountable being—Mental Philosophy, or the phenomena of mind—and Jurisprudence, or the principles of legislation. This is a very imperfect outline; but general and incomplete as it is, it may serve to show the vastness and beauty, and value of that intellectual domain, which it is the destiny of mind to achieve and enjoy. The higher branches of scholastic education are taught in colleges and universities. And it is the duty of all, who feel an interest in the propagation of knowledge, to give their countenance to such institutions. It is the interest of the poor as well as the rich, of the weak as well as the strong, that his own country should provide suitable nurseries for invigorating and expanding the faculties of its own citizens, so as to acquire for itself character and power, and, for the humble and the obscure, protection and instruction. Such men as Socrates, and Demosthenes and Cicero and Newton and Bacon and Burke and Adams and Jefferson and Hamilton and Madison—are, to the moral, what the luminaries of Heaven are to the natural world. The higher institutions of learning are almost indispensable to the production of such moral lights. And it should not be forgotten, that most of the patriarchs of the Revolution—men full of scientific, as well as practical wisdom, had been students in colleges or universities.

Colleges not only prepare the more active minds for usefulness and distinction, but they are efficient agents for the diffusion of correct elementary education. *Wrong education is worse than no education.* Primary schools have been woefully deficient in qualified teachers, and, not unfrequently, have been injuriously perverted by ignorant pedagogues. The colleges, if well patronized, might furnish for common schools, teachers of the proper qualifications, who, in the useful employment of moulding the human mind, might acquire, for themselves, honor, and for their country, glory. And thus too, might society be relieved of literary drones, who, by idleness and inactivity, too often propagate a pestilent contagion in the sphere in which they move. No vocation is more honorable or useful, than that of the elementary teacher; and no man can be too exalted for such employment. When such men as Pythagoras and Adams and Crawford, were teachers of youth, who should be ashamed to be a good school-master? But elementary teaching will never be as general or as useful as it should be, until well educated teachers can be easily obtained.

Common schools, properly conducted, are also useful auxiliaries to colleges, in affording convenient opportunities for cheap preparatory education. But were they adapted to no other purpose than that of educating those classes of society whose sphere will be that of the common mass, their utility could not be overrated. The value of elementary education has but seldom been rightly estimated by the enlightened and benevolent; and never has been justly appreciated by that portion of mankind, whose destiny forbids higher scholastic attainments. Every citizen should be acquainted with the rudiments of science—the elementary principles of the arts of civilized man—the organic laws of the animal, vegetable, and mineral kingdoms of nature—the fundamental principles of moral and political law, and his own duties and rights as a man and a citizen. It is the duty as well as the interest of every citizen to understand the principles of the Federal and State Constitutions; and, though the American statesman cannot hope to see the municipal laws of his country taught, like those of Minos once were, as a part of common education, still he should desire to see every citizen instructed in the principles of his government. These, like the twelve tables of Roman law, should be taught as a *carmen necessarium* in every common school.

The great object of elementary education, is, to employ the youthful mind in such a manner as to establish proper habits of thought and of action—to prepare the pupil for the ac-

tive business of life, and to enable him to understand his true destiny. And the body, as well as the mind, requires attention. *"A sound mind in a sound body"* is essential to happiness, and to the utmost usefulness. Gymnastic, and other more scientific exercises of the body, are conductive to grace as well as to vigor and health; and are therefore useful if not indispensable. We feel that we are in danger of degenerating;—*active, industrious, and moral habits are too much neglected.*

But the best interests of the commonwealth, no less than our own sacred duties, require that our daughters, as well as our sons, shall be well educated—instructed practically in all the domestic duties, and instructed also in the elements of science. Woman's influence on the destiny of man is unsurpassed. She will ever be his good or his evil genius. The object of his most tender relations—the first and most impressive instructress of his children—his confidant—his counsellor—the companion of his joys—the sharer of his woes—WIFE—MOTHER—surely she should, by proper culture, be well qualified, in every respect, to dignify and adorn the important station to which Providence has exalted her sex.

A well organized system of common schools, sustained by the public sentiment, is indispensable to the greatest happiness and the highest glory of the Republic. The poor, as well as the rich, must be protected. *All* should be carefully instructed. Every child in the commonwealth is a child of the commonwealth and should be equally the cherished object of her guardian care. *Here* lies her strength —*here* her liberty—*here* her true glory. Let her rally all her moral energies, and blend all her scattered rays; let not her neglect cause one intellectual flower to "blush unseen, or *waste its sweetness on the desert air*"—and *then*, and not till then, she will have equality—then *power*—and then an *unwritten law* in the hearts of her people, far more salutary and effectual than all the sanctions of *all her written codes.*

In our own blessed America, the importance of diffusing truth cannot be exaggerated. *Is man capable of self-government?* This problem of ages is now, and perhaps for the first time, subjected to a fair test. Americans may solve it for themselves, and for the whole human race. All has been done for us that the mere structure of government could have done —all that the wisdom and example of our patriarchs could do. But our institutions are yet in a state of eventful trial. They are but the *anatomy* of liberty—*public sentiment* is the SOUL. The vitality as well as the longevity of the yet living idol, depends on the purity and intelligence of those who worship at her shrine. The virtue of our fathers imparted the Promethean spark, and the breath of their children must preserve, or extinguish the vestal flame which they kindled on our country's altar. The vital air of liberty is pure intelligence, as pervading as the sun. Without this vivifying element, the whole organic structure, beautiful as it is, must soon become a lifeless mass, and perish.

But mere philosophy, however sublimated or prevailing, is not the only, or the surest safeguard of human liberty. Reason, the most unerring, is still frail and flitting and, unaided, is but the *Eutopia* of More, or the *Ptatonopolis* of Plotinus. This important truth is demonstrated by the history of the Pagan world. Social man needs a law *immutable*—some motive beyond the grave—a pure and *fixed religious principle.* This is his ANCHOR —*sure* and *steadfast.*

In its purity and simplicity—the Christian Religion is the friend and companion of civil liberty—its constant companion—its best friend *It* taught man his true dignity, and his true and equal rights. It elevated woman to her just rank in the scale of being; and, even amid the perversions and prostitutions of a wild superstition, it rescued literature and civilization from the ruins of a dark and desolating age. It is not the metaphysical, or polemic theology of the schools, nor the infallible "orthodoxy" of sectarian bigotry, nor the false religion of persecution, nor the bloody religion, of Smithfield, and of the Inquisition—of which we speak; but it is that mild and pure, and holy religion, which rebukes intolerance, and dispels ignorance, and subdues vice—that heavenly religion which beams in the pious mother's eyes, and hallows the accents of the pious mother's lips—that religion which proclaims peace on earth, and good will to men, and inspires that love to God and to man which purifies the hearts and overcomes the world.

It is the prevalence of this last and brightest hope of man that will establish his liberty on the rock of ages. And this it was, pure and unconstrained as it came from Heaven, that the father of his country recommended to the people of these United States, when, in his valedictory address, he conjured them, by all they held dear, not only to regard religion as the firmest prop of their liberty and happiness, but to treat, as a public enemy, him who should ever attempt to undermine, or to shake it.

Had not Washington, like Fabius, led our armies, and saved our country, and then, like Cincinnatus, retired to his farm—had not his influence—more than that of any other man, induced the adoption of the Federal Constitution—had not his rare virtues, and the weight of his character preserved that Constitution in its infancy, and paralyzed the *Briarian* monster that threatened its destruction—the closing act of his public life—his farewell address to his countrymen, would alone have entitled him to an imperishable monument. Let those countrymen always revere his principles, and follow his advice, and their liberties will last as long as their country shall be known as *"the country of Washington."*

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Young Gentlemen of Centre College, at whose request this address is attempted—may I now be permitted, respectfully, to invite your attention to your own peculiar duties and pros-

pects? Having engaged in the pursuit of knowledge in its highest branches, much will devolve on you, and much will be expected of you, as conspicuous actors in the opening scenes of active life. Your efforts and your examples, may have a peculiar influence. Shall it be salutory, or shall it be pernicious? will you, by honoring science, bring honor on yourselves, upon this excellent institution, and upon your country?

He who desires to be practically wise, should be a close observer of men; and should be, not only industrious and persevering, but systematic and patient. It was chiefly by a judicious method, that Bacon achieved wonders. Although engaged actively in the Jurisprudence of his day, he wooed the muses with a success almost miraculous; and, whilst he was deciding two thousand chancery causes in a year, he found time, not only to display his Botanic taste in beautifying his garden, but to write his *Novem arganum*. Had he, like Leibnitz, wasted his time in desultory or miscellaneous studies and vainly attempted universal conquest, he would, like that literary epicure, have achieved but comparatively little. He was also patient. He lived for mankind, and looked to posterity for his reward; so did Solon, and Newton, and Milton, and Franklin—whose names possess more moral influence than those of all the sciolists and chieftains the world ever saw.

Many a signal abortion has been the consequence of impatience, and premature ambition. Let the young student and the nestling politician, remember Tiberius and Caius Gracchus, and let him never forget the Dialogue between Socrates and Glauco. Let him remember that it is in the maturity of right knowledge, practical as well as speculative, that useful service is to be rendered, or unfading laurals to be plucked—that, if he wishes to be distinguished as a Jurist he must do as Coke, and Mansfield, and Marshall--did that, if he desires political fame, he must follow the example of Cicero, of Burke, of Chatham. and of Madison; and that, if he wishes to adorn the sacred desk, he should look to Saurin, to Whitfield, and to Alexander.

Learn as Bacon, and Newton, and Franklin learned—by patient and rational induction. Banish all false idols which lure but to decoy; and especially abjure Bacon's *idolta Tribus and idola Theatri*. A servile imitation of distinguished men—a proneness to theories, and an eagerness for generalization, have ever been common stumbling-blocks in the way of science. Aristotelian abstractions, and Academic jargon reigned with a mystic and fatal spell over the intellectual world for two thousand years. Cartesian reveries then had their day of pernicious authority; and even Bacon the founder of the true system of philosophising by induction from facts well ascertained, did not live to be hold the complete triumphs of his great innovation, and was not himself, in all respects, an examplar of his own rational principles.

In the succeediug age, the human mind, rendered presumptuous by its achievements' and still ignorant of the true principle of knowledge, or inattentive to it, became sceptical, and not unfrequently, Atheistical. And though the Atomic philosophy of Leucippus and Democritus had been exploded, and Plat-onism and Stoicism had been renounced, a new system of Epicurianism was erected on their ruins.

The physiological hypothesis of Locke, being perverted, or misunderstood, encouraged Materialism. And the developments of the inductive process having inspired a delusive confidence in human reason, the Humes and the Berkleys of the 17th century, dethroned common sense, unhinged the minds of men, and left nothing certain but the uncertainty of knowledge.

Atheism and Theophilanthropy were the fruits of their metaphysical sophisms of presumptuous reason and perverted ratiocination. And anarchy, vice and confusion followed.

But knowledge is certain; and true knowledge inspires humility, as well as confidence. It teaches the mind to move in its appropriate sphere—to forbear enterprise beyond its power—to trust to its own light as a safe guide in its own domain, and to follow that light wherever it leads, and, when it goes out, to stand still. Newton is the most perfect model of the true philosophy, and most happily illustrated its proper sphere and its great efficacy.

Knowledge—thorough and right knowedge, is opposed to bigotry, selfishness, and cynicism—it wages an incessant war with idleness and vice—it is benevolent, and its benevolence is active—it aspires to positive usefulness, and is afraid to do nothing but that which is wrong—it will not follow a multitude to do evil—it knows that "the fear of man bringeth a snare"—it knows that popularity is not an infallible evidence of merit, and is as evanescent and uncertain as the wind—it knows that to do good, and not to seem good, is the duty of man—and well it knows, that honorable fame, is the reward only of honorable conduct; that to despise such fame is but to despise the virtues which alone can earn it, and that the Amaranthyne wreath can adorn none but the good and the wise, who climb the lofty cliff, where it blooms.

The enlightened mind has resources for adversity, which no vicissitude of fortune can destroy, and the want of which no wealth or power can supply. When harrassed by care, assailed with obloquy, or bereaved of friends, the man of true philosophy has still a fund on which he can draw with confidence, and of which no earthly power can ever deprive him, as long as his reason is left unimpaired. The sanctuary of a pure and cultivated mind will afford him peace and comfort when darkness and desolation are around him. Remember Cicero. He had seen his country's glory blasted by upstart demagogues—he had been exiled and his house had been demolished by the mock patriot Clodius—death had borne from his arms his lovely Tullia, the only remaining prop of his declining years—but then, even then, when, to the mere animal man, nothing remained but gloom and despair, he enjoyed

in his retirement, the society of the illustrious dead, and the consolations of philosophy, and thus soared above destiny and robbed fate of its victim. To his friend Sulpicius, he wrote thus—"My daughter remained to me—that was a constant support—one to which I always had recourse—the charm of her society made me almost forget my troubles; but the frightful wound I have received in losing her, uncloses again all those I had thought healed. I am driven from my house and the Forum." But to Varro he wrote thus—"I have reconciled myself with my books—they invite me to a renewal of our ancient intercourse—they tell me that you have been wiser than I in never having forsaken them—I seek my repose with true satisfaction in my beloved studies."

Do you desire that fame which shines like the twinkling star, and whose temple stands immovable on the mountain's summit? Knowledge—true knowledge, is the beaten and toilsome way, and all other paths bewilder and mislead. Who would not prefer the fame of Socrates to that of Cleon—that of Cicero to that of Clodius, or Anthony, or Lepidus, or Cæsar?—the fame of virtue to the blazonry of titles or of arms?—Knowledge is the only passport to a virtuous immortality; and its personal exemplifications shed a happy moral influence. Sappho, you know, was canonized as the 10th muse; and old Cato was called the 13th table of the Roman law. And the classical reader remembers that, when almost all the Greeks, captured with Nicias at Syracuse, had died in dungeons, a remnant of the survivors saved themselves by the recitation of beautiful extracts from Euripides. How potent was the shadowed genius of the immortal Athenian when it alone melted the icy hearts that nothing else could touch, and broke the captive's chains which justice, and prayers, and tears, had in vain tried to unloose? And hence "the glory of Euripides had all Greece for a monument." He too was elevated by the light of other minds. It is said that he acquired a sublime inspiration whenever he read Homer—whose Iliad and whose Odyssey—the one exhibiting the fatality of strife among leading men—the other portraying the efficacy of perseverance—have stamped his name on the roll of fame in letters of sunshine, that will never fade away. No memorial tells where Troy once stood—Delphi is now mute—the thunder of Olympus is hushed, and Apollo's lyre no longer echoes along the banks of the Peneus—but the fame of Homer still travels with the stars.

But my young friends, knowledge, to be useful, must be active. If you wish to be most useful, do not, like Atticus, shrink from the responsibilities of public life, nor always agree—right or wrong—with the dominant party,—but, rather like Cicero, actively and honestlay devote all your talents to the service of your country, and in vindication of its institutions and its liberties. With Epaminondas, neither seek nor decline, on account of their imputed dignity, places of public trust; and always remember his maxim, that, it is not the station, but the manner in which it is filled which gives dignity and honor. Always thus acting, you may be benefactors of your race—may help to exalt your country and consolidate its liberties, and at last earn for yourselves enduring monuments.

Fellow Citizens—all who hear—of every age and condition—we all have our allotted places, and our alloted duties. Shall we fill those places, and discharge those duties as freemen ought? Whatever may be our station, our influence will be felt. Then, "act well your part, there all the honor lies."

Like the golden leaves of Autumn, our patriarchs are dropping around us; a few only remain to watch over the work of their hands, and close the age of glory. La Fayette—the last surviving general of the Revolution—friend of our country, and benefactor of mankind—has just taken his flight from the troubled scenes of earth, and is, we hope, once more and forever, united with Washington and Adams and Franklin. And soon—too soon for us—not one of the patriarchal band will be left behind to guide and to instruct the new generation that succeeds them. And when—appointed by Heaven—the last survivor shall close the long line in its march to the skies, shall he tell that the great work of their lives was in vain—that their sons have proved recreant and dishonored their trust?—or shall he bear the glad tidings that all is yet safe? Let us be true to ourselves and faithful to the memory of our illustrious dead, and all *will* be safe—safe to us, and safe to those whom we shall leave behind us. All depends on ourselves and our fellow-countrymen. Shall this Union be dissolved, and the fame and the ashes of our father's divided? Will we bequeath to our children happiness or woe—degradation or glory?

Our work is not hard. Honesty, and vigilance, and true public spirit among ourselves, and proper examples and precepts to our children, will finish all that remains for us. Let us improve our country, and preserve and strengthen the fabric of liberty reared by our predecessors; and let us, by the proper means, prepare our successors for its continued preservation and enjoyment. The age of glory is past or is fast passing away. Let this be the age of improvement—improvement here as well as elsewhere—improvement in virtue and intelligence—in government and in laws.

And then—after we too shall have joined our friends and the friends of our country above—should our departed spirits be permitted to re-visit the scenes of our pilgrimage here below, a century hence, we may see the Star-spangled Banner—unsoiled and unrifled—proudly waiving over an hundred million of our posterity, free and happy, and grateful to those who completed the great work our fathers began. And then too—with Washington and Adams and Jefferson and La Fayette—may we behold, in the temple of concord and union, the altar of liberty, the altar of justice, and the altar of God, standing side by side—firm, broad, and resplendant; and consecrated forever to Earth and to Heaven.

PRELECTION.

Introductory Lecture, delivered in the Chapel of Morrison College, on the 7th of Novemer, 1835.

LEXINGTON, NOVEMBER 9th, 1835.

DEAR SIR:—We have been deputed by the LAW CLASS of Transylvania University, to express to you the high gratification they received from the delivery of your Introductory Discourse; and, to request, that you would favor them, with a copy for publication.

We take pleasure in performing the duty assigned us, and are,

With great respect, your obedient servants,

BENJ. TOMPKINS,
C. M. CLAY,
B. E. GRAY,
W. M. TUNSTALL,
J. F. BUCKNER,
R. H. COCKE,
J. B. HOUSTON.

HON. GEORGE ROBERTSON, *Professor of Law, T. U.*

LEXINGTON, NOVEMBER 10th, 1835.

GENTLEMEN:—In answer to your polite note of yesterday, requesting a copy of my late Introductory Lecture, for publication, I tender to yourselves, and to the Law Class whom you represent, my aeknowledgements for your and their kind consideration, and freely present you with a copy of the address.

With sentiments of high respect and sincere friendship,

I am, Gentlemen, yours respectfully,

GEORGE ROBERTSON,

MESSRS. TOMPKINS, CLAY, TUNSTALL, BUCKNER, COCKE and HOUSTON.

ADDRESS.

General expectation, as well as established usage, demands, at this professional anniversary, a public address introductory to the didactic course of legal instruction in which we are about to engage. The pressure, until now, of other and more important public duties has left us leisure scarcely sufficient for some general and discursive suggestions respecting the character and elements of Law, as a science—a subject which, in its most graceful and attractive form, would be comparatively dry and uninteresting to a miscellaneous auditory.

Therefore, in attempting the discharge of this preliminary duty, we respectfully invoke your patience and indulgence.

Among human sciences, Jurisprudence is first in utility, first in variety and extent of knowledge, and should therefore be first in dignity and in public estimation. But nevertheless, vulgar prejudice, arising from ignorance of its true nature and extent prevailing among too many of the select class whose lives have been ostensibly dedicated to it as a branch of professional learning, has doomed it to an unjust degradation in public opinion. When considered philosophically, it is not, as it has been too often deemed to be, a circumscribed art or trade, altogether practical and arbitrary, but is a vast department of knowledge, pre-eminent in value, illimitable in extent, and infinite in detail—embracing, as far as it is visible, in its luminous outline, the elements of all human science—the concentrated wisdom of ages—and the immutable principles of natural fitness and enlightened reason.

Jurisprudence is, as we know, generally defined to be "the science of Law." Laws, according to Montesque, are but the necessary relations of things. And, thus comprehensively understood, law governs every thing in the physical and moral universe; and is divisible into two great orders—natural and positive—or universal and civil. Natural law is immutable in its nature, and universal in its authority and operation; and is either physical or moral.

Physical law governs the material world and all animal existence; and is sub-divided into various subordinate departments—such as Chemistry, Mechanical Philosophy, Geology, Anatomy, Phisiology, Botany, &c., &c.

Moral law is the system of rules prescribed by God, for the conduct of rational beings in a state of nature, or independently of civil relations and obligations, and is of two classes—Theology, or the relations and duties of man to his Creator—and Ethics, or the natural relations and obligations of man to his kind.

Universal law, thus comprehending so many interesting departments of knowledge, each depending on natural fitness and eternal principles of reason and of right, must be admitted to be, not only a perfect, but a beautiful and voluminous science, which vitally concerns all things and all men, under all circumstances, and throughout all time. It is, in the only perfect sense, the supreme law, which cannot be universally obeyed without universal harmony and peace, or violated, in any possible instance, without consequent disorder and punishment. It is the immovable foundation of all human obligation and of all human power; and an enlightened contemplation of it in its outline or in any of its branches, however minute, tends to elevate and ennoble the character of man, and must improve and exalt the mind.

But of a system so infinite and so sublime, a more particular analysis would be now inappropriate. We will only add that universal law is either a fixed and controling principle of being, or an inflexible rule of action emanating from the Creator of all things, and binding the universe to the Throne of Heaven.

Positive law is an artificial system of rules resulting from, and peculiar to the social and civil state of man, prescribed by human legislation for regulating civil conduct, and enforcing civil obligations. These laws, mutable various and comparatively imperfect, but indispensable to the happiness and dignity of our species, constitute the elements of civil jurisprudence. And it is in this restricted sense that the term jurisprudence is professionally used and generally understood. And, though universal jurisprudence is, as it has been defined—"the knowledge of things human and divine, the science of what is just and unjust"—the latter branch of the definition alone designates the science which engages the peculiar attention of the legislator and jurist. This may be appropriately termed civil jurisprudence, because it regards man in the civil state, and regulates political and civil relations. This department of jurisprudence may be sub-divided into general and particular, rational and arbitrary. General law is that civil code which has been recognized by all civilized communities of men, and is founded on the principles of universal reason and right.

Particular or local law is the system of positive enactments, which are peculiar to one place or people. The body of the laws of every enlightened age or nation, are rational, or deducable from reason and analogy. This is

science; profound and exalted science. Laws merely arbitrary and local are comparatively rare and unimportant.

Rational law prevails, to some extent, among all civilized men, and is the same every where. And hence among nations, differing in climate and in language, the same general rules of individual right and relative justice may generally be found to prevail.

A thorough knowledge of civil jurisprudence pre-supposes a general knowledge of the principles of justice, and of social and political organization, as well as an acquaintance with the history and laws of nations, and the local laws of our own country; and requires a mind of peculiar power, enlightened by general science, and invigorated by severe and systematic study; and consequently, it must be a science of a high order. This may be demonstrated by a very slight attention to the nature of law. And our chief purpose in this initiatory address is, to improve this interesting occasion by an imperfect analysis of the elements and objects of positive law, and by some incidental reflections on our own peculiar institutions.

Society is the natural state of man. This is proved by his history in every age, and country, and clime; and may also be demonstrated by considering, in a rational and philosophical spirit, his physical and moral adaptations—his capacities—his sympathies—his corporeal imbecility and helplessness—his great improvability and potential pre-eminence—his faculty of speech—his destiny. Societies cannot exist without conventional organization and laws; nor be happy or prosperous, unless those laws be just and effectual. As all men are by nature entitled to equal personal rights, and as the greatest attainable good of the greatest number is the ultimate object of political association, the will of a majority possesses an inherent and natural authority, as a law for all, and which therefore, each constituent member must be presumed to have agreed, by the act of becoming a member, not only to obey, but to aid in enforcing and upholding, if it be consistent with the fundamental principles of their civil organization. As every civil community must have a common will and a corporate existence and power, each individual member must have surrendered, by necessary implication, as much of his natural liberty as may be necessary for giving sufficient authority and effect to the aggregate will, to be expressed and enforced according to the terms and ends of their association into one body politic. And consequently, as human society and human government are indispensable to the personal security and dignity of every individual of the human race, all positive laws, authoritively enacted and consisting with the principles of universal law, possess a supreme sanction as effectual and as obligatory as the security and welfare of the aggregate body and of every constituent member can make it. It is the interest, and therefore, the duty of every citizen to acknowledge the authority and maintain the efficacy and dignity of the laws of his country; for it is the supremacy and inviolability of law, which alone can preserve order or tranquility, or ensure justice, peace or security. And here we may, at once, perceive the nature of the obligation of human laws—the importance of wise and just legislation—and the beneficence of a stable, authoritative and enlightened administration of positive law. Human legislation, always imperfect, must correspond with the character of the legislature. In legislation, as well as in physics and in morals, the cause will produce its kindred effect; and, as light cannot spring from darkness or virtue from vice, so neither can wise and salutary laws be the offspring of legislative ignorance, selfishness, or passion. Just and rational legislation is the rare fruit of prevailing virtue and intelligence. But, in every civilized community, the occasional aberrations and capriciousness of the legislative will, almost invariably yield, in time, to the salutary wisdom of experience, and to the settled predominance of principle.

The enactment and enforcement of law require the exercise of the three primordial functions of sovereignty—the legislative—the judiciary—and the executive; and the depository of these powers possesses inherently, in a relative sense, incontrolable authority; and hence all law is, in the same sense, paramount and obligatory as long as it exists. Just comes from *jubere*, to command: and right is *rectum* in Latin, the past participle of *regere*. Thus, in a legal sense, one person's right is that which all other persons are ordered or commanded by law to let him have and enjoy. In legitimate governments, all human laws are enacted by the people, or with their tacit or presumed authority and consent, and, operating as they do, personally, the legislative authority, wherever it may be deposited, or however it may be limited, must be superior to the will or authority, or power, of any member of the body politic; and is, therefore, in this sense, supreme. But it is not necessarily the supreme power of the State; and is certainly not so in the North American states, whose written fundamental laws limit the legislative authority —distribute the functions of government into three separate and co-ordinate departments, each independent of the others, and reserve to the people ultimate supremacy. In England there is no fundamental law—that which is called the British Constitution, is nothing but a set of statutes and principles of unwritten law, which have the authority of legislative prescription, and have been, in some degree, consecrated, in the popular feeling and judgment, by age, and national associations, and ancient reminiscences. Hence, in England, Parliament is said to be omnipotent, and none of its enactments can, in a practical and effectual sense, be deemed unconstitutional, are therefore void.

But here our constitution and fundamental laws are declared to be supreme: and therefore, as the judiciary must, in the administration of the laws, decide what the law of each case is, it must necessarily disregard, as a nullity, any legislative enactment in violation of the constitution or the supreme law. No such in-

terdicted enactment can here be considered law. But, in a political sense, the judiciary of America is not superior to the legislature —nor the legislature to the judiciary; each, in its appropriate sphere, is the sole representative or agent of the common and only sovereign —the constituent body, or the people.

Positive law is divisible into a three-fold classification—national, organic and municipal; respecting each of which we will now proceed to take a general notice—a mere *coup d'œl* view of their character and elements, as understood according to American principles and doctrines.

Separate and independent communities are the natural offsprings of diversities of climate —of topography—of moral character—of language—and of the vastness of the territory and population of the earth, separated by physical and moral barriers.

As a nation or state is but an aggregation of natural persons associated into one body politic for social and civil purposes of mutual improvement, security and happiness—bound together by some fundamental compact, express or implied, and governed and protected by the same law and the same power; each independent nation or state, though composed of a multitude of natural persons is politically and relatively to all other nations or states an unit, possessed of legal and moral individuality; and is, though an artificial, yet a moral being. Having a corporate power and will, the different nations of the earth are, as between each other, like so many natural persons, living independently in a state of nature; and consequently, as the laws of nature, though modified by the social state, cannot be altogether abrogated, each nation has its peculiar natural rights and obligations, and must be the subject of a moral law, possessing an inherent obligation paramount to that of any civil or human authority; and of course, also, there must be among nations some code of international law for regulating their intercourse and their reciprocal rights and obligations. This is what is called "the law of nations"—which is divided into the natural and the positive law of nations. The natural law of nations is divided into two branches—the internal, or that which is binding in conscience only, and therefore imposes but an imperfect obligation; and the external, or that which creates a perfect obligation, which may be enforced by an appeal to arms, the *ultima ratio regis*. As a natural law must be adapted to the subject of its application, and as a nation is not precisely and in all respects like a natural person, the natural law of natural persons is only so far the law of nations as it is suitable to their peculiar and essential character and rights. A nation has a right to do whatever may be necessary to preserve its independent existence, and to promote the legitimate ends of that existence; and an independent nation must, from the necessity of the case, be the sole judge, in most instances, of the proper means of effectuating those ends. A nation, when it has the right to judge for itself, cannot be amendable to the judgment and control of any other nation, and is, of course, under no other obligation than that of conscience, which requires perfect justice among nations as well as among men. And hence the internal law of nations has arisen. The external law, or law of perfect obligation, requires no further explanation or definition than that which the term itself imports.

The natural law of nations is necessarily immutable and universal, and can be understood only by applying the principles of ethical jurisprudence to nations as far as, in the nature of things, they are reasonably applicable. The fundamental principle of ethics is that human happiness, temporal and eternal, is the ultimate end of human existence, and should be the object of all human action and pursuit. The same principle is the true test of the necessary law of nations; and consequently, it is the duty, as well as the interest of nations, to observe justice and to cultivate peace and friendly intercourse among each other, and to do to each other all the good they can, consistently with their own safety and welfare. This was understood by the wise and good even in the age of Xenophon, who, in his *Cyropedia*, suggests a sufficient reason for it; and that is, that no nation can reasonably expect to receive from another that which it will not reciprocate, or, in other words, more justice and beneficence than it practices towards others.

The positive or arbitrary law of nations is composed—1st. of customs and usages which have been established by tacit recognition, and are denominated "the customary law of nations; and 2d. of compacts and treaties, called "the conventional law of nations."

The positive law, depending, as it does, on consent, is liable to change. But it is the most extensive and practical branch of national law, and must be learned in the civil and diplomatic history of civilized nations, who, in modern times, and especially wherever the christian religion has shed its meliorating influence, have reduced international jurisprudence to something like a regular and harmonious system, founded on the stable and universal principles of natural justice and enlightened policy. This code of laws, thus but recently matured and systematically practiced among christian nations, and to the recognition and prevalence of which, the maxims and usages of our Republic have essentially contributed, is divisable into two classes—the one public —the other private The public law is that which regulates commercial, social, and diplomatic intercourse between nations, and defines their rights and their duties, as between each other, in war and in peace, and the extent of their power and jurisdiction. The private law is a law of comity, regulating the extent to which the laws of one nation may operate on persons or things within the jurisdiction of another nation. The domestic laws of the various nations of the earth, for regulating contracts, and succession and personal rights, and the modes of acquiring, and of

holding and of suing for property, differ in a greater or less degree from each other.

The laws of one state cannot, *proprio vigore*, have an extra-territorial operation. Each nation has an exclusive right to legislate for itself, and to enforce its own laws within its own jurisdiction. But the interests of social and commercial intercourse require some relaxation of this fundamental principle of legislation and of sovereignty, an inflexible and universal adherence to which would, to a great extent, prevent that kind of personal and commercial intercommunication, which is most conducive to the mutual harmony, prosperity and happiness of states. A contract is made in one state, and its enforcement is sought in another state. At to the effect of the contract or the capacity of the parties, the laws of the two States are in conflict— shall the *lex loci contractus* or the *lex fori* prevail? A right to property is claimed to have been acquired within the jurisdiction and according to the laws of one nation, and the property is within the jurisdiction of another nation—shall the *lex domicilii* or the *lex loci rei scitae* govern?

Among an almost infinite variety of cases, in which there may be a vexatious conflict of laws in regard to persons and to things, these two alone may be sufficient to illustrate the importance of that courtesy among the more enlightened nations of this age, which permits the law of one, in certain cases and to a certain extent, to prevail and be enforced within the jurisdiction and by the courts of another; and, as this is a concession partly *ex comitate*, the system of rules resulting from it is called the law of comity among nations, or the *jus privatum gentium*. The mutual interests of nations constitute the true principle of this law, and the rule deduced from this principle is, that it is the duty of each nation to permit foreign laws to operate within its limits, except so far as its own essential rights or interests, or the just rights or proper duties of its own citizens may be thereby surrendered or jeoparded. It is not, therefore, altogether arbitrary; in its nature it is a law of reason and of justice; but its recognition and enforcement being voluntary and apparently *ex gratia*, it is therefore denominated a law of comity. And, though the extension of commerce and its train of enlightening and liberalizing agencies have given birth and maturity, and no small degree of general prevalence and authority, to this important branch of international law, within the last half century, still it depends so essentially on plain and fixed principles, as to be generally understood and applied by reason and analogy, without great difficulty or doubt; and, surely, constituted as these confederated States are, no branch of jurisprudence is, to the extent of its application, more interesting or useful to the statesmen, and jurists, and citizens of our complicated Union. Here it is peculiarly important; and the harmony and best interests of these States require that it should be rightly understood and scrupulously regarded.

But the existence of an independent state or nation presupposes an organic system of laws, brought into being by the consent, express or implied, of the whole mass, or by the predominant power of the few over the many, and dependent, for their character and efficacy, on the moral and physical condition of the constituent body. The philosophy of human nature teaches the philosophy of government and of legislation; and history proves that the prevailing character of the people has ever been, and will ever continue to be, everywhere and in all time, the prototype of their government and laws. The organic laws of every nation, not only should be, but will be adapted to the character and condition of the people. And from this political axiom, the inefficacy and abortiveness of all abstract systems of political organization, and of all speculative codes of law, might have been inferred without the aid of historic testimony. The excellence of government or of laws is altogether relative; such as may be the best for one people, may be the worst for another. In practical politics and legislation, abstract perfection is unattainable. Men acting upon men must act imperfectly. The safety and happiness of the people are the ends of all just human laws. These ends may be approximated only by the appropriate means, which are as various as the diversified circumstances and character of mankind. Hence there is no political panacea; and he who recommends such a *nostrum*, is a quack, whose charlatanism is less excusable, because it may be more pernicious, than that of Paracelsus or Sangrado. There is no such thing as abstract optimism in government or in law. That only is best which is most suitable to those for whom it is intended—and none is good, whatever may be its speculative excellence, which is inadaptable to the genius and habitudes of the people. Plato's Republic, and Harrington's Oceana, and Moore's Eutopia are but a few of the many monuments which speculative philosophers and scholastic legislators have built up, and common sense has pulled down in attestation of these simple and practical truths.

In the nature of things, civil laws, being moral rules for the government of moral subjects, must, to be durable or efficacious, be modified according to the characteristic principles of the majority of the people, for whom they are enacted. And, as every body politic must have a single will, which, however expressed, is the actual government, the nature and the form of the government will, of course, depend on the intelligence and virtue of the individual members of the corporate body. A people enlightened and virtuous will always govern themselves; those who are not so, never can, but will be governed by the superior intelligence, craft or force of a few men, or of a single man.

Whether a democracy, pure or representative, a republic, an aristocracy. monarchy, oligarchy, or anarchy, shall actually prevail, will depend on the moral character of the people.

But the form of government does not al-

ways harmonize with the prevailing tone and character of the public authority.

A constitution is a fundamental law, fixing the manner in which the public will shall be expressed, and the national authority shall be exercised. An unmixed democracy cannot practically exist. Under such a form of government, the sovereign power will be assumed by demagogues or usurped by force.

Therefore, for the purpose of wisely enacting and justly administering laws, the power of the whole people must be delegated, in some mode, to a part. And the organic law, which prescribes the mode of delegation, and defines the power, and fixes the responsibility of the public agents is, whether written or unwritten, express or implied, the constitution of the state, which, being the will of the constituent, who is the only original and ultimate sovereign, must possess an inherent authority paramount to the conflicting and consequently unauthorized will of the representative; and must, therefore, be intrinsically the supreme law, which, as long as it shall remain unrevoked by the proper authority, is obligatory on the whole, as well as on each individual member, and department, and organ of the body politic; and its stability and efficacy will be proportionate, not only to the degree of its fitness and approvableness, but also to the character and effectiveness of the checks and balances, moral as well as political, which may guard it from sudden and inconsiderate destruction or innovation. If it be popular in its origin and ends, the intelligence, vigilance, and public virtues of the majority of the people are its ultimate safe-guards; but, to fortify and effectuate these moral means, political checks are not only useful but indispensable. These truths, to us self-evident, have not been and are not even now universally admitted, although the history of governments, from that of the Jewish theocracy to this day, has demonstrated them by an unbroken series of memorable proofs. The dazzling republics and democracies of past ages—what were they, and where are they now? Let the turbulence, and inconstancy, and demagoguery of Athens, and of Rome, and of Florence, and the mournful desolations and dumb ruins of Italy, and of Greece, and of Carthage, be rightly contemplated, and the question is satisfactorily answered. They all, with one voice, utter this great truth of inductive philosophy—"that in republics, the people are not safe unless they are enlightened, virtuous, and vigilant, and unless also their fundamental rights are secured by wise and prudent political entrenchments." The history of England, the mother of our language and common law, tells the same truth, though in tones of varied modulation. The English constitution, as it now exists, is the growth of ages. Though it has had many trying vicissitudes and has undergone great transformations, its Teutonic *stamina*, containing the seminal principles of civil liberty, have never been altogether destroyed.

The longevity of the English government is a political phenomenon. But, though accident has had a preservative influence, yet the philosophy of England's history will show that her constitution is indebted, not only for its maturity, but for its prolonged existence, chiefly and essentially to the equipoise of antagonist elements, social, moral and political.

The Norman Conquest, as it is called, was a virtual revolution, which seemed, for a while, to have extinguished every germ of Saxon liberty. But these, though dormant, were not dead; and, in less than fifty years, began to shoot through the thick covering of leaden despotism which had, for a time, concealed them. The indiscriminating severity and universality of regal tyranny consolidated the people, of all grades and all conditions, into one sympathizing and co-operating mass. The feudel Lords and Yeomen and vassals, thus united by common suffering, mutually assisted each other, and every success of a common effort, in their common cause, produced a common benefit. Had the king been less absolute and the feudal nobility more independent, as in contemporaneous France, or, in other words, had feudality been introduced gradually, and not suddenly, in England, as in France, the constitution of England would not have been much better, in the last century, than that of France; where, in consequence of their comparative independence, the feudal Lords, not needing the co-operation of the common people, habitually contemned and oppressed them until they were forced to unite with the king against their common enemies, and having, at last overcome them, yielded every thing to the crown.

But the common people of England, thus strengthened and upheld by the nobility, soon began to retrieve some of their lost Saxon rights; until *Magna Charta* was wrung from a reluctant and humbled king. This, being but statutory in its character and without effectual political guaranties, was frequently disregarded by subsequent sovereigns; but the Baronial war against Henry III., having given birth to the house of Commons, the third estate in the government, and succeeding continental wars having compelled the Crown to solicit contributions, the Commons soon were taught to use the great leaver of the British Constitution, the exclusive right to appropriate money or impose taxes for the support of government, and the consequent power to withhold supplies until the grievances of the people had been redressed. Thus nourished, civil liberty had taken deep root during the reign of the Plantagenet dynasty, until the despondence and exhaustion produced by the intestine wars between the houses of York and Lancaster paralyzed all effectual opposition to the absolute will of the two Henry's of the Tudor race, which succeeded. But Henry the VIII, whose proclamation was Law, being incensed against papacy, because it would not allow him to repudiate his wife Catharine and marry her maid the pretty Anne Boleyan espoused the reformation, which had then begun to dawn—the discovery of America had begun to stimu-

late a commercial enterprise tending to enrich and elevate the common people—and the Press was beginning to shed abroad its vivifying beams. The combined influence of these agencies—that is, the prevalence of the religion of equality and liberty—the extension of commerce—and the light of the press—together with other incidental and accompanying causes, gradually improved the social and political condition of the people until the temerity and obstinacy of Charles the first, who did not understand the spirit of his age, provoked his own decapitation, which was succeeded by a nominal Commonwealth, but an actual Cromwellian Despotism, more rigorous and less disguised than that of Augustus Cæsar. The reign of Cromwell was never approved by the mass of the people, but was sustained only by his army and by the fanaticism of a small party—and, as soon as the popular voice could prevail, a Convention Parliament recalled Charles II. and restored the constitution as it was in the time of Charles I. with the exception of the abolition of military tenures and the substitution of other means for providing a royal revenue. The indemnity and reparation acts, and the act for the settlement of the church were only temporary expedients. But, though the spirit of the constitution was greatly improved and the prerogative of the crown considerably reduced by the abolition of military tenures and their oppressive incidents, no reign was more absolute and no court more licentious than that of the popular Charles, whose restoration, being the consequence of general alarm at premature innovation and partizan fury, was consequently followed by a servile adulation and abject loyalty bordering on idolatry. The problem presented in this memorable transition is solved by the fact that the people were not prepared for a republican government. But nevertheless, benumbed and besotted as England was during this profligate reign, the spirit of the age, excited to action by trivial circumstances, abolished the Star Chamber, which had been used as an engine of oppression, and also induced the enactment of the *habeas corpus* and other salutary statutes. Many have supposed that the most efficient agent in producing these results was the popular belief that the revenue was wasted by the king and his court in voluptuousness and debauchery! and hence, not a few of those who have studied the history of the British Constitution have ascribed to Eleanor Gwin, and to Barbara, Duchess of Cleveland, and to Louisa, Duchess of Portsmouth, the accidental merit of hastening the downfall of the House of Stewart. These causes, co-operating with the arrogant pretensions of James II. and the common apprehension that he was exerting his influence against Protestantism, accelerated, if they did not altogether produce, the civil revolution of 1688, which has been looked upon as settling the British constitution and consolidating the liberties of England. But, if it be entitled to such merit, it derives that title, not so much from the fact that it exploded the *jure divino* pretension of kings and illustrated the true doctrine that princes and ministers and governments are instituted by the people, and are responsible to the people, as from the less conspicuous fact that the act of settlement secured the independence of the judges, by providing that they should be entitled to hold their commissions during good behavior and the life of the king, and thus furnishing the only certain and ultimate guaranty for the preservation and efficacy of acknowledged principles, which, as long as the judiciary was dependent entirely on the pleasure of the crown, could have been nothing better than delusive abstractions. It is the security of person and property, assured to the most humble by the independence of an enlightened judiciary and a wholesome common law, which, more than every thing else, endears England to the heart of her people, and prompts her forlorn tars to nail their country's flag on high, and cheerfully die in its defence. And, had not this Doric column been reared, the complicated fabric of British liberty, the Mosaic work of ages, could never, with all its other props, have withstood, until now, the underminings of corruption or the stormings of faction.

But though, since the revolution, justice has been more stable and jurisprudence has been more improved than in all the ages which had preceded it, still there are radical defects in the British system; and one of the chief of these is the supremacy of legislative will. The British constitution lacks the soul of a fundamental law. It has no other political guaranty or principle of vitality than the pleasure of King, Lords and Commons, in Parliament assembled. An act of parliament inconsistent with the constitution, is nevertheless the supreme law, and, in the language of Mr. Hallam, the utmost that can be said of it is that it is—"a novelty of much importance, tending to endanger the established laws." The constitution of England, venerable as it is, can be found only in the statutes and political history of that distinguished Isle. Such a government could not stand in such a country as ours, or in any country where there is an approximation towards practical equality in the rights and the condition of the people. And, though in England the inherent imbecility of which we are speaking has been hitherto, in some measure, supplied by artificial expedients, yet, if her institutions shall become much more popular in their texture, her constitution must become the supreme law and its practical supremacy must be secured by other guaranties than any now provided, or, otherwise, dissolution must be inevitable. A landed aristocracy, the stock in an irredeemable national debt—the rival interests of the crown, and nobility, and hierarchy, and commonality, cannot always preserve a safe and stable equilibrium. The spirit of this age will, if it go on, require other and more comprehensive expedients. Liberalism and rationalism are abroad in the world; and all institutions of men must, sooner or later, feel and acknowledge their plastic influence.

In these confederate states—for the first time on earth—the experiment of written constitutions, popular in their nature, declared to be the supreme law, and formally adopted by all the people in convention, are now in eventful progress. The issue can be foreseen only by Him who governs all things and does all things well, and who, not only made all men free moral agents, but endowed them with noble faculties for attaining an exalted destiny here and hereafter.

Our systems of government are peculiarly complex in their structure, though perfectly simple in their elements. All the people of all the states, with separate state constitutions of striking similitude in spirit and outline—have adopted a federal constitution, constituting them one people for national purposes, and intended to operate, within its prescribed sphere, on each individual of every state as constituent members of the same body politic. Here arise, complexity; and hence the entire system has been, not inaptly, denominated *imperium in imperio*.

The principles announced in our Declaration of Independence constitute the foundations of all of our constitutions, state and federal.

They were all made by the people, who alone can alter or abolish consistently with constitutional right. They a distribute the functions o government into three departments—legislative, judiciary, and executive—define and allot to each department seperate powers, and provide for the relative independedce and counteraction, when proper, of each of the three distinct bodies of magistracy. These are modern contrivances, and great confidence in their efficacy in the preservation of free and popular institutions, has been felt and expressed in the new cis-atlantic world.

The states are entitled to exclusive sovereignty respecting all things of exclusively state concern. The federal government is entitled to exclusive sovereignty as to every thing of federal or national bearing or concern, and, in the event of a conflict between federal and local authority, the constitution of the United States, and all laws and treaties made pursuant thereto, are declared to be supreme, any thing in any state enactment, or state constitution to the contrary notwithstanding.

The federal constitution, like those of the states, is popular in its origin, popular in its character, and popular or national it its operation. It is not, like the Amphyictionic, Achaien Helvetic, or Germanic confederacies, a mere league or treaty between sovereign and independent states, which can be enforced only by war. But it is a form of national government—it is a law; and, of course, a supreme law for all the states, and for the people of all the states. The inefficiency and unsuitableness of a mere confederation of the states had been demonstrated by the experiment which had just been made of the articles of confederation, already in a state of virtual dissolution. The war of the revolution had scarcely been closed when collisions and jealousies began to disturb the harmony of the states. The powers which had been delegated to Congress were found to be altogether inadequate; 1st. because they were too circumscribed; 2nd. because the acts of the federal authorities could not be enforced by federal power, but depended, for their execution, on the will of each state. These radical defects evinced the necessity of a general government with some national authority, or with plenary and supreme power, to effectuate national objects or general ends common to the states, by operating directly on persons instead of states. That this was the great purpose of those who recommended and of those who adopted the federal constitution, no one, acquainted with contemporaneous history, can doubt. That which was recommended and adopted, was not called a treaty, or league, or compact, or articles of confederation between sovereigns, but was appropriately characterized as a constitution or form of government for the United States. And it exhibits, on its face, all the qualities which entitle it to that character, and which will allow no other to be ascribed to it. Is it not law? Supreme law? Are not all treaties and acts of Congress, which are authorized by it, laws—supreme laws? Then no ground remains for doubt or cavil. And whether it be called a compact or a constitution is immaterial; for, whatever it may be, it operates on all the people of all the states, personally and directly, and with an authority superior to all other political power.

Could it not thus operate, and had not the general government power to make it so operate even against the will of any state, it would be but little, if at all, better than the articles of confederation, and would be nothing like a constitution or fundamental law. Moreover, the people, and not the state authorities, adopted it. The states, in their political capacity, had no power to adopt it. The people of each state, in their primeval sovereignty, had a right, and the only right, to modify their local government; and they, and only they, have done so. They have taken from their respective state authorities such powers as were deemed necessary for effectuating the common interest of the whole, and have deposited them in the hands of agents chosen chiefly by themselves and responsible to no other tribunal. The federal constitution is as much the constitution of all the people of every state in the Union, as the local government of each state is the peculiar government of every citizen of that state; and the functionaries of the general government are, therefore, as much the representatives of the people of all the states, as the officers of any state government are the organs of the people of the state. Then the origin, nature and objects of the federal constitution would be sufficient to prove—had there been no such express declaration by the people in convention—that it must possess an authority paramount to that of any state constitution, or state legislature; and that, being law, it must have a sanction, and may be enforced by those whom the people of the United

States select for administrating their national affairs. And it is but a necessary corollary from this conclusion that, so far as the general government has power, it is sovereign, and is, until its powers are revoked—the only sovereign to the extent of its exclusive authority. And, to this extent, the individual states cannot be sovereign, because, so far, they have no constitutional power. Each state is, however, in one sense, a sovereign—it is sovereign to the extent of its local power, and exclusively local interests. Sovereignty being the highest power in a state, the general government must be the only sovereign within its prescribed sphere, and each state in the Union must be the only sovereign within the scope of its residuary power. We speak of course, of political sovereignty. God and the people, are the only actual sovereigns according to the American creed. If the individual states possess as extensive and unqualified sovereignty or political power as they did before the adoption of the federal constitution there is no general government—for there can be no government without inherent power to govern; and consequently, if the people of the states are also citizens of the United States, and have a general government, they must have made that government by imparting to it powers which must necessarily have been subducted from the original powers of the local governments.

To the Supreme Court of the United States has been delegated the ultimate decision of judicial questions arising under the constitution, laws, and treaties of the United States; and the settled adjudications of that tribunal, in all cases in which it has jurisdiction, must, therefore, be universally authoritative and conclusive.

Though no court, composed of mere men, can be infallible, and though, therefore, the Supreme Court of the United States may err, and doubtless has erred more than once, still, all things fully and rightly considered, no more fit or safe depository of this ultimate power of judicial decision could have been selected. The judges are responsible, like all other official agents of the people of the United States, to their constituents; and that responsibility is one of the many guaranties of their fidelity and rectitude. Hitherto, the judges of that Court have been generally distinguished for personal integrity and for judicial learning, and might justly claim the tribute offered in the *Rosciad* to judges of England:

"Each judge was true and steady to his trust,
As Mansfield *wise*—as old Foster *just*."

All the chief-justices of the Supreme Court, Jay, and Ellsworth, and Rutledge, and Marshall, were men of eminent talent and services. And the late Chief Justice Marshall did more to exalt the character of the American bench, and to illustrate the federal constitution, than any other American citizen. He was more than the Lord Cokes, and the Lord Bacons, and the Lord Hardwickes of England—he was the "John Marshall of America;" a title full of honor—another and an immortal name for vigor of mind, purity of heart, moderation of temper, simplicity of character, and firmness of purpose. May the universal grief manifested at his death be the most costly offering his country shall ever be called to make at his hallowed shrine. May the remembrance of his virtues, like that of Washington's, inspire a sacred respect for justice and a pious veneration for the constitution of hismanhood and his tomb—and may that constitution live as long, as pure, and as fresh as the memory of its chief founder and builder—Washington and Marshall.

The federal constitution, popular in its origin, partly federative and partly national in its character, and altogether national in its operation, has constructed a general government of delegated powers. Each state government possesses inherent power; restrained only by the laws of nature and the inhibitions of its own and of the federal constitution. But the general government has no power, except such as the people have expressly delegated, or such as may be necessary and proper for effectuating the express powers. Certain great ends were contemplated by those who adopted this constitution, and, to accomplish those ends, they have expressly delegated to the general government specfic powers, and also have declared, through abundant caution, that it shall possess all other powers that shall be "necessary and proper" to carry into full effect the enumerated powers. Without this precautionary declaration, implied or incidental powers would have necessarily resulted from the grant of express powers—for it is an axiom of reason and a principle of universal law, that, when a power is expressly granted to do a thing, or a right is given, all subsidiary powers necessary for doing the thing or enjoying the right, and which are not forbidden, are, by necessary implication, also granted. But these implied powers must be both necessary and proper. When a mean is adapted to an end designated by the constitution or contemplated by its founders, it is, in the political sense, necessary. Many different means may be, and generally are, well adapted to the same end, and either of them may be selected; for no one of them can be said to be indispensasable as long as there is another which is fitting, and which might answer the same purpose or effect the same end. And, therefore, it is evident that "necessary" in the constitution, or when spoken of in reference to implied or subsidiary power, does not mean indispensably necessary, or that without which alone the designated end could not be accomplished—but imports, as has been authoritatively settled, that which is eligible and has a clear relation, or is conducive to the end. But the mean, however adaptable to the end, or in other words, "necessary," must also be "proper"—that is, not merely that which may be expedient—for that would convict the convention of redundance and tautology, and would confound expediency and power—but

that which is not prohibited by the constitution, or by the laws of nature. But, as what means may be "necessary and proper" for effectuating express powers and what powers have been reserved to the states or the people, may be matter of doubt, collisions between federal and state authorities may be expected to occur—as they have hitherto frequently occurred. A mutual temper of forbearance and respect should be displayed in such delicate and irritating contingencies. And the fact that both governments equally belong to the same people, one acting for a part and the other for the whole, should surely inspire a just confidence and a becoming spirit of liberality. But if, in an extreme case, there must be an umpire, the federal constitution, as long as it shall remain unrevoked and unmodified by the proper authority, and either in the mode prescribed by itself or by revolution, must furnish the only lawful means of authoritive adjustment.

Whether in this new and complex system of government, there is greater danger of disunion or of consolidation is a question concerning which wise and honest men have differed in opinion ever since the federal constitution was first proposed for adoption. General Washington, considering the more interesting and domestic character of the mass of state powers, and the influence of local pride, and interests, and attachments, entertained the opinion that the natural tendency of the system would be centrifugal rather than centripetal. And such would seem to be the more rational deduction from a sober and enlightened survey of the whole subject, in all its ramifications, unless a prostituted press and a perverted executive patronage should break the moral ligaments that bind the people to the states. Without military force, these are the most efficient means of political or practical consolidation.—They are the Lernaen monster and the lion of Nemea, which Herculean efforts alone can overcome.—Should they ever threaten the integrity of the constitution or the liberties of the country, general intelligence and virtue can alone secure the rescue of the people. Political barriers possess their efficacy, which is great and, for occasional and ordinary emergencies, may be sufficient. But their chief value consists in their tendency to prevent mischief from a transient delusion or popular effervescence. The integrity and intelligence and patriotism of the body of the people are the surest conservative principles, and the only ones which can finally save the people from their common enemy—deceitful demagogues—who live and move and have their being in popular credulity, prejudice and ignorance, and who have ever been the cankers of every popular government which has failed on earth. The agents of the people will be but seldom, if ever, honest or capable, unless the people themselves are so; nor can justice and security long survive the loss of public virtue and general intilligence. Political expedients may save for a season until the people have time to think and to act soberly; but a people incapable of thus thinking and acting, when sufficient time is allowed them, are incapable of self-government.

"He is a freeman whom the truth makes free,
And all are slaves besides."

Our institutions are founded on the assumption that the mass of our population are honest and intelligent; and, that hypothesis being true, our governments are wisely constructed and may last; but if it be false, or should ever cease to be true, passion and not principle, power and not right, will rule, and the people will, in fact, be slaves, The form of government, whatever it may be, will then be immaterial—and it was in this view that Pope said:

"For forms of government let fools contest,
That which is best administered is best."

If applied to an ignorant or vicious people, there is almost as much truth in the sentiment as poetry in the phrase.

The actual government will correspond with the character of the people and the spirit of the times. But when the majority are virtuous and enlightened, wise distributions of power and the adoption of proper fundamental principles of free government, such as those which characterize the Anglo-American constitutions, are not only useful, but indespensable as safeguards of liberty and justice in transient seasons of popular excitement or delusion; and therefore, in such a community, the form of government is important, and such constitutions as ours, seem to be, not only eligible, but the best. How long they will continue to be so, will depend on how long the people are able to think rightly and act justly for themselves. Whilst they possess this capacity, our constitution will deserve all confidence and all praise. But if the people become ignorant or corrupt, then we may say in sober truth—"for forms of government let fools contest"—for whatever the form may be, the substance will be despotism—either mobocratic, oligarchic, aristocratic, or solitary; and among these, but too common actual governments—"that which is best administered *is* best."

It was the maxim of a wise politician and is doubtless true, "that when the body of the people is not corrupted, tumults and disorders do no harm; and where it is corrupted, good laws do no good."

But it is the natural tendency of free and equal civil institutions to liberalize and elevate the human character; and thus it is that such institution possess inherently a conservative principle, which, by an indirect and reflex operation, may have a progressive influence in their preservation and improvement.

Municipal law is that which defines and regulates the civil rights and duties of the individual members of the body politic, or nation or state; and is divisible into statute law, the common law, and "the civil law" or elements of Roman jurisprudence. In this land of written constitutions and limited government, there is no such thing as an authorita-

tive *plebescite, senatus consultum,* imperial rescript, or *responsum prudentum.*

The common law, as modified by our statutes and by the spirit of the age, and of our our institutions—the civil law, as partially introduced by judicial recognitions and applications of some of its more enlightened and congenial principles—general statutes of England which have been adopted here, and such enactments of the national and local legislatures as are consistent with constitutional principles—constitute the only authoritative municipal code of this country.

The common law is an unwritten code of matured reason, of obscure origin in times of great antiquity, in the north of Europe and in England—the offspring chiefly of the feudal system—the companion and friend of civil liberty, strengthened by age, and improved and improving with the progress of civilization and of human knowledge. It is found only in the reports of adjudged cases, in elementary law books, and in the enlightened judgment of mankind. It is practical reason, rectified and recognized by the experience of ages, and modified by analogies and by changing circumstances.

This general and imperfect definition may be sufficient to show why the quality of maliability has been ascribed to the common law; and which is one of the principle constituents of its great and peculiar value. To understand it well as a branch of science, it is necessary to read attentively and thoroughly, not only numerous law books, but also, the feudal, political and judicial history of England; and, to know how to apply it in this country, the lawyer and the judge should understand our own peculiar institutions and policy. In England, the common law has been applied inflexibly to real estate, or immovable property. But, in regard to personal or moveable property, personal contracts and equitable jurisprudence, the doctrines of the civil law, by gradual judicial interpolations, has obtained a considerable influence and prevalence; and, to this extent, no code of human law was ever more enlightened or liberal than that of the civil law, as embodied by Justinian, and since modified and improved.

The common law is the basis of the civil polity of all the states of this Union—excepting only Louisiana, which has adopted the civil law—and regulates most of the private rights and domestic relations of those states in which it prevails. The established rules of pleading in suits, in courts where the common law prevails, constitute a rational and beautiful science, perfectly simple when well understood, though extremely vexatious and embarrassing to those whose acquaintance with them is only superficial.

Equitable jurisprudence, transplanted from the civil law, has been engrafted upon the common law, and, having grown with its growth, and strengthened with its strength, has already produced a blended symmetry and harmony, which a new and simple production of no age could ever possess. The separate jurisdiction of the courts of equity, divided into three branches—exclusive, concurrent, and auxiliary—is an interesting anomaly, peculiar to the common law, originating chiefly from the hyper-technicality of the ancient common law courts, and from the pertinacity with which they, in defiance of the increasing liberality and light of the improving world around them, adhered to the comparatively rough and unyielding feudal doctrines of the more ancient common law. The history of equity is full of interest; but this is not a fit occasion for even an outline. We shall barely observe, that, though the chancellor of England had originally no equitable jurisdiction, but acted only as the representative of the king, in the cancellation of letters patent, in the superintendency of infants, idiots and lunatics, and in the hearing of petitions—all of which were common law prerogatives of the crown, as *parens patriæ;* and though, for some time after the chancellor had arrogated the powers of a court of equity, and even since the day of Woolsey, his decisions were regulated by his own arbitrary discretion only; nevertheless, since the controversy between Chancellor Ellesmere and Lord Chief Justice Coke, the Nottingham's and Hardwick's, and the Thurlow's and Eldon's of England, and the Kent's of America, have harmonized the principles of equity, and made them as certain, as perfect, and as authoritative, as those of almost any other science. Now, the chief, and almost the only difference between a court of equity, and a court of law, is merely modal; that is, a difference in the mode of suit, in the mode of proof, in the mode of trial, and in the mode of relief. In both courts, the same construction is now given to laws, and to contracts, and both are equally bound by authority, and by fixed rules and principles. But in consequense of the modal differences which have been suggested, a court of equity may, in many cases, such as those of fraud, trust, accident, the specific permormance of contracts, &c., be more able than a court of law to reach the full measure of justice and give adequate and perfect relief. And courts of equity have also, to a greater extent than courts of law, in some classes of cases, and especially in respect to trusts, and the marital relation, and its incidental rights and obligations, adopted many of the more approved principles of the civil law.

A court of equity here has not all the power of the Chancellor of England; it possesses only his equitable jurisdiction, with some statutory modifications and enlargements. Although courts of law might, with propriety, proceed according to the modes prescribed in courts of equity, yet, until they shall feel authorized to do so, equity will remain a distinct branch of jurisprudence. There is no good methodical treatise on the principles of equity; and, therefore, that branch of law is not so generally, nor so easily understood as other departments of the positive law; but it is equally simple and scientific, and when well understood, equally plain and elementary. Its

main foundations are the immutable principles of universal justice; and its history and present state, and its benign influence upon general jurisprudence, present a most illustrious example of an adventurous, but beneficial, judicial legislation, sustained by the gradually increasing light of civil and religious liberty, and by the various promptings of social and commercial prosperity.

The civil law of Rome has, in a greater or less degree, been interwoven with the body of the legal codes, as the language of Rome has been mixed with the modern tongues, of most of the nations of the continent of Europe. And thus the prostrate city of the Cæsars still lives and reigns, and will long live and reign, over a moral empire more extensive than the imperial domain of the deified Augustus. And, though the civil code is not authoritative here, nevertheless, as it has furnished principles which have been embodied into our equitable jurisprudence and our commercial law, and, in some degree, into our laws respecting legacies and distributions, and other laws relating to personal property and personal contracts—every American jurist should be acquainted with its elements and general spirit. It is, in some respects, an admirable system, not only unsurpassed, but unequalled. And no man altogether unacquainted with its principles can be a scientific lawyer, or enlightened jurist. The common law, not only has been greatly improved by a commixture with the civil law, but is yet susceptible of still more improvement by the same process. Our institutions and habits of thought and of action designate the United States as the theatre on which the common law is destined to attain its greatest ultimate perfection, when the gray-headed mother, England, will learn jurisprudence from her young daughter, North America, as she even now begins to learn some other things which maternal pride has not acknowledged.

This very imperfect sketch of an equally imperfect analysis of law may be sufficient to give some faint conception of the vast extent of its domain, and to prove also, that it is eminently entitled to a conspicuous place among the useful sciences. In its vast and almost interminable periphery, it embraces all the affinities of matter and all the sympathies and aptitudes of mind—it defines and regulates, and guards all the relations of man, social and civil. It protects the weak and controls the strong; it gives confidence to innocence, and alarm to guilt; it is the poor man's earthly prop, the rich man's surest rampart; the widow's champion; the orphan's friend and guide; it regards and upholds all that is most interesting or endearing on earth, and places mankind in a condition to aspire to their high and noble destiny, and to occupy their proper place in the created universe. No human science is so extensive in its range, or embraces, within its scope, so many and such interesting objects and relations. Without universal law, the world would be a vast ruin; without rational law, nations would be enemies and pirates; without municipal law, men would be beasts of prey, and women their victims;—unless by the universal prevalence of true religious principles, a theocracy should supersede all human institutions, and govern all human conduct. Positive law is not a perfect science, because nothing partaking of human frailty can be perfect. All positive law has some anomalies, and in some particulars may be altogether arbitrary and irrational. But, as a whole, it is founded on eternal principles of fitness, and is susceptible of infinite extension by analogy and induction, it is intimately associated with all other sciences, and has some connection with every branch of human knowledge. Without it, no other science could exist, or be useful; and no one, whose mind is not illumined and invigorated by general knowledge, can ever understand civil jurisprudence thoroughly, or perceive all its harmonies and beauties, as a comprehensive and practical system of truth—of pre-eminent utility, unsurpassed excellence, and indefinite expansibility.

Among the many wonderful advances which have been made, during the last fifty years, in knowledge, practical and speculative, the improvements in jurisprudence have been conspicuous. Europe has already begun to exhibit some practical acquaintance with the true principles of legislative philosophy; and even in England, the common law, feeling the renovating spirit of the age, is becoming more and more malliable, and is exchanging its old fashioned and unseemly costume for a more modern and befitting drapery. Sound philosophy is operating on jurisprudence as beneficially as on any other department of knowledge, and has much yet to do in the progressive improvement of a science so comprehensive and complex. But, as long as human laws are necessary, and wherever civil liberty prevails, simplicity can never be one of the attributes of jurisprudence. Much good may, and doubtless will, be done by redaction; but simple and perfect modification is hopeless and visionary. Simplified to the utmost extent which prudence or safety would allow, the science of law must nevertheless still continue to be, as it now is, though in a less degree, comparatively intricate and extensive; and it can never be thoroughly understood, without laborious and protracted study, and extraordinary vigor, and perspicacity, and cultivation of mind.

Wise institutions, and a stable and just administration of the law, are some of the contributions which minds enlightened in the science of jurisprudence have made, and which such minds can alone make, in all time, to the welfare of mankind. It is to such minds that society is indebted for the confidence, security, and peace with which it may be blessed by good government and wholesome laws, justly administered. Virtuous and enlightened jurists are the peculiar guardians of the commonwealth, because *law* is the panoply of all that is most cherished and endearing among men. Without good laws, honestly

administered, there could be no security for life, liberty, reputation or property. LAW and RIGHT are the body and soul of *civil liberty.*

Civil jurisprudence is illustrated by a long roll of honored names—the names of law-givers and jurists, in different countries and ages, admired for pre-eminent talents, and ever to be revered as benefactors of mankind. And, on its broad escutcheon, we see, beaming with a chaste and hallowed light, the names of Cicero, of Solon, of Daggessau, of Pothier, of Grotius, of Vattel, of Littleton, of Coke, of Bacon, of Hale, of Mansfield, of Blackstone, of Erskine, of Adams, of Jefferson, of Jay, of Boyle, of Marshall—and a multitude of others, equally, or almost as much, distinguished, both in the old and in the new world—all of them men unsurpassed in intelligence and usefulness, by any equal number, in any other department of knowledge, or sphere of action. And our own brief history is emblazoned with the names of distinguished jurists, without whose enlightened counsel our liberties could never have been established, nor our free institutions constructed or maintained. A chaste and mellow light shines around the names of John Adams, Thomas Jefferson, John Jay, Roger Sherman, Patrick Henry, Alexander Hamilton, and a host of other eminent and patriotic lawyers—the light of whose intelligence, the fire of whose patriotism, and the burning eloquence of whose pens and whose tongues cheered and guided their desponding countrymen, in their dark and perilous pathway, to constitutional liberty and law. Then may we not conclude that jurisprudence is a noble science, and that a virtuous and enlightened jurist is an ornament and an honor to his race?

Our's being emphatically governments of laws, and our liberties and rights depending, as they do, on the wisdom and efficacy of constitutional and legal guarantees, there is no country on earth where a thorough, extensive, and general knowledge of the elements of enlightened jurisprudence may be so useful, or can be so indispensable to the welfare of men, and the stability and authority of just and equal institutions. The supremacy of good laws will ever save us; the predominancy of passion, or of rank, or of ambition, will destroy the only shield of our rights.

It is strange that a science of such extent and importance—so intimately associated with all that is interesting to social man on earth, so exalted in dignity, so purifying and ennobling in tendency, and so universal in its influence on all civilized men, in every relation, and under every circumstance, should not have generally been made a branch of academical education, and been taught where other sciences are usually learned. Every free man, in a free state, should be acquainted with the elements of general jurisprudence, and with the spirit and character of the peculiar institutions of his own country. Such elementary knowledge may be acquired in the course of ordinary scholastic education; and, in these states, a knowledge of at least our own fundamental laws, should be deemed indispensable to every citizen, and should, of course, be taught in every common school.

But it is peculiarly important that those who are destined for the bar, the bench, or the hall of legislation, should be thoroughly imbued with that kind of knowledge which is founded on the elements of a virtuous and enlightened philosophy, and to the proper acquisition of which, toil, and system, and talents, and probity, are indispensable. No class of men exercise more influence on society, than the professional lawyers. Their predominant influence is felt in all the business and walks of life, as well as in the forum, the legislative hall, and the arena of popular politics. How all important then, is it, to the vital interests of the commonwealth, that our lawyers should be men of enlarged, and liberal, and virtuous minds; purified and enlightened by the moral light of thorough, general, and, as far as possible, universal science. Until our western lawyers shall be thus enlightened, we shall not have among us many Mansfields, Erskines, Marshalls, Websters or Clays.

Ignorant or unprincipled lawyers are among the most mischievous nuisances which can annoy the peace and disturb the well-being of the body politic. But virtuous and enlightened jurists are a blessing to any people. Even in the administration of law in courts of justice, the value of honest and able professional counsel, is almost incalculable; and the direct and indirect influence of such moral agency, on public and private rights, and on the spirit of litigation, is much greater than is generally supposed.

A lawyer is a pettifogger, as a doctor is a quack, unless he understands the science of his profession. Such scientific knowledge is not as common among the professional men of this great valley of the west, as the best interests of the people and of science require that it should be. Thorough and systematic elementary education is important, and will be soon seen to be indispensable. Such an education can but seldom, if ever, be expected in the common course of reading in a lawyer's office. This has been felt and acknowledged, even in England, where the training of young men for the bar is more severe and systematic, in the offices and inns of court, than it has generally been in this country. We find the following language in the introductory lecture of Mr. Park, professor of English law and jurisprudence in the King's college, London: "Few things will bear less looking into than the system of legal education hitherto prevailing—and if the public at large could see it in its real nakedness, common sense and safety would alike dictate that such culpable neglect should no longer be permitted to insult society, and set at naught the deep interests that are at stake in the proficiency of those who offer themselves to the public as legal practitioners. A great number of young men are annually let loose upon the public,

calling themselves solicitors, and barristers, and conveyancers, and having personal claims upon many to be intrusted with their business, who have given no other security to the public, for their having qualified themselves for a most important and arduous profession, than that of having paid a certain sum of money for articles of clerkship, or having purchased the name of pupil in the chambers of some practitioner. Upon the present system, scarcely one in every five, has a single chance of attaining that proficiency that would enable him to keep practice, even should he be so fortunate as to obtain it." But even more may be said of the common defects in the usual course of legal education in this country. Here, where there are, much to our discredit and disadvantage, but few scientific lawyers, young men of ordinary capacities, without the advantage of preparatory education, read a few books, selected either by themselves or by the advice of some practising attorney, and, in a few months or weeks, without any systematic instruction or general examinations, and before it is possible they can have learned the A B C of jurisprudence as a science, obtain licenses and offer themselves as learned counsellors, in one of the highest, most important, and most difficult of the learned professions. What can be the consequence of such a course, but great mischief to society, and the unjust degradation of the law, and of jurisconsults, as a professional class? And hence, the jurisprudence of the west has not obtained that exalted rank which the general character and prospective influence of the Mississippi valley would seem to indicate.

The law must be considered as a science of infinite amplitude and importance, and must be taught and studied, like other sciences, with a system, an interest, and a patience, corresponding with its magnitude, utility, and destiny. This cannot be done in any other mode, so certainly and effectually, as in regularly organized schools, where system and science prevail.

Prior to the institution of the Vinerian professorship at Oxford in England, law was considered but a rude art, to be acquired—in the language of Thomas Wood, who wrote his Institutes, about the year 1725—"by a long attendance on the highest courts of justice, and by a tedious wandering about"—and containing "a heap of good learning, which he *hoped* it would not be *impossible* to assort, and put into *some* order." But under the auspices of an university, where *science* was taught, Blackstone, who was the first Vinerian professor, reduced the laws of England to the system and order of a beautiful science. And since the publication of his lectures, under the title of commentaries, even positive law has been justly deemed a *science*, and has been wonderfully simplified and improved. Those commentaries have themselves been pronounced by Sir Wm. Jones, in his admirable Treatise on Bailment, to be "the most correct and beautiful outline that was ever exhibited of any human science." But they exhibited *only* the outline of a vast and cultivated territory of judicial science. And it was under the like auspices and circumstances, that the similar work of Chancellor Kent of America was produced—a work that will be an useful *cynosure* to the American student.

Moreover, it is known, that the civil law was introduced and taught, in the universities of England, by the clerical professors; and Hume, in the 23d chapter of his history of England, has said truly, that it was by this means, that the common law was "raised from its original state of rudeness and imperfection."

And why should not jurisprudence be taught as other sciences are taught? "To disincorporate any particular science from general knowledge, is one great impediment to its advancement; for there is a supply of light and information, which the particulars and instances of one science yield and present for the framing and correcting the axioms of another science in their very truth and notion; for each particular science has a dependence upon universal knowledge, to be augmented and rectified by the superior light thereof." This was the opinion and language of Lord Bacon, who did as much for science as any man who ever lived. And his opinion has been confirmed by experience; for wherever law has been taught as a branch of scholastic education, it has been more scientifically and perfectly learned, and has been "augmented and rectified by the superior light of universal knowledge."

The pupil derives many and obvious advantages from studying law systematically in a public institution of learning. In such an institution, judiciously and faithfully conducted, he wastes no time or toil in unprofitable reading. The best text books are selected for him; he is led on, day by day and step by step, from the more simple elements to the abstruse and subtle doctrines of law; his path is illuminated and progress facilitated, by frequent professional examinations, illustrations and lectures; by which, obscurities are cleared away, absurdities and incongruities satisfactorily explained, and all the doctrines and authorities gleaned by the professor, from all his legal reading and research, are brought, at once, intelligibly to the understanding; and this last alone must be felt to be a circumstance of great utility, when it is recollected, that all this professional knowledge is to be obtained from hundreds of volumes of books, and can be acquired only by the study and practice of years. In addition to these, and other peculiar advantages which we shall not enumerate, another, and not the least, is the industry and emulation that will be excited by an association of young men of talents in the same class, pursuing the same studies together, and all candidates for the honors of the same institution of learning. And, although the knowledge thus to be imparted, is only elementary and initiatory, yet we believe that, such knowledge, thus acquired, will lay the only broad and sure foundation for successful pro-

gress in the science of jurisprudence, or for ultimate usefulness, or honorable distinction. And we trust that the law department of Transylvania, will never be degraded by its professors, or its pupils; and may we not be permitted to hope, that this, our own cherished *Alma Mater* may, in all her departments, soon be resuscitated and, once more, become the pride of the west? Her fate depends, in no inconsiderable degree, on the conduct of her sons. They may reflect honor, and raise her, or bring shame and sink her, in the opinion of a scrutinizing public; and none of those who will be nourished at her breast, will have more influence on her destinies than the pupils of her law department. Remember then, young gentlemen, that, in these academic halls, you will only be initiated into a boundless science, and that true professional eminence can be attained only by extensive learning, virtuous habits and pure principles. Remember your obligations to this institution, to yourselves, to your friends, to your profession, and to your country. The habits and principles which may be here acquired, may fix your characters forever. If it should be your fortunes to be lawyers, judges or legislators, remember that *knowledge*, and much and various knowledge, will be necessary for the honorable discharge of your duties; and may none of you—whatever or wherever you may be—ever forget that: "An honest man's the noblest work of God."

The moral and political influence of the *west* is even now sensibly felt, and will soon become preponderant. This valley of Hope exhibiting, in its infancy, so much of moral interest and native moral power, is, we think, destined, in its maturity, to be the best theater ever presented on earth, for the development of intellectual resource, and for the establishment of moral and political TRUTH. Those who are shortly to act upon it, as lawyers, and judges, and legislators, will occupy stations peculiarly conspicuous and responsible. We believe that, *here* the pure vestal light of truth is to shine, if it is ever to live among men—that *here*, if any where, civil liberty is to be established and preserved—that *here*, the decisive moral battle, now evidently commenced, is to be lost or won, for ages; and that, in this new world, jurisprudence is to be brought to its utmost perfection, and elevated to its true dignity.

The law is the accustomed pathway to political influence and distinction. May those of you, whose fortune it may be thus to rise, deserve public confidence. Always vindicate the law's just supremacy, and especially defend the rightful supremacy of the federal constitution and the union and harmony of the states. Any one, at all acquainted with the history of that constitution, and with the history and character of men, must see that, if the existing Union should ever be destroyed by dissolution or consolidation, it will never be re-established. Even now the safety of the constitution and the integrity of the Union are, in the opinions of many wise and good men, menaced by the licentious spirit of disorganization, and the factious influence of selfish politicians. Moral light, and that alone, can *surely* save—and we trust that it will be speedily diffused, so generally and effectually, as to rescue and preserve, in this distinguished land, the principles of sound morality, pure religion, and enlightened law.

May it be your lot, gentlemen, to be efficient and useful actors in the eventful scenes that are coming. May it be your fortune to share the honors and the blessings of a glorious triumph for our country and mankind; and may you so act, here and hereafter, as to reflect honor on this institution, exhalt the character of the west, and shed lustre on American jurisprudence.

PRELECTION.

Lexington, Nov. 13th, 1836.

To the Hon. George Robertson,

Sir,—We have the honor of expressing the thanks of the Law Class, for the very able and appropriate Introductory Lecture delivered by you in the Chapel of the University, on the 12th inst., and of requesting a copy of the same for publication.

Having shared the high gratification of hearing your Lecture, we take great pleasure, in pursuance of their desire, in making this application.

We have the honor to be, with the highest consideration,

Yours, &c.,

THOS. A. MARSHALL, Jr.
JOHN TITUS,
A. J. LAFON,
CALEB M. MATHEWS.

Lexington, Nov. 13th, 1836.

Gentlemen,—As my late Introductory Lecture was intended for the benefit of the Law Class of Transylvania, it is at their disposal; and I am pleased to learn from your polite note of the 13th inst., that it was deemed satisfactory.

Accept for yourselves and for the class my acknowledgments, for such a testimony of approbation, and an assurance of the perfect good will of

Your and their friend,

G. ROBERTSON.

Messrs. Marshall, Titus, Lafon, and Mathews.

ADDRESS.

HAVING, in our last Introductory Lecture, given a very general analysis of the nature of LAW, and comprehensive classification of its elements, we shall, in this address, attempt a more particular consideration of the most interesting branch of American Jurisprudence —the political organization of the North American Union. This, also, being limited by the occasion, will necessarily be summary and imperfect, and will, therefore, only embrace an outline of a circumstribed view of the origin and nature of the Federal Constitution, and of the only means of preserving unimpaired, and of rendering most effectual, the peculiar fundamental institutions of our common and much distinguished country.

The lapse of the last eighteen hundred and thirty-six years, has not been marked by an event more interesting to mankind, than the adoption of their national constitution by the people of the North American States. The affairs of men, like the phenomena of the physical world, being controlled by instrumentalities progressively developed in the onward course of an immutable Providence, enlightened philanthropy looks back on the Lutheran Reformation—the invention of the Printing Press—the discovery of the Magnet's polarity—the transatlantic voyage of Columbus—the discovery of America—its colonization—the persecutions which contributed to its civilization—and the civil Revolution of "76," which liberated its northern half from the dominion of European priests and monarchists—not only as among the causes, pre-ordained by a wise and benignant God, for the regeneration of man, but as pioneers appointed by Heaven for leading the way to the Ark of civil and religious liberty, constructed by the people of these States, in 1788, for themselves, and, as we hope, for all posterity. If this last and best experiment for the consolidation of human rights, and the exaltation of human destiny, made and still progressing in an age and in a land most propitious to success, shall, like all that have gone before it at last fail, the cause of Democracy must be discredited and degraded in the opinion of mankind. But the simple fact that such an experiment has been tried in such a country and at such a time, and has so far succeeded, stands before the admiring world a pyramid of strength to the friends of equal rights; and the spangled banner of our Union, though waving yet alone on its peerless top, encourages all men, of every country and clime, to aspire, at a proper time and in a becoming manner, to a restoration and firm establishment of their long lost privileges. As long as this tower shall stand and this flag shall still wave—civil and and religious liberty, with all their countless blessings, are sure and safe. But let the American bulwark sink and the American emblem fall—and with them must perish for a time, if not forever, the dearest rights and most cherished temporal hopes of christian or civilized man. Civil and religious liberty are indissolubly associated. One connot exist securely, if at all, without the guardian companionship of the other.

Until both shall universally prevail, man can never attain his proper rank in the scale of being, or his ultimate destiny upon earth. And looking, with either a christian or philosophic eye, on the progress of events for ages past, we have some reason for cherishing the hope that our favored land is the preparatory theatre, and our civil institutions the initial means intended by an overruling Providence for establishing, in all time to come, and for extending throughout the world, human liberty, human happiness, and human glory. The union and harmony of these confederate States, and the consequent prevalence of the federal constitution, are indespensable to the enjoyment and security of our liberty and peace. For both reason and history proclaim, as an axiomatic truth, the political aphorism of our whole country:—"UNITED we stand—DIVIDED we fall!"

It is under the influence of such sentiments and such prospects, that we feel, in all its magnitude, the peculiar great comparative importance to mankind of the rare and signal event of adopting the Constitution of the United States.

The discovery of America was among the most memorable of human events, not because it opened a new theatre for commercial enterprise and for the exquisition of fortune and of fame, but chiefly because it has led to other and consequential events already most interesting, wonderful and ennobling: and, of these, the federal constitution of '88 is not the least important. Without this our Declaration of Independence, and the glorious Revolution which succeeded it, might, like similar agents in fanatical France, have been delusive, and have prepared our beloved country, first for the wild fury of anarchy and vice, and next for a domestic crown and tyrant chains forged by the ambition of some vene-

rated Chieftain or loving demagogue, and rivetted by the perverted passions of his deluded victims. Our colonial fathers of the revolution,—not contemplating ablolute independence, but intending only to maintain their right, according to the British constitution, to exemption from parliamentary taxation without parliamentary representation, and to resist the pretension of Great Britain to supremacy over them in all cases whatsoever attempted to be enforced by the stamp act and tea duty,—instituted a Congress of representatives from twelve of the then thirteen colonies, for consulting about the common welfare. That Council, called "the Delegates appointed by the good people," and emanating of course, virtually, though not in every instance, directly and in form, from the popular will, met, for the first time, in the city of Philadelphia, on the 4th of September, 1774, and exercised supreme authority, in the name, and for the benefit, of all the people of all those colonies, and not in the name, nor in the behalf, of the colonial governments. Pursuant to the recommendation of that assembly, a Congress of delegates chosen by the people of the thirteen United States, as the former colonies were then for the first time called, and entrusted by their constituents with more definite powers of sovereignty, convened at the same place, in "Carpenter's Hall," in May, 1775; and proceeded to prepare for a defensive war; and, on the 4th of July, 1776, adopted the Declaration of Independence in the name, and by the authority, of "the people of the United States," and not in the name nor by the authority of the colonial governments. It was to put down those governments and to substitute others according to their own will, that the people of all the thirteen colonies united and announced, as their joint act, the equa rights of man and their determination to maintain for themselves, to the uttermost, all the privileges of independence and self-government. They alone had a right to make that announcement—it was made by them and for them alone, and for all equally and in common,—and was nobly maintained by them, under the panoply of approving Heaven and the standard of their own union, in the same cause and for the same end. The Declaration of Independence was, therefore, not only a popular, but a national act—the Revolutionary war was equally national—it was carried on under the auspices of the continental Congress until 1781, when the articles of confederation were adopted by the 13th State, Maryland—and the Treaty of 1783 was made with the United States, as one nation, and acknowledged their independence, as one United Republic. In the mean time each State had, for itself, established a distinct government for purposes altogether local. But the general Congress regulated all affairs common to all as one struggling and united community. This national council exercised supreme national sovereignty even to the extremity of delegating, at one time, to General Washington, dictatorial power—and the people of all the States, having confided plenary power, not only acquiesced, but never, in any instance, claimed a right to control the authority of the common head, nor ever arrogated a right to secede or to make a separate peace. But jealous, as well of central as of foreign power, and sensible of the importance of defining and limiting federal authority, the people finally adopted the Articles of Confederation which had been prepared, principally by B. Franklin, as early as 1775, but were not unanimously ratified until the year 1781. That form of association was also the offspring of the popular will—for, although it was approved, in form, by the respective State Legislatures, it derived all its authority from the sanction of the people—because their representatives only acted out their will and had no power to bind them without their consent.

But the Articles of Confederation were, in effect, as well as in terms, nothing more than a treaty between States, each claiming to be free and altogether independent. Though it stipulated that each State and the people of each State should be bound by the authorized acts of the federal Congress, in which each State, large or small, had one and but one vote,—yet it not only conceded power totally inadequate to the purpose of a superintending and controlling public authority, and declared that the Congress should possess no other or greater power than that which was expressly granted—but it neither created nor delegated any one of the essential faculties of government—Congress might, to a very circumscribed extent advise, recommend, declare, urge and entreat—but it could, by its own means or its own power, enforce nothing. All its acts were addressed to the Confederate States, as independent and absolute sovereigns—they were not addressed to nor could they directly operate upon the individual people or any one citizen of any one of the States. And the federal functionaries had neither judicial nor executive authority—each of which is indespensable to the existence and the idea of sovereignty or government.

Government is the body of constituted public authority possessing the right and the power to govern. To govern necessarily includes not only the right to prescribe the rule, but the authority and power also to enforce it. Without both attributes, there is, in fact, no regular or established government. To announce the public will and compel the observance of it are the functions of government. The public will cannot be LAW unless the body politic, whose will it is, has a right to enforce it, against the resisting will of any citizen, or of any constituent part of the aggregate community. And, consequently, as the articles of Confederation delegated none of the efficient faculties of government, the

Union which they contemplated was altogether federal, depending on the will of each State for its duration and harmony, and destitute of any cement or inherent conservative principle or power whatsoever. Such a union—if union it could be called—could not long exist—and could not exist at all in peace and concord. The emphatic history of the short-lived confederacy of the States furnishes abundant and melancholy proof of this truth, in itself almost self-evident.

As man, however pure and wise, is very fallible, and as "the heart of man is deceitful above all things and desperately wicked," it is necessary to his own welfare, no less than to the peace and security of his fellow men, that he should be subject to civil rule and coercion. And the uncontrollable self-will of sovereign States is as incompatible with the effectiveness and durability of a federal union instituted for the common welfare of the whole, as the natural independence of individual man is, to the prosperity, security, or even existence of a society of men organized for the benefit of each and all. In each case and as much in one as in the other, the common will and the common interest must prevail, and the whole must possess sufficient power to control every part—and consequently, the law of the whole must be the paramount law for each constituent member. Were not this self-evident, we might find apposite and unanswerable illustrations of its truth in the history of all mere confederations among sovereigns—and especially in that of the Amphyctionic Council—the Achaean League, which approximated more nearly the character of practical government—the Helvetic, the Germanic, and the Belgic Confederacies, also exhibiting the semblance of political power—and more especially also, our own Articles of Confederation, which only delineated the shadow of a helpless body, without power, substance or life.

No dispassionate and enlightened man, can contemplate the annals of our confederation from 1783 to 1788, without feeling a thorough conviction that, had not a more vital and efficient system been substituted for the Articles of Confederation, consolidation or dissolution, and consequent despotism, in some of its *hydra* forms, would have speedily and certainly followed the imbecility, anarchy, jealousy, collisions, and distrusts, which characterized that short, but most awful and eventful period which intervened the Treaty of Independence and the adoption of the Federal Constitution. And our own warning his tory portrays, in no false colors, the necessary effects of a natural cause—the lifelessness of the confederation, without an inherent spark of vitality or principle of cohesion.

And here we have another and striking exemplification of the aphorism that, in the inscrutable dispensations of Providence, the greatest good not unfrequently arises from that, which, when it occurred, was, in itself, a grievous evil. For had not the confederation been altogether nerveless, our present constitution may never have been adopted; and the ultimate and probably not remote consequences would have been disastrous. But the palpable and total inadequacy of an ideal government enabled the enlightened and disinterested patriots of that day of gloom and despair to urge, just before it was too late, successful appeals to the understandings of a majority of their countrymen of the thirteen confederate States, in favor of the absolute necessity of adopting a common Government, armed with authority sufficient for preserving union and domestic order, and for maintaining the external rights of all the States and of all the people, as one undivided nation. And hence that, which was cause of mortification and alarm to our predecessors, may be ground of joy and gratitude to us.

The confederate Congress had power to declare war, but none to carry it on—power to make treaties, but none to secure the observance of them—power to appoint ambassadors and other diplomatic agents, but none to pay them one farthing; and to borrow money, but none to ensure payment. In fine, power to say, but none to act—a right to declare much, but no authority to do any thing. And, therefore, even the treaty acknowledging their independence was not executed by all the States; and Congress, though it made the treaty, had no power to compel the fulfilment of its stipulations—because nothing that federal authority recommended could be enforced without the intervention and sanction of every sovereign State; and whenever any such recommendation was effectuated, it was done by state and not by federal power. If this be government it is that kind only which may be imagined to exist when every citizen of every State shall, in every instance, think rightly and act rightly, without the fear or coercion of civil Law; and then no government will be necessary, or can exist otherwise than theoretically and passively.

The necessity of essential renovation and even radical re-edification was seen and felt by WASHINGTON and his compatriots—and the following sentiments from his hallowed and oracular pen were also theirs:—"It is indispensable to the happiness of the individual States that there should be lodged somewhere, a supreme power to regulate and govern the general concerns of the confederate republic, without which the union cannot be of long duration." "Whatever measures have a tendency to dissolve the Union, or contribute to violate, or lessen the sovereign authority, ought to be considered hostile to the liberty and independence of America, and the authors of them treated accordingly." And for the purpose of preserving the liberty of the States, he recommended, as indispensable,—"An in-

dissoluble union of the States under one federal HEAD.

As early as 1781, Pelatiah Webster, in an able pamphlet, demonstrated the insufficiency of the articles of confederation, and suggested a Continental Convention for improving the instrument of Union. In 1782 Alexander Hamilton urged the same thing, with objects rather more explicit. In 1784, Noah Webster, in one of his miscellaneous publications, proposed the adoption of "a new system of government, which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect." So far as we know this was the first proposition for a sepreme national government —a constitution of national sovereignty instead of a league among sovereigns. But often afterwards many illustrious citizens urged the same thing. In April 1787, James Madison, in a letter to Edmund Randolph said:—"I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried then whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local authorities, so far as they can be subordinately useful. Let the National Government be armed with positive and complete authority in all cases where uniform measures are necessary, as in trade, &c., &c." This was, probably, the first recorded proposal of a Constitution of a General Government, national and supreme as to all national interests and federal also with local supremacy in the States to the extent of concerns exclusively affecting each State seperately and alone.

As soon as the Federal Convention was organized, Edmund Randolph, as the selected organ of the Virginia delegation, submitted the following as the foundation on which the Convention should build:

"1. That a union of the States merely Federal will not accomplish the objects proposed by the Articles of Confederation,—namely, common defence, security of liberty, and general welfare.

"2. That no treaty or treaties among the whole or part of the States, as individual sovereignties, would be sufficient.

"3. That a National Government ought to be established, consisting of a supreme Legislative, Executive, and Judiciary."

For himself, his colleagues, and his State, he made an able speech explaining their purposes, and vindicating the necessity of a Government, in lieu of a League—a National Government operating supremely on every citizen of the United States, instead of a confederation of State sovereignties, without any common sovereignty over them—a Government armed with power in the highest political sense, and co-extensive with the objects and interests of the Union. And, in answer to an enquiry by one member, and an objection by another, he and several other members made concurrent explanations, such as the following:

Governeur Morris explained the distinction between a Federal Union and a National Supreme Government—"the former being a mere compact, resting on the good faith of the parties—the latter having a complete and compulsive operation. He contended that, in all communities there must be one supreme power, and one only."

And George Mason, of Virginia, observed, not only that the confederation was deficient in not providing for coercion and punishment against delinquent States, but argued very cogently "that punishment could not, in the nature of things, be executed on the States collectively; and that therefore such a Government was necessary as could directly operate on individuals."

Upon such explanations and arguments this Virginia programme was adopted by an almost unanimous vote—Connecticut alone voting against it! And the Constitution, as adopted, is but a proper amplification and wise organization of the principle thus planted as the *vital germ.*

The confederate Congress having, without success, urged the States to delegate to it some power over the regulation of external commerce—without some unity and uniformity in which there could be no union long—the Legislature of Virginia, in January 1786, at the instance of James Madison, appointed commissioners to meet similar representatives to be appointed in other States, in compliance with a request previously made by that ancient Commonwealth—with authority to confer respecting the propriety of adopting some uniform system of commercial regulation. And accordingly commissioners from New York, New Jersey, Pennsylvania, Delaware, and Virginia, met at Annapolis in September, 1786—and recommended a convention of representatives of all the States in Philadelphia, in May, 1787—"to devise such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union." At the time thus designated, the representatives of twelve States—Rhode Island declining—assembled in Philadelphia, and, after much difficulty and mutual concession, agreed, on the 17th of September 1787, to recommend the adoption of the present constitution, to "be laid before the United States in Congress assembled" and afterwards to be submitted to a convention of Delegates chosen in each State by the people thereof, under a recommendation of their Legislature for *their* assent and ratification." And the People in Convention, as the only true sovereigns, who had a right thus to act, did ratify it, and thereby im-

parted to it all its authority and all its life.

The federal convention, at the close of its patriotic and eventful deliberations, addressed to the people of the several States, a memorable communication signed by its president, George Washington, containing among other sentiments, the following: "It is obviously impracticable in the federal government of these States to secure all right of independent sovereignty to each, and yet provide for the interest and safety to all. Individuals, entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend, as well on situation and circumstances, as on the object to be obtained. It is at all times difficult to draw, with precision, the line between those rights which must be surrendered and those which may be preserved; and, on the present occasion, this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests. In all our deliberations on this subject, we have kept steadily in our view, that which appears to us the greatest interest of every *true* American, the CONSOLIDATION OF OUR UNION, in which is involved our prosperity, felicity, safety—perhaps our National *existence*. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected. And thus the CONSTITUTION, which we now present, is the result of a spirit of amity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable." After considering the report of the convention Congress resolved unanimously—"that the said report, with the resolutions and letter accompanying the same, be transmitted to the several Legislatures in order to be submitted to a Convention of Delegates chosen in each State by the PEOPLE thereof, in conformity to the resolves of the Convention made and provided in that case." It was so submitted to the people of each State in their original sovereignty in Convention, and was thus ratified and adopted, by the constituent body of each State, as a form of government binding each State and every citizen of every State. As each state possessed a separate local sovereignty, it was, of course necessary, before any portion of that sovereignty could be transferred to a common repository so as to establish a general government, that the people, in their political character as the constituents of their several States, should deliberate and decide, each man for himself, and the majority of the people of each State for their own distinct community. And just so the constitution was considered and adopted; and, therefore, the ratification, though necessarily federal, was also as necessarily popular and national. Addressed to the people of each State, and adopted by the people of each State—it was, when completely ratified, like the Declaration of Independence, the joint and several act of the people of "the United States," jointly and severally obligatory upon all the citizens of every State and each citizen of the United States. In their natural personal rights the people made it, and no other human authority could have made it. Its authoritative voice is "we the people of the United States"—"ordain and establish this Constitution," &c.

Independence was declared, not by the several States, and each for itself, nor by the people of each State separately for themselves, but by the people of the United States, coalesced spontaneously into one national body. The revolutionary war was carried on by the people of all the States in one united band—Independence was acknowledged, not to the States severally, but to the United States as one nation—and the federal constitution was adopted for the same American Republic, styled "THE UNITED STATES." Since the day on which Independence was declared, no one of the confederate States was ever, for any external purpose, or in the true and full sense of national existence, recognized as a nation. In foreign intercourse and all foreign relations, they, altogether, constituted but one nation. And, although, for all the purposes of local governments, each State has ever been a seperate and independent body politic, even as to its Co-States, yet, to the extent of all domestic interests common to them as confederates, they have never, in true theory, been independent sovereigns—but each has been only an intregal part of the common sovereign—the whole united into one consistent mass of aggregate authority, with but one name, one head, one will, and one single body of co-operating powers.

In *Chisholm's Exrs. vs. The State of Georgia*, (1*st Pet. Con. Rep.* 635.) Chief Justice Jay, a Statesman and Jurist of the Revolution, said:—"The revolution, or rather the Declaration of Independence, found the people already united for general purposes, and, at the same time, providing for their more domestic concerns, by State Conventions and other temporary arrangements. From the crown of Great Britain, the sovereignty of their country passed to the people of it,—and thirteen sovereignties were considered as emerging from the principles of the revolution, combined by local convenience and considerations. The people, nevertheless, continued to consider themselves, in a national point of view, as one people; and they continued, without interruption, to manage their national concerns accordingly.

In *Penhallow, vs. Doane,* (1*st Pet. Con. Rep.* 21.) Justice Patterson, an eminent cotemporary publicist, used the following language:—"The danger being imminent and common, it became necessary for the people or colonies to coalesce and act in concert, in order to di-

vert the gathering storm. They accordingly grew into union, and formed *one* great political body, of which Congress was the directing principle and soul." "The truth is, that the States, individually, were not known nor recognized as sovereign by foreign nations, nor are they now."

And, in *Ware, vs. Hylton,* (1*st Pet. Con. Rep.* 99.) Justice Chase, also a distinguished judge and a co-laborer in the formation of the Federal Constitution, speaking of the period from September, 1774, to March, 1781, said —"It appears to me, that the powers of Congress during that whole period, were derived from the people they represented, expressly given through the medium of their State Conventions or State Legislature; or that, after they were exercised, they were implicitly ratified by the acquiescence and obedience of the people."

The doctrines contained in the foregoing quotations, seem too obvious to require the aid or argument, or of any other authority than that of their own intrinsic propriety and necessary truth. The birth of the Union and that of the several States were simultaneous. And there never has since been an instant, when the States collectively have not, for national objects, acted as one single State, and been known and characterized as "the United States."

The people who made the several States, also made the United States—the first for local, the last for national purposes. And the same people who established, and who alone could have established their State governments, adopted the Federal Constitution and constructed a National Government: and they alone could have done this work. Any other doctrine or deduction, would be inconsistent, not only with reason, and right, and history, but also with the principles of the Declaration of Independence and of the Revolution. Independence was claimed by the people of the United States as one entire mass, entitled to the same rights—equal liberty to all at once was achieved by their united councils and common efforts; and their Federal Constitution, for the government and security of each, was the concurrent act of the whole.

Thus the Liberty and the Union of the people of the States, have ever been co-existent and indissolubly associated, as the body and soul of one vital, substantial, comprehensive political being, of the same popular parentage, conceived at the same time, cast in the same matrix, nurtured by the same common blood, passing through the same fiery travail, brought forth and legitimated by the same process and at the same time, subjected to the same pupilage, protected by the same guardianship, and finally, at the same memorable epoch of 1788, matured into manhood, established in robust vigor, and, like Jacob's sons, blessed by the same hand and the same parental voice, of "WE THE PEOPLE OF THE UNITED STATES."

The union of the States and of the people, though, in theory, always partly Federal and partly National, was, nevertheless, prior to the adoption of the present Constitution, altogether Federal in its practical operation. Wanting, until then, a controlling national power, it did not possess the inherent faculty of self-preservation, until it was imparted by the people in that great Charter of American liberty and security. Although, prior to that signal event, a Promethean spark had given it the delusive semblance of an artificial vitality, yet, it was helpless and exanimate, until then the sovereign people of all the States breathed into it the pure breath of life, which alone enables, or could enable it to live, and move, and enjoy a self-sustained and healthful existence.

Foreign force and oppression having produced Independence, internal weakness and discord induced the adoption of the Federal Constitution. Thirteen sovereign States, nominally united by a fragile Confederation, without national power, presented but the shadow of government, merely *Utopian*, and altogether inadequate to any one purpose for which it was established. "To form a more perfect union, establish justice, ensure domestic tranquility, and secure the blessings of liberty," it was necessary to convert the shadow into the substance of an actual and efficient national GOVERNMENT. This could alone have been done by the plastic power of the entire people, and required the consentaneous efforts of all their intelligence, and patriotism and self-denial. But great and difficult as was this work, it has, as they believed, and as we still hope, been accomplished, in the only practicable and most effectual mode, by the adoption of the Federal Constitution; which, as a very general analysis of its nature will show, has constructed a national government, possessing within itself all the faculties necessary for preserving the Union and existence of the States, securing the liberties of the people, and maintaining peace at home and independence abroad.

According to its literal and popular import, and the most approved definition of Lexicographers and Publicists, a political Constitution is a form of government instituted for organizing a civil community, and defining the manner in which its public will shall be expressed or its public authority enforced. Government is either speculative or practical, and generally both; the first is the body of organized public authority, the latter is the actual operation of the highest political power—the one being the form, the other the action of supreme civil authority.

Then the great American Charter of 1788, must be deemed, in form and in power, a structure of government, national, independent, and supreme,—an organic Law for all the

people of all the States, imposing a personal and paramount civil obligation on *every* citizen, and possessing an inherent and adequate power of self-preservation and cannot, consistently with its style, its provisions, its origin, or its objects, be considered a mere treaty, or league, or compact, between sovereign States, and depending on the faith and interpretation of each contracting party.

On its face it is announced to be a "CONSTITUTION," and it delegates and organizes all the powers necessary for a supreme popular government of the United States.

The language of the compact of Confederation was—"ARTICLES of CONFEDERATION *between* the STATES of New Hampshire, Massachusetts," &c.—"Each STATE retains its own *sovereignty*," &c.—"The United States hereby enter into a firm league of friendship," &c. But the style, and origin, and ends of the Federal Constitution are thus announced—"We, the PEOPLE (not the States) of the United States, in order to form a more perfect union, ESTABLISH justice, ENSURE domestic tranquility, provide for the common defence, promote the general welfare, and SECURE the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this CONSTITUTION for the UNITED States of America."

The first was evidently only a Confederation between sovereign States, without any common power or arbiter. The last is as evidently a union of the more sovereign people of all the States, under the standard of one National Government, to which they transferred, from their local sovereignties, all the powers necessary for governing themselves with supreme authority, to the full extent of all the purposes of the Constitution, independently of the local power or sanction of the several States.

Such is the essential and necessary difference between a Confederation of States and a Federal Constitution for the people of the United States. The one is a treaty between sovereigns —the other is a National government, above the local sovereignties, and, pervading the united whole of the people for all the ends of their union, is the only sovereign within the prescribed sphere of national authority.

Is there not a constitution of the United States? Is not that Constitution a form of government for the United States? And *can it then* be a lifeless form without power to govern, or is it not, in action as well as in idea, as it must be to be a government, armed with sufficient power to coerce the citizen without the consent and in defiance of the opposition of *his* State, and thus to maintain all the just rights of a *National* Government? It is not a government at all, unless, throughout the United States, it is the highest, and, to the extent of its exclusive authority, the only political power. For, unless, to the extent of the objects for which it was instituted, it has, as long as it exists, supreme and independent authority over those upon whom it operates, it is not, in any intelligible and practical sense, a Government. That which governs must, as long as it has a right to govern, have authority to coerce those whom it may govern; and *must*, therefore, be the highest political power, and consequently, must be politically irresistible. The Constitution of the United States, as to the national concerns embraced by it, is just as supreme as any Constitution of any of the States can be as to local affairs exclusively within *its* scope. The one is as much a fundamental LAW as the other,—both emanating from the only ultimate sovereign—the constituent people; that of the union being established as the supreme law for all the people of all the States, as one nation for all international purposes, and that of each separate State being made for regulating rights exclusively concerning one State alone or the people of such State. An organic or fundamental law being the immediate offspring of the people, in their natural right, brought into being for controlling all delegated power, and even the power and will of the people themselves as long as it remains unchanged by them, must be above all legislative authority, and equally above even the popular voice, when inconsistent with it. Neither the Legislature, nor any portion of the people, nor even all the people of a State, can, authoritatively or rightfully, overrule, or suspend, or resist, the fundamental law, as long as its existence is acknowledged. The people may abolish or reform it peaceably, and in the mode permitted by its nature or its terms, or may overturn or abolish it by force, or, in other words, by revolution. But, whilst it exists, its authority must be supreme and irresistible, or it is not what it purports and was intended to be—a fundamental law. The Federal Constitution, to the extent of its provisions, is thus fundamental and supreme. It was made by the people, not by the States; is subject to modification or abolition by the people alone; operates on the people directly and individually and not on the States or through the agency of State authority; and belongs to the people of all the States, as one common and entire mass, and not to the several States as separate and corporate bodies. It cannot, then, be subject to State power or State will, or even to the power or will of a majority of the people of all the States, except for amendment, or by revolution. All this is undeniable, if there is a Constitution of the United States, and that Constitution be a fundamental and supreme law of all the people of all the States.

But lest there might, in this respect, be ground for doubt or controversy, the people have expressly declared, in the Federal Constitution itself, that *it*, as well as all laws and treaties made under its sanction, shall be "the supreme law of the land"—any provision in any State Constitution or State law "to the

contrary notwithstanding." Then, if even a provision in a Constitution of a State, repugnant to the Federal Constitution, is void, how, or by what peaceful and authorized means can a State, or the people of a State, control or resist that law which is thus sepreme over all?

Moreover, the people, who alone had the power, have not only organized a National Government, but have endowed it with all the faculties, and have delegated to it and taken from the several States, all the powers necessary and proper for maintaining supreme and irresistible national authority. All the attributes of the highest political sovereignty are reducible to three functions of power—the Legislative, the Judiciary, and the Executive. And the depository of these three is undoubtedly a political sovereign. Now the Constitution of the United States, not only delegates to the General Government all national powers, but organizes those powers, and distributes them among three separate and co-ordinate classes of functionaries, and declares that the Judiciary power of the United States shall be co-extensive with the Constitution, Treaties, and Laws of the United States, so that the General Government shall not have to depend on the uncertain and diverse, or partizan interpretations of its Constitution, Treaties, and Laws, by State tribunals; but has the right, without which it could not be a GOVERNMENT, of upholding and enforcing its own laws, through the agency and according to the judgment of its own independent Judiciary. It is the nature of Judicial power, that when a court of the last resort finally decides a case over which it had jurisdiction, the decision is conclusive and irreversible. The only appeal from it is to arms. This conclusiveness is necessary for peace, certainty and confidence, and for the uniformity and stability of law and of justice. If, while the Constitution lasts, the will of a majority of all the constituent people be the supreme law, then the Constitution itself is a delusive shadow, altogether unnecessary and unavailing.

The only object of all our Constiturions was, to secure the minority against the power of the majority, the weak against the strong, the humble against the exalted, the poor against the rich; in fine, every isolated citizen, against the combined will and power of every other citizen. And that end can be attained only through the instrumentality of an enlightened, firm, and impartial Judiciary, whose peaceful and noiseless award shall still all commotion, and awe, into submission, all opposing power. Some single and ultimate expositor of the Constitution and Laws of the United States was indispensable to their proper efficacy and prevalence. For want of such an umpire, the old Confederation was a rope of sand. And, therefore, the people, anxious to make any sacrifice necessary for preserving their common liberties, adopted a Constitution in lieu of a League, and imparted to it the power of self-preservation, without depending on State authority, and in defiance of State opposition. As the Constitution and Laws of the Union are the Constitution and Laws of all the people of the Union, that cannot be constitutional or lawful in one State, which is unconstitutional or unlawful in any or every other State. But this would be the case frequently and inevitably, if each State, through its Judiciary or otherwise, had the ultimate right to expound for itself, or within its own borders, the Constitution and laws of all the people of all the States.

Neither the union of the States nor the authority of the Constitution and laws of that union could be maintained without a federal Judiciary with jurisdiction over that Constitution and those laws, nor unless the authorized and ultimate decisions of the National Supreme Court should be final and conclusive every where within the limits of the United States. The constitution constructs a limited government. If the Legislative department transcend the prescribed limitations, its acts, so far, are not laws—but are without any authority and utterly void. Who is to declare them void and prevent their enforcement?—The Judiciary; because that is the appointed organ of the aboriginal judicial power of the people, as the Legislative Department is the depository of their Legislative function. And, as the judiciary is bound to decide what the law is—and as a legislative enactment unauthorized or prohibited by the constitution cannot be law, it is the right, and the duty too, of a judge to disregard, as a nullity, any enactment conflicting with the fundamental will of the constituent people, which is, in such case the only law. For this purpose it was adopted—and to this end it must operate.

The federal constitution also limits, in many important particulars, the local power of the States. No State for example, is allowed to coin money—emit bills of credit—pass any *ex post facto* laws or any law, abridging the liberty of conscience, of speech, or of the press. How are such limitations on State sovereignty to be enforced? By the State which has itself overleaped them? Such an assumption is suicidal and preposterous. The people of the whole United States, by their fundamental law say to each State and to all the people of each State—"You shall pass no *ex post facto* law—and, if you do, it shall be void." One State nevertheless, under the influence of a faction, or for the purpose of experimenting with an arrogated self-independence, enacts and attempts, through its own prejudiced or intimidated Judiciary, to enforce, against a persecuted individual of an obnoxious denomination or subjugated party, a statute punishing capitally an act or an opinion, which, when done or uttered, was perfectly lawful and innocent; he appeals to the Constitution of the United States as the ark of his salvation—that

is his only hope, his last refuge—it is closed against him by his own State—cannot the people of all the States, through their constituted organ, appointed as its controlling sentinel and presiding minister, open its portals and save him? If not—then any State may pass and enforce an *ex post facto* or any other statute, "the supreme law of the land" to the contrary notwithstanding. But the federal Judiciary has this salutary, necessary power, and has exercised it ever since the organization of the general government.

A State constitution also limits the Legislative power of the State. If its Legislature overleap one of these bulwarks and strike at the guarantied rights of a single citizen or minor party of the State, can the major party, or "THE STATE," who prompted the usurpation, constitutionally maintain it in defiance of the judgment of the ultimate guardian and umpire of the fundamental law—the State Judiciary? Certainly not: for again we say, that, if the will of a majority is always the Supreme Law—a constitution was, not only unnecessary, but idle and delusive. The federal constitution is as inviolable and as effectual throughout the United States as any local constitution can be within the limits of a State. They are both, in the same sense, fundamental laws as far as they are respectively applicable, excepting only when they are in conflict; and then the minor yields to the major; and the federal Judiciary has as much right and as much power to uphold and to enforce the national constitution and national laws as a State Judiciary can have to maintain the proper supremacy of a State Constitution and State laws. But the Supreme Court of the United States may err in its judgment, and decide that to be unconstitutional which is, in fact, constitutional; or that to be constitutional which is, in fact, unconstitutional. And is such an error irremediable? Not at all. There are two remedies, the one constitutional—the other unconstitutional. The responsibility of the Judiciary—the right to repeal Legislative acts and to amend the organic law, are the only constitutional remedies—popular resistance by force, is the only other actual remedy, and that is revolutionary—because it is inconsistent with the frame of the government and subversive of its great ends—the supremacy and stability of law, and consequent legal security against popular passions and tumultuous or licentious power, or, in one comprehensive word, MOBOCRACY. If all these fail, we have a rare and solitary case presenting a necessary evil incident to all human institutions; an *immedicabile vulnus* of the body politic, to which every work of man, however good, is necessarily liable. A similar case may occur in a State, and may be more apt to occur there. And then would there be any other remedies than those just described? Certainly not. Would not the latter remedy by force be unconstitutional? Certainly. And is there more danger that the federal constitution will be perverted or abused by the national court, than there is that a State constitution may be perverted or abused by a State court? Are not both, the people's courts—the one, for all the people—the other, for only a part—the one, the guardian of the supreme law of the Union—the other, the guardian of the subordinate law of an intregal portion of that Union?

Every political sovereignty must not only have all the faculties necessary for governing, but must, of course, be the judge of its own powers. And therefore, each State, as altogether isolated, is the sole arbiter of its own exclusive power, according to the plan of its own organization—and the government of the United States is necessarily the judge, in the last resort, of its power; and, if there be collision between a State and the General Government, the latter must prevail, because the Constitution and the constitutional acts of the United States are "the Supreme law" of all the people of all the States; and the Supreme Court of the Union has delegated to it, by the people and for their protection, the ultimate power to decide on the Constitution and laws of the Union. We say, confidently, it has the ultimate power, because the jurisdiction is conferred on it without qualification or reservation, and therefore its final and authorized decisions must be conclusive and unquestionable; and, because also, any other doctrine would lead to confusion, uncertainty, anarchy and disunion, and would be altogether inconsistent with the provisions and objects of the federal Constitution, and irreconcilable with the practical existence of a general government.

The States of the Union have not all the powers of independent sovereigns. A State has no power to declare war, make treaties, coin money, regulate commerce either external or among the States, control the mail, naturalize foreigners, or make any invidious discrimination between the civil rights and privileges of its own citizens and those of citizens of any of its co-States. The people have, for wise purposes, taken all these and many other powers from their separate State governments. And are not those just enumerated the highest attributes of sovereignty? If a State, nevertheless, declare war, or make a treaty, or coin money, or interfere with the transportation of the mail, or with the regulation of foreign commerce, may not the general government control it? Has it not authority and power to do so? It has not, if a State has a right to judge and act for itself in defiance of the judgement of the federal authorities —and then the federal constitution has no conservative power, and is a mere *brutum fulmen*, nothing like a constitution or fundamental and supreme law.

If a citizen believe that the Legislature of his State has enacted, to his prejudice, an unconstitutional statute, he has the natural right

of deciding for himself, in the first instance, whether he will submit to it or whether he will incur all the peril and responsibility of personal resistance. If he resist, and the Judiciary should sustain him by deciding that the statute was void, all would be well; but if the decision should be against him, he must submit to the legal consequences, even if they should be those of treason; unless he is stronger than his government; and if he be, his government is put down, and so far revolutionized. The right, and the process, and the issue would be precisely the same if a statute of the general government were called in question; whether by one person or by all the constituent persons of one State or of a majority of all the States. No set of men can be the final judges in their own case, unless they resolve themselves into their original elements, disorganize their government, and shake off the political obligations which it imposes. Insurrection and revolution are natural and inalienable rights; but they are still insurrection and revolution, and nothing else. They are not political rights; because they are inconsistent with political obligation and subvert all political authority.

The majority of the people of one of the States have no more political right to overrule or resist an authorized decision of the Supreme Court of the United States respecting the federal constitution than the same majority would have a political right to overrule or resist a like decision by the Supreme Court of their State respecting their local constitution. Indeed they have not as much semblance of authority, because, in the latter case, they are the majority—but, in the former, they are in a very small minority.

The general government is armed with power to protect and control a State, even in some conflicts of local concerns. The federal constitution makes it the duty of the general government to guarantee to each of the States a republican form of government, and, on the application of the Legislature or the Executive when the Legislature cannot be convened, to protect any State "against domestic violence."

It was deemed essential to union that, as to their fundamental principles and forms of government, the States should all be homogeneous,—and that republicanism should pervade and characterize the whole; and, therefore, the people of the whole, in the plentitude of their sovereignty, denied to themselves, as the constituents of the several States, the right to establish any other than a Republican State Government, and delegated to Congress authority to prevent the pestilent contagion of any other form in any of the States. The history of political fraternities, and especially that of the Germanic Confederacy, the Helvetic League, and the Amphyctionic Council after Philip of Macedon was initiated, proclaimed, in one warning voice from the tombs of nations, the danger of a heterogeneous union of dissimilar political bodies without a pervading and common sympathy. And hence a dominant faction in a State cannot establish any form of State government it may choose, but may be so far controlled by the government of the United States, as to be compelled to retain a republican form. And if the same, or any other party or combination in a State threaten domestic violence, or attempt to resist the regularly constituted State authorities—the general government may, on proper application, protect the State from insurrection and violence.

The same necessary doctrine applies equally to every power delegated to the general government. The Constitution is one consistent and entire system. If, as to one of its powers, it is a Constitution or fundamental and supreme law, it is just the same—neither more nor less,—as to all the other powers delegated by it and denied to the States. Its fundamentality can arise only from its inherent power, according to its structure, to preserve itself; and its only supremacy arises, or could arise, from its own power to enforce its own principles, and maintain, without extraneous aid, its own just authority. It was made by the people to preserve their dearest rights, and to secure the Union, and to uphold the liberties of the several States. And the people so organized it and transferred to it such powers as, in their judgments, would enable it to effectuate all those great ends. Why else was it adopted at all? Why called a Constitution? Why the Supreme LAW of the United States? Why were so many and such high powers so carefully and specifically delegated by it? Why were the national depositories of those powers so wisely separated and arranged as to make them mutual checks on each other? Why was the exercise of many important powers by the States expressly prohibited? Why has the general government, ever since its organization, acted and been permitted to operate just as a supreme government to the extent of the powers conferred on it by the Constitution and above the control of the States? And why did the people, by the federal Constitution, institute a Supreme National Court, and confer on it jurisdiction in all cases in which that Constitution or a treaty or law of the United States should ever be called in question?

The nature, and terms, and known ends of the Constitution itself answer these questions without doubt or difficulty; the practice of the general government and the decisions of the Supreme Court of the United States ever since its organization, and the common understanding and acquiescence of the people answer them also and in the same way. The sentiments of General Washington already quoted, and the language of the Federal Convention in its address to the people, and the declared opinions of those who opposed, as well as of those who advocated the adoption of

the Constitution, all concur in the same plain and emphatic answer—that precisely which we have been endeavoring to deduce from the Constitution itself and from the history of its adoption. Had not the object of the people been to convert a confederation of independent sovereigns into a popular Government for all purposes common to all the United States, and endow it with the means, of course, of self-preservation and the power of self-enforcement—they would not have substituted the present Constitution,—as it is,—for the Articles of Confederation.

It is historically true and undeniable that the most radical objection urged against the adoption of the Constitution, by whomsoever and wherever it was opposed, was—that it was not a confederation of States, but a national government which would, by its own power, operate personally and directly on every citizen of the United States without regard to the intervention or sanction of the State governments—and that, therefore, State sovereignty, to a great and dangerous extent, was surrendered, and the general government, might, consequently absorb all the residuary powers of the States and produce one central consolidated government. The advocates of the Constitution met that objection, not by denying or qualifying the premises, but by shewing that the liberties of the people and the security of the States imperiously required that such a national government should be established, and should possess the supreme power of doing all that the Constitution authorised and contemplated.

"There ought always to be a constitutional method of giving efficacy to the constitutional provisions. What, for instance, would avail the restrictions on the authority of the State Legislatures without some constitutional mode of enforcing the observance of them? No man of sense will believe that such prohibitions would be scrupulously regarded without some effectual power in the Government to restrain or correct the infraction of them. This power must either be a direct negative on the State laws, or an authority in the federal courts to overrule such as might be a manifest contravention of the articles of Union." "There is no third course that I can imagine. The latter appears to have been thought by the Convention preferable to the former." "If there are such things as political axioms, the propriety of the judicial power of a government being co-extensive with its legislative may be ranked among its number. The mere necessity of uniformity in the interpretation of the national laws decides the question. Thirteen independent courts of final jurisdiction over the same causes is a hydra in government from which nothing but contradiction and confusion can proceed." "Controversies between the nation and its members or citizens can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum." "The peace of the whole ought not to be left to the disposal of a part. The Union would undoubtedly be answerable to foreign powers for the conduct of its members: And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it." And the letters of Publius, by Hamilton, Madison, and Jay, explaining the Constitution, vindicating its provisions, and urging its adoption, are replete with such arguments. Nevertheless the Constitution, thus understood by all parties, was adopted.

This consideration, sustained by indisputable facts, should alone be conclusive.

"The means ought to be proportioned to the end. The persons from whose agency the attainment of any end is expected, ought to possess the means by which it is to be attained." "Whether there ought to be a Federal Government, entrusted with the care of the common defence, is a question, in the first instance, open to discussion; but the moment it is decided in the affirmative, it will follow, that that Government ought to be clothed with all the powers requisite to the complete execution of its trust." "There is an absolute necessity for an entire change in the first principles of the system (confederation)." "If we are in earnest about giving the union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the Federal Government to the individual citizens of America. Every view we may take of the subject, as candid inquirers after truth, will serve to convince us that it is both unwise and dangerous, to deny the Federal Government an unconfined authority, in respect to all those objects which are entrusted to its management. A government, the constitution of which renders it unfit to be entrusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depository of the national interests."

Such are only a few of the many arguments which, prior to the final ratification of the Constitution by the people, were addressed to them in the letters of Publius and elsewhere. And it was just because the Constitution was understood to possess the national, efficient, and supreme authority thus ascribed to it, that one party opposed and another advocated the adoption of it. Then, were there no other consideration leading to the same conclusion, does it not possess that character? Plainly and undeniably, as we unhesitatingly believe, it does, it must.

That the Supreme Court of the Union has final jurisdiction over a judicial case, in which a State is a party as plaintiff, is not, and cannot be denied or doubted. And that court in Cohens *vs.* Virginia, and in other cases, has decided, and correctly too, that it has jurisdiction whenever the Constitution or a treaty

or law of the United States, is implicated by a decision by a State court against it, even though a State be defendant in the suit.—Those decisions, having been so long acquiesced in and so generally approved, must be deemed to be correct. Then will it, can it be denied, or seriously doubted, by an intelligent and dispassionate mind, that, the Supreme National Court having jurisdiction to decide against a State, the General Government has the power to enforce the decision? If it cannot, the decision cannot, as the decisions of the same court in other cases, be final and conclusive, and if it be not, that court has not, in that class of cases, appellate jurisdiction. But it has such jurisdiction; and, therefore, a State, like any other suitor, is bound to submit. This is only another exemplification of the supremacy of the Constitution, Treaties and Laws of the United States, and of the power of the General Government to enforce them, against any opposing body of citizens, even though they may happen to constitute a majority of a State. This kind of security of a citizen, or a minor party against a dominant majority, is one of the most valuable and necessary of all political rights.—And certainly the order of nature would be inverted, and all precedent outraged, if a court of a State, from which an appeal may be taken to the Supreme Court of the nation, may lawfully refuse to obey the mandate of the revising tribunal, and thus, in effect, abolish the constitutional right of appeal, assume supreme independence, and virtually reverse the decisions of the higher court. And if a court of a State cannot do this, surely the State itself cannot do it, by law or otherwise, in any of its political functions or capacities.

We have two systems of government, each supreme in its sphere—the several State governments for local purposes concerning each State separately and alone, and the National government, for all national objects of external concern, or of domestic interest among the citizens of different States, or important to the harmony and union of the States. In the first aspect, the Union is Federal, in the letter it is altogether National; and the whole action of the General Government is National; that is, upon all the citizens of the United States equally and alike, and not on the States in their corporate character. The Constitution of the United States was made to bind the States together. This it cannot do, if any one State can control the Government of the United States, or dissolve the Union by either resistance or secession. The people of the States had a right to abrogate their local governments, and form one consolidated National Government. It was not deemed prudent to do so altogether, or to a greater extent than was proper for preserving the Union of the States, and protecting their common interests abroad: And, to that extent, but that only, the people did surrender all separate State power, just as fully and effectually as if they had utterly abolished their State governments and substituted one entire, exclusive, central government. "The Constitution of the United States being ratified by the people of the several States, became, of necessity, to the extent of its powers, the paramount authority of the Union. On sound principles, it cannot be viewed in any other light. In the institution of the government of the United States, by the citizens of every State, a compact was formed by the whole American people, which has the same force, and partakes of all the qualities, to the extent of its powers, as a compact between the citizens of a State in the formation of their own (State) Constitution. It cannot be altered, except by those who formed it, or in the mode prescribed by the parties to the compact itself. If it could, it would not be a Constitution. "The great office of the (Federal) Constitution, by incorporating the people of the several States, to the extent of its powers, into one community, and enabling it to act directly on the people, (the only parties to it) was to annul the powers of the State governments to that extent. The government of the United States relies on its own means, for the execution of (all) its powers, as the State governments do for the execution of theirs; both governments having a common origin or sovereign, the people: the State governments, the people of each State, the National Government, the people of every State: and being amenable to the power that created it. It is by executing its functions as a government, thus originating and thus acting, that the Constitution of the United States holds the States together, and performs the office of a league. It is owing to the nature of its powers, that it performs that office better than the Confederation, or any league which ever existed, being a compact which the State governments did not form to which they are not parties, and which executes its own powers independently of them."

Thus thought, and thus said, James Monroe, who was among the most distinguished of those opposed the adoption of the Federal Constitution, and whose chief objection to it was, that it was understood then, as now, to be just what he has so plainly and forcibly described it as being, in one of his messages as President of the United States.

Luther Martin, a leading member of the Maryland Convention, and who voted against the ratification of the Federal Constitution, assigned, among others, the following reason: "By the 3rd article, the judicial power is vested in one Supreme Court, and in such inferior courts, &c. These courts, and these only, will have a right to decide upon the laws of the United States, and all questions arising upon their construction, &c., by whose determination every State is bound."

Charles Pinckney, among the most prominent and active of the members of the federal con-

vention, said that it would be the duty of the Supreme Court of the United States, "not only to decide all national questions which should arise in the Union, but to control and keep the State judiciaries within their proper limits."

Mr. Madison, who was an eminent member of the Federal Convention, and also of that of his State, Virginia, said, in the latter, —in answer to an argument by the celebrated Patrick Henry against the controlling power vested in the General Government through its Supreme Court—"It may be a misfortune, that, in organizing any government, the explication of its authority should be left to any of its co-ordinate branches. THERE IS NO EXAMPLE IN ANY COUNTRY WHERE IT IS OTHERWISE. There is no new policy in submitting it to the Judiciary of the United States."

It is thought by many, that Mr. Madison, in his famous Preamble and Resolutions of 1799, advocated the right of a State to set up its own judgment in opposition to that of the constitutional organs of the General Government, and to resist, by force, an act of Congress which it should deem unconstitutional. We presume, however, that this was not what he or those who concurred with him intended, but that they meant only to maintain the unquestionable and unquestioned doctrine, that a State or State court, like an individual, might, in the first instance, judge for itself as to the constitutional validity of an act of Congress, and might endeavor, peacefully, by argument, remonstrance or resolution, to procure the repeal and prevent the enforcement of it. But if, as is possible, more was intended, the later and more enlightened, and matured, and disinterested opinion of Mr. Madison, should alone be a sufficient antidote to any such cancerous doctrine as that of the political independence and supremacy of any one State, in a collision with the Government of all the States. In his admirable letter to Edward Everett, dated October 1830, after establishing, in a lucid and unanswerable argument, the popular origin and action of the General Government and the supremacy of its authority, he said:—"Those who have denied or doubted the supremacy of the judicial power of the United States, and denounce at the same time a nullifying power in a State, seem not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land, without a supremacy in the exposition and execution of the law, nor to the destruction of all equipoise between the Federal Government and the State governments, if, while the functionaries of the former are directly or indirectly elected by and responsible to the States, and the functionaries of the States are, in their appointment and responsibility, wholly independent of the United States, no constitutional control of any sort belonged to the United States over the States. Under such an organization, it is evident, that it would be in the power of the States, individually, to pass unauthorized laws, and to carry them into complete effect, any thing in the Constitution and laws of the United States to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect through the legislative, executive, or judiciary organ of the State, would be equally fatal to the constituted relation between the two governments. Should the provisions of the Constitution, as here received, be found not to secure the government and rights of the States, against false usurpation and abuses on the part of the United States, the final resort, within the province of the Constitution, lies in an amendment of the Constitution, according to a process applicable to the States."

Peace and justice between the States themselves and the just and necessary authority of the government of the Union, could not be preserved, unless the latter had powers paramount to those of the Several States. As it, as well as each of them, was made by the people, and as it was made by the whole people of all the States and is responsible to them and only them, and each of the State governments was established by only a fraction of the people of the Union, it is as intrinsically fitting, as it is absolutely necessary, that, in a collision between it and any of them, the Federal Government should control. In a contest between the whole and any of its parts, the former must govern.

But, if any State should ever feel itself so oppressed by Federal usurpation or injustice, as to consider it better to dissolve the connexion than passively to endure what it deems wrong, its remedy is undoubted and natural—it may, as our fathers did, and as all men have a right to do, try the hazards of revolt. But such a remedy is extra-constitutional; and, whenever, in any instance, it shall be resorted to successfully, the Federal Constitution will be impaired or destroyed, and the Union itself maimed or dissolved. The trial will be one of moral, not of political power, and will present a rare and momentous crisis, in which all political systems must either fail, or must triumph only by the ultimate reason of nations —physical force. And in the language of Chief Justice Ellsworth, after urging in convention the necessary supremacy of the General Government—"Still, however, if the United States and the individual States will quarrel—if they want to fight—they may do it, and no frame of Government can possibly prevent it."

But to prevent or render difficult such a catastrophe, the Federal Constitution was adopted, the Union was established, and the General Government was, as far as authority has been delegated to it, vested with ample and supreme national powers. And as long as its just authority, as established by the people in convention, shall be properly

respected or maintained, that Union and Liberty which it was designed to watch over and secure, will exist and be enjoyed as far and as perfectly as they could exist or be enjoyed under any political organization which the wisdom and patriotism of our predecessors could, with their lights, have completed. It was thus only, that they could "ESTABLISH justice" or "SECURE domestic tranquility."

If the people of a State, by ordinary legislation, or by the intervention of their State Judiciary, cannot nullify an act of Congress, or a treaty or provision of the Federal Constitution, against the will of the people of the United States, as expressed, finally and authoritatively, through their proper organs, they surely cannot do so, lawfully or availably, in convention, or otherwise in any political capacity which they can assume as a constituent member of the Union. The Federal Constitution being made by and for the people of the States, and addressed to and operating upon them, is, of course, obligatory on them as citizens of the United States, and may be enforced upon them as long as they shall remain in the Union.

If, for example, no state Legislature can pass an *ex post facto* law, or law impairing the legal obligation of a contract, or any law establishing a religion or prescribing a religious test oath, the people of a State certainly cannot, in convention or in any other mode, constitutionally enact and enforce any such interdicted law or ordinance, or any thing else forbidden by the supreme law of all the people of all the States. A State Constitution is a law—fundamental it is true—but nevertheless law, and nothing more than law. And the Constitution of the United States being the supreme law—any thing in any State law or "State CONSTITUTION to the contrary notwithstanding"—must retain its supremacy over a State convention and even the people of each State as long as they continue to be also people of the United States; otherwise, it would not be, what it is both declared and admitted to be, the supreme law of the people of the United States; but might, at any moment, be paralyzed in all its functions and parts, by a factious and dominant party, in any one State, under the pretence of renovating their State Constitution. A State cannot remain in the Union and claim the protection of the Federal Constitution, without being, at all times, and under all circumstances, subject, in all respects, to the paramount authority of that Constitution. No portion of the people can, in any mode, be exonerated from the obligations and sanctions of the Federal Constitution, and still be entitled to all its blessings. They cannot be, in any particular, above the supreme law of the Union, and still be in the Union, and under the protection of its striped banner. And should any person be deemed both candid and sane, who, admitting the supremacy of the Federal Constitution and the absurdity of indiscriminating nullification by a State, yet pretends to believe that the people of a State, in State convention, may disband themselves from all national authority and rightfully trample under their feet any principle of the National Constitution? Such a suicidal nostrum as that recently concocted by a few reckless political steam doctors of the Keystone State, for destroying the legal obligation of its own contracts, is ultra-nullification, and would, if sanctioned, lay the Constitution of the United States at the feet of any discontented or unprincipled faction, to which, in any State, accident, or fraud, or force, might give predominance.

The people of a State have no more right, in any mode, than the same aggregate number in all the States would have in the same mode, to control the action of the General Government; and, the only modes in which the people of the Union can constitutionally and effectually operate, are just the same as those in which the people of a State may operate on their State Constitution and laws—not by popular or legislative resistance, but by acting on the public functionaries, or by constitutional abolition or amendment, as prescribed in the fundamental Charter. And, in order thus to control the General Government or the Constitution of the United States, a constitutional majority of the States or the people of the United States must, of course, concur. Upon any other hypothesis, there can be no Union or national supremacy, and a majority in any one State might arrogate supremacy, as to itself, and, at any moment, dissolve the Union. Such is not the character, such was not the object—such cannot be the effect of the Federal Constitution. It was popular in its origin, is national in its operation, and must be practically, as well as theoretically, the supreme law of the land, any thing in any State law or State Constitution to the contrary notwithstanding. And no State can judge for itself, in the last resort, in any other sense, than every individual citizen may judge for himself upon all his personal and political responsibilities—for a State is but the persons who constitute it. In each case, and in every case that can arise of a judicial character, the National Judiciary has ultimate jurisdiction, and its judgment must be authoritative and conclusive. This is the Constitution the people adopted—it was thus universally understood, has always thus, and only thus, operated, and can not prevail or long exist unless it has authority and power so to maintain itself.

It may appear strange that we have said so much, and yet so little of what might be said, in support of a proposition, which seems almost, if not altogether, self-evident. But an opposing doctrine having, in a certain quarter recently sprung up under the sanction of some distinguished names, we deem it our duty to you, who may be destined to be among that class which is to give tone to the coming gen-

eration,—to endeavor, by fair and candid argument, to fortify your minds against, what we consider, a most dangerous and indefensible heresy in American politics; and which, if permitted to take root and grow, would, as we believe, be almost certain, in the hands of misguided patriotism or selfish ambition, to destroy the fairest political fabric ever yet constructed.

Having consumed so much time in establishing the vital principle of the government of the United States, we can but barely touch its organization and the general features which characterize it.

1st. It is a representative democracy; or more appropriately, a Republic—which is a government mediately of the people or a portion of the people in their natural and equal right. It is founded on the doctrine that an enlightened and virtuous people may, under a suitable organization, govern themselves.

2nd. It is not only moved and sustained by public opinion, but is so constructed as to be able to maintain an equable motion by counteracting occasional erratic tendencies of popular excitements and delusions in a virtuous and enlightened nation. For securing intelligence and proper deliberation in the enactment of laws, the people are represented by a complex legislative body, sufficiently large to know and to speak the interest of all, and not too large for proper deliberation and a due sense of responsibility; compounded of three distinct and mutually independent elements—a popular branch elected immediately by the people,—a Senate chosen for a longer term by the State Legislatures,—and a President elected virtually by the people—each operating as a check on the others; and thus affording some security against ignorance, passion, precipitancy and corruption. Lest the popular branch might not feel a proper degree of responsibility it is elected every two years—lest that branch, thus popular, should act hastily and unwisely, a Senate, consisting of two members from each State and appointed by State authority for six years, is placed as a sentinel and check—and lest both of those branches might sometimes be impelled by passion, the President is vested with the qualified Veto.

3rd. But a still greater security is afforded by distributing the three great functions of political power among three co-ordinate and distinct departments, and confiding each function separately to an independent body of magistracy—so that neither the Legislature, Judiciary, nor Executive can easily do wrong without being checked by one or both of the others. An enlightened, honest, and self-willed Judiciary is the Doric Column of this Temple of Human Justice. It is an indispensable conservator of the Constitution. No limitation on Legislative power could be enforced without a separate judicial department. And to secure fidelity and impartiality in the discharge of its high functions, it must be independent, to a great extent, of the other departments, and even of popular opinion. It could not otherwise be a safe and sufficient anchor of the Constitution. And hence the Judges of the U. S. are not elected by Congress, nor by the people—but are appointed by the President and Senate—are entitled to salaries which cannot be diminished during their continuance in office—have a right to hold their offices during good behavior—and can be removed only by impeachment by the House of Representatives to be tried and concurred in by two-thirds of the sitting senators. And the Supreme Court of the United States, being established by the Constitution, and its jurisdiction thereby also fixed, cannot be abolished nor deprived of its power without amending the Constitution.

The elective principle, the distribution of all sovereign power among co-ordinate and independent departments, and the firm and durable tenure of Judicial office—are political expedients of modern contrivance, in the efficacy of which, for preserving a just balance of power and a wholesome stability and equilibrium, great confidence is felt wherever they have been tried. Without them republican government cannot be maintained—as the annals of all time clearly prove.

4th. The powers delegated to the national government are altogether such, and such only, as concern the foreign intercourse and external rights of all the States as one aggregate and united nation, and as are necessary also for preserving harmony and union among the States. And both the general and the individual State governments are expressly prohibited from doing anything which they could not do without transcending their respective spheres and frustrating the ends of the Union. But, for all purposes in which the citizens of a single State are alone concerned, each State retains its original and unimpaired sovereignty—excepting only that, in a collision between a state and the United States as to their respective powers, the latter must necessarily decide in the last resort. Then, of course, for all the purposes exclusively local, the several States constitute a union nearly federal—and for all ends common to all, they constitute but one single, consolidated, national government. And it is evident also that the Constitution of the United States is also popular in its origin—partly federal and partly national in its structure, and perfectly national in its operation. One branch of Congress represents the whole people of the United States—and the laws of Congress are addressed to the people of the United States.

The several States derive security and strength from their union, and from the action of the general government; and that also is aided and secured by the existence and co-operation of the several State Governments. In a territory so extensive and diversified, neither could exist in purity, harmony or safety, with-

out mutual co-operation in their respective spheres. Together they are the solar system of politics—the centripetal attraction tends to consolidation—the centrifugal, to dissolution—but as long as their equilibrium, as arranged by the fiat of the people, shall be preserved, order, harmony and reciprocal blessings will be their joint offspring. It is obviously the interest of the people, therefore, to preserve the proper and necessary relation and powers of the one as well as of the others. And consequently the federal constitution should be construed, not as a penal statute, or even a deed, but as a beneficent system of government instituted by the people for cementing the Union and preserving their liberties. And such an interpretaton and effect should be given to it as to enable it to effectuate all the great ends of its institution and adoption.

5th. The Constitution of the United States cannot be regularly altered, revoked or abolished without the concurrence of a majority of the people in three-fourths of the States of the Union. This anchorage gives it stability and elevates it far above ordinary legislation. And without such a provision or some similar one, it could not have the proper effect of a fundamental and paramount law. If it could, at any moment, be changed, or destroyed, or controlled by any one State, or by a majority of the people of the United States, it could not possess sufficient stability or authority. Its peculiar value arises from its inviolability and the great difficulty of altering, or destroying, or evading it.

These are the only general features of the Constitution which we have time now to notice, in even the most summary manner.

This Constitution as it is, has, so far, not only falsified the predictions of its foes, but generally fulfilled the expectations of its friends. It has hitherto shewn, and as long as it shall work well, will continue to show—what was never before discovered—the true limits within which popular government may be both practicable and safe—and the kind and degree of democracy which may be compatible with the proper authority of government, the order of society, and the security of personal rights.

It is our sacred duty to ourselves, and to posterity, and all mankind, to preserve this Great Charter, in its original purity and harmony, and to transmit it to our successors unimpaired, and, as far as possible, improved in its form, and strengthened in its authority.

The proper means for securing this great end are both political and moral, and are so various that the proprieties of the present occasion will not allow us to do more than barely to allude to such of them as are most prominent.

1st. The more essential of the political means are—first, inherent in the structure of the federal and State governments—all framed and intertwined in such a manner as to make it the interest of each to support and aid the other in the proper exercise of its proper authority, and to render it difficult for either to encroach on the exclusive sphere of the other and maintain the usurpation—and secondly, and chiefly, in an honest, enlightened, and prudent administration of the powers of each, WITH THE SINGLE VIEW OF PROMOTING THE PUBLIC GOOD; and the power to correct, in the proper mode and in due season, any incongruities or innate vices which a matured and rational experience may, from time to time, develope in the fabric of the federal Constitution; and the faculty also, of always upholding its principles and supreme authority by enforcing prudently, fearlessly and undeviatingly, its own necessary and independent powers.

2nd. But, for this end, moral means also are indispensable. Our Governments being the offspring and creatures of public opinion, are essentially moral institutions—and, therefore, cannot exist in purity or with proper practical effect without the controlling influence of a pervading public virtue and intelligence. To govern themselves rightly or securely, the people must not only know how to govern, but must also be determined to govern and to do it justly and for the permanent and greatest good of the whole United States. Without these cardinal qualifications for self-government the many will necessarily be the deluded instruments and victims of the ambitious, selfish and deceitful few, who will govern them by fraud or by force. Union and Justice are the conservative principles of the Republic as well as the ultimate objects of its complex political organization. And these are the fruits only of common sympathies, common intelligence, and common public virtue. The same language—the same religion—the same color—kindred origin—common interests, common glory, and common destiny—are strong and peculiar ligaments of Union, never all concurring elsewhere upon earth; and these are not only strengthened in this New World, by the physical adaptations of our common country, obviously designed by Providence for such a civil Union—but may be greatly and almost indefinitely increased by an enlightened and national system of internal improvement, for facilitating social and commercial intercourse, and vitalizing with the same spirit the East and the West, the North and the South, each a necessary part of a happy and essentially whole body politic.

But all these moral bonds, strong and numerous as they are, may be dissolved by the blind ignorance or perverted passions of a degenerate people, as easily and almost as speedily as the attenuated web may be broken by the wantonness of the capricious spider that wove it.

The moral improvement of our countrymen, and especially of our children, is far more important than the physical improvement of our country, and not only will insure the latter,

will be honored, and charlatanism and vice bnt is the only means of ensuring it, as well as other and more desirable ends of human power and true human glory.

Our fundamental institutions are excellent —but they are not perfect—they have most of the elements of prolonged existence—but they are not indistructible. They will totter with the decay, and must perish with the extinction of the public virtues which gave them birth, and have, in a manner, hitherto upheld them; and they will be entombed in the same mausoleum of departed glory and buried liberty.

It is right and rational to love our country and revere her institutions. But let not idolatry usurp the throne of reason, nor a Narcissian fondness for form, tempt to blind delusion or self-destruction. Such unreflecting enthusiasm is finely satyrized by Lucian, when he represents Plato as a voluntary exile from Elysium for the ideal purpose of living in his Utopian Republic—and such visionary abstractions as those of Plato have built up and pulled down all the popular governments of the old and monumental world. Our Republic is more rational and solid—because, unlike all that had preceded its establishment, it is the fruit of experience in the affairs of men, and is, therefore, adapted to the character and condition of the people and the nascent spirit of the age. But, depending for its ultimate destiny, on the popular breath, it must sink with the decay of public virtue, as certainly as manners have always governed, and will ever govern laws. The history of all nations and ages of the world echoes the sentiment of Horace, *Quid leges sine moribus vanæ proficient!*—and proves beyond question that, without proper education and moral principles and habits, all the pomp and circumstance of the most magnificent civil and ecclesiastical establishments, and all the laws, however numerous and good, which legislative wisdom could enact, will be insufficient for preserving order and maintaining justice among men. Montesquieu announced a self-evident truth when he said that—"the laws of education are the first we receive, and should have respect to the principle and spirit of the government we live under." And we need not look to China or Confucius, or to Sparta, or to Lycurgus for an exemplification —we may find it in every age of the civilized world. Plautus and others complained that, at Rome, manners prevailed over the laws long before the destruction of the commonwealth, which fell in the struggle between Cæsar and Pompey for the prize of empire;— and it was not Cæsar, but the degeneracy of a self-confident, luxurious, and flattered populace that brought the Roman Republic to its fatal end. We read in Tacitus that—"good manners did more with the Germans than good laws in other countries;" and in Lord Bacon, that "it is an old complaint that Governments have been too "attentive to laws while they have neglected the business of education." and gaming, and tippling and swearing, and other fashionable vices, is only a partial illustration of the ancient maxim—*leges moribus servient*—"the laws give way to manners."

Fundamental, as well as other laws, yield to the more supreme law of public taste and public sentiment. And, whilst the organic and municipal laws exist in name, they are dead in practical power, when public virtue fails. The laws have but little efficacy, unless they are honestly and effectually administered. And even in our own much favored country, under the guardianship of our excellent Constitutions, we know that, sometimes the ambition of selfish demagogues, and the blind enthusiasm of misguided party spirit, and an idolatrous devotion to distinguished names, have prevailed over the principles of supreme law, and furnished cause for much distrust, apprehension and despondence. And we ought to know, also, that here, as elsewhere, and in our own day, as in ancient times, there is not always more than one Brutus in a whole tribe of "liberty men," who destroy a Cæsar for his ambition; and that the vaunted patriotism of contending parties, struggling as for the palladium of the citadel, is sometimes nothing loftier or better than the aggrandizement of a few aspiring men, whose great solicitude is, not as to "how the government shall be administered, but (only as to) who shall administer it." And we cannot have forgotten, that Walpole has not been the only minister who was ever put down by a selfish coalition, in the abused name of disinterested patriotism; and that Pultney, and Cartaret, and Newcastle, have not been the only leaders of parties, who, when they triumphed over the antagonistparty —out-Walpoled Walpole himself.

The causes of these things may be found in the credulity, ignorance and passions of a deluded and degraded people. And wherever these popular elements exist, demagogues, and not honest patriots, will rule; and selfishness, and passion, and party, and not justice or the Constitution, will prevail in the administration of the Government. This is bad enough, even if the forms of governments shall be preserved; and it is as certain as it is bad. But it cannot long continue without a Nero, who, throwing aside the mask of a more dissembling Augustus, will trample under his idolized feet, even the long insulted forms of free institutions.

The only ultimate security against such mal-administration or final destruction of our own National Government, is the prevailing virtue and intelligence of the body of our freemen. Let them possess pure patriotism, and public virtue, and sufficient intelligence to enable them to think rightly for themselves, and they will be sure to act for themselves, as it is their interest that they should act. And then the Federal Constitution will be strong enough to protect the humble, the poor, and the persecuted; then talents and virtue

The impotency of the laws against chivalry, will be rebuked and degraded; then innocence can sleep in safety, conscience can feel secure, the tongue may utter what it has to say, and all honest and virtuous men may look to the Constitution of the land as the supreme law indeed, and feel assured that all their rights may be left with confidence to the protection of its broad panoply. But, without proper and general moral culture, this Constitution, perfect as it is, and asmuch as it cost, must fail, and the best hope ofChristian man must thus be lost.

Liberty and security can be assured only by the integrity and supremacy of the Constitution and of constitutional laws. Rousseau never uttered a more obvious and important truth than when he said—"A Republic is a Government of Laws, not of demagogues or monsters." And the following admirable defintion of a virtuous democracy, by Thucydides, though theoretically true, has never been long exemplified on earth, and never will be, until the mass of the people shall be, what they ought to be, honest, patriotic, and enlightened —"it (a democracy) is a government that hath no respect to the few, but to the many—wherein, though there be an equality amongst all men with respect to their private controversies, yet, in conferring dignities, one man is preferred to another, not according to the reputation of his power, but of his virtue: and is not put back through the poverty or obscurity of his person, as long as he can do service to Commonwealth;—in which all are obedient to the laws, and living not only free in the administration of them, but also with one another —void of jealousy in their ordinary intercourse —not offended at any man for following his own humor, nor casting on any, censure or sour looks—they converse freely with one another without fear of offence, fearing only to transgress against the public."

Such a society and such a government, presuppose the prevalence of true knowledge, and of private and public virtue approximating ane qualization of intellectual and moral power.

As long as public opinion controls the laws, and whenever the moral condition of the mass of our free population is such as to enable a favored and selfish few to create or give tone to that opinion, there can be no constitutional or legal security; public functionaries will not be selected for their merit, but for their obsequiousness and destitution of principle; vulgar partyism, altogether personal, will prevail; public trusts will be prostituted to personal aggrandizement; public agents instead of being controlled by, will control public opinion: and the offices and public property of the people will be considered as spoils by the dominant party; and yet all will be done in the abused name and under the easy pretence of mock patriotism and democracy.

Kings, and Priests, and Demagognes, and all men of selfish and sinister ambition have ever been, and will always be secretly opposed to the dissemination, among the common people, of the ennobling light of true knowledge and personal independence. Honest and disinterested patriots and philanthropists alone, are sincerely desirous of the diffusion of universal moral light, and practical equality and independence.

Protestantism and popular instruction were coeval; and, as twin-sisters, they have gone together, and co-operated in the cause of human liberty and happiness. And all history proves, that no people can be free or happy, unless the great body be enlightened and improved by proper education and discipline—moral, physical, RELIGIOUS and POLITICAL. This will be the only effectual antidote against the pestilent aristocracy of sinister patronage; which, official and unofficial, is the great canker of our institutions.

Let no true lover of his country's glory or the happiness of his race doubt that their only true safeguard is the virtue and intelligence of the mass of the people. It is the first duty, as it is the highest interest, of the commonwealth, to provide all necessary and proper means for educating, or for compelling parents to educate, in a suitable manner, every child of the commonwealth, so far as to establish right habits and principles, and impart competent knowledge of whatever—civil, moral, or physical—freemen ought to know, in order to enjoy as they ought and might, the comforts and blessings of rational nature, and to preserve, as they should and may, their civil liberties and political rights; and, more essentially, a proper opportunity should be afforded to every citizen, howeve, poor or friendless, for acquiring an accurate knowledge of his political rights and obligations. Such moral discipline is possible, and might be made universal and successful, by a provident, enlightened and determined public authority and patronage. And the first civil duty of every free State is, to effect such an object, as far as it may be possible, by the liberal, fearless, and persevering application of the proper and requisite means. And then it would be free indeed—then its institutions and laws would be effectual; and then its citizens might, with some truth, be called freemen, and not, as many must be, without efficient legislation on the subject of popular instruction, slaves to passion and ignorance, and blind puppets in the hands of the more wealthy and enlightened few, who must govern them absolutely—and then the people would become more rational, and less sensual, more moral, more industrious, more happy, and much more honored and powerful, as well as more intelligent and virtuous.

Without the aid of public authority and munificence an effectual system for diffusing, in a proper manner and to a proper extent, the useful elements of a popular instruction, can never exist; and, without such a system practically and universally enforced, these States will

never do justice to the people or their institutions. Everything else is comparatively worthless; this, alone, will be everything; and, without it, nothing else will avail or be secure.

Let the States of this Union but follow, at once, the example of Prussia in this respect, and ere long, the Union itself will be harmonized, like the fabled Memnon, when tuned and inspired by the rays of the Sun. And then we, of this generation who have mourned over the symptoms of a retrograde movement in morals, and have felt alarm at the rapacity of the spirit of commercial and political adventure which, of late, has but too much, characthrized our country, may hope for better prospects and brighter days for the Republic, and may at last be solaced with an assurance that when we shall have gone to our fathers, our ashes and our children may repose in safety under the unmarred flag of the Union, and the sure protection of wise and just laws, wisely and justly administered. And then, too, we might well hope, that the Star Spangled Banner may long wave, o'er this land of the free and home of the brave; and that, though our Washington, and Franklin, and Madison, and Marshall are gone, our country's hallowed flag, at no distant day, rising higher and higher, will float aloft with the blood-stained ensign of the cross, to cheer and to guide, and to bless a regenerated WORLD.

INTRODUCTORY ADDRESS

ON THE HISTORY AND NATURE OF EQUITY.

[Delivered before the Law Class of Transylvania, November 1837.]

Were we, in either the subject or the manner of this initial address, to consult your taste instead of your reason, it would not be, as we have determined that it shall be, an appropriate precursor to the didatic course of the coming winter.

You have come here to learn, and it is my business to try to teach—from the beginning to the end of the session—the rudiments of the most indispensable and comprehensive of all the departments of human science. *Law*, natural and civil, elementary and practical, is not only multiform, but illimitable—embracing and upholding all that is most interesting to individual and to social man, upon earth.

And therefore, as our aim is utility rather than show—naked truth rather than fantastic drapery—it is my present purpose to make a few very plain and general suggestions concerning one of the branches of civil jurisprudence; a topic which cannot be made both useful to the student and alluring to miscellaneous auditors. Our subject, being one of dry, deep, and complicated law, appeals to the sober and discerning intelligence of the understanding, scorns all the embellishments of poetry, and needs none of the graces of rhetoric.

That code of unwritten reason called *"the common law"* established in England and adopted, with various modifications, by all except one of our North American States, is divided into two primordial departments distinguished by the incongruous titles "LAW" and "EQUITY." To exhibit an intelligible outline of the nature, origin, and history of the latter is the purpose of this preliminary discourse.

Though its peculiar title is inappropriate and delusive, and many persons, therefore, yet erroneously look upon it either as arbitrary and indeterminate, or as synonomous with *moral justice*, nevertheless, *Equity* is as consistent, as well defined, and as scientific as any other portion of the common law. It was, in its rude and remote origin, as arbitrary and capricious as the unregulated discretion of a king or of his arrogant chancellor. But, though, for some succeeding ages and even as late as the days of Lord Chancellor Bacon, it was still immature and altogether inconsistant with the certainty and stability of a known and established code of law, it has, at last, been matured by the enlightened reason of many consecutive generations into a beautiful system of jurisprudence, regulated by principles of rational law, corresponding with the genius of our civil institutions. And now no branch of American jurisprudence is more elementary, and, excepting our organic laws, none is more useful in practice, than that denominated equity. Still, lawyers and judges are generally less acquainted with it than with any other branch of elementary, or practical law; and even some of these seem yet to consider it as an indefinable something, above positive law, and as uncertain as popular or personal conscience.

Although law and equity are generally contradistinguished, the one from the other, yet, when considered with proper precision, they are essentially identical in principle. *Equity* is *law*—otherwise it would be inconsistent with that certainty and security in the administration of civil affairs which the supremacy of laws can alone ensure. *Equity* is *justice* too; but it is justice in a peculiar and technical sense; not variable, like the changing sentiments of the chancellor or the multitude, but as constant as the fixed and rational principles of civil right and civil law. In a judicial sense that cannot be equitable which is inconsistent with the law of the land. In the proper sense, a court of equity can neither make nor abrogate any rule of law; nor enforce what the law forbids; nor relieve from that which the law enjoins; nor decide otherwise than according to the principle and spirit of established law; nor interpret a contract or a statute so as to give to either an import different from that which should be ascribed to it by any other judicial tribunal—the intention of the contracting parties is their contract, and the intention of the Legislature is the law in every *forum*, and should, in all, be sought and determined according to the same principles and tests. In all these particulars, and in every essential respect, equity is law, and law is equity; and each, therefore, is *justice* according to the principles of civil right and obligation. Equity is but the philosophy of law—the

spirit and end of the law; and it may therefore be, not inaptly, defined to be *rectified law* administered in England by the lord chancellor, one of the king's ministers, and by subordinate courts of chancery, and in the most of the states of the N. American Union by courts of equity, in peculiar modes better adapted to the ends of perfect justice than the technical and imperfect remedies but too strictly adhered to in those ordinary tribunals called *"common law courts."*

With the exception of a very few anomalies, the only difference between *law and equity* is, not in the principle or rule or right, but in the *remedy* merely—and is, therefore, chiefly *modal*—and this remedial difference is threefold—that is: 1st. In the mode of suit. 2d. In the mode of proof and of trial; and, 3d. and principally, in the mode of *relief*. 1. An action in *"a common law court"* is brought by a writ and declaration of a prescribed form; the actor is called *plaintiff*, and a perilous and vexatious technicality is observed. A suit in equity is instituted by a summons and a bill in the style of a petition adapted to the facts of the case and uninfluenced by form or technicality, and the complaining party is called the *complainant*. 2d. In an action in a *"court of law,"* the proof is generally oral by witnesses in court, and the defendant cannot be compelled to make any disclosure against himself; in a suit in equity, the proof is documentary; consisting 1st, of the answer of the defendant, who may always, excepting in a few peculiar cases, be compelled to respond upon oath to all the material allegation of the bill; an efficient procedure adopted from the modern or Justinanean civil law, and also from the ecclesiastical courts, which appeal to the conscience of the parties litigant; and 2d, by depositions in writing, which may be taken by a commission or *dedimus potestatum*, beyond the jurisdiction of the court where a common law tribunal would have no authority to summons a witness; and the trial in courts of equity, in imitation of trials before the Roman Prætor and the courts Christian, is generally by the court without the intervention of a jury; and 3rd, the *relief* in equity, unlike that given by a *judgment* of a common law court in a prescribed or an unvarying form, whatever may be the character of the case, is by a decretal order called a decree, either interlocutory or final, giving a full and appropriate measure of justice according to the circumstances of the case, and effectuating the purpose for which all judicial remedy is given; and which, not unfrequently, could not be done by a court which is restricted to one simple mode of relief prescribed for and peculiar to each form of common law suit. A court of equity, moreover, may enforce its decrees and orders, in its own way, and according to its own discretion, by attachment or otherwise; but a court of law can enforce its judgments by execution only. And, as to parties and subjects of controversy, there is also an important difference between suits in courts of equity and actions in courts of common law. In a common law action, none but those who have the legal right, or against whom there is a legal demand, can be made parties; and generally, but one cause of action can be litigated in one suit; but a court of equity, anxious to prevent multiplicity and to make its decrees conclusive as to all matters, in any degree connected, and between all persons equitably interested therein, either immediately or consequentially, and who may be anywise affected, will not only permit, but will require all subjects of controversy thus connected to be united in one suit, and all persons thus interested or who may be thus affected by its decree to be made co-parties, or antagonists parties; and it is not material, if there be opposing parties, complaining and defending, whether those interested on the same side be co-complainants and others of them be made defendants, excepting that all who have a joint interest would generally be more appropriately associated as co-parties.

In all those distinctive particulars, courts of equity possess an eminent advantage over those of strict common law jurisdiction; for example; 1st. One suit in equity may effect the same end, which several actions at law might not, as certainly and cheaply, attain. 2nd. As there is no technicality in the pleading in equity, justice is not liable to be vexed, retarded, or frustrated by cobweb forms in suits in chancery, as is but too often the case in common law actions. 3rd. The parties having a right in equity to mutual discoveries upon oath, may thus establish important facts which could not always be shown in legal actions. 4th. The depositions of witnesses may be taken in suits in equity, when in consequence of their remote residence, their personal attendance in other courts could not be procured. 5th. The modes of proceeding in equity may secure an economy, and a certainty and security, which might be, elsewhere, unattainable. 6th. An enlightened and impartial judge is more apt to make proper deductions from facts than an ordinary jury, and if a judge, sitting in equity, desire an inquisition he can have it for the purpose of informing and aiding him in doubtful questions of fact; but once having jurisdiction, he will not remit a case to a common law tribunal for trial, and is never *required* to impannel a jury except in a few cases, in which some statute directs it; as, for example, where there is an issue of *devisavit vel non*. And certainly there is, at this day, and in this country, no peculiar value in the trial by jury except in criminal cases, and in those, perhaps, of tort; in none of which, has a court of equity, jurisdiction. 7th. But the most obvious and eminent advantage resulting from proceeding in a court of equity arises from the power to adapt the relief to the exigencies of the case. Thus, for example, whilst for a breach of contract, a court of common law can only adjudge damages often inadequate, a court of equity may compel a specific execution; and whilst for fraud, damages only can be adjudged in a common law action, a rescission of the contract, and a restoration of property, and a reinstatement of the parties *in statu quo*, may be decreed by a court of

equity; and thus the true spirit and end of the law may be effectuated in equity, when the accustomed technicalities in other courts might not only embarrass, but altogether defeat them.

The distinction between *equity* and *law*, as separate departments of jurisprudence, and the existence of different tribunals called *"courts of equity,"* in which *equity* only is administered, and of others called *"courts of law,"* in which technical law alone is applied, is an anomaly peculiar to England and to some of the states of our Union, which, as well as the true nature of equity itself, can be satisfactorily explained and understood only by the history of the common law of England, from the origin of equitable jurisdiction; which was first chiefly *assumed* by the chancellor of England, and which, after violent and protracted conflicts between that officer and the common law *judges*, has at last attained its present maturity and firm establishment.

The chancellor of England now possesses both legal and equitable jurisdiction; and is, therefore, a *judicial* as well as a ministerial officer. Anciently he had no other authority than that which was delegated to him by the crown, and was, therefore, ministerial or executive. As the fountain of justice, the king had the prerogative right of issuing original writs and cancelling letters patent, &c., and as *parens patriæ*, he had the like right to the custody of idiots and lunatics, the guardianship of infants, &c.; and these being onerous to majesty, were delegated to his chancellor as his official organ appointed by only delivering to him the great seal of which he is the legal depository. As the powers thus delegated were altogether prerogative, the chancellor, in respect to them, possessed what is denominated an ordinary jurisdiction, coeval with the authentic history of the common law itself. And therefore, to the extent of those delegated powers, the British chancery was as ancient as any of the common law courts of England. But at first the chancellor had no equitable jurisdiction; this he afterwards mainly assumed, as will presently appear: and when assumed and established, it was called his "extraordinary jurisdiction," in contradistinction to his delegated legal authority, denominated his "ordinary jurisdiction." And though the same officer acts now in both spheres, his powers in each are as distinct and independent as the jurisdiction of a court of law and that of a court of equity are understood to be here. Consequently, a mere court of equity here has none of the prerogative powers of the chancellor of England, except so far as they may have been expressly delegated by statute.—Such courts have no inherent authority to issue judicial writs, nor to cancel letters patent, nor to appoint guardians for infants, excepting where an infant being a party to a suit in equity, the judge, having jurisdiction over the case, has the incidental power to appoint a guardian *ad litum*, or a *curator*, to take care of property involved in the suit; nor to take custody of lunatics and idiots; nor to hold inquisition as to lunacy or idiocy. The cognizance of all such cases belongs to the chancellor of England, not as a judge in equity, but as the ministerial organ of the king; and when there is an issue of fact in any such case he cannot try it, but must remit it to another tribunal to be tried by jury. Lord Redesdale said that "the jurisdiction in the three cases of infants, idiots or lunatics and charities, does not belong to the court of chancery as a court of equity, but as administering the prerogative and duties of the crown;" and this is doubtless true with this qualification, that when a charity is connected with an available trust, a court of equity may, as in other cases of trusts, take cognizance of it, but not because it is a *charity*; for as a mere charity, the chancellor, acting as the agent of the king, and not as a judge in equity, had a delegated power over it to the exient of the pre-existent prerogative authority of the crown.

The term chancellor is borrowed from imperial Rome, where the emperor had a confidential minister who acted as his register and secretary, and was called *cancellarius*, from the circumstance, as many antiquaries believe, that the place where he usually did his official business was enclosed by cross bars called *cancelli*.

In England there was a similar officer with the like ministerial functions, long prior to the Norman conquest, and even from time immemorial—to whom were confided the powers just described, and some other prerogatives of the crown.

But as late as the reign of Henry II, the chancellor had no equitable jurisdiction; for neither *Glanville* nor *Bracton* has alluded to a court of equity as existing in his day. And though many believe that the chancellor had, to some small extent, assumed equitable jurisdiction sometime prior to the reign of Edward III, yet there is no satisfactory memorial of the recognition, or even assumption of such authority, until the twenty-second year of that King's reign: when the sheriffs of London were ordered to give notice that "all such business as, by special grace, was cognizable by the King, should thenceforth be prosecuted before the chancellor;" which was afterwards, in the 37th year of the same King's reign, ratified by an act of Parliament. The power thus delegated was the arbitrary and unregulated prerogative, which had been immemorially exercised by the King, of redressing grievances, and even controlling suits and judgments, upon the petitions of his complaining subjects, and which had, doubtless, been occasionally delegated to the chancellor prior to the general delegation sanctioned by the act of Parliament. And here we have the principal reason why bills in chancery are yet in the style of petitions.

But a jurisdiction, more like that now considered equitable, was, about the same time, probably afterwards, *assumed* by the chancellor.

The Roman Prætor, who decided according to rules prescribed by himself, and called *jus*

honorarium, exercised an arbitrary discretion in overruling that which he deemed harsh or unjust, and supplying whatever he considered defective in the positive law. The emperor Augustus, by one of his imperial edicts, ordered the Prætor to enforce the secret trusts which, under the name of *uses*, had been frequently contrived for the purpose of evading the law restricting testamentary dispositions of property to certain persons, for whose use the dying owner, in order to effectuate his own wishes, devised it, with a secret trust to another. But, as there was no power to compel a discovery—the remedy thus prescribed by Augustus was frequently unavailing—and therefore an edict of Justinian, following the example of the ecclesiastical courts, empowered the Prætor to compel the respondent to answer the complainant on oath.

Sometime in the reign of Edward III, for the purpose of evading the mortmain acts, the ecclesiastical party in England resorted to the Roman device of *uses*, which afterwards, during the desolating civil wars between the houses of York and Lancaster, were adopted by both parties as a common mode of conveyance, to secure the beneficial interest in lands from forfeiture to the successful party; and those trusts, though not recognized by the ancient common law, which protected the legal title only, were sustained and enforced in England by the chancellor, who, being in those days, an ecclesiastic and instructed in the civil law, adopted many of its principles even though they conflicted with those of the common law. The chancellor of England framed and issued writs in all actions in the common law courts; and when, by the extension of business, the expansion of commerce, and the progress of social development, the anciently prescribed forms became unsuitable for new cases, he refused to prescribe a new and appropriate form of legal process, and chose rather to administer relief in his own court on petition to himself as chancellor. And this was, doubtless, one of the sources of his jurisdiction in equity. The first case in equity of which the British archives, as far as hitherto explored, furnish any authentic history, occurred in the reign of Richard II, and was a case of trespass, in which the chancellor interfered and controlled a common law court, and relieved the petitioner, on the alleged ground of the partiality and sinister influence of the sheriff. This, though not allowable now, was at that day, only what the king had been in the habit of doing upon petition to himself antecedently to the delegation to the chancellor of the once unlimited royal prerogative of redressing grievances.

But such cases, and even those of trust, which may have been acted on by the chancellor prior to the fifth of Richard II, must have been, not only rare, but *exparte*, and therefore, according to the notions of more modern times, extrajudicial; because, until that year, there was no mode of compelling the appearance of the party complained against. But during that year John Waltham, bishop of Salisbury, who was keeper of the rolls, adopted, for the first time in the chancery court, a summons for compelling—under a prescribed penalty, and therefore called a *subpœna*—an appearance and answer upon oath. And from that time the equitable jurisdiction of the chancellor was rapidly extended, until, tho' it was not only unregulated, but had to a great extent been usurped, and, therefore, had awakened the jealousy of the common lawyers, it was legalized by the statute of seventeenth, Richard II, to the extent to which it had been previously either delegated by the King or usurped by the chancellor. Afterwards, the chancellor, encroaching more and more, on the courts of common law, and deciding according to his own caprice, without regard to any fixed rule or uniform practice, a statute of 4, Henry IV, declared that judgments should be irrevocable in any other mode than by writ of error or attaint. But continued extensions and encroachments by subsequent chancellors having occasioned the celebrated controversy between Lord Coke, then chief justice of the King's bench, and chancellor Ellesmere, King James and his counsellors determined that, though the chancellor should have no power to reverse or overrule a judgment of a common law court on the ground of error, he might, by acting on the person of the creditor, enjoin the enforcement of his judgment if there should be any equitable ground, not available in the common law court, for enjoining it.

Cardinal Wolsey, who was, for some time, in the reign of Henry III, chancellor of England, greatly extended the equitable jurisdiction of that court; but his decisions, though generally approved, were as arbitrary and capricious as his own will.

And though Sir Thomas Moore, who succeeded Wolsey, and was the first chancellor who had studied the common law, and Bacon, an enlightened lawyer and philosopher, who was afterwards chancellor, endeavored to regulate equity by principle, and thus to give it something like system and certainty, it was not matured into anything like a science, but was considered as, in a great degree, arbitrary and unlimited, until Lord Nottingham, (Sir Hineage Finch,) who was, for nine years, chancellor in the reign of Charles II, brought it from chaos into comparative order and consistency. And from his day the chancellor's decrees in equity, which had never before been reported or admitted to be binding as precedents, were regarded as authoritative—and thus Lord Hardwicke, and Lord Somers, and other distinguished chancellors—all eminently learned in the principles of both the common and the civil law, following, as far as they should have done, former precedents, and always deciding according to their *judicial* notions of principle and analogy—finally established, upon the combined principles of the civil and the common law, an harmonious and authoritative system of equitable jurisprudence, deemed far superior to either of the elements of which it is compounded.

And now, as already suggested, the chief difference between a court of law and a court of equity is, that the former is restricted in its proceedings to prescribed forms, which are not unfrequently insufficient for fulfilling the end of the law and securing a full measure of justice according to the spirit of rational jurisprudence, and the other, looking to the aim of the law, adapts its remedies, and its modes, and its measure of relief to the exigencies of each case, and administers that justice which it was the object of the law to secure. The hiper-technicality of the ancient common law courts of England, and their punctillious adherence to forms and remedies often inappropriate and inadequate, induced the chancellor to *assume* a jurisdiction which the public opinion finally approved and sustained, and which, when regulated, as now, by the *principles of law*, subserved the purposes of justice, and remedied a defective and often perverted judicial administration, without either subverting the policy or frustrating the spirit of the common law, or shaking that stability which can be secured only by the supremacy of an established and known judicial system. No despotism could be more intolerable or vexatious than that of arbitrary and erratic discretion; and therefore equity would be a *monster*, if, as in its infancy, it were now either lawless, capricious, or uncertain. But enough has been already said to prove that equity is not now, in England or America, what it was prior to the time of Lord Nottingham, and in the days of Grotius and of Poffendorf, nor the *laximentum legis* of Cicero—and to show that distinguished jurists in modern times, feeling the necessity of uniformity and stability in the judicial administration of justice, and co-operating with the spirit of the age in which they lived, have finally succeeded in circumscribing equitable jurisdiction and power, within rational and well-defined bounds, prescribed by principle and analogy; and have thus blended the harmonies of the common and the civil law—each the offspring of a prolonged existence and rectified reason, that belong to no single age of the world.

Even at Rome, the various rules adopted by different Prætors, and especially the precedents of successive judges of that class, to whom trusts or cases *fidei commissa* were confided, were, in the progress of time, collated and made authoritative and binding by "the *perpetual edict*."

But no system of equity ever equalled that matured by the wisdom of the Anglo-Saxon race, and which we are now considering.

Equitable jurisdiction, as now here and in England established, is limited to civil cases arising from contract express or implied, and is well defined by plain and inviolable rules.

1st. The jurisdiction of a court of equity is either preventative or remedial. As prevention is better than cure, and preventive justice therefore not only is better than that which is punitory or retributive, but is the ultimate object of all human law; and as courts of mere law,—though anciently they used, to a very limited extent, some imperfect legal remedies called *brevia anticipantia*, for staying impending wrongs—would not, to any general or very useful extent, interpose for preventing injury or loss—courts of equity have assumed jurisdiction for that purpose in cases in which there is danger of a loss that cannot be fully and certainly repaired by an ordinary legal remedy, and which are therefore all fit subjects of an anticipating equitable cognizance upon bills *quia timet*, so called because the complainant fears some irremedial damage, which therefore ought to be prevented. Thus a court of equity will compel the surrender and cancellation of a forged or satisfied obligation —because otherwise an unjust use might be made of it after the death of the apparent obligor, or a loss of his proof; and, for the like reason, a court of equity will enjoin a trespass whenever the damage would be irreparable, or the remedy in a court of law inadequate —and will, on the same ground, enjoin waste, or the sale of a copy right, or the abduction or destruction of property of a peculiar value to the owner; in which cases a jury could not fully estimate the damage sustained by the injured party, if the apprehended wrong should be done—and in which, there is no adequate remedy in a court of technical law: and thus also a person who owes a debt, demanded by several independent and antagonist claimants, strangers in law to each other, may, by bill in equity, compel the claimants to interplead so as to secure himself against the danger of being forced to pay the same debt more than once, which, without the aid of a court of equity, might be the case, as judgment in favo of one stranger could not be pleaded in bar of a suit by another for the same demand.

These few illustrations are sufficient to show the nature and value of the preventive jurisdiction of courts of equity.

The remedial power of equity is either exclusive, concurrent, or auxiliary.

1st. The jurisdiction of a court of equity is exclusive, when *in foro conscientiæ*, or according to universal law, there is a right which (except in a few peculiar cases) is not inconsistent with either the prohibitions or policy of the local positive law which, being silent respecting such a right, or not clearly recognizing it, affords no remedy for enforcing it. This branch of jurisdiction may be illustrated by express trusts, which, being the creatures of equity, and neither recognized nor prohibited by the strict common law, will be enforced by a court of equity only. In such cases of trust, and in many other cases depending on the same principle, it is said that there is an equitable, but no legal right; yet this distinction is not essential, but modal only; for, in the substantial and ultimate sense, equity is law, and that which is equitable is, and of course must be, sanctioned by the common law, as now understood, though, in its origin, equity was an arbitrary interpolation by the ecclesiastical chancellors of England at first and for a long time resisted, and finally acquiesced in by those organs of public opin-

ion and authority by whom the common law was created, improved, and expounded. Like every other element of the common law, equity has gradually and imperceptibly grown and expanded into a broad, deep, and refreshing stream, whose sources, being small, various and distant, are almost as obscure and legendary as those of the Nile. And the characteristic distinction now recognized between equity and other law is, that the one is common law, first introduced and adopted by chancellors, and administered by tribunals called courts of equity, and according to the liberal principles and flexible modes of *civil law*, and the other, modified and improved also by judicial legislation, is administered by other courts denominated courts of law, and according to the inflexible forms of the more technical common law. Thus, though once there was no such available right as the equity of redemption, which was first established by courts of equity, and though also that right, however undoubted now, is called equitable and not legal, nevertheless it is recognized and upheld by the modern common law; otherwise it could not be enforced by any judicial authority. But the remedy being still, as at first, in a court of equity only, the right itself, though sustained by law, is called *equitable*, in contradistinction to that class of rights which, being enforcible according to the modes peculiar to the common law, are therefore distinguished as *legal*. And thus also the modern right to a specific execution of a contract—having been first recognized by courts of equity and being enforced only by bill in chancery—is called equitable merely—but certainly, in the comprehensive and more effectual sense, it is a legal right—that is—a right sanctioned and upheld by the common law, as now existing and understood.

In all such cases of right recognized by the common law, but not enforced or protected according to its peculiar forms of proceeding in courts of strict and technical law, a court of equity has yet, as at first, exclusive jurisdiction.

2nd. In some classes of cases in which a right was first recognized by courts of equity, and was enforcible in no other forum, the common law courts, becoming more liberal and enlightenod than they once were, and following the example of courts of equity, have adapted their remedies to the cases, and now exercise a concurrent cognizance over them. Thus, though anciently a court of law would not sustain an action on a lost bond, because the forms of pleading required profert which could not be made, and therefore, courts of equity assumed aud once exercised an exclusive jurisdiction to give relief to the obligee, now an action of law may be also maintained —and, therefore, as the assumption of jurisdiction by a court of law will not oust the pre-existent jurisdiction of a court of equity, the case of a lost bond is now one of concurrent cognizance by courts of law and courts of equity; in either of which the obligee may elect to sue—but, having had a final decision in one of them, he cannot sue again in the other for the same cause.

But there is another class of cases in which, though the common law never withheld its peculiar remedies, yet, as they were not always adequate or effectual, courts of equity assumed a concurrent jurisdiction for the purpose of effectuating the true object and spirit of the law, which the common law forms could not always do. Thus, as fraud, from its very character, may escape detection unless the injured party can have the benefit of a discovery from the fradulent party upon oath, and as moreover a rescission of a fraudulent contract, and a consequential restitution may be important to justice, and the common law forms are not adapted to such an end—therefore courts of equity assumed and now possess, concurrently with courts of law, jurisdiction in most cases of fraud. So, too, in a case of mutual accounts, difficult to prove without a discovery on oath by the parties themselves, and in which also there is an implied confidence or trust, courts of equity have assumed and now exercise a concurrent jurisdiction, because the legal remedy is not perfectly adequate.

3rd. Sometimes a court of law, restricted by its forms, cannot effect fully or certainly the end of its own exclusive cognizance of an action pending before it—and to supply such a defect in the administration of justice by such a tribunal, a court of equity may, so far as may be necessary and consistent with the *principles* of law, interpose in aid of the law court, and, by exerting its peculiar and extraordinary powers in effectual modes, give efficacy to the law.

Thus, when property involved in litigation, in a common law action, is in danger of destruction or abduction beyond the jurisdiction of the court, a court of equity may, on a bill containing appropriate allegations, enjoin the removal or destruction of it—and thus also a court of equity may compel a party to an action at law to make discovery of facts material to the issue, and to be used as evidence on the trial of it—and, after a judgment, may compel a discovery of property subject to execution, or remove incumbrances and extinguish fraudulent liens, in subservience to the common law remedy by execution; but a court of equity will not interfere in these latter cases, unless the complaining party will show that he had tried ineffectually a *fieri facias*, and thus show, *prima facie*, that the ordinary legal remedy is insufficient—nor, as no court can subject that to execution which the law has exempted, can a court of equity, in aiding a common law court in enforcing its judgment, compel a discovery, or decree the subjection to execution of property not liable to levy and sale, according to common or statute law; a right to discovery alone gives jurisdiction; and upon discovery a court of equity can only compel the production of the property so as to be levied on; and can thus only aid the common law Judge to do that which he would have a right to do if his officer could, without the aid of a

court of equity, find and seize property liable to execution.

As the jurisdiction of a court of equity, as now established and defined, arises chiefly from the defectiveness or unsuitableness of the prescribed remedies in a court of law—is limited to the end of effectuating the true spirit and design of the law—and cannot be extended beyond what may be comprehended within the genius, policy, and aim of the law—it may be tested by three general facts. 1st. If, according to universal law, not inconsistent with the positive local law, there is a right but no remedy in a court of law, a court of equity may take cognizance of the case, and has, of course, exclusive jurisdiction. 2nd. If there be both a right and a legal remedy, or, in other words, a legal right in a particular class of cases, but the remedy in a court of law be doubtful, or difficult, or inadequate, a court of equity has concurrent jurisdiction. 3rd. When, in a particular class of cases, the legal remedy perverts the end of remedial justice—as, for example, when judgments were rendered and enforced for the penalty, instead of the sum really due according to the spirit of a penal bond—a court of equity may interpose, and by granting appropriate relief, fulfill the object and intention of the law, and prevent an abuse of a perverted legal procedure.

The only objects of a court of equity are reducable to this three-fold classification.

Thus the *modal* difference between equity and law, and the character of equitable jurisdiction, and the objects or tests of that jurisdiction, being each distributable into three classes, we have, not only the mystic multiple 3, but the classic number 9—and by adding the subjects of jurisdiction, equity presents, on its front, the sacred number 12; for the subjects of equitable jurisdiction may also be comprehended in three classes—that is, *Fraud, Accident* and *Trust*—each understood according to a liberal and comprehensive import peculiar to equity, which considers fraud as actual or constructive—accident as any circumstance (excepting fraud or trust) which disables a party, in a class of cases, from obtaining justice by the ordinary legal remedies—and *Trust* as express or implied, and as, therefore, embracing cases in which one party holds a right for another, or to which another has an equitable claim derived from contract, resulting from some voluntary act, or implied by law.

The foregoing outline exhibits a very general and comprehensive map of the history and elements of that branch of jurisprudence denominated equity—and the very fact that it is jurisprudential shows that it is an established and defined system of principles as authoritative and inviolable as the law of the land. Being engrafted on the common law, there may be no good reason why, like other departments of jurisprudence, equity should not now be administered by all courts of law. "A court of *Equity*," proceeding without form, and deciding according to one set of common law principles, and "a court of *Law*" restricted to prescribed forms, and deciding according to other principles of the same code, in the same country, and with an essentially different effect, exhibit a singular and rather vexatious anomaly. In Louisiana, where the civil, and not the common law, prevails, there is, of course, no such distinction as that between law and equity—and in Pennsylvania, where there are no courts of equity, justice is administered by the same court, according to both equity and law. And were this the case universally, the almost incomprehensible distinction between *Law* and *Equity* would not exist, but American jurisprudence would be understood to be a homogeneous system, operating equally and alike in every forum.

However arbitrary and unauthorized may have been the first encroachments on the common law courts, and the modifications of the common law itself by the clerical chancellors of England, there can be no doubt that the ultimate result of the innovation is a very great improvement of our complex civil code, mitigated and liberalized, as it now is, by principles transplanted into it from the civil law by ecclesiastical authority, and which would never perhaps have taken root in its uncongenial soil, had not the first seeds been planted and watered, and sheltered by the hand of arbitrary and lawless power—and thus, by clerical usurpation, the rough and simple genius of the ancient common law has been greatly refined, invigorated and expanded.

But, as already suggested, there are even yet some anomalies in equity; and it is therefore not universally true, that a court of equity has no power to decree relief contrary to the doctrines of the common law. There are some few cases in which, though the civil and common law conflict, the one is administered in a court of equity, and the other alone prevails in a court of law. Thus, though according to the common law, as inflexibly enforced in a court of mere law, a married woman can neither make a valid contract with her husband, nor own separate property in her own independent right, yet in a court of equity, (the doctrines of the civil law there prevailing in such cases) such contracts and such rights may be recognized and enforced.—thus also, a bona fide sale of a chose in action, though *void* according to the common law, is valid and available in a court of equity—and thus also, certain trusts, denominated executory, are construed and enforced according to the intention of the parties, though in a court of law the arbitrary application of technical rules may give them an essentially different effect,

With these and some few other similar exceptions, equity and law are consistent and identical in principle and object, and differ only in remedial power and effect.

But though the discretion of a chancellor is, in no degree, personal or arbitrary, but is essentially judicial, it is nevertheless regulated by some rules and principles peculiar to equity—the chief of which are the following: 1st. That he who seeks equity must first himself do equity. 2nd. That a complainant must

come into court with clean hands—that is, he must have been fair, just and punctual. 3rd. The vigilant only, and not the supine or negligent, are entitled to the consideration of a court of equity. 4th. A court of equity will not enforce a penalty, or forfeiture, or an oppressive contract. 5th. A court of equity will not compel a bona fide purchaser to make discovery, nor permit an infant to be prejudiced by the negligence of the *prochien amy* or guardian *ad libem*, nor take a bill for confessed against infancy. 6th. For many practical ends, equity considers that as done which ought to be done.

7th. As already suggested, whenever, according to rational law, there is a right neither recognized nor interdicted by the Saxo-Norman common law, a court of equity will uphold it, and the judicial discretion of the chancellor is governed by the code of universal reason and natural right, as understood and defined by elementary writers and eminent jurists.

8th. Reciprocity and conscience limit the discretion of a chancellor in affording or withholding remedy in cases—especially of concurrent jurisdiction—and the rescission and specific execution of contracts will present apposite illustrations of this kind of equitable discretion. Thus a court of equity cannot rescind a contract on the single ground of inadequacy, unless it be so gross as *per se* to indicate *fraud*—but if the party, who is most to be benefitted by an unequal executory agreement, sue for a specific execution of it, the court may, on the ground of hardship alone, refuse to give relief, and remit the complainant to his ordinary legal remedy, which, in such a case, may be deemed all sufficient for the purposes of justice contemplated by the spirit of the law. In such a case the chancellor has no discretion to relieve a party from the legal obligation of a contract which was voluntary and uninfected by fraud—and yet he should not use his extraordinary power for enforcing it, when the legal remedy is deemed sufficient for all the ends of full and perfect justice.

9th. When parties are in *equali jure*, the defendant must prevail—and when equities are equal in quality, the oldest is preferred according to the maxim—*qui prior est tempore potior est jure.*

10th. Equity not only follows the law, that is, the principles and analogies of the law, but it has also adopted rules partly analogical and partly peculiar respecting the limitation of suits by time.

No statute of limitation, being, in terms, applicable to suits in equity, no statutory limitation can apply *proprio vigore* to courts of equity. But those courts have, upon a principle of analogy, voluntarily adopted the statute of limitations in all cases of concurrent jurisdiction, and apply it in such cases, excepting in those of fraud and mistake, precisely as it applies to the concurrent remedy in courts of law. But as, in such cases, it was adopted voluntarily, it was but reasonable that it should be so qualified as to operate justly and consistently with the spirit and end of all statutory bars—and, therefore, in cases of fraud and mistake, in which there may be either an action at law or a suit in equity, time in equity will be computed only from the discovery, and not, as in a common law action, from the perpetration of the fraud.

Cases of exclusive jurisdiction in equity are, in respect to the application of the statute, of two classes—the first class embracing those cases in which, if there could be any legal remedy, it might be barred by the statute; as, for example, a superior equitable right to land, of which the holder of the legal title had been adversely possessed for 20 years after the equity accrued—and the second class consists of all those cases in which, had there been a legal remedy, it would not have been subject to the operation of the statute; as, for example, an express trust or a mortgage, unaffected by either proof or presumption of an adverse possession in fact. In the first class, the statute applies just as it would against a legal remedy; but in the second class, it may operate and can only operate presumptively.

When the only difference is in the form of remedy, the modern law will apply the statute of limitations as a presumptory bar to a suit in equity, whenever, on the same facts, it would be so applied to an action in a different forum, if such were the remedy for the same cause. This is what is called the adoption of the statute by analogy.

But when the statute would not have applied effectually as a bar to a legal, it can never bar an equitable remedy for the same cause of suit. This, too, is analogy; and the class of cases most fitly illustrative of this branch of the modern doctrine, is that of mortgages and express technical trusts. Let us, for example, take the case of a suit to foreclose a mortgage 20 years after the debt became due, the mortgagor having, all the time, retained the possession of the mortgaged land. If an action of ejectment, to place the mortgagee in possession, had been brought, the lapse of 20 years would not have operated *per se* as a statutory bar—and therefore the same fact cannot so operate in the suit of equity to foreclose. But in both cases—and in each equally and alike—time would operate as a presumptive bar. The reason why time would not, in either case, operate as a statutory bar, is because the possession, in its origin, was under the mortgage, and therefore amicable, and not adverse, unless proved to have become so *in fact*—and such proof may result from an ostensible possession in fact, in the character of *owner*, and not as *mortgagor*, or from a presumption of law arising from the lapse of 20 years unexplained. But such a presumption does not operate inflexibly, like the statute, which can be eluded only by proving some exception provided for in its saving clause—but may be repelled and defeated by proof of any fact inconsistent with the legal presumption.

The lapse of 20 years is now the fixed period of *prima facie* legal presumption, in all com-

mon law remedies, whatever may be the form of remedy or mode of relief. And, therefore, in an action on a bond which had been due more than 20 years, though the defendant, could not here availably plead any statute of limitations—nevertheless, if he plead payment, the court will instruct the jury that the lapse of 20 years unexplained is presumptive proof of payment, and that, in the absence of any countervailing fact, they should find for the defendant.

But proof of a partial payment, or of acknowledgment of the debt, or of inability of defendant to have paid, within the 20 years, may be sufficient to repel the legal presumption, and entitle the plaintiff to recover.

So, in a suit to foreclose a mortgage, if the mortgagor plead payment or release, a continued possession by him for 20 years after the debt became due, would, unexplained, be presumptive proof of the payment or release, and the law would then also presume that his possession had, from the time payment was due, been in his own right, and not as mortgagor. But, as in the suit on a bond, proof by the mortgagee of any fact inconsistent with these legal presumptions, might be sufficient to repel them, and entitle him to a decree.

The same principle applies to every suit in equity, by a beneficiary against his trustee, who had been in possession more than twenty years.

But in all such cases, proof of adverse possession *in fact*, openly and ostensibly held for 20 years, would make the time operate as a statutory, and not merely as a presumptive bar, however tortious such conversion and usurpation or breach of trust may have been; for in every such case, the party wronged had a known cause of suit, and from the moment of its accrual the statute commenced running; and the possession being adverse, and the only difference being in the form of suit, analogy applies the limitation in equity just as it would have applied as a bar to a legal remedy, had any such been appropriate.

We may now see how material the difference is between a statutory and a presumptive bar, and how indiscriminating and delusive are those dicta which suggest that, as between mortgagor and mortgagee, the possession by either of these for 20 years operates as a statutery bar against the other.

But still, as policy and uniformity require that even in such cases there should be some fixed rule of prescriptive limitation, courts of equity have, in imitation of the statutory limitation to the right of entry, adopted 20 years as the period of legal presumpiton against a dormant equity; but which period, unlike the period adopted in cases of concurrent remedy, does not, in such a case, operate inflexibly as a statutory bar, but only presumptively; and therefore any fact that will rebut the arbitrary presumption thus arising from the lapse of 20 years, in a case of the second class, exclusively cognizable by a court of equity, will be sufficient to defeat the *prima facie* bar to the suit.

The foregoing is a very imperfect and general sketch of the history and principles of equity in England. It exists and is practised in most of the States of our Union substantially as in England, whence, at different times, and with various modifications, it has been adopted here. No court had chancery powers in Virginia prior to 1700—nor in New York prior to 1701. And equity, administered in some of the states by distinct courts, and in others by courts, like that of the Exchequer in England, combining both legal and equitable powers—was not matured into a well defined system in any of the United States sooner than about the close of the last century. But being now established on principles of universal reason and justice, which are infinite and eternal, and as expansive as the destiny of man, it will progressively improve and be improved, and assimilate and be assimilated, until there shall be but one law, in name, in substance aud in practice—and especially in this *our* land of intellectual independence, where the science of jurisprudence, as well as every branch of practical knowledge, may find its most congenial soil and vivifying sun, and where the coming generation may achieve and enjoy the noblest of the many moral triumphs of our race.

The vexatious delays and uncertainty to which litigants are generally subjected in courts of chancery, are not ascribable to any defectiveness in the principles or peculiarity in the doctrines of equity, but result altogether from the unsuitable organization of most of those courts, and the loose practice which generally characterizes them. And whatever may be the excellence of theoretic equity, practical equity must ever be liable to just criticism without some essential improvement in organization. As long as our *Circuit Courts* in Kentucky shall continue to exercise, by distinct remedies, the powers of Judges both of equity and strict common law, suits in chancery will be protracted, neglected, defectively prepared, and of course, often and almost always erroneously decided. Nevertheless, with all our practical defects, which could be easily remedied—equity is, in many respects, even here eminently useful; and we cannot doubt the day is not far distant when, by proper reform in its administration, it will be made in practice what it is in principle—the most just, efficient and rational branch of the common law.

It will appear from the foregoing sketch of a mere outline of equity, that it is *law* and justice in a peculiar and rational sense—law in its spirit, and justice in its essence—not the *summum jus* of the letter of the law, which, like that of the gospel, killeth, and which therefore is often *summa injuria*, but that regulated and enlightened justice which is the basis of all happiness, and which, therefore Cicero in his offices, declared to the *"omnium dominaet regina virtutum,"* "the mistress and queen of all the virtues. And it will be seen also that equity is not now what it once was in the days of Aristotle, of Papinian, of Grotius, or even of Bacon—the personal "discretion of a good man" or the correctrix of that in which the

law, in consequence of its universality, is defective"—but that it is more nearly what Blackstone defined it to be, "the soul and spirit of all law," and by which "positive law is construed, and rational law is made." And, moreover, it will become manifest that equity, as now practised in England and in these states, has never been exactly defined by any publicist or jurist, and is not, even now, easily defined, though it may be well understood."

It may be here also perceived how—through the principles of her civil code, blended with the common law by courts of equity—fallen *Rome* will continue to maintain by her *reason*, an extensive and indestructible empire for countless ages after the destruction of all the other and more pretending monuments of her republican glory, or imperial power and magnificence.

Nor can it escape observation that—with the exception only of the christian religion—equity is the best friend that *woman* has, or ever had. It does not, like the gothic common law, destroy the separate legal existence of the wife by merging it in that of her husband—nor make *coverture* a state of vassalage—nor, even like the civil law, give to wives inconsistent rights and injurious authority—but it will, to a just and rational extent, protect married women in their personal identity, and in the enjoyment of property and of mental independence.

But we must not forget that equity—vast and useful as it must be admitted to be—is only one of the many streamlets that contribute to the shoreless reservoir of universal law. Even equity, and the more technical and ancient common law combined are, to the great ocean of all law, but like our noble rivers, Mississippi and Missouri, whose commingled volumes—limpid and turbid—though long distinguishable, are destined to a more perfect union and identity in the continued flow of one majestic stream bearing its beneficent contributions to the bosom of the great deep.

And thus it is evident that, wherever the Anglo-Saxon tongue is spoken, modern English equity is among the most useful of the elements of that copious system of civil jurisprudence, which is the rule of civic right and duty—the mother of all other arts and sciences—the upholder of order and liberty—the conservator of peace—the creator and preserver of all the social relations—the guardian angel of the most endearing charities of domestic life—the tutelar divinity that guards infancy, weakness, and innocence—and without the protection of whose strong panoply this earth would be a wilderness, our whole race savages, and our moral world itself a cheerless, trackless, hopeless waste.

PRELECTION.

Lexington, Nov. 27th, 1838.

Sir—We, the undersigned, having been appointed by the Law Class of Transylvania University, a committee to wait upon your honor, respectfully request a copy of your Introductory Lecture for publication, believing it to be a just and able eulogy on the life and public services of the late Hon. John Boyle.

Respectfully, your ob't servants,

WILLIAM T. BARBOUR,
WM. R. CARRADINE,
WM. H. ROBARDS,
M. R. SINGLETON,
Committee.

Hon. George Robertson,

Lexington, Nov. 28th, 1838.

Gentlemen—Thanking you and the Law Class for your kind sentiments, I commit to your discretion and disposal the Introductory Lecture, a copy of which you have requested for publication.

Yours, respectfully,

G. ROBERTSON.

Messrs. Barbour, Carradine, Robards, Singleton.

ADDRESS.

It is the sacred duty of every generation to preserve faithful memorials of the character and conduct of its distinguished men. The memory of the illustrious dead should never be lost in the oblivion of time. Biography is the soul of history. The maxims and motives and destinies of prominent men, as exemplified, from age to age, in the moral drama of our race, constitute the elements of historic philosophy, and impart to the annals of mankind their only practical utility. When, and only when, illustrated by the life of an eminent man, virtue or vice, knowledge or ignorance, thus personified, is seen and felt as the efficient lever of the moral world. The lives of conspicuous men help to characterise their day and country, and, like sign boards on the high-ways and the bye-ways through the wilderness of human affairs, tell the bewildered pilgrim where he is going, what way he *should* go, and the weal or the woe of his journey's end.

Here, with trembling hand, the gifted Burns points to the ruin and despair which lie in ambush on the broad and voluptuous turnpike on which his noble genius was driven to destruction—here sits the cold bust of the captive Napoleon, scowling on the iron railway, where the steam-car of unrighteous ambition, exploding with a tremendous crash, shivered all his gigantic hopes and projects of power—and here, too, stands the god-like statue of our Washington, consecrating the straight and narrow pathway of virtue, which leads the honest man to everlasting happiness, and the pure patriot to immortal renown—and here, every where, we see exemplifications of the vanity of worldly riches, the wretchedness of selfish ambition, the usefulness of industry, and charity, and self-denial, and blissfullness of cultivated faculties, and of moderation in all our desires and enjoyments.

The lessons, thus only to be usefully taught, are practical truths echoed from the tombs of buried generations in the mother tongue of all mankind.

Greece, and Rome, and France, and England, have honored their dead and contributed to the stock of useful knowledge among men by graphic memoirs of their conspicuous Philosophers, Heroes, Statesmen, and Bards. And Plutarch's parallel Biographies of Greeks and Romans, and Johnson's Lives of the British Poets—scholastic as the one, and garrulous as the other must be admitted to be—are among the most valuable of the repositories of practical wisdom.

But it is in our age of rectified reason and enlightened liberty that the lives of the virtuous great who have lived and are buried in our own America, would exhibit the most attractive models of the virtues which made them and our country great, and which alone will ever ennoble and bless the nations and countries of the earth.

The Anglo-American Heroes and Statesmen, from the Pilgrim Band of Plymoth Rock to that more illustrious group signalized in our memorable revolution, stand out in bold relief on the column of history; and the humbler, but not less noble pioneers and hunters of Kentucky, and the primitive founders of the great social fabric of this blooming valley of the West, have left behind them monuments more enduring than storied urns or animated busts. But the personal history of most of these nobles of their race is yet told only by the tongue of tradition. And the story of the deeds of many of them is, even now among ourselves, listened to as romance.

Our own favored Commonwealth, though young in years, is venerable in deeds. Kentucky has been the theater of marvelous events and of distinguished talents.

Though not more than 68 years have run since the first track of civilization was made in her dark and bloody wilderness, yet she has already had her age of chivalry, her age of reason and religion, liberty and law. She has her battle-fields as memorable, and almost as eventful as those of Marathon or Waterloo—and she has had heroes, orators, jurists and lawgivers who would have been conspicuous in any age or country. But neither biography nor general history has done justice to their memories. Most of that class of them, whose lives were peaceful and whose triumphs were merely *civic*, have been permitted to slumber under our feet without either recorded eulogy or biographic memorial.

The memory of the Nicholases, the Breckinridges, the Browns, and the Murrays, the Allans and the Hugheses, the Talbotts and the Bledsoes, the Daviesses and the Hardins, the McKees and the Andersons, the Todds, the Trimbles and the Boyles, of whom, in their day, Kentucky was justly proud, should not longer remain thus unhonored and unsung.

Influenced by a strong sense of personal and public obligation, we will now attempt to sketch a brief outline of one of these our departed great.

Among the honored names of Kentucky, *John Boyle*, once Chief Justice of the State, is deservedly conspicuous. Modest and unpretending, his sterling merit alone elevated him

from humble obscurity to high places of public trust which he filled without reproach, and to a still more enviable place in public confidence and esteem which but few men ever attained, and none ever more deserved. Though his whole career was peaceful and unaspiring, his life, "take it all in all," domestic and public, exhibits a beautiful model of an honest man, a just citizen, a patriotic statesman, and an enlightened jurist. The example of such a man is worthy of imitation by all men living or to come—and the memorials of such a life must be interesting to all good men, and peculiarly profitable to the young who desire to be useful and honored.

John Boyle's genealogy cannot be traced through a long line of ancestry. He inherited no ancestral honors, nor fortune, nor memorial. Like most of the first race of illustrious Kentuckians, descended from a sound but humble stock, he was the carver of his own fortune, and the ennobler of his own name. His only patrimony was a vigorous constitution, a sound head, a pure heart, and a simple, but virtuous education.

He was born October 28th, 1774, in Virginia, at a place called "Castle Woods," on Clinch River, in the (then) county of Bottetourt, now Russell or Tazewell; and in the year 1779 was brought to Whitley's Station in Kentucky, by his father, who immigrated in that year to try his fortune in the wild woods of the west—and who, like the mass of early adventurers, reared in the old school of provincial simplicity and backwoods equality, was a plain, blunt man of independent spirit. The father first *"settled"* in Madison county, but afterwards moved to the county of Garrard, where he lived on a small estate until his death.

Of the early history of the son, we have heard nothing signal or peculiar. In his days of pupilage, a collegiate education was not attainable in Kentucky. And those who, like him, were poor, were compelled to be content with such scholastic instruction as might be derived from private tutors and voluntary country schools.

Emulous of such usefulness and fame as can be secured only by moral and intellectual excellence, he eagerly availed himself of all the means within his reach for improving his mind and cultivating proper principles and habits. After acquiring an elementary English education, he learned the rudiments of the Greek and Latin languages and of the most useful of the sciences, in Madison county, under the tutelage of the Rev. Samuel Finley, a Presbyterian clergyman of exemplary piety and patriarchal simplicity. With this humble preparation, having chosen the Law for his professional pursuit, he read Blackstone's Commentaries and a few other elementary and practical books under the direction of Thomas T. Davis, then a member of Congress, whom he succeeded, and who resided in the county of Mercer, in the neighborhood of Jeremiah Tilford, a plain, pious and frugal farmer, with whom the pupil boarded, and one of whose daughters, (Elizabeth,) a beautiful and excellent woman, he married in 1797, about the commencement of his professional career. His wife's estate did not equal in value $1,000, and his own patrimony was himself alone, just as he was. With these humble means he bought an outlot in Lancaster, Garrard county, on which, in 1798, he built a small log house, with only two rooms, in which, not only himself, but three other gentlemen, who successively followed him as a national representative, and one of whom also succeeded him in the Chief-Justiceship of Kentucky, began the sober business of conjugal life. There he lived happily and practiced law successfully until 1802, when, being unanimously called to the House of Representatives of the United States, he settled on a farm of 125 acres, near Lancaster, where he continued to reside until 1811, when he moved to a tract of land in the same county, a part of which had been recently given to him by his father, and where he lived, in cabins, until 1814, when he bought and removed to the tract in Mercer on which his wife had been reared, and where he continued to reside until his death.

Here let us pause a moment, and, from the eminence to which the people spontaneously elevated the isolated and unambitious Boyle, let us look back on the humble pathway which led him so soon to the enviable place he occupied in the affections of those who knew him first, and best, and not one of whom ever faltered in his confidence and esteem.

Without the adventitious influence of wealth, or family, or accident, and without any of the artifices of vulgar ambition or selfish pretension, he was, as soon as known, honored with the universal homage of that kind of cordial respect which nothing but intrinsic and unobtrusive merit can ever command, and which alone can be either gratifying or honorable to a man of good taste and elevated mind. It was his general intelligence, his undoubted probity, his child-like candor, his scrupulous honor and undeviating rectitude, which alone extorted—what neither money, nor office, nor flattery, nor duplicity, can ever secure—the sincere esteem of all who knew him. And so conspicuous and attractive was his unostentatious worth, that, though he rather shunned than courted official discinction, it sought him and called him from his native obscurity and the cherished privacy of domestic enjoyment. His education was unsophisticated and practical. He learned things instead of names, principles of moral truth and inductive philosphy instead of theoretic systems and scholastic dogmatisms. His country education preserved and fortified all his useful faculties, physical and moral—his taste was never perverted by false fashion—his purity was never contaminated by the examples or seduced by the temptations of demoralizing associations. Blessed with a robust constitution, his habitual industry and "temperance in all things" preserved his organic soundness and promoted the health and vigor of his body and his mind. What he knew to be right he always practised—and that which he felt to be wrong he inva-

riably avoided. In his pursuit after kowledge his sole objects were truth and utility. In his social intercourse he was chaste, modest and kind—and all his conduct, public and private, was characterised by scrupulous fidelity, impartial justice, and an enlightened and liberal spirit of philanthropy and beneficence. Self-poised he resolutely determined that his destiny should depend on his own conduct. Observant, studious, and discriminating, whatever he acquired from books, or from men, he made his own by appropriate cogitation or manipulation. And thus, as far as he went in the career of knowledge, he reached, as if *per saltem*, the end of all learning—practical truth and utility.

Panoplied in such principles and habitudes, his merit could not be concealed. In a just and discerning community, such a man is as sure of honorable fame as substance is of shadow in the sun-light of day. And have we not here a striking illustration of the importance of right education and self-dependence? Proper education is that kind of instruction and discipline, moral, mental and physical, which will teach the boy what he should do and what he should shun, when he becomes a man, and prepare him to do well whatever an intelligent and upright man should do in all the relations of social and civil life; and any system of education which accomplishes either more or less than this, is so far imperfect, or preposterous and pernicious. But, after all, the best schoolmasters are a mediocrity of fortune, and a country society, virtuous but not puritanical, religious but not fanatical, indpendent but not rich, frugal but not penurious, free but not licentious—a society which exemplifies the harmony and value of industry and morality, republican simplicity and practical equality.

Reared in such a school, and practically instructed in the elements of useful knowledge, a man of good capacity, who enters on the business of life with no other fortune than his own faculties, and no other hope than his own honest efforts, can scarcely fail to become both useful and great. But he who embarks destitute of such tutilage or freighted with hereditary honor or wealth, is in imminent danger of being wrecked in his voyage. Fortune and illustrious lineage are, but too often, curses rather than blessings. The industry and self-denial, which are indispensable to true moral and intellectual greatness, have been but rarely practised without the lash of poverty or the incentive of total self-independence. And the son who cannot make fortune and fame for himself, will not be apt to increase or even to keep inherited wealth and reputation, however bounteously they may have been showered on his early manhood. Parents should, therefore, be solicitous to educate their children in such a manner as to make them healthful in body and mind, and to enable them to be useful and honorable, without extraneous wealth, which is but too apt to paralyze or ensnare the victims of perverted bounty, and indiscriminating affection.

John Boyle, rightly reared and unincumbered by patrimonial trash, started the journey of life alone and on foot—his own mind his only guide, his own conduct his only hope; and though there was nothing strikingly imposing in the character of his mind or in his manners, but few men on earth ever reached his earthly goal of honor by a straighter or smoother path. During his short professional career, he was eminently just and faithful to his clients; and though his elocution was neither copious nor graceful, he was extensively patronized. For this success he was indebted altogether to his intelligence, integrity and fidelity. But with much business—his fees being low, and not well collected—he made but little money. He acquired, however, that which was far more valuable—the reputation of an enlightened and "an honest lawyer."

Translated from the forensic to the political theater, he declined altogether the practice of the law. In the national legislature he acted with the Jeffersonian and then dominant party. And though not a speaking member, he was vigilant, active and useful, and his disinterested patriotism, amiable modesty, unclouded intelligence and habitual candor, soon exalted him to an enviable reputation. If there be any valid objection to his political course, it is this only—that, agreeing, as he generally did, with a party armed with power and flushed with a recent and great victory in the downfall of an opposing and previously governing party, he was more of a partizan than perfect justice or abstract truth would altogether have approved. But this aberration, which could not have been easily avoided, was, in his case, as venial and slight as it ever was in the case of any other man who ever lived. He did not "give up to party what was meant for mankind"—nor was he intolerant, proscriptive or factious, or ever influenced by any selfish or sinister motive. And if, when he co-operated with his political friends, he ever erred, the ardor of his patriotism and the unsuspecting confidence of his own honest mind induced him to believe, at the time, that his party was right. But he was never charged with insincerity or obliquity of motive. And his character was always blameless in the view even of those who did not concur with him in opinion.

If as much could be as truly said of more modern partizans, our country would be blessed with more honor and tranquility than can be admitted to prevail in this our day of comparative intolerance and intellectual prostitution.

Having no taste for political life, and finding moreover, that the duties of a representative in Congress were incompatible with his domestic obligations, he had soon resolved to retire from the theater of public affairs and devote himself to his family and his legal profession. But such a man as John Boyle cannot always dispose of himself according to his own personal wishes. His constituents re-elected him twice without competition. And we have heard that Mr. Jefferson, who justly appreciated his worth, offered him more than one federal appointment, which either his diffidence or his romantic at-

ta chment to his family aud home induced him to decline. But in March, 1809, Mr. Madison, amoug his first official acts as President, appointed him, without his solicitation, the first Governor of Illinois. This being, as it certainly was, prospectively one of the most important and lucrative of all federal appointments, and his domestic duties having become still more and more importunate, he was inclined to accept the provincial Governorship—and did accept it provisionally. But, on his return to his family, he was invited to elect between the territorial office and that of a Circuit Judge, and also of an Appellate Judge of Kentucky, both of which latter appointments had been tendered him in anticipation of his retirement from Congress. And though the salary of Appellate Judge was then only $1000, and the duties of the office were peculiarly onerous, yet, his local and personal attatchments and associations prevailing over his ambition and pecuniary interest, he took his seat on the Appellate bench of his own State on the 4th of April, 1809—and Ninian Edwards, the then Chief Justice of Kentucky, solicited and obtained the abdicated proconsulship of Illinois.

The election thus made by Boyle affords an impressive illustration of the cast of his mind and his affections. Illinois was obviously the better theater for an ambitious or avaricious man. But he was neither ambitious nor avaricious. His own domestic happiness and social sympathies prevailed over every other considsration. And at last, perhaps his decision was as prudent, as it was patriotic. His judicial career, for which he was peculiarly fitted, forms an interesting epoch in the jurisprudence of the west—and he could not have left to his children a better legacy than the fame he acquired as Chief Justice of his own beloved Commonwealth—to which high and responsible office he was promoted on the 3d of April, 1810, and which he continued to hold until the 8th of November, 1826.

When first called to the bench of justice his legal learning could not have been either extensive, ready, or very exact. But he possessed all the elements of a first rate judge, as time and trial demonstrated. He soon became a distinguished jurist. His legal knowledge, though never remarkably copious, was clear and scientific. Many men had read more books, but none understood better what they read. His law library contained only the most comprehensive and approved volumes—and those he studied carefully, could use readily, and understood thoroughly. With the elements of the common law and the philosophy of pleading, he appeared to be perfectly acquainted.

His miscellaneous reading was extensive—and in mental and moral philosophy and polite litrature, his attainments were eminent. His colloquial style was plain and unpedantic, but fluent chaste and perspicuous; and his style of writing was pure, graceful and luminous.

Though his perceptions were clear and quick, yet he was habitually cautious in forming his judicial opinions. It was his maxim that a Judge should never give an opinion until he had explored all the consequences, direct and collateral, and had a well considered opinion to give. His associates on the bench, and the members of his bar always felt for him perfect respect, and manifested towards him a becoming deference. His reported opinions are equal, in most, if not in all respects, with those of any other Judge, ancient or modern, and will associate his name, in after times, with those of the Hales and the Eldons of England, and the Kents and Marshalls of America.

In politics, also, he was enlightened and orthodox. In his more matured and tranquil season of life, he repudiated some of the theories of his earlier and more impassioned days—and in American politics, he was, long before his death, neither a centralist, nor a confederationist—a democrat nor an aristocrat—but was an honest and liberel republican, national as far as the common interests of the people of the United States were concerned, and local, so far as the municipal concerns of each State were separately and exclusively involved. He was a friend to that kind of liberty and equality which are regulated by intelligence and controlled and preserved by law—and was a foe to demagoguery, ignorance, licentiousness, and jacobinism.

But it was as a jurist that he was most distinguished. And as an illustration of his influence, as well as rare modesty and public spirit on the bench, we may notice the signal fact that, in his whole judicial career, during a portion of which, about 500 causes were annually decided, he never, but once, dissented from the opinion of the court, and then he magnanimously abstained from intimating any reason against the judgment of the majority, lest he might impair the authority of the decision which, until changed by the court, should, as he thought, be deemed the law of the land.

The only objection to him as a Judge, which we ever heard suggested, was that, in the opinion of some jurists, he adhered rather more rigdly to the ancient precedents and technicalities of the common law than was perfectly consistent with its progressive improvements and its inadaptableness, in some respects, to the genius of American institutions. But this criticism, though it may, in some slight degree, have been just, should not detract much from his superior merit as an Appellate Judge. So far as he misapplied any doctrine of the British common law to cases in this country to which the reason for it in England does not apply here, he certainly erred. But such a misapplication was rarely, if ever, made by him . And for not extending or improving the American common law, he was not justly obnoxious to censure. It is safer and more prudent to err sometimes in the recognition of an established doctrine of the law, than to make innovation by deciding upon principle against the authority of judicial precedents. And though one of the most valuable qualities of the common law is its peculiar malliableness,

in consequence of which, it has been greatly improved from age to age by judicial modifications corresponding with its reason and the spirit of the times, yet the Judge who leaves it as he finds it is at least a safe depository. Such a Judge was John Boyle. He was neither a Mansfield nor a Hardwicke—he was more like Hale and Kenyon. If he did not improve, he did not mar or unhinge the law. But, not long before he commenced his judicial career, the Legislature of Kentucky, as if to seal up the common law as it was understood on the 4th of July, 1776, and to hide it from the light of more modern reason and improvement shed on it in the land of its birth —interdicted the use—in any court in this State—of any post revolutionary decision by a British court. And that proscriptive enactment was scrupulously observed by Judge Boyle. So far as it was observed—however injuriously—the fault was not so much his as that of the legislative department. But it is impossible, altogether, to proscribe enlightened reason, whether foreign or domestic, ancient or modern, British or American. And now, Judges more bold, but perhaps less prudent, virtually disregard the legislative interdict, by consulting British decisions since '76—not exactly as authorities, but as arguments to prove what the common law now is, and ever should have been held to be, here as well as in England.

No man, however, of his day, contributed more than Judge Boyle contributed to establish the proper authoritativeness of judicial decisions, to elevate the true dignity, and to inspire confidence in the purity of the judiciary department of the Government, and to settle, on the stable basis of judicial authority, the legal code of Kentucky. Truly he was—to his own State—what Edmund Pendleton was to Virginia, and John Marshall to the United States—the Palinurus of our lawyers and our judges. And a more honest and faithful pilot never stood at the helm of jurisprudence. A careful review of his many judicial acts, as published in our State Reports from 1st Bibb to 3d Munroe, including fifteen volumes, will result in the conviction that he was equalled by but few Judges and surpassed by still fewer of any age or country. Such an analysis cannot be here attempted.

But, for the purpose of illustrating his official firmness and prudence, we will cursorily notice a few only of his decisions:

1st. In the year 1813, the question whether a merely legal or constructive *seizin* was sufficient for maintaining a "Writ of Right" came up, for the first time, for decision by the Court of Appeals of Kentucky. Few questions could have been more interesting or eventful —especially as some of the best lands in our State, which had been improved and occupied for many years by our own citizens under titles deemed good by them, were claimed under dormant, though superior titles held by non-residents, and the ultimate assertion of which disturbed the tranquility of our society and impaired the security of meritorious occupants of our soil. If an actual seizin, or personal entry, or *pedis possessio*, were indispensable to the maintenance of a writ of right, many of the claims of non-residents could not have been successfully asserted against an adversary occupant who had been possessed of the land more than twenty years. But if a constructive seizin, resulting from a perfect title, were alone sufficient to support a "writ of right," many non-resident claimants, who would otherwise be remediless, might evict the occupants in that species of action, which could be maintained on the demandent's own seizin within thirty years, and on that of his ancestor within fifty years, even though he had never been on the land. In an opinion written by Chief Justice Boyle, and reported in 3d Bibb, (Speed vs. Buford,) our Court of Appeals decided that, according to the common law, actual seizin was indispensable to the maintenance of a "writ of right." A petition for a rehearing having been granted by the Court, the Supreme Court of the United States, between the granting of the rehearing and the final decision upon it, unanimously decided, in the case of Green vs. Liter, that mere legal seizin, resulting from a perfect title, was sufficient to maintain a "writ of right." But, as that decision, though conclusive in the case in which it was rendered, was not controlling authority for the State Court on a question depending on the State law, and as to which the National Court could not reverse or revise the judgment of the highest Court of Kentucky, Chief Justice Boyle, as much as he respected the tribunal which rendered it, and anxious as he undoubtly was for harmony and uniformity, still clearly adhering to his first opinion, firmly, but temperately and respectfully reasserted and maintained it by affirming the coincident judgment of the inferior court, even though Judge Logan, his only colleague on the bench, in that case, receded and yielded to the opinion of the Supreme Court of the Union. And the decision, thus given by Boyle alone, has never since been overruled.

2d. Though Chief Justice Boyle had been inclined to the opinion that the Bank of the United States was unconstitutional, yet, after the Supreme Court of the United States had decided unanimously that it was constitutional, he acquiesced and recognized the authoritativeness of the opinion of the National Court on a national qustion.

3d. Nevertheless, although a majority of the Judges of the Supreme Court of the Union had decided, in a solitary case, that the Kentucky statute of 1812, for securing to *bona fide* occupants a prescribed rate of compensation for improvements before they could be evicted by suit, was inconsistent with the compact between Virginia and Kentucky, and therefore unconstitutional—Chief Justice Boyle, with the concurrence of his associates, maintained the validity of that protective enactment. And the doctrine thus settled by our State Court has never since been disturbed.

In this instance—being clearly of the opinion that the compact guaranteed only the titles

to land according to the laws of Virginia under which they had been acquired, and did not restrict, in any manner, the authority of Kentucky over the remedies for asserting them, and that the occupant law did not impair the obligation of any contract our distinguished Ch. Justice did not feel bound or even permitted to surrender his own judgment to the conflicting judgment of a mere majority of the Judges of the Supreme National Court in a single case and never reasserted by all the Judges, or even a majority. And, in thus acting, he exhibited, in a becoming manner, his own firmness and purity, whilst he did not manifest any unjustifiable obstinacy or want of due respect for the opinions of a majority of the federal Judges on a national question. Had Boyle's opinion been indefensible, the fair presumption is that it would have been overruled; and the fact that it has never been disturbed is evidence, almost conclusive, that it was right. And thus he and his colleagues, by their firmness and intelligence, maintained the sovereign rights of their own State, without any dereliction of official authority.

4th. The only other case to which we shall here allude, is the memorable one arising out of a series of legislative enactments, designed for the relief of debtors, and therefore characterized as the "relief system." Having chartered a bank denominated "the Bank of the Commonwealth," the notes of which—as the natural consequence of deficient capital—were constantly fluctuating in value, and once sunk to less than 50 per cent. of their denominated worth—the Legislature, among other subsidary enactments, passed an act for prolonging, from three months to two years, the right of replevying judgments and decrees on contracts, unless the creditor would agree to accept, at its nominal value, the depreciated paper of that Bank.

That act, as well as the general system of legislation which it consummated, was popular. And the minority, opposed to the whole system as inexpedient, unjust and unconstitutional, was, of course, denounced as aristocrats, federalists, Shylocks. When the antagonist parties, denominated "relief" and "anti-relief," had become greatly excited, and the subject of their division had silenced every other common topic of party discussion, and produced extreme discord—Chief Justice Boyle, and his associates of the Court of Appeals, at the fall term, 1823, decided unanimously, in the cases of Blair *et al. vs.* Williams, and of Lapsley *vs.* Brashears *et al.* reported in *4th Littell*, that the two years' replevin statute, in its retroactive operation on contracts made prior to the enactment of it, was repugnant to that clause of the federal constitution which declares that no State shall pass any act "impairing the obligation of contracts." That decision was, as might have been expected, very offensive to the dominant party in the State—and the appellate Judges were denounced as "tyrants, usurpers, kings." Corrupt motives were imputed to them by many partizans—their authority thus to annul or disregard a legislative act was derided by some, and the correctness of their decision was confidently assailed by all or nearly all of the "relief party." During the first session (1823–4,) after the date of the decision, a majority of the Legislature, but not *two-thirds*, adopted resolutions condemnatory of the Chief Justice and his colleagues, and calling on the Governor to remove them from office; which were prefaced by a long *"preamble,"* assailing their decision as unauthorized, ruinous and absurd. That attempt to intimidate and degrade the court having failed, the same party, still greatly ascendant, determined, at the next session, to remove the Judges from office by abolishing the Court of Appeals, *established* by the constitution, and substituting a *"new court,"* by a statute entitled the "re-organizing act." Under that act other persons were commissioned as the appellate Judges, opened court, and attempted to do business. But the act being resisted by "the old Judges" and the party which sustained them, a judicial anarchy ensued, and both parties appealed to the only ultimate arbiters of such a conflict—the people at the polls. Here a great civil battle was to be fought: a battle in which the constitution of Kentucky was the stake, and on the issue of which that fundamental law was either to triumph or to fall, perhaps forever. It triumphed. The people unfurled its white banner and inscribed on it, with their own hands, in new and indellible colors, *"supreme law"*—sacred and inviolable"—"and far above the transient passions of partizan strife."

The radical and decisive objection to the constitutionality of "the re-organizing act" was, that, as the constitution expressly ordained and established the Court of Appeals, no legislative statute could abolish it; and that, therefore, as the same tribunal instituted by the constitution still existed, 'the old Judges,' who, by an express provision of the same constitution, were entitled to hold their offices during good behavior and the continuance of their court—could not be legislated out of office by a less majority than that of two-thirds of both branches of the legislature, that being the requisite constitutional majority for removal by address.

When the final appeal was made to the ballot box, all the talents and moral energies of Kentucky were brought out into most active and efficient exertion, and the whole Union looked on with intense anxiety; for the issue involved the integrity and efficacy of fundamental law—the stability and efficiency of an enlightened judiciary as the only sure anchor of that law—and the momentous question whether the people will, in every emergency, maintain the rightful supremacy of their own organic will over the subordinate and conflicting will of their legislative agents. The people of Kentucky determined that issue and answered that question with a most decisive emphasis in the never-to-be-forgotten year of 1825. Nevertheless, after all, the Senate of Kentucky not having been fully subjected to the

popular ordeal at the polls, still retained a small majority in favor of the proscribed act, and that majority, in defiance of the people's award, resisted the repeal of the act. But the "New Court" vanished, and the "Old Court" re-appeared and resumed its suspended functions without further obstruction; and *John Boyle* was still the honored Chief Justice of that signally persecuted, but more signally triumphant, "Old Court." Had he consulted his own personal wishes and repose, he would have submitted with alacrity to the legislative mandate. He was tired of his office—had worn out his constitution in a laborious discharge of its irksome and incessant duties—had become no richer by his small salary; and no man on earth was less belligerent, or had less taste for notoriety or for strife and obloquy. Most anxious was he, we well knew, to escape the impending storm. But he felt that it was his duty to his country, his character, and the constitution, to stand firm on the judicial rampart, even though he should sink with it, a martyr in the great cause of constitutional security.

Had he and his colleagues bowed to the unauthoritative will of the legislature, they would have been treacherous to the constitution and faithless to a proscribed minority, for whose security that supreme law was adopted by the people and placed under the guardianship of a judiciary so organized as to be able, if firm and faithful, to uphold its rightful supremacy against the passions and the will of any majority less than that of two-thirds of the legislature.

The great object of the constitution was to secure certain fundamental rights from invasion by a bare majority of the people or their legislative agents. That end could not be effectuated without an enlightened Judiciary, armed with power to prevent the enforcement of unconstitutional legislation. Such a Judiciary, invested with such authority, was ordained by the constitution itself; and, to enable it to execute its high trust, honestly and fearlessly, it was made, in a great degree, independent of a popular caprice and legislative authority. Here we find the constitution's inherent power of self-preservation—this, at last, is its chief conservative principle—without which a numerical majority would be politically omnipotent, the few would be subjugated by the many, reason would bow to passion—and the simplest problem in arithmetic might solve the whole mystery and power of our democratic institutions, by the mighty magic of "the majority of numbers."

But had Boyle and his colleagues, consulting either their own ease or their personal fears, yielded to popular clamor or to legislative denunciation, they would have surrendered the constitution to the keeping of the legislative department which it was framed to control—and such an example might have given practical supremacy to unlicenced numbers—to physical over moral power—to matter over mind—and thus eventually have converted our beautiful system of organized liberty into unalloyed and uncontrolled anarchy.

But our Judges did not thus ingloriously fly. Like *Leonidas*, with his Spartan band, *Boyle* and his associates stood firmly, a forlorn hope, in the last *Thermopylæ* of the constitution—but more fortunate than the Grecian martyrs, they achieved a glorious triumph for mankind, and lived to enjoy the homage of their country's gratitude.

A civic victory more eventful or glorious has seldom been won—its spoils are the fruits of a rescued and reanimated constitution, the practical vigor and supremacy of which constitute the only sure *palladium* of the rights of men—social, civil and religious. And the example has been most salutary—and will, as we trust, be useful in all time to come.

Had *Boyle* been suppliant, he might have been, for the moment, the idol of a dominant party; but such popularity, being meretricious, would have been as evanescent as the fleeting breath on which it would have floated. Solid fame can be acquired only by solid worth—lasting renown is the matured fruit of noble, virtuous, honest deeds. Boyle deserved such renown for his self-devotion on the altar of his country's constitution; and, had he been even sacrificed on that altar, his fame should have been associated with that of *Socrates*, who was doomed to the hemlock only because he would not make a mean compromise of eternal truths with the vulgar prejudices and vices of his day.

As the constitution is the supreme law, no legislative enactment which conflicts with it can be law; all such unauthorized or prohibited acts must be void. And, therefore, as it is the province of the Judiciary to administer the law, it is the duty of a Judge to disregard, as a nullity, any act of assembly which is inconsistent with the fundamental law of the sovereign people, and thus to uphold their organic will against the opposing and forbidden wills of their legislative agents. And, consequently, as the constitution forbids every legislative enactment impairing the obligation of contracts, it was the obvious duty of the Court of Appeals to declare, as it did, that the two years' replevin act was void, if they were, as doubtless they were, clearly of the opinion that it impaired the obligation of contracts made prior to the enactment of it.

And was it not clearly unconstitutional? It was only the *civil* or *legal* obligation of contracts which the constitution contemplated—for no legislation could impair a *moral* obligation. Then what is a legal obligation? Is it not the binding or coercing efficacy of the law? Can a contract, which the law will not sanction or enforce, have any *legal* obligation. Can the law be said to bind a party whom it will not coerce? And how *alone* does the law enforce contracts? Is it not by the legal remedies by suit and execution? Then, will not the abolition of all such remedial agency of the law destroy the merely legal obligation of contracts? And if it will, must not any statute, which impairs the rem-

edy, also impair, in the same degree, the obligation of pre-existing contracts? And if the legislature, by acting on the remedy, could not impairthe legal obligation of antecedent contracts, how will it be possible to impair the obligation of contracts by any species of legislation? The legislature cannot change the terms or alter the form of a contract—it can only modify its legal effect—and this it can only do by giving, withholding or modifying the remedies necessary for enforcing the contract. *Right* and *Remedy*, or the civil obligation of a contract and the civil remedy for enforcing it, are essentially different. But, though the legislature may therefore change the remedy without impairing the right, yet it cannot destroy the legal obligation of a contract without abolishing all legal remedy, nor impair it without making the remedy less efficient or available—and therefore it cannot abolish all remedy for existing contracts, nor so change the remedy as to essentially impair them. And if theretrospective extension of indulgence under execution for two years did not impair the legal obligation of contracts, an unlimited extension, or even an abrogation of all means of coercion would not have been an impairment of the obligation of any contract. But the one, as certainly as either of the others, would, in our view, be an impairment of the legal obligation of contracts existing and unperformed at the date of the enactment. So every court in the Union, which has adjudicated on the question, has decided. So thought Boyle; and therefore so he decided, *at all hazards*. And, in thus deciding, he faithfully discharged his duty to the parties litigant, to his own conscience, and to his country—revived a prostrate constitution, and inspired the commercial community with confidence.

It was for that decision alone that he was denounced and persecuted, and his state was convulsed by a most perilous conflict. As long as the storm raged he would not "give up the ship of state." But as soon as the troubled elements were stilled by the people's voice, and he saw the Constitution safely moored, with its broad banner still proudly floating, he determined to retire from the toils and cares of an office which he had so long and so nobly filled and illustrated. It had been his settled purpose, from the beginning of the judicial contest, to resign his office as soon as he could do so consistently with fidelity to the Constitution and to his own honor. And now, the people having, at the August elections of 1826, settled the controversy finally and conclusively, he accordingly, on the 8th of November of that year, resigned the Chief Justiceship of Kentucky—thus saying to his countrymen: "Persecuted and abused for honestly maintaining the best interests of yourselves and your children, and for helping to save your Constitution, I now voluntarily resign, and with alacrity, the most important office in your gift—an office full of labor and responsibility, and to the duties of which I have dedicated the prime of my life—an office which I never sought, and the profits of which have been barely sufficient to feed my wife and children—an office in which I have grown gray, and from which I retire at last much the poorer, in consequence of having so long held it—*now fill it better, if you can.*"

But the Federal Government, anticipating his resignation, had offered him the office of District Judge of Kentucky, which he accepted as soon as he retired from that of Chief Justice. This new office he filled admirably—but it never pleased him. Its duties were not sufficient to give him active employment, and he felt some scruples of conscience in receiving the salary (only $1,500 per annum,) without performing more public service. But he was induced to hold it until his death.

Upon the death of Judge Todd, he refused to be recommended to the President as his successor on the Bench of the Supreme Conrt of the United States—and subsequently upon the demise of Judge Trimble, he was unwilling to accept the same office—because he preferred retirement, and distrusted his qualifications for a place so high! Rare and excellent man!

He now devoted most of his time to the teaching of law, to miscellaneous reading, and to agriculture. He was, for one year, sole professor of law in Transylvania—but was generally engaged at home in giving instruction to such young men as sought it—and they were not a few. He became much pleased with rural employments, and talked *con amore* of ploughs and ploughing, cattle and grazing.

But he was hastening to the end of his journey of life. His constitution had been impaired by hard public service. During the prevalence of the cholera in 1833 his wife died, and he himself had a violent attack of that fatal malady, which he survived. But all his hopes of domestic happiness being buried in the grave of his beloved wife, he continued lonely and desolate, and never recovered his former tone of health or spirits. He talked of his own death as very near and not undesirable. And though he had, in his early life, been an infidel, and had always been a skeptic, he now studied theology, talked reverently of the christian religion, and finally, not a month before his death, expressed to us his firm and thorough conviction of the divinity of that system, and his determination to become a member of some christian church. But this last and best boon he was not permitted to enjoy. He died rather unexpectedly, but not suddenly, on the 28th day of January, 1835, in his own house, like a christian philosopher, firm, placid, and rational—surrounded by his physicians, his younger children, and his devoted servants. And in the agonies of death, turning himself on his couch, he said, *"Doctor, I am dying!"*—and with his expiring breath ejaculated, firmly and audibly—*"I have lived for my country!!"* These were his last words on earth, and they were true.

What is it to live for one's country? It is not to get rich, nor to hold office, nor to be gazed at with vulgar admiration, nor to win a battle,

nor to make a noise in the world. Many who have accomplished all these have been a curse rather than a blessing to mankind. But he, and he alone, who honestly dedicates his talents and his example to the happiness and improvement of his race, lives for his country, whatever may be his sphere. He who seeks his own aggrandizement at the expense of truth, or principle, or candor, does not live for his country—nor can he live for his country, in the full sense, whose example is demoralizing, or, in any way pernicious. But he truly lives for his country, who, in all the walks of life and relations of society, does as much good and as little harm as possible, and always acts according to the disinterested suggestions of a pure conscience and a sound head. Whatever may be his condition—high or low, conspicuous or obscure—he, whose life exemplifies and commends the negative and positive virtues, personal, social and civil—who lives in the habit of pure morality, enlarged patriotism and disinterested philanthropy—and whose conduct and example are, as far as known and felt, useful to mankind—he and he alone lives for his country. And hence it is perfectly true that a virtuous peasant in a thatched hut may live more for his country than many idolized orators, triumphant politicians, or laureled chieftains.

The life of John Boyle exhibits a practical illustration of all the nobler and more useful virtues of our race. No man was ever more chaste and upright in the whole tenor of his conduct; he had no selfish pride or sinister ambition; he was punctiliously just and truthful: he was as frank and guileless as an artless child untutored in the arts and ways of social life—his humility was most amiable and his benevolence unsurpassed. He always spoke as he thought and acted as he felt—and his sentiments were pure, and honorable, and almost always right. He devoted his life to the cultivation of his moral and intellectual faculties, and all those faculties were dedicated to the honest and useful service of his fellow-men his family, and his country. He was a patriot and benefactor in a pure and comprehensive sense. His heart was his country's—his head was his country's—his hand was his country's—his whole life was full of philanthropy and lofty patriotism—and his example, altogether blameless and benificent, presents a full-orbed and spotless model, worthy of all imitation.

In contemplating his character we see nothing to condemn—much to admire.

As a lawyer, he was candid, conscientious and faithful—as a statesman, honest disinterested, and patriotic—as a *Judge*, pure, impartial, and enlightened—as a citizen, upright, just and faultless—as a neighbor, kind, affable and condescending—as a man, chaste, modest and benignant—as a husband, most constant, affectionate and devoted.

We have heard his amiable and excellent wife declare in his presence, not longer than a year before her death, that, notwithstanding all the cares and crosses of domestic life, there had never been a sour look, a harsh word or a hard thought between them, from the eventful moment when their destinies were linked together on the altar! And knowing them both as we did, we doubt not that she told the truth.

Here, in this man, we present a fit *exemplar* for all men, in every condition of social and civil life.

The noiseless life we have thus imperfectly sketched, illustrates most impressively the old fashioned truth, that "honesty is the best policy"—shows what may be achieved by industry, probity, and undissembled humility—proves how much better and more honorable it is to *deserve* than to *seek* preferment, and how certain modest merit will ever be of ultimate notice and reward—and may we not add, that it affords strong evidence of the important fact, that an enlightened mind, when once abstracted from the cares of earth or mellowed by affliction, will be apt to see the light and feel the value of the christian's hope, and to embrace, as the best of all books, the Christian's Bible?

Surely this was a good and a great man—and most truly did he asseverate, on his exit from earth, "I HAVE LIVED FOR MY COUNTRY."

Such is a brief outline of the life and character of one of the best and greatest of men, hastily and imperfectly sketched, by one who knew him long and well, and who feels too much respect for his virtues and reverence for his memory to exaggerate or disguise the truth of faithful biography with any embellishment of empty panegyric. The best eulogy of Boyle would be a naked exhibition of him, as he was, without any drapery from either fancy or friendship. Posterity would be greatly benefitted, and his own fame much exalted by such a portraiture.

The death of such a man, in the prime of his life, was a great public calamity. His intimate friends felt it most deeply, and regretted that an inscrutable Providence had not spared him to delight and instruct the countrymen whom he left behind him. Had he lived to a mellow old age, he would have enjoyed the ripe fruits of his earlier habits and toils, and have rendered inestimable service to his country in the example of a venerable, virtuous and enlightened Patriarch.

But doubtless it was better for him to die when he did. He had lost his dearest earthly treasure—his house had become, to him, desolate—and, by his early death, he escaped all the infirmities of extreme age. He died full of honor and of hope, when his setting sun had *"all its beams entire—its fierceness lost."*

The worth of such a man is never fully known until long after his death. Posthumous fame is of slow growth, and never attains its full elevation until it has survived all personal prejudice and envy. Though Boyle died in peace with all mankind, and left not an enemy behind, yet his death was followed by no sepulchral honors or postmortuary testimonial. No funeral eulogy, no public meeting, no Bar resolution, nor even obituary no-

tice announced that he was dead, and that Kentucky mourned. Nor has either marble or canvass, chisel or pencil, preserved any trace of his person. But this is just what he would have preferred. He desired none of the empty pageantry of mock sorrow—his memory needed no perishable memorial. Like *old Cato*, he built his own monument—and one far more honorable and enduring than any marble cenotaph or granite column.

Personal reminescences of the most revered of our race moulder with their dead bodies, and are soon buried forever with the dying generation that knew and loved them. Their deeds and their virtues alone may be embalmed for ages. *Boyle's* illustrious deeds and rare virtues, if faithfully recorded and transmitted, will be long and gratefully remembered by approving posterity. And should a *Tacitus* ever become his biographer, his name will be as immortal and at least as much honored as that of *Agricola*.

And now and henceforth, in all time to come, may every American youth emulate the virtues and imitate the bright example of *John Boyle*—and then, like him, he may be able honestly to declare, with the expiring breath that wafts him to eternity, "I HAVE LIVED FOR MY COUNTRY."

PRELECTION.

Lexington, Nov. 14th, 1842.

Dear Sir:—We, the undersigned, a Committee appointed on the part of the Law Class, are instructed to request a copy of your very eloquent and appropriate address, delivered before the Class on Thursday last. By acquiescing, you will confer a favor upon us individually, and upon the Class.

D. HOWARD SMITH,
JAMES L. ALLEN,
JOHN I. JACOB, JR.,
W. B. HENDERSON,
JOSEPH P. FOREE,
Committee.

Hon. George Robertson.

Lexington, Nov. 17th, 1842.

Gentlemen:—The little Introductory Address, for which you have been pleased to express such favorable consideration, was intended chiefly for yourselves and those whom you represent, and therefore it is yours to dispose of as you may desire.

Yours, respectfully,
G. ROBERTSON.

Messrs. D. H. Smith, J. L. Allen, and others.

ADDRESS.

Harmony is nature's law, and wonderful simplicity the order of Providence. Gravitation is not more universal or effective in the material than love is in the moral world. The moral, as well as the physical economy of the earth, is upheld and harmonized by an admirable chemistry, as universal and resistless as the voice of God. We are not gregarious merely, but instinctively, necessarily, and eminently social. Society is the natural state of man, and love is the attractive element of cohesion which binds us together, and the gravitating principle which holds us fast, as with chains of gold, to the almighty centre and source of all being.

Reverence to God and sympathy for one another, are natural emotions of mankind; and consequently, religion and benevolence eminently distinguish our race, and point intelligibly to its duties and its ultimate destiny.

But there is a more vital principle—a sexual sympathy, that pervades and vivifies the living universe—a more than Promethean fire, that burns in the human heart, even when not one spark of vestal light may glow on the altar of God. This is the *punctum saliens* of being, of society, and of human jurisprudence; and its first hallowed fruit is marriage. The conjugal is the natural condition of the sexes. The bridal couch is prepared, and the nuptial knot is tied by the hand of Omnipotence. Marriage is not only a sacred union; it is also a rudimental relation, coeval with the first pair on earth—the nucleus of society—the parent of social order and civilization—the guardian of household purity—and the source of domestic charities and joys, without which man would be a wandering savage and woman a beast of burden.

The beautiful and most eventful apologue revealed to us concerning our first progenitors, illustrates the true object and nature of the virtuous love and pure conjugal union of man and woman. It prescribes, too, the appropriate sphere of husband and wife—and, whilst it shews that she is "bone of his bone, and flesh of his flesh," and therefore subordinate, it exemplifies the fact of her potential supremacy over his will.

As marriage, holy though it be, is also and chiefly a social and civil relation, it is subject of course to human as well as divine law; and few branches of our jurisprudence are more interesting or important than that which regulates the matrimonial state and its consequential rights and obligations.

Presuming that the subject would interest and amuse young men just entering the threshold of manhood and the illimitable territory of law, and that it might not be altogether unacceptable to a miscellaneous auditory, whether under the yoke or in a state of single blessedness, I propose, in this introductory address, unexpectedly and very hastily prepared, to present to you a *syllabus* of our law respecting marriage and divorce.

We have said, and truly, that marriage is both a natural and civil union, the parent and the offspring of primitive society, and therefore, a fundamental relation, natural, social and civil. As defined by Rutherforth, it "is a contract between a man and a woman, in which, by their mutual consent, each acquires a right in the person of the other for the purposes of their mutual happiness, and of the protection and education of children."

As it is a spontaneous union, for weal or for woe, it cannot be valid between the parties, without the unconstrained consent of both, and when each was legally competent to make such an alliance. But, though necessarily consensual, and partaking of the character of a civil contract, it is anomalous, and in many respects, *sui generis*. The legal age required for irrevocable consent to most commercial contracts is not necessary to the validity of marriage, which may be binding, if actually consummated, between parties deemed *habiles ad matrimonium*, and that is, according to the common law, when the male is 14 and the female 12 years old. Marriage, at or after those ages, is neither void nor voidable on the ground of infancy or juvenile indiscretion.

According to the same ancient code, a marriage *de facto*, without any formal solemnization or proof of consummation than cohabitation and recognition, may be binding on the parties, and for most purposes as effectual as a marriage *de jure*. But a mere agreement to marry *in futuro*, is not *ipsum matrimonium;* and though a legal obligation may result from such a prospective stipulation, for a breach of which damages might be recovered, nevertheless a Court of Equity would never compel a specific execution, because coercion would frustrate the desirable ends of matrimony.

Contemplating the equality of the sexes surviving "the accidents of flood and field," the importance of having well defined legal heirs, and the inappreciable value of concentrated affections, conjugal, filial, and parental—the genius of our common law, like that of Christianity, unites with the voice of nature and the suggestions of enlightened policy, in denouncing, as meritricious, any other matrimonial

connexion than that of monogamy; and consequently as long as the legal relation of husband and wife shall continue to subsist, neither of the parties to it can lawfully marry any other person, and any such prohibited marriage will be nullified by such subsisting pre-contract. And the same code of law only echoes the voice of nature, when it declares that duress, fraud, mental imbecility, and a prohibited degree of propinquity by blood or affinity, may avoid a marriage *ab initio*.

The legitimate effects of marriage, and the importance of the various relative interests involved in it and depending on it, constitute it an union for life, indissoluble, according to natural law, by either party without the consent of the other, or without a substantial breach by one, or the concurrence of both, and perhaps not even then, if they have any child to rear; and the divine law, as now revealed, seems to prohibit a divorce even for a breach of the contract of marriage; for, though the Jewish Legislator, (Moses,) permitted divorces, yet his more perfect successor, contemplating the Christian economy in lieu of Judaism, said, "Whom God hath joined together, let no man put asunder."

Marriage is moreover, *juris gentium*; and, according to a modern code of international comity recognized among most Christian nations, the *lex loci contractus* generally determines the validity of this, as well as of other contracts. The degrading and injurious consequences that might obviously and frequently result from any other doctrine, have at last compelled proud England reluctantly to acknowledge the validity of even the stealthy marriages of her own subjects, at famous Gretna Green, in open violation of her local laws. But the recognition of all foreign marriages, valid where consumated, would neither be required by the fundamental principle of comity, nor be consistent with its reason. That principle, being the offspring of the mutual interests of commercial nations, extends no further than may be useful for subserving those interests; and is consequently this—that foreign laws, though not entitled, *proprio vigore*, to extra-territorial operation, shall nevertheless be deemed as ubiquitous as the rights affected by them, unless by giving them such effect in a particular nation, its institutions, or its local policy, or the just and preferred rights of its own citizens might be undermined or jeoparded. Consequently, incestuous marriages, incompatible with domestic purity; poligamy, or more wives than one; and polyandry, or a plurality of husbands, even though recognized by the law of a foreign country, where these unnatural unions may have been first consummated, would not be tolerated in this country where they are deemed pestilent and extensively mischievous. And, consistently with the same conservative principle of comity, a foreign marriage unreasonably declared void by the local law of the place of the contract, might still be recognized as valid by our courts, if such a marriage here would be legal;—for example, the actual marriage of a monk in Spain, which is prohibited by that Catholic sovereignty.

Such is the international rule in Protestant Christendom, as to the *status* of marriage, or the marital condition of the contracting parties.

But, as to the legal consequences of marriage, a different rule of comity prevails. The law of the contemplated or actual domicil regulates marital rights to moveable property; the law of the *situs* governs the same rights to immovable estate; and the law of the habitation controls the personal relations and obligations of the parties. No other sovereignty than that of the *domicilium habitationis* can authorize such a divorce as will be deemed valid in any forum of that domicil; for it might be as subversive of the independence and conservative sovereignty of a nation to suffer a foreign sovereign to control its domestic institution and relation of marriage, as it would be to permit such foreign legislation over its *terra firma*, which has never been allowed or claimed. Consequently, a divorce of the citizens of one nation, granted by the authority of any other nation, may not be admitted as valid in any of the domestic tribunals.

The positive laws regulating marriage and defining the relative rights and obligations resulting from it, differ essentially in different countries; and in these respects, the common law of England, which is substantially our law, is materially variant from the civil code of Rome, which is the *substratum* of the laws of a great portion of modern Europe, and also of those of Louisiana.

The common law is less tolerant of divorces, and far less liberal to wives than the code of Justinean.

Our Teutonic code merges the legal existence of the wife in that of her husband; incapacitates her to make any contract or testamentary disposition otherwise than in execution of a power, express or implied; gives to the husband a harsh dominion over her person, the full exercise of which would not be tolerated by the less authoritative but yet more supreme law of public sentiment, in a Christian society of this enlightened age. And, as to property, the same law is also unequal and apparently harsh. It vests absolutely in the husband all the moveable property possessed by his wife at the time of her intermarriage, and the usufruct of her immovable estate during their joint lives, and even after her death and as long as he may live, in the event of his survivorship, the birth of an heir, and the reduction of the estate to his actual possession during the coverture. It gives to him also all the chattels that come to her during the marriage; a right to recover and appropriate to his own exclusive use all choses in action accruing after the marriage; and as adminis-

trator, without liability to distribution, all those also which accrued to her before coverture, and had not been reduced to possession at her death.

But the same law allows to the wife nothing during coverture; and, in the event of her surviving her husband, gives her, only for life, one-third of his real-estate, and a distributive share of his personalty absolutely after the payment of his debts.

But this very general and imperfect outline would leave our legal code subject to unjust imputation, unless we should add to it the memorable fact, creditable to English jurisprudence, that modern Equity, with a rational and liberal spirit, has gallantly interposed and covered the helplessness of coverture with its protecting shield. By interweaving into the iron web of the ancient common law some of the softer and finer fibres of the civil code, courts of equity have greatly improved the texture of the entire fabric, in many respects, and in none more essentially than in the melioration of the condition of married women. Equity recognizes the distinct existence, and to a limited extent, the separate rights of wives; it permits them to sue their husbands for good cause, and will protect them against tyranical and cruel abuse; it will also enforce post-nuptial contracts; allows wives to enjoy and dispose of separate property; and will neither always permit nor ever aid a husband to obtain the possession of his wife's property, unless he will first secure a competent maintenance to her, and her children also, if she have any.

And thus, next to the Christian religion, Equity may justly claim the most grateful tribute of wives, for the comparative elevation on which they stand in this land of law and age of light.

This skeleton of our law on the subject of marriage and its incidents brings us to the interesting inquiry—how is the Gordian knot to be relaxed or cut? And the answer is, only by death or divorce.

Divorces are of two classes—first, divorces A MENSA ET THORO—and, second, divorces A VINCULO MAMRIMONII. The first is only a temporary separation from bed and board, still leaving the parties in the legal relation of husband and wife: the second dissolves the matrimonial tie, and places the parties or one of them in STATU QUO.

By our law, the first class of divorces are allowable for inexcusable abandonment, or SÆVITIA or that kind of cruelty which endangers life or health. Any less degree of misconduct or neglect, however tormenting, will not authorize such a divorce, which is deemed perilous to morals by liberating the parties and still leaving "husbands without wives, and wives without husbands." For relief from incompatibility of taste, asperity of manners, acerbity of temper, offensive habits, or opprobrious words, the suffering party must draw on the consolations of religion or the fortiude of practical philosophy. This species of divorce is granted here by a court of equity only; and the divorce is accompanied by a monition to the parties to live chastely, and also leaves the door to reconciliation and restitution wide open. If a wife be thus separated, she is entitled to ALIMONY or a reasonable annuity for her maintenance. And, presuming conformity with the decretal injunction, the law will, PRIMA FACIE, deem illegitimate all children born during the separation.

Notwithstanding the value of the social intercourse depending on the stability of this most important of all the domestic relations, a dissolution of the matrimonial chain is authorized, for some cause or other, in all Christendom, excepting only in such portions of it as have established Catholicism, which looks on marriage as an inviolable sacrament, and therefore indissoluble and intactable by human authority.

According to our common law, the canonical disabilities of consanguinity, affinity, and anti-nuptual infirmity, render a marriage voidable only; and it is nevertheless good for all civil purposes until after a sentence of nullity, which cannot be pronounced after the death of either of the parties. But the civil disabilities of pre-existing marriage, want of age and want of mind, prevent a valid matrimonial contract, and therefore make it absolutely void. In neither class of cases, however, can a nullification of the marriage be appropriately denominated a divorce, which, in its strict sense, is a dissolution of marriage valid and binding between the parties at the time of consummation.

The laws of different nations and ages have also differed essentially as to the prescribed causes for a divorce A VINCULO.

In the early history of Rome, divorces were unknown; yet, in the most refined ages of the Republic, either party might renounce the matrimonial union without any other cause than a wish to do so; and even when, in a later age, the same latitude of license was not indulged, a husband might repudiate his wife for trifling and frivolous causes, which might often occur in the happiest wedlocks. Such laxity tended to the frustration of the most cherished ends of marriage and to the unhingement of society.

Antecedently to the French Revolution, marriage was indissoluble in France; but the volcanic eruption, that inundated the institutions and works of ages, desecrated the legal union of the sexes; and in 27 months, there were six thousand divorces in the single city of Paris. And even the Code of Napoleon allowed divorces for many causes, among which was mutual and persevering consent.

The Dutch law allows divorce for incontinence and malicious desertion only. And, in England, a divorce, A VINCULO, is granted for one cause and by Parliament alone. In South Carolina no divorce has ever been granted.

In New York, Massachusetts, North Carolina and Illinois, divorces may be decreed by the Judiciary for one cause, and that is the same for which marriage may be dissolved in England.

In Kentucky, a statute of 1809 authorizes judicial divorces A VINCULO for several prescribed causes. But nevertheless, the Legislature has adopted a practice of divorcing for those and many other causes, by simple enactment. Both the policy and constitutional authority of this accustomed procedure have been, and still are arraigned by many of our most prudent countrymen and wisest jurisconsults.

Can the policy be either wise, just, or beneficent? Can such a miscellaneous multitude as the Legislature of Kentucky be a suitable tribunal for the final decision of such important individual rights as those generally involved in the application for divorce? Can it be expected that each of the members who acts and votes will either feel a proper degree of responsibility, or deliberately investigate or understand all the facts of every one of the multitude of cases presented for legislative decision, at every session? And moreover, may there not be reason for apprehending that the personal solicitude of individual members to succeed in particular cases confided to their management, might operate unjustly on other cases, and mischievously on general legislation? It is a fact that important measures of general concern have been defeated or adopted by the influence of those sympathies and combinations. And it is a fact also that divorces have often been enacted without the knowledge of one of the parties, and sometimes without that of either of them.

It must be admitted, however, that our legislature have lately become more judicial by adopting the practice of notifying the party complained of, and summoning witnesses. But whether this usage is adhered to in every case, or how long it may be continued, we cannot tell. We know, however, that this extraneous business impedes general legislation, protracts the sessions, and greatly augments the public expenditures, even to an amount almost equal, every year, to the united salaries of the whole judicial corps, who could, much more fitly, perform the same service without any additional compensation.

Is it not surprising that the constituent body, habitually so astute and jealous in reference to the treasury and the conduct of their functionaries, seem not to have been yet awakened on a subject so important to them, in both a prudential and economical point of view, as that of legislative divorcing?

Would they not—if they would consider this matter—deem it much better for the Legislature, by a comprehensive general enactment, to prescribe all the proper causes for Divorce and leave the decision of each of those causes to the judiciary, and at the cost of the parties, as in other individual controversies? But the hazard of injustice, and the uncertainty of the matrimonial tenure incident to the practice of arbitrary and unlimited legislation on the subject of Divorces, present the strongest objection to its policy. Should such vital interests and inestimable rights depend on the ARBITRIUM of a legislative body which cannot determine a private right to a horse, a cow, or even a pig?

But the question of power is even more important than that of policy. Does the power, as assumed and generally exercised, exist? This is a grave question never yet judicially settled.

Those, who deny the power, do so generally on one or both of two grounds. 1st. The constitutional prohibition against the enactment of any Statute "impairing the obligation of contracts"—and, 2nd. The organic distribution of all the sovereignty of our State among three co-ordinate departments, Legislative, Judiciary and Executive, and the fundamental interdiction to the Legislature of any judicial authority over private rights.

The first ground is, in our apprehension, neither so comprehensive nor so strong as the last.

That marriage is an obligatory contract, is not now doubted. Nor, consequently, can there be any doubt that it possesses obligations that might be impaired by legislation. But it is more than a contract—it is an organic relation, on which the prosperity and even the existence of organized society essentially depend; and therefore, the sovereign authority of every State, having the inherent and inalienable right of self-preservation, must necessarily possess, to a conservative extent, the power to control that relation, for the public welfare. Hence, as the voluntary disruption of this domestic relation is deemed inconsistent with the interest of well-regulated society, it is not allowed by our system of jurisprudence; and consequently, contracts of marriage cannot, like agreements merely commercial, be dissolved by the mutual consent of the parties. On this general ground, we were once inclined to the opinion that marriage is not such a contract as was contemplated when the constitution prohibited legislative impairment of contracts. But subsequent reflection has shaken, if not changed that opinion. The power, which certainly exists consistently with the constitution, of dissolving marriage for a breach of any of its obligations by either party, may be enough for all the necessary or useful purposes of the government; and if any divorces have ever been granted by our Legislature or Courts, without an actual or supposed breach of obligation, expressed or implied, such cases have escaped our observation and must be rare; and although marriage is indissoluble without the consent of the sovereign authority, yet, when that consent is given, a dissolution for a breach of the contract cannot

impair, but only, so far, enforces the obligation of the contract. Unless, therefore, the Legislature should attempt to divorce man and wife against the consent of both, or without any delinquency or fault inconsistent with the object or implied obligation of the marriage contract, the inquiry, whether such a contract is protected by the constitution, would be irrelevant; and, in the language of Chief-Justice Marshall, (in the case of Dartmouth College vs. Woodward,) we may say that "when any State Legislature shall pass an act annulling all marriage contracts, or allowing either party to annul them without the consent of the other, it will be time enough to inquire whether such an act be constitutional."

But the second objection is more applicable, and may not be so easily resisted or evaded. The boundary line between the legislative and the judicial field is not defined with a precision either distinct or susceptible of absolute certainty; and the practice of special legislation for particular cases and persons has increased the difficulty of defining the legislative function in this country. But any act, in any form, which decides private rights from facts proved or assumed, must be judicial, and in no sense legislative; and therefore, if a legislature divorce a wife on the ground of alleged misconduct of the husband, they not only determine his rights, but decide the alleged fact, and seem to exercise the judicial function. Such an act might be an usurpation; and therefore void, unless the legislature have power to divorce a wife without either the consent or the fault of her husband. And does this power exist? Does that constitution, which guards private property and commercial contracts against legislative interference, leave the most important of all social rights and all its incidental and consequential interests exposed, naked and helpless, to the tide of legislative passion or caprice? This is a question we are not disposed now to discuss.

The stability and security of democracy have been assured by two modern expedients: 1st, representation judiciously organized and guarded; and, 2nd, the distribution of the three great functions of political sovereignty among as many separate bodies of magistracy, and the delegation of the judicial function to the judiciary department exclusively.

If the will of the numerical majority could be always deliberate, calm and rational, it ought always to prevail as the ruling power of a State; and, on this hypothesis, no fundamental restrictions on that will would be, politically, either necessary or proper. But this theory can never be safely exemplified in the imperfect state of fallen man; and no rational and prudent being would be willing to confide all his rights to the unchecked will of a majority of his fellow citizens. The great object, therefore, of all constitutions was to provide checks on the majority. And representation, as here organized, was intended as one security against popular passions and delusions, by assuring intelligence, deliberation, responsibility, and exemption from passion in the enactment of laws. This theory is as beautiful as it is philosophical. It is—that, in a popular government, the aggregate reason of the dominant mass must be made to prevail over its passions, and reflecting judgment over hasty impressions, occasional prejudices, and temporary excitements—that the will of the majority would be fluctuating, uncertain, and unsafe until it shall have been secreted through the constitutional organs—and that, when thus elaborated and rectified, it should be permitted to prevail, if mankind be acknowledged capable of self-government. And, if all the constitutional organs would always perform their proper functions, as originally contemplated, the practical government would be as benificent as the theoretical is provident and wise. But there is a class of timid or deluded representatives who will not maintain their constitutional positions—but surrender their own deliberate and instructed opinions and echo the passions, prejudices, or inconsiderate wishes of the constituent multitude. Such a course tends to undermine the constitution and frustrate its power and ends—and if it should become prevalent, there will be an eventful transition from a regulated and ballanced republic to an unregulated and uncontrollable democracy—a transition from a government of intelligence to one of passion, from a constitutional government to the tyranny of faction and anarchy. And how awful is the responsibility of those functionaries who, by such examples of recreance and servility, are helping passion and ignorance to usurp the reigns of government from reason and light in whose hands our Fathers placed them!

But there is still another and more hopeful safeguard in the constitutional separation of judicial from legislative power, and the institution of a chosen judiciary selected for its learning and probity, and made sufficiently independent to feel unmoved by cupidity or ambition. This is the great Bulwark of stability and justice—and without such a fundamental organization there could be no security. The concentration of legislative and judicial power in the same hands would, as the history of man proves, be despotism in EMBRYO.

And, therefore, our partition wall between making the law and applying it conclusively to the facts of individual cases is the most important and inviolable structure of our political fabric. It is the great Breakwater constructed and embedded by the wisdom of ages to stay the surges of the agitated ocean. And, as long as it shall remain untouched by the popular or law-giving hand, the humblest citizen may look unmoved on the foaming tide and feel secure. But let this embankment also be undermined or give way, and then the flood, unchecked, may soon inundate the land

and desolate the land we hold most dear—life, liberty, property, religion—and all.

The friends of constitutional liberty and justice cannot, therefore be too jealous of the assumption by the legislature of any portion of judicial power. Let that department, within its allotted sphere, prescribe the rule of conduct and of right; but never suffer it to take from any freeman his chartered right to be tried and judged by the constitutional tribunal of impartail and enlighted judgment.

And if it be the legislative will that a wife may be divorced from her husband for any prescribed cause, ought or not the decisive question whether the cause exists be determined in the same manner as all other questions of fact involving public right? This is an important enquiry.

Even the Parliament of England, whose will is law, never, in the plentitude of omnivorous power, grants a divorce until the only fact upon which it will dissolve marriage has been established by a regular trial and sentence in an ordinary court of justice. And not only was this the invariable practice also of Virginia prior to our separation from her, but Kentucky never departed from it until the year 1805—when, for the first time, her legislature passed an act peremptorily divorcing a husband from his wife.

But our purpose here is neither decision nor discussion—but only general suggestion for inciting reflection and research. And, therefore, our allotted time being about to expire, we will now close the subject, by only repeating, that God himself instituted marriage and declared, in the very act of his creation, that "it is not good for man to be alone."

Pupils—academic, medical, jurisprudential—all—We welcome you to the classic halls of Transylvania. Partially dismantled for years, she is now, at last, completely rigged and manned; and, with all her sails hoisted and her tri-colored banner floating in the light of an auspicious re-dawning, she launches on a broad sea, with flattering hopes of surviving every adverse gale and triumphantly surmounting every opposing billow. Though patched and renovated from hull to mast, she is the same old Argo that, in the infancy of the West and Kentucky's heroic age, gallantly bore aloft the "golden fleece" of science. Embarked on this long-tried, good old ship, you need no insurance. She will neither sink nor fail. May your voyage be prosperous, and land you well equipped for the rich harvest that ripens before you in this valley of hope. A better theater was never prepared for the useful employment of honest talents, or the honorable development of a noble patriotism. The age, in which you live to act, is evidently most portentous. The country on whose bosom providence has been pleased to cast your lots, is full of promise; and on the eventful drama in which it may be your fortune to play conspicuous parts, may possibly hang that country's destiny.

Our Anglo-American union has organized a great moral revolution, and is now, with the world's gaze upon it, testing a mighty problem for all mankind. The Mississippi valley may soon hold a preponderating authority in the councils of that union. In this hopeful valley the educated and professional classes, and especially the enlightened in jurisprudence, will possess a controlling power; and among these, Transylvania's sons must exereise a pervading and perhaps decisive influence.

It is on this ground that we feel especially the peculiar importance and momentous responsibility of this law Department. Who knows that it may not bless, save or destroy the hopes, not of this generation only, but of unborn millions? Will you, its pupils, all strive to illustrate its beneficence? Knowledge, fidelity, pure love of country, and honorable ambition will be your best armor in the conflict for which you are preparing. With these alone you may hope to be useful in your day, and expect to achieve virtuous renown. Any other panoply would be a dead weight which might crush you to the level of the vulgar herd of useless drones or ephemeral bustlers.

Resolve to be useful, and the end is almost attained. Correggio, when a boy, resolved to be a distinguished artist—and that instant, his fate was sealed, and posthumous fame was secured. And it is credibly reported of an eminent American, that, when taking final leave of college, with nothing but "poverty and parts" and a fixed resolution to become what he has already been, he said to the President of the institution, "You shall, one day, hear from Daniel Webster." And now Dartmouth, like the mother of Washington, is cannonized by the association of her name with that of her illustrious son. Will all or any of you, in the votive spirit of the New Hampshire boy, resolve, as he once resolved, to illustrate the name of this your alma mater? Shall Transylvania ever hear from you? And what shall she hear? The long line of her distinguished sons has already hallowed her fame and shed a lustre on this western world. Magna mater virum, Cornelia-like, she is justly proud of her jewels. Will you add to their number, or will you cast a shade on her bright escutcheon?

May you all contribute to swell the volume of her fame—may you ennoble your own names, and earn a grateful remembrance that shall never fade away. And, when you come to take your last leave of these scholastic walls, may you, each and all, make a sacramental resolve that Transylvania shall hear from you? and when she does, may the intelligence be such as to swell her venerable heart with a mother's joy.

Thus, on a subject full of harmony and full joy, we have commenced with "harmony," and close with "joy."

PRELECTION.

LEXINGTON, Feb. 24th, 1847.

DEAR SIR: At a meeting of the Senior Class of the Transylvania Law School, the undersigned were appointed a Committee representative of the wishes of the whole Class, who, through us, solicit for publication a copy of the able and eloquent Valedictory Address delivered to our Class last evening. Hoping to receive a favorable response, we have the honor to be

Your friends and obedient servants,

DAVID KERR,
JOHN KERR,
J. WATSON BARR,
WM. ATWOOD,
WALTER C. WHITAKER,
Committee.

LEXINGTON, February 26th, 1847.

GENTLEMEN: The Valedictory, of which you so courteously request a copy for publication, is the substance of one prepared by me for a similar occasion ten years ago. It is—as it is—yours.

And may you, and those you represent, each and all, carefully follow its counsels, exemplify its principles, and attain the destinies to which they point, and, if properly regarded, will surely conduct you.

Truly your friend,

GEORGE ROBERTSON.

Messrs. Kerr, &c., &c.

ADDRESS.

Gentlemen of the Senior Class of the Law Department of Transylvania:

Our didatic course is now finished. We as perceptors, and you as pupils, are here together for the last time; and the memories of the past, and the prospects of the future, now all at once clustering around our hearts, impress this closing scene with an unusual pathos and solemnity.

Your voyage of discovery, though toilsome, has, we trust, been correspondingly profitable. And now, in sight of TERRA FIRMA, it is natural that each of you should feel some of the emotions of Virgil's voyager, when—cheered with the first glimpse of recognized land, long sought and desired as his home—he cried out ITALIUM! ITALIUM! But, unlike his joy, yours is mixed with sorrow—and, unlike his hope, yours is clouded with the unknown shadows of uncertain destinies.

After long and interesting associations, peculiarly endearing we shall all soon part—where or when to meet, or whether ever again on earth, no one knows; and where you are to land, and what is to be your doom, the unwritten page of time to come alone can tell.

Having now finished your scholastic course, you will soon take leave of this institution, of your preceptors, and of each other, and enter as men, each for himself and in his own strength, on the sober and important business of active life, in which your own conduct may fix your destinies for good or for ill, for weal or for woe, for time and for eternity.

Although our professional relations are now dissolved, we feel it our duty before we separate, to tender to you the offering of our farewell blessing and parting counsel; and this last duty, resulting from our recent relations, is not the least difficult to us or important to you. In attempting to discharge it we feel its peculiar delicacy and responsibility; and therefore, with becoming sensibility and solicitude, we invoke your candid consideration of the valedictory suggestions which we will proceed to offer with all the sincerity and plainness of a parting friend.

Having been under our tutilage, and bearing with you our credentials our precepts and our hopes, we feel a solicitude, almost paternal, for your future welfare and usefulness. We have faithfully endeavored by proper tuition, to enlighten your minds with the elements of jurisprudence and to prepare you for becoming, in proper time, useful citizens, sound jurists and enlightened statesmen. In all these relations you may be usefully and honorably distinguished. Your recent opportunities and your professional pretensions, impose on you peculiar obligation to your ALMA MATER, to yourselves, your friends and your country. Much will be expected, much required of you—and be assured that all you have and can acquire and do, will be necessary for the proper fulfillment of your various duties, or the realization of high and honorable anticipations.

We may presume that most, perhaps all of you, are destined first for the Bar. The sphere of the popular and enlightened Lawyer is very comprehensive and elevated. It embraces the personal, social, and civil rights of his fellow men, and all the various and important interests and relations that depend on human laws. To act usefully and honorably in such a sphere, requires careful discipline, great knowledge and rare endowments, moral and intellectual. Ministering at the alter of Justice, lawyers should have clean hands, wise heads, and pure hearts, lest they profane the temple of jurisprudence, and sacrifice the lives, the liberty, the property, and the reputation of those who repose on their counsel and trust in their protection. The welfare of society depends, to a great extent, on the character and conduct of legal men. And, notwithstanding the prevalence of a vulgar prejudice against them as a class, they have an acknowledged and commanding influence, and therefore must necessarily do much good or much harm. In an intoductory discourse we made some general suggestions once, respecting the eminent dignity of jurisprudence and the high rank and influence of the gentlemen of the bar; and those suggestions have been since coroborated on an interesting occasion, illustrated with much learning by an eminent citizen attached to a rival profession, who, in estimating the relative influence of the various classes of society, conceded the second place to the lawyers—the first being, of course, allotted by him to the fair. Such a juxtaposition, if deserved, should be as inspiring as it must be grateful and honorable. But to merit and maintain it, requires a purity of purpose, a propriety of conduct, and a degree of intelligence which have not always characterized professional men of every denomination; and this is an age of renovation and light; all branches of knowledge, and all orders of society, are in a rapid progress of improvement. To maintain its high rank and ensure a benificent influence, the western Bar must be quickened by the regenerating spirit of

the times, and must elevate the professional standard and advance in that knowledge and in those virtues which will become more and more befitting their American character. To be useful or successful on the forensic arena, you must, gentlemen, be panoplied with the armor of legal learning, literary taste, general science, habitual prudence, moral principle, and practical wisdom. A thorough knowledge of scientific and practical law, should be the leading object of your professional ambition and pursuit.

Public expectation, the dignity of your profession, the interests of justice, and your own duty and fame, will demand the attainment of what you will profess to have—an accurate knowledge of the laws of your country in all their departments and relations. The want of such knowledge cannot be supplied by fidelity, however undeviating; integrity, however scrupulous; miscellaneous learning, however extensive; or talents, however solid or brilliant.

Do not repose in confidence, or presume too much on the elementary knowledge you have acquired whilst here. Though you have learned much, you are only initiated into the first principles, and prepared for the successful study of legal science, the most of which is to you, yet a TERRA INCOGNITA, far beyond the range of your circumscribed horizon. You may learn all your lives, and the more you learn the more you will find to be learned. To attain the utmost that can be accomplished, it is important to make a judicious selection of books, to read them properly, and to make a systematic appropriation of all your time. It is not the number, but the kind of books, and the manner of reading them, that will be most useful. The most scientific and approved editions of elementary books should be studied, carefully compared with the cases to which they refer, and tested, when doubtful or anomalous, by principle and analogy—and such text books as Blackstone, Cruise, and Kent should be periodically reviewed as well as occasionally read. The more important of the adjudged cases should be read carefully and compared and collated; and a commonplace manuscript, arranged by titles, alphabetically, would be both eminently useful by imprinting new doctrines on the mind, and always of great value for occasional application. An adjudged point, unreasonable or inconsistent with analogy or principle, should not be regarded as conclusive evidence of the law, unless it shall have been long acquiesced in, or more than once affirmed—and unless, on a survey of all material considerations, you feel that it is better to adhere to it, than, by overturning it, to produce uncertainty and surprise. STARE DECISES should be thus and only thus understood and applied. Stability and uniformity require that authority, even when conflicting with principle, should sometimes decide what the law is. But, in all questionable cases, follow the safer guides—reason and the harmony of the law in all its parts.

Whenever consistent with other and more important engagements, make it a rule to devote some portion of every secular day to the reading of law; and whenever you can, converse on legal subjects—this will tend to give clear and practical conceptions of legal principles, an habitual directness and facility in communicating what you know, and a taste for legal investigations which could not otherwise be acquired.

But the habit of intensely thinking and carefully writing on the more abstruse doctrines of the law will be still more useful. Unless we meditate on what we read, and see, and hear, until we rightly understand it, we can never make it our own, or use it properly or effectually. Reading and observation only supply materials for meditation; and intellectual rumination is to the mind what mastication and deglutition are to the body. But it is intense thinking alone that can digest and assimilate, into a congenial and vitalizing essence, the aliment of the mind. Intensity of thought is as indispensable to the nutriment of the mind, as the gastric solvent and vascular labaratory are to animal digestion and life. No man was ever truly great or useful who did not think much and well; and many have been practically wise without reading books. Patrick Henry's chief book was the volume of nature—but he thought with a peculiar interest and intensity—and thus, the carver of his own fortune, he became one of nature's tallest noblemen. But he did not know much law. To have acquired that science it was indispensable that he should have read as well as thought much. Proper reading furnishes food: right thinking digests it; and careful writing and speaking rectify it, and circulate the vital product. Bacon has said—"Much reading makes the full man, much thinking makes the correct man, and much writing makes the perfect man."

Let your miscellaneous reading harmonize with your professional duties. Be careful never to indulge it to such an extent, or in such a manner as to seduce from a proper allegiance to the law, or generate ascetic habits or epicurean appetites, incompatible with the robust health and masculine vigor of the legal mind. But general knowledge is as useful to the lawyer as to any other man. Whatever will furnish the mind with light, or impart to it vigor, health or discipline, must be peculiarly useful to one whose professional avocations require, in an eminent degree, analysis, illustration, and persuasiveness. All branches of virtuous knowledge mutually aid each other. The sciences are united by a common sympathy, called by Cicero COMMUNE VINCULUM.

"All are but parts of one stupendous whole,
Whose body nature is, and God the whole."

All eminent jurists have been enlightened by general learning. The example of Cicero, of Bacon, of Hale, should never be forgotten.

Cicero was one of the most profound philosophers and polished scholars of erudite Rome; Bacon's great mind was enlarged and liberalized by universal science; and Hale, among the most learned of his day, and a christian too, was, according to Runnington, of the opinion that "no man could be master of any profession, without having some skill in all the sciences."

This infallible truth has not been universally felt. But we have some reason for hoping that a more propitious era has come, or is coming, when all, who feel true professional pride or have a just sense of professional dignity and obligation, will know that general science cannot be neglected without great danger of abortion and degradation. Civil history, mathematics, philology, geography, moral, political, and physical philosophy, and medical jurisprudence, may be deemed essential; and polite literature and some acquaintance with the fine arts will be highly ornamental and useful. Without some acquaintance with these various branches of knowledge, the lawyer must enter the arena unarmed, or armed only with the rough and unwrought club of dry, hard, technical law. Medical jurisprudence has been too generally neglected. Every lawyer should acquire some general and correct knowledge of anatomy, human and comparative; of physiology; of chemistry; of materia medica; and pathology. An accurate and practical acquaintance with the purity and power of your vernacular tongue should be deemed a SINE QUA NON. And such an attainment implies no small degree of literary taste and study, as well as much attention and habit. In fine, it is important that a lawyer should learn all that it is useful for man to know. And the more he learns, the more he will be able and inclined to learn, and the more humble and less dogmatic and pedantic will he be, and seem to be. There is no danger that you can know too much. Whilst the moral and physical universe is around you, your minds can never be inactive, full, or satisfied. The higher you ascend the topless mountain of knowledge, the clearer will be your horizon; but, should you climb to where no mortal footstep has ever been, you will then be but the more sensible to the evidence of your own inferiority and ignorance, when, from your peerless eminence, for the first time, the interminable wilderness of unexplored knowledge, indistinctly opened to your enlarged vision, will appear as a world, contrasted with the little spot which, in a lifetime of toil, you had belted and enclosed as your intellectual domain, and which, so insignificant in your more comprehensive eye, seems to the microscopic vision of those below you to be the NE PLUS ULTRA of human attainment. A judicious distribution of your employments, and a systematic allotment of your time will afford you leisure for every reasonable purpose and enable you to acquire a mass and a kind of knowledge which can be attained by no other means.

Be careful never to pause in your pursuit after useful information. The mind cannot remain stationary—if it make no advance, it must retrograde; nor can morals stand still—and as nothing can contribute so much to your dignity, influence and happiness, as the activity and improvement of your own moral faculties, therefore, if you wish to be happy or useful—if you hope to be gratefully remembered among men, and to be ranked with the good and great of your species, be ever mindful that God has identified your peace and your honor, your duty and your usefulness, with intellectual activity and moral purity and light. Never neglect the map of nature always unrolled before you—nor the sacred volume of revealed truth, in which, when properly studied, true and practical wisdom, elsewhere unattainable, will certainly be found; and remember that whenever true "Science builds a monument to herself, she erects an altar to God."

But do not read more than you can understand, nor oppress the mind or impair the health and vigor of the body by excessive or indiscreet study. The studious mind requires occasional relaxation and relief. Let these be judiciously afforded by physical exercise and interludes of innocent and improving amusements. But never suffer the mind to become rusty from indolence, to be seduced by the allurements of vice, corrupted by sensuality, or unhinged by vacuity. Dr. Johnson's expedient for preventing Hypocondria was—never to be alone when idle, nor idle when alone; and it is worth being remembered and tried. Physical exercise, literary companionship, and moral conversation will be sure antidotes to gloom and cynicism; and music, Luther's intellectual Catholicon—next to the Bible in his judgment, as an adversary of the devil—should not be derided or undervalued. It exhilerates and tranquilizes the mind, elevates and purifies the heart, and thus contributes much of what scarcely any other amusement can, as innocently, contribute to improvement and happiness. Nor are gymnastic and other athletic exercises, for health or amusement, either useless or incompatible with personal dignity or intellectual eminence. They not only tend to impart vigor and health to the body, elasticity and tone to the mind, and simplicity to the moral character, but, when properly regulated, they render us more amiable and useful. Behold Professor Playfair, when a septegenaire, with the spring and muscle of manhood, leaping with the young athletes of Edingburg—Alexander Hamilton, playing marbles with his little children—Patrick Henry tumbling with his household Gods, and playing the fiddle for them to dance—and a Chief Justice Marshall, throwing aside the TOGA PRETEXTA, and as a youth, CON AMORE, pitching quoits with the young men of Richmond. These and many others of the distinguished great men were exemplars of the simple dignity, amiable condescension, and practical utility of true wisdom. Knowledge, to

be most useful, must be communicative, unaffected and benevolent. Such knowledge illustrates the social and civic virtues, and is equally opposed to haughtiness, to artificial dignity, to incivism, and to misanthropy. The honest face of virtuous nature, always attractive—if distorted or disguised by ignorance or false pride, is metamorphosed into corsitted, cadaverous, repulsive art. A virtuous and enlightened mind, necessarily unaffected, humble and cheerful, will, like the sun, shed its vivifying light around the young and the old, the rich and the poor, the lowly and the exalted; and, by acting in harmony with chaste nature's laws, will refresh and edify wherever there is any sympathy with its cheering influence. This is nature unmocked—dignity uneclipsed. Appollo should sometimes play on his lyre, and Hercules with his distaff. That is a false and pernicious dignity which chills the warm emotions of the heart or hushes the soft accents of nature's voice. Achilles was never so attractively interesting as when agonizing in the dust for the death of Patrocles; nor did the aged Priam ever appear so amiable, as when, with trembling frame and streaming eyes, he begged the lifeless body of his son Hector. These were nature's doings, and among her proudest achievements; exhibiting, in the one case, the most impetuous of heroes tamed and subdued by the tenderness of a holy friendship, and, in the other, the majesty of a King mildly mingled with the tenderness of a kind father. You remember the stern and towering Pyrrhus—being rebuked for the unstoical weakness of shedding tears for the death of his wife, and urged to assume the aspect of a Philosopher unmoved, he exclaimed—"Oh, Philosophy! yesterday thou commandest me to love my wife—to-day thou forbiddest me to lament for her!" And being told that tears could not restore her, he replied—"Alas! that reflection only makes them flow faster."

The reasonable indulgence of the affectoins and emotions of the heart is not only happying but meliorating, and is one of nature's expedients for civilizing mankind and saving them from selfishness and vice. The most wise and honored should always act as rational men, and never rebel against Heaven, or commit treason against nature, by attempting to destroy or to conceal those emotions which belong to the wisest and best of men for the wisest and best of ends. Let them then be enjoyed and acted out in a becoming manner by the most exalted of our race, as long as they wish to be considered as men. Such a course secures the intellectual Sun from eclipse, disrobes knowledge of the cold and mystic cloud of pride and hypocrisy, and presents it in all the simplicity and radiance of its native grace and intrinsic loveliness. He who never seems to feel, either never feels at all, or as man ought to feel; and others will never feel much affection or respect for him. But in the tender sympathies of pure hearts, there is "a joy unspeakable and full of glory"—and remember,

"The path of sorrow and that path alone,
Leads to the land where sorrow is unknown."

In discharging the various duties incident to your profession, you will find use for all human knowledge and moral power. Sallust doubted whether a higher order of talents and attainments was not necessary to make a good historian than an able General. But can there be any doubt that the *beau ideal* of an eminent lawyer requires more knowledge and moral power, than what might be sufficient to make an able General? Prudence, sagacity, decision, courage—are the chief attributes of able Generalship. The able and honest lawyer must have these and more. He must have a profound knowledge of law, an acquaintance with general science and polite literature—integrity of principle and of character, and a peculiar faculty of speech. Nothing is more difficult or interesting, or requires more variety of attainments, or greater compass or power of mind than a forensic argument, in a great and difficult cause, addressed to the reason, the hearts, and the passions of men in behalf of truth obscured by sophistry, justice oppressed by power, or innocence persecuted by malice and falsehood. In such a cause, all that is most good and great in moral power may be necessary and will ever be most useful.

A man of the ordinary grade of intellect may, by assiduity, perseverance and fidelity, become a respectable lawyer, and *"get along"* in his profession. But talents the most exalted—knowledge, most profound and various; industry, most regular; honor, most chivalrous, and integrity, most pure and inflexible, must all be combined in him who is eminently distinguished for forensic ability.

Talents, however bright—knowledge, however great—will be unavailing or pernicious, without habitual industry, systematic prudence, and perfect honor. What Johnson said of Savage, and Butler of Sheridan, is universally true—"Those who, in confidence of superior capacities, disregard the common maxims of life, will be reminded that nothing will supply the want of prudence, and that negligence and irregularity long continued, will make knowledge useless, wit ridiculous, and genius contemptible." No lawyer, who neglects that maxim, can be true to his clients, to his own fame, or to the dignity of his profession. And here we deem it not inappropriate to invite your attention to the importance of a peculiar propriety in personal and professional deportment; and also, to the necessity of, what may be termed, forensic ethics.

1st. A lawyer should be a gentleman in his principles, his habits, and his deportment; in fine, a gentleman in the sterling import of the term—else he brings degradation on himself, and helps to reflect discredit on the profession. And to be a gentleman in the true and perfect sense, is to be—what is too rare—a man of sound principles, scrupulous honor, becoming modesty, active benevolence, ha-

bitual morality, and rational, just, and polite deportment.

2d. In his intercourse with his clients, he should be candid, respectful, patient, liberal and just. He should never advise a suit unless it is the interest of his client to "go to law." If the case be frivolous, or the right doubtful, he should advise forbearance or compromise. He should never encourage litigation. When a suit becomes necessary, or is pending, his fee should be regulated by the value of his services and the client's ability conveniently to pay. An honest man will never barter his conscience, nor will an honest lawyer ever speculate on the ignorance, the fears, or the passions of his confiding clients. A faithful lawyer will never deceive his client nor neglect his business. It is his duty, and his interest too, to deal in perfect candor, and to do, in the preparation of his client's cause, all that he ought to do; and that is, all that he can do consistently with personal honor or professional propriety. If, in consequence of his negligence, misdirection, or unskillfulness, his client's claim unjustly or improperly fail, he should indemnify him fully, promptly, and cheerfully. He should never attempt success by any other than fair, honorable, and legal means; nor should he advise or connive at the employment of any other means by his client. He is not bound by any obligation to the dignity of his profession to abandon his client's cause, merely because he may discover that he is on the wrong side; for he might be mistaken in his opinion, and might do great injustice by turning against his client. And also, it is his duty, whether in a good or bad cause, on the wrong side or the right, to present, in as imposing a manner as fair argument can exhibit, the stronger or more plausible points in his client's behalf, without expressing an uncandid opinion. In no case should he ever express, as his opinion, any thing but his opinion. To do so would not only be inconsistent with the propriety of his profession, but would surely impair his influence, subtract from his reputation, and render it altogether uncertain when he thinks what he says.

3d. Towards the court he should be respectful and modest, but firm and candid; and he should never endeavor to elude his own responsibility, by attempting to throw it unjustly on the court. This artifice is but too common. It is, however, not only disingenious, but discreditable and disadvantageous; because it is dishonorable, and tends to disparage the the courts of justice, in which public confidence is indispensable to a satisfactory administration of the laws.

4th. In his intercourse with his professional brethren, he should be courteous, just, and honorable. He should repudiate all dissimulation and low cunning, and all those common place and humiliating artifices of little minds, which constitute chicanery. He should desire only an honorable victory; such as may be won by fair means and fair arguments. If he beat his antagonist by superior arguments or superior knowledge, his success is creditable; but if he beat him in cunning, fraud or trickery, he degrades himself, prostitutes his privileges, and outrages forensic dignity and propriety. Such vulgar game is beneath the pride, and revolting to the honor of lofty intellect. It is the offspring of moral infirmity, and is, almost always, proof of a diminutive mind.

5th. A lawyer can hardly be both mercenary and just. An inordinate appetite for gain, is apt to seek gratification in spoliation, fraud and oppression, and is generally the companion of a cold and calculating selfishness, irreconcilable with the most attractive and useful of the personal, social and civic virtues. Avarice is also undignified and unreasonable. He, who is not content with a competence for independence and rational enjoyment, has a morbid appetite which this world can never satiate—because it craves to *hoard* and not to enjoy. More than a competency is not necessary for happiness, and is but seldom consistent with it.

"Reason's whole pleasure, all the joys of sense,
Lie in three words—health, peace and competence."

And the book of books tells us, that it is almost impossible for a very rich man to reach, or, if he could reach, to enjoy heaven; because he is almost sure to be sordid, and to look on ephemeral, earthly possessions, as his *summum bonum*, or supreme good. It is almost as difficult for a rich man ever to become a great lawyer. There are but few who can be stimulated by ambition or taste alone, to encounter the toil and vexation, the sleepless nights and anxious days, which must be the price of forensic eminence. And he who desires that his last moments on earth shall be gilded with a firm assurance that his children, whom he has pledged as hostages to posterity, shall be useful and honorable in their day, should not be solicitous to lay up for them, more of this world's goods, than barely enough to enable them to give to their moral and physical powers proper means of employment and development. Why then should we court an empty and delusive shadow? Worse—an *ignis fatuus*, that too often lures from the straight and open path of virtue and happiness? for we know how few there are, or ever have been, who dedicate their surplus wealth to its only useful and proper end—beneficence.

6th. But it is the duty of every man to endeavor honestly to acquire and retain the means of a proper independence. Industry and economy are therefore social virtues—and the lawyer, as well as any other person, should be paid adequately for his useful services. But this should be with him a secondary object. A proper administration of the laws, usefulness to his countrymen, and his own fame, should be the prime and controlling motives of his professional labors and ambition.

Concurring altogether in its truth, and deeming it here appropriate, we commend to your approving consideration and abiding remembrance, a sentiment of the open-hearted and gifted Burns:

"To catch dame fortune's golden smile,
Assiduous wait upon her,
And gather gear by every wile
That's justified by honor.
But not to hide it in a hedge,
Nor for a train attendant.
But for the glorious privilege
Of being INDEPENDENT."

7th. It is also very important that you should be able to communicate effectually what you know and feel. And to possess this eminent faculty, it is necessary that you should understand and feel your subject, and have an articulate and well-modulated voice, appropriate action and a pure and felicitous style. No speaker can be understood, who does not himself understand his subject, nor make others feel what he does not himself feel. Others will never be enlightened by the mind of him who has no light, or moved by the tongue of him whose own heart is unmoved. Eloquence is the voice of truth and of nature. It springs from the head and the heart—a clear head and a benevolent heart, are the living fountains, without which, no limpid stream of eloquence will ever flow. Nothing can supply the want of good thoughts rightly felt. The stammer of Demosthenes and the wart of Cicero can never help a turbid brain or a callous heart—nor can all the "*contortions of the sybil*" enlighten the head or move the heart without her "inspiration." But a good manner and appropriate style impart to good thoughts their true grace and full effect, and are therefore important.

Every speaker's manner should be his own. A natural manner is the only good one. The attitudes, expressions and intonations of nature may be improved by judicious art, but never by servile imitation. The voice, especially, may be wonderfully improved in distinctness, melody and power—but with all the improvement of which it may be susceptible, it should still be natural. Mimicry is unseemly and ridiculous, and many a public speaker has been spoiled by attempting to follow some popular model.

Language, being the dress of thought, should be chaste and appropriate. The principal defects in Western elocution, and especially at the bar, are verbosity and vociferation—too many words, and too much noise. Our forensic style is generally too copious—and of most of our best speakers, the remark applied to Gibbon might with more propriety be made—"the thread of his verbosity is (sometimes) drawn out too fine for the staple of his argument." The style should be adapted to the subject and the occasion, and should always be pure and clear. This is the only safe or unerring rule. A speaker should never bawl or scream. His intonation should be regulated by the subject and the natural volume of his voice, but in such manner as not to be disagreeable or unintelligible; and it is always very important that it should be distinct and audible. More words than are necessary to express the idea or emotion, just as it is in the head or heart of the speaker, should not be employed—

"Words are like leaves, and where they much abound,
Sound fruit or solid sense is seldom found."

The true orator is never arrogant, presumptuous, pedantic or theatrical. Eloquence is well personified by Homer in his delineation of the style and manner of Ulysses:

"When Atreus' son harangued the listening train,
Just was his sense, and his expression plain;
His words succinct, yet full without a fault—
He spoke no more than just the thing he thought.
But when Ulysses rose in thought profound,
His modest eyes he fixed upon the ground
As one unskilled, or dumb, he seemed to stand,
Nor raised his head, nor stretched his sceptered hand.
But when he speaks, what elocution flows,
Soft as the fleeces of descending snows,
The copious accents fall with easy art,
Melting, they fall, and sink into the heart.
Wondering, we hear, and fixed in deep surprise,
Our ears refute the censure of our eyes."

Here was no foaming or thundering—no redundance—no affectation—no visible artifice—no unnatural drapery; but all was naked thought and feeling, presented in chaste nature's simple dress. Such is eloquence, and such, in a great degree, was that of the great popular orator of America—Patrick Henry—who, had he possessed the literary advantages and habits of reading with which some men have been blessed, would, doubtless, have been the most perfect model of human eloquence.

Written or committed speeches are dangerous things to lawyers. Understand your subject thoroughly, and trust to the inspiration of the moment—nature will then do more for you, as to manner, than all the elaborate preparation of the closet.

8th. But the nature of forensic controversy requires that lawyers should possess a peculiar kind and eminent degree, not only of knowledge and persuasive elocution, but of dialectical skill. We do not mean the verbal sophistry of the schools, nor that vulgar habit of weak and skeptical minds, of arguing as plausibly on the wrong as on the right side; but we allude to that faculty possessed only by a gifted few, of presenting the strongest ideas in their utmost force—of exhibiting the whole truth in its fullest effulgence—or of throwing over it, when expedient, the greatest obscuration.

Thucydides said of Pericles, as proof of his almost superhuman power and dexterity of argumentation—"when I have got him down, he cries out he is not vanquished and *persuades every body to believe him.*" This wonderful de-

bater did not resort to the shallow artifices of the pedantic quibbler described by Hudribas:

Who could "on either side dispute,
Refute, change sides, and still refute—"

but his resources were those of a mind that could perceive most clearly—a heart that could feel most keenly—and a tongue that could speak most seductively all that he saw, and thought, and felt. Common sense was his magic wand. It was also Patrick Henry's great lever. This—the soul and end of all knowledge—cannot be acquired in the closet, nor found in books. It is instinctive and practical—the offspring of native sagacity, and of an intelligent observation of things as they actually exist. Without it, all other knowledge will be comparatively useless, and may be easily misapplied and perverted. It is the visual organ of the body of human knowledge, without which, the mind is a labrynth without a clue, or, when fullest of speculative wisdom, is like the blind giant striking in the dark.

Be careful, therefore, gentlemen, to learn all that can be gleaned by rational induction from all things that come within the range of a reasoning and discriminating observation. The rare knowledge that can be only thus acquired, will be necessary to enable you to apply all that you have and know, most honorably to yourselves and usefully to mankind.

9th. A nuzzling pettifogger—SUTOR NE ULTRA CREPIDAM—is one of the most contemptible and pestilent of human beings. A dishonest lawyer, of ingenious talents, is one of the most dangerous and terrible of the whole animal kingdom; but an enlightened and virtuous jurist is a sentinel of liberty, a minister of justice, a guardian of peace, on a lofty eminence, waving over the admiring multitude below and around him a pure white flag, bearing as its only motto, Law and Light, Protection and Right. Such a lawyer is the friend of the honest poor—the counsellor of the ignorant—the champion of the weak—the avenger of the wrong, and the advocate of right, public and private.

10th. But, gentlemen, to become eminent and useful lawyers, you must resolutely guard yourselves against two of the besetting sins of your profession—premature distinction, and political ambition.

You must be patient, constant and persevering. Professional ability and fame are ripe fruits of toil and of time—the *lucubrationes viginiti annorum* are not more than sufficient for their full maturity and grateful flavor.

It is neither prudent nor just to solicit more business than you can manage well; and a *junior apprentice* cannot well manage much. Too much will occasion abortions which may fix upon you a character which it will be difficult to change. It will be much more propitious to your future fortune and fame, that, in your initiative practice, you attend satisfactorily to a few cases, than negligently or unskillfully to many. You must not yield to despondency—whatever may be your difficulties or prospects, industry, perseverance and fidelity will ensure ultimate success. The best and most enduring products are of slow growth, and many of the greatest lawyers who ever adorned the profession, have encountered and finally overcome years of obscurity, poverty and discouragement. But mark! Their season of trial was improved by unremitted study and observation. And here allow us to admonish you never to ask for employment, or hunt for clients, or underbid your competitors. No practice is more humiliating, or can be a more certain index of a destitution of merit; and, in the end, if not at the beginning, it must operate injuriously. "The cheap lawyer," like "the cheap merchant" and "the cheap doctor," is generally, when the whole truth is known, the least useful and the most costly. Instead of obtruding yourselves into business, or degrading yourselves by becoming the lowest bidders, prove yourselves worthy of public patronage, and clients will hunt *you*, and honorable and just employment will be certain.

11th. Beware of the seductions of political life. Whenever the tumult of the *comitia* becomes music to your ears, the grove of *Egeria* will be deserted or too much neglected. It is difficult for practical law and politics—though twin-sisters—to live and labor together prosperously in one household, and under the same guardianship. A young lawyer, attending properly to his profession, cannot be a very useful or distinguished statesman; nor can such a statesman easily or conveniently be a first rate practising lawyer. To become either useful or eminent as politicians, your time and talents should be chiefly dedicated to political study and duty—so as to render a proper devotion to the law impossible—for to be qualified to earn political renown or do much public good, implies an extent of statistical, political and practical knowledge, which are the rare fruits of intense study, great talents, long service and matured experience. How insignificant is the upstart and shallow *quid nunc* who knows nothing of politics but what he reads in partizan newspapers, or hears in the street, on the stump or in the legislative hall. And how ineffably contemptible is the vulgar miscreant who, not desiring to know anything higher than party discipline, nor to feel any thing better than party devotion, stifles conscience, prostitutes reason, and degrades his own nature to an approximation to that of the tiger or the wolf, in sacrificing, with a blind servility and fanatical alacrity, justice, principle, judgment, patriotism, and *himself*, as a mercenary offering to the rapacity of a political Juggernaut?

To render valuable service or acquire honorable fame as statesmen, you must think for yourselves, and act as you think, and all alone for the true welfare and glory of your common country. And all this will require probity, firmness, and intelligence of no common cast. The subterranean path of the selfish politician is dark and devious, and full of peril—the sword of Damocles hanging over every turn of its meandering course. And the more open and elevated way of the honest statesman, though radiant and straight, is beset

with corroding anxiety, envious obloquy and mortifying disappointments. But few, very few political men have enjoyed the triumph of unvaried success, or have acquired honorable and enduring fame—fewer ever reached the goal of their hightest hopes—and fewer still have been satisfied or content. Neither office nor civic honors can confer solid happiness and lasting renown; and therefore, neither possesses anything for which, in itself or on its own account, it will ever be sought or desired by a wise and honorable man. When not bestowed as the just reward of merit, but obtained by stealth or solicitation as the price of prostitution, they are but gilded ornaments which will glitter but for a short time in the eyes even of the ignorant or unprincipled, and can never serve as passports among honest and enlightened men. No active politician was ever a man of tranquil mind—no seeker of office was ever long contented—no lover of office, who delighted in reflected honor, was ever both wise and virtuous. Besides, political aggrandizement is so fascinating, and political ambition so all-absorbing as generally to produce tastes and habits unsuitable to professional employments, and, but too often, uncongenial with the pure feelings of disinterested friendship, and the still holier sympathies and lovelier charities of private and domestic life. And like him "whose Empire has been lost in the ambition of universal conquest," the man who attempts to become, at the same time, a great lawyer and statesman, is almost sure to lose both objects of his enterprise. It is as unreasonable as unjust to seek political or official preferment until we are qualified to be useful, and to earn honorable distinction. Do not then, young friends, enter the political arena, if ever, until you are properly matured, or have determined to dedicate all, or the chief of your time, to the public service.

12th. But the talents of every citizen belong, in some measure, to his country; and it is the duty of every one to contribute to the welfare of the commonwealth. If, therefore, at any time, you should think that you may be able to render valuable service in public life, and should be prepared to surrender your profession, or to make it only a secondary object and occasional pursuit, we would not dissuade you from yielding to a spontaneous call by your country into her public employment. And should it be the fortune of any of you to be thus engaged, never forget your sacred obligations to truth, to patriotism, to honor, and to justice. Remember that your own fame will, at last, depend on your own integrity, rectitude and talents; and that no man ever acquired honorable and lasting influence without intrinsic and superior merit. If you wish to be truly useful—if you desire the sincere esteem of virtuous and intelligent men—if you hope for posthumous remembrance and gratitude—be sure never to court or seek a vulgar and ephemeral popularity, which is the idol of unreflecting and unprincipled ambition, and is caressed and won by duplicity, servility and vice. Truth and probity, and talents rightfully employed, must finally triumph over every combination of hypocrisy, meanness and ignorance. The straight path of light, and that alone, leads to true honor and renown. Never sacrifice judgment to passion, light to darkness, principle to interest, or your own dignity or conscience to the blind and ferocious idol of partisan faith and allegiance. The soul of most organized political parties is selfishness—the end, power and emolument in the hands of a few—the means, mock purity, counterfeit principles, popular excitability, passion and ignorance.

Look at democratic Greece, mobocratic Rome, or republican Florence, or France, or England, or America—consider ancient times and modern times—examine political parties of all times—and the truth just uttered will not be denied or doubted. The history of party under the Brunswick Dynasty in England is but an epitome of faction or selfish party everywhere. You recollect that after Pultney, Wyndham and Shippen, leaders of the malcontent whigs, the tories and the Jacobites, crushed the Walpoleon party, they quarreled for the spoils, and Pultney himself, the popular oracle, like all selfish men in power, apostatised and out-Walpoled Walpole himself, as soon as he reached the premiership—the ultimate prize of his long crusade against denounced aristocracy and corruption. Such is noisy *vaunting* patriotism—such is poor mortality when puffed with vanity, pampered with flattery, or stultified by premature or unrighteous ambition. We are even indebted for Paradise Lost to Milton's blindness, occasioned by the prostitution of his great mind to the partizan drudgery of scribbling with intense devotion in favor of the sanctimonious and hypocritical Cromwell. And had he not written himself blind in the filthy cause of personal politics, he might have been long since forgotten or remembered with regret for talents perverted, and patriotism misguided. Gentlemen, always be independent, and give your own reason full scope and fair play. Never pin your faith on a politician's sleeve. *"Cum Platone errare quam cum aliis recte sentire"*—is yet the practical maxim of too many men who are entitled to be free. The authority of a great or popular name too often consecrates error and vice by confounding them with truth and virtue. Never flatter or deceive the people. Honestly seek for truth and justice—and never either do or utter that which your impartial and enlightened mind may condemn. Such a course of conduct will secure for you public confidence and esteem, whatever may be your condition; and it will be almost sure to obtain for you, sooner or later, a just share of the public patronage—but, in any event, it, and it alone, will console you with an approving conscience. And is it not better to live like Aristides or to die like Socrates, than to be an Alcibiades or a Cleon, hoisted on the shoulders of an insulted or deluded populace? Nothing but virtuous motives and useful deeds will embalm your names in the grateful re-

membrance of honest men; and an honest man would be ashamed of any other fame than honest fame. This alone is creditable—this alone useful—this alone will be pure and lasting. Not what, for the moment, may be popular, but what is right should be your purpose. Have the courage always to do right, and be afraid only of doing wrong. Honorable ends by honorable means—be this your motto—and then, if you fall, you fall a martyr to truth, and will be blessed. But if you should ever rise by unworthy or dishonest means, you will, at last, surely fall, and be cursed both in this world and in that which is to come.

"Oh! is there not some chosen curse,
Some hidden thunder in the stores of Heaven,
Red with the uncommon wrath,
To blast the wretch who owes
His greatness to his country's ruin."

In political, as well as in civil and social life, be justly tolerant. Every freeman has an equal right to liberty of opinion and of conscience. There is no real freedom when an honest man is denounced or disfranchised for an honest opinion. In describing a perfect democracy, Thucydides put into the mouth of Pericles, the following among other admirable suggestions—"Not offended at any man for following his own humor, nor casting on any censure or sour looks—we converse freely with one another without fear of offence, fearing only to transgress against the public."

But whatever you may be, you will be citizens of a country the most interesting, at a time the most eventful, and under institutions the most popular the world ever knew. The pilgrim fathers who planted the seeds of civil and religious liberty—the revolutionary worthies who conquered tyranny, consolidated the rights of man, and embalmed them in the affections of mankind—are all gone, and we, too, of this generation, who have succeeded them, will soon pass away and leave to you, who are coming after us, and are about to take our places, a land and a government blessed, as we trust, by a benignant Almighty, as the abiding place of liberty and light for all generations of men in all times to come. We have anxiously endeavored to assist you in making some useful preparation for the enjoyments and the duties that lie before you. The field is unlimited—the harvest is ripe—the precepts of Washington and the memory of the illustrious dead are fresh and full before you—the happiness of the living, your own destinies, and the hopes of the unborn, rest upon you as among the laborers of the dawning day, and urge you to be in all things, and at all times, zealous, and active, and true. In all the relations of life, important duties will devolve upon you—and in all, however humble or circumscribed, you may be eminently and lastingly useful. Enlightened reason, perfect justice, and comprehensive patriotism and benevolence, should be your cardinal guides. Cultivate, to the utmost, all your moral faculties—this you owe to yourselves, to your fellow men, and to him who gave you, as a sacred trust, all you have. Do all the good you can to others by a scrupulous attention to all positive and negative obligations, personal, social, and civil; and never forget that you should always "do unto others as you would, —your places being changed—wish that they should do unto you"—this is the golden rule of philosophy as well as of religion. Cherish a rational love of your country, not only because it is your country, but because it deserves your love and support. But let your patriotism be not selfish or contracted, but benevolent and comprehensive—embracing your whole country in all its parts, and interests, and institutions, and with an intensity proportionate to the benefits it confers, and the moral ties which bind you to it. Encourage the diffusion of moral, religious and political truth, and countenance organized efforts tending to promote the common welfare. Never encourage falsehood or vice, nor infect the morals, pervert the taste, nor unhinge the principles of any rational being by conversation or example either demoralizing or licentious. The ruin of one immortal mind could never be expiated by all the beneficence of a long and active lifetime. But, as the surest means of preserving every thing else most valuable, strive, by all proper efforts, to maintain unpolluted the principles of constitutional liberty and equality, to uphold the authority of law, and to strengthen the ligaments and increase the harmony of the North American Union. Thus you may be useful and honored in your day, and inscribe your names on the roll of virtuous and enduring Fame. And thus, truly, you will have lived to the honor of your race, and the glory of your age and country. The good a man does dies not with him; his example and his labors live and act long after he is dead. Remember Socrates, Cato, Newton, Sydney, Franklin, Washington, and Marshall—their deeds live after them, and will long live to enlighten and bless mankind.

We must here conclude. The suggestions now offered, though cursorily presented *raptim ei carptim*, we beg you to consider seriously and long remember.

You will now go forth as the winds, to scatter over this great valley of the west seeds of knowledge which have been gathered under our auspices. May these take deep roots, and be watered and nourished until they shall grow, and fructify, and cover the land with a richer moral foliage and a fragrance of more perfect liberty and truth. Whatever may be your destiny, may you ever cherish fraternal sympathies for each other, and a filial remembrance of your Alma-Mater. She will never cease to feel a deep interest in all that concerns you, and in whatsoever you may do, or may be; and it will rejoice her to hear of your prosperity and honest fame. May she, like Berecinthia, be now and always—

Felix prole virum . . .
. . . . . .
Proud of her sons, she lifts her head on high,

Proud as the mighty mother of the sky—

. . . . . .

And may we too be allowed to hope that you will not forget us, nor neglect our precepts. If we have contributed to your improvement, we shall be happy to hail you as sons, and to be long and kindly remembered; and when our earthly course is finished, may you, our cherished pupils and friends, still live to adorn, to save, and to bless our beloved country.

Though—after our approaching separation—we may not meet again on earth, yet, as we are taught to believe, it will not be long until we shall be re-assembled at the bar of Almighty God, to be severally judged for the deeds of our probationary pilgrimage. May the light of that day, like a bright fixed star, guide us from the snares through which we pass to the tomb, and cheer our hearts with a hope beyond the grave.

PRELECTION.

Lexington, Nov. 8, 1852.

Dear Sir:—The undersigned have been appointed a Committee on behalf of the members of the Law Class of Transylvania University, to request of you a copy of your Introductory Lecture, delivered on the 4th inst., for publication.

We hope you may find it convenient to comply with this request; as we believe that the lucid and masterly exposition of the principles of the American Constitution, to be found in that address, will have the tendency to check the monstrous doctrines of nullification and secession, which threaten, ere long, unless firmly resisted by the patriotic intelligence of the people, to undermine the fabric of our Government, and "to enfeeble the sacred ties which now link together the various parts" of our beloved country. We have the honor to be, sir, with very high regard, your obedient servants,

J. M. HARLAN,
G. G. VEST,
V. H. LYNN,
Committee.

Hon. George Robertson.

Lexington, Nov. 12th, 1842.

Gentlemen:—Absence from home has delayed an answer to your kind note, requesting a copy of my Introductory Lecture for publication.

If the deliberate perusal of it in print, shall help to impress you with right conceptions of the radical principle of the Constitution of the United States, and of the extent of the powers of the Government it established, the Lecture will have effected as much good as I could expect. It was intended for you alone, and, if its publicity shall extend its influence beyond the Lecture Room, and tend, in any degree, to arrest the progress of pernicious errors, and to prevent the unhingement of the Government of our model Union, I shall be more than compensated for my effort, through you, to contribute to save and exalt the great work of the Washingtons, and Madisons, and Hamiltons, and Marshalls of America.

In compliance with your request, therefore, I commit the Address to your discretion, to be disposed of as you deem best.

Yours, respectfully,
G. ROBERTSON.

ADDRESS.

When the Federal Convention of 1787 determined to substitute a constitution for a league, a National Government operating supremely on the people of all the States, instead of a confederation among the States as political sovereigns—the character and scope of the powers which the sovereignty of the Union should possess, presented a question of the gravest consideration. The object of the contemplated Government was the union of the people and the States; and the end of such union was undivided nationality abroad, and peace, justice, and security, as to all international interests and rights at home. Consequently, as experience had demonstrated the necessity of a supreme popular Government, constructed by and responsible to the people of all the States, for effecting the desired ends, wisdom and patriotism concurred in making the authority of that Government co-extensive with all international concerns. History, Philosophy, and the representative principle embalmed in the Declaration of Independence, all united in defining this as the true conservative boundary between the Governments of the several States, and the comprehensive Government of the United States. Common interests should be protected by common counsels. No one of the States should possess any arbitrary control over affairs involving the liberty, peace, or property of the people of all the States. Whatever affects the rights of the people of all the States, or of more States than one, ought to be under the guardian care of their common Government. As to all international concerns abroad, we have, and should have, but one Government, and but one Nation—that of "the United States." And as to all domestic concerns, in which the people of the Union have a common interest, there should be, and is, but one Government—that of the Union. Such powers as were essential to that Government, were taken by the people, from their State Governments, and delegated to the National Government, which, being thus derivative, possesses no power except what has been given to it by the provisions of the constitution. And to avoid, as far as possible, collisions between the States and General Government, as to their respective jurisdictions, the national constitution classifies and enumerates the general powers deemed essential to enable the latter to fulfil the great trust of maintaining harmony, peace, and justice, throughout the limits of the Union. But the most eligible means of effecting the ends of the enumerated powers being various, and often changeful in their adaptations, they neither were, nor could have been specified. It is an undeniable principle of both jurisprudence and philosophy that, when power is granted to an agent to do a designated thing, or a trust is confided to perform a defined duty, all the accustomed or fitting means of doing the thing, or executing the purpose of the trust, and which the constituent, before delegating the power or imposing the trust, might have employed for the same object, are also delegated to the representative organ, excepting only so far as the character of authority shall have qualified or restricted them. But lest this axiomatic truth might be sometimes questioned, in its application to the constitution of the United States—which recites the self-evident fact, that the Goverment constructed by it, shall exercise no power not delegated in it—the principle of implied or resulting powers just suggested, was expressly recognized by the declaration that, in addition to the enumerated powers, Congress should possess all other powers, "necessary and proper," for carrying them into full and complete effect. Without that prudent recognition, the existence of constructive powers would have been unquestionable, and their scope would have been as comprehensive, and the test for defining it as clear, as now. Implied power is only the right to employ appropriate and unprohibited means for fulfilling the ends of the express powers. Is the thing done or proposed under the claim of constructive authority, a mean to an end of any express power—is it expressly forbidden by the constitution, or is it inconsistent with its genius or any of its principles?

This is the true and only constitutional touchstone of implied power. It is sufficiently obvious, and can but seldom be of difficult or doubtful application, by the candid and intelligent mind, enquiring only for the truth.

If there be no express grant of power to Congress to enact a statute for a specific purpose, the question of its constitutionality will depend, 1st, on whether there be any express power, the end of which may be accomplished or facilitated by such legislative provision—and 2d, on whether the prescribed measure be interdicted by the constitution. The constitutional declaration that Congress shall possess all power "necessary and proper" for carrying into effect the express powers specifically delegated, is not restrictive of the universal principle, that a grant of express power to do a thing carries with it authority to employ any unprohibited mean for executing the grant in a manner consistent with the object for which the power was delegated. "Necessary," without qualification, does not mean that which is indispensable. As it is not a technical term, it must be construed according to the popular use and import of it. Its ordinary adjective

acceptation is synonimous with a mean effectuating or tending to effectuate an end. When a certain end is to be accomplished by means, some effectual or appropriate mean to the end is, of course, necessary. For effecting most ends of the express powers in the constitution, the efficient means are various and multiform; no one of which, more than another, can be deemed indispensable. Which should be preferred, as best adapted to the end, is a question concerning which equally enlightened minds may differ; and, consequently, sound discretion will make the selection. Those who do not concur in that choice, have no right to say that the act is unconstitutional, merely because, in their opinion, or according to their taste, some other mean would have been more appropriate or expedient. The degree of relative adaptation is a matter of policy, not of power. Any mean that relates to the end of any one of the enumerated powers, is as constitutional as any other mean to the same end, if it be not prohibited. Of all such means no one can be deemed more necessary than another. The constitutionality or unconstitutionality of any one of them, cannot depend upon the uncertain and controverted opinion of its *optimism*, which involves the question of expediency, not of power. But, among all the various unprohibited means which relate to the end of an express power, the majority have a right to choose that which it deems best adapted to the fulfilment of the purpose of delegating that power. The power to do a thing, does not depend on the policy or expediency of the thing. A particular species of legislation by Congress, might operate very beneficently on the general welfare. Yet, unless there is either an express power to do it or it has relation to some such power and will tend to effectuate the end of it, the constitution would not sanction it. For example, it might be useful to have one uniform national law regulating the obligation of contracts, or the transfer of title to land by inheritance, conveyance or devise. But all these matters are local: and, as none of them, as means, relate to the end of any of the enumerated powers given to Congress, every such act would be unconstitutional and void. So, on the other hand, the impolicy of an act does not prove that it is unconstitutional. A subtreasury may not be the most suitable or politic mode of executing the express power of taking care of and transmitting the national treasure; it may, therefore, be inexpedient or impolitic. Nevertheless, it may be clearly constitutional, because, as a mean having an obvious relation to the end of an express power, it may execute the trust, tho' not perhaps in the best possible manner. This is equally true, even as to the express powers. Congress might happen to declare an unjust or impolitic war. The express power to declare war is limited only by the discretion of Congress. War is one mode of effecting national security and justice,—other modes may happen to be more expedient for attaining the same object,—in such a case war would be inexpedient. But still it would be undoubtedly constitutional. So, for fulfilling the end of the express power, "to establish post offices and post roads," it might be more expedient and economical to have the mails carried at the expense of the General Government, by its official agents, for compensation fixed by law.—But this would not show that the more expensive and irregular mode of having it transported by contract, as a job, is unconstitutional.

The same distinction between expediency and power applies, with equal clearness and force, to the class of resulting, or implied powers. The express power to regulate foreign commerce, carries with it the incidental power to improve our bays and harbors, and erect light-houses, to give facility and security to commercial navigation and intercourse. No such improvement is indispensably necessary; but every one that has ever been made may be useful, has relation to an express power, and tends to subserve its great objects. There are various modes which might all tend to the same result,—each of them is within the constitutional discretion of Congress, and each, therefore, though it may not be the best, is constitutional. A breakwater, costing millions of dollars, may turn out to be comparatively useless for the protective purpose for which it shall have been constructed—and might not be expedient therefore—but, as it relates to the power to regulate commerce, and was made to promote it, the implied power to make it is unquestionable, even though it was neither indispensably necessary, nor even expedient.

If there be no implied power to do anything in the execution of an express power, without doing which the object of the express power could not be fulfilled, then there can be no such thing as implied power; for if any of the various means for effecting the same end be not constitutional, because the end could be accomplished in some other mode, no one of the adaptable means can be constitutional, because no one of them can be indispensable, while there is another which can serve the same purpose. The expedients for executing the trust of an express power, may be as various as the letters of the alphabet. If the plan of A be not constitutional, merely because B's will effect the same object, and therefore A's is not indispensable; then, for the same reason, neither B's nor that of any other, can be constitutional. And, consequently, there could be no incidental power in any case except the non-existent and unimaginable one, in which there is but one mean for effecting the end of an express grant of power. Adaptation of unprohibited means to ends of express powers, is the true and only test for determining whether an act not expressly authorized is necessary for effectuating one of the enumerated powers. The comparative degree of adaptation affects the policy only. And this is not only self-evident, but has been illustrated by the history of Congressional legislation ever since the inauguration of the Federal Consti-

tution, and confirmed by universal acquiescence and authority.

Before there can be implied power to do a thing, it must not only be in the constitutional sense *"necessary,"* but also *"proper;"* which means, not that it shall be expedient, but appropriate merely, or in other words, suitable to the end, and not repugnant to the principles of the constitution; for that which is prohibited by the letter, or is incompatible with the spirit of the constitution, cannot be *"proper."* And this, too, is well settled by history and authority, popular, legislative, and judicial.

The test thus defined for determining the existence and limits of implied power, cannot be objected to as either too vague or too latitudinary. One more certain or properly restricted could not be substituted. He who discards it, is at sea without compass or rudder. He can have no criterion of construction, but an arbitrary and varying discretion governed only by his passions, or his changing opinions of expediency; and will sometimes assume powers that do not exist, and at other times repudiate those that do. In his hands the constitution will be a *Protean puppet* of party or of times; and that which, until authoritatively changed, must be, under all circumstances, one and the same, will lose its uniformity and identity, and change with policy, interest, or the thermometer of popular feeling. The history of the Bank of the United States affords an apposite illustration. Men and parties have often changed concerning the constitutionality of such a Fiscal Institution. Even Mr. *Madison* and Mr. *Clay* denounced it as unconstitutional in 1811, and advocated it as constitutional in 1816. Each of them had applied to it the varying and delusive test of expediency. They thought it impolitic in 1811, politic in 1816. It would have been perfectly consistent, therefore, for each of them to have opposed the charter at the first of these periods, and to have been for it at the last. But, if it had been unconstitutional at any time, it could never have become constitutional without a change of the constitution. Until some such change of it, all its powers, express and implied, must be precisely the same at all times and under all circumstances. Time and circumstance may, and often do, change the policy of exercising certain powers, or of doing it in the same mode; but they can never give power not granted by the constitution, nor either abrogate or change that which was once conferred by it. The test we have defined as the true one will preserve the consistency and uniformity of the constitution—any other will make it *clay* in the hands of the Potter.

The stability and efficacy of the Constitution require that it should be uniform in its character and operation; and, consequently, it should be always construed by a fixed test as certain as the magnet. For want of such a test, or because it was neither carefully nor uniformly applied, the constitution has been made to assume different and inconsistent characters at different times, and under the controlling influence, not only of different men and parties, but of the same men and the same parties, at different times and on different occasions. This is a deplorable truth; and persistence in a procedure so fluctuating and liable to abuse, will afford an augury of dissolution and anarchy, or of despotism and centralism, at no very distant day. It would, sooner or later, inevitably unhinge the constitution, and make it the sport of ambition, local or national. The true test, honestly and faithfully applied, would restore the constitution to its original purity, simplicity, harmlessness, and benificence. And then we should have no more nullifying States, or mis-styled *"States-rights"* parties,—no more "strict construction," or "latitudinary construction,"—no more vibrations from centralization to dissolution, from a National Government of the people, to a confederation of State sovereignties claiming constitutional supremacy. But harmony and security would pervade a union homogenious and steadfast in fundamental politics. The self-styled "strict constitutionist," and the falsely styled "States-rights" politicians, mould the constitution to suit the occasion and their immediate purpose. Sometimes excessive power is conceded to a patronizing party President, and, at other times, almost all power is denied to an incumbent of a different cast—and sometimes is denied to Congress any implied power which is not indispensably necessary, and at other times, power is claimed to do whatever is desired, or deemed beneficial or expedient. "Strict construction" is itself vexatiously indeterminate and flexible. It has no settled land mark; nor is it governed by any fixed principle of uniform and certain application. If its principle be, that no power belongs to the General Government, except what has been expressly granted, it is radically absurd, and is falsified by the express declaration of the constitution itself, and by unvaried legislative action and judicial sanction, ever since the adoption of it. If its principle be, that there is no implied power which is not indispensably necessary for fulfilling the object of some express power, it is equally absurd, has been exploded by the same authorities, and, if let alone, would result in suicide. And, if its principle be, that there is no implied power, except that which operates as a mean to the end of some express power, then the strict constructionist concurs in theory with the most orthodox class of American jurists and statesmen. But *"plain," "clear," "obvious"*—all have degrees; and what may be quite obvious to one mind, may be altogether invisible to another. This, therefore, is too vague and variable for constitutional certainty—and needs the polarity of some principle more fixed and infallible,—and that is the one we have already defined as the only true and safe guide; and which has hitherto been recognized by all the public authorities of the Union.

There is, therefore, nothing consistent, or maintainable, in the distinctive appellative, "strict constructionist." And there is just as little in that of "States-Rights" party or doctrine which, not only urges the same vagary

of "strict construction," but goes to the destructive extremity of claiming for each State of the Union political supremacy, and of denying to the authorities and laws of that Union ultimate and practical sovereignty. This fundamental heresy, which had been considered as long dead or banished, was revived under the auspices of John C. Calhoun, during the administration of President Jackson, whose immortal proclamation in 1832, denounced it as treason. Its only basis is the monstrous assumption that the Federal Constitution was made by the States in their political capacities, and not by the people in the same capacities in which they made their respective State Constitutions—that, though it declares itself to be the supreme law of the land, and although the people, who made it, established by it a tribunal for deciding, in the last resort, on its construction and application, yet, nevertheless, it is a mere league, like the superceded articles of Confederation, between sovereign States, each of which has a constitutional right to dissent from the national authorities, to decide for itself, and to "nullify" within its borders, any act which it may choose to consider unconstitutional. The pivot of this nullifying platform is the radical error that each of the States in the Union still retains, in the ultimate sense, under the Federal Constitution, uncontrollable sovereignty—or, in other words, that the constitution is a mere confederation, and is not an organic law intended to operate, and with power, to enforce its operation on every citizen of every State, as a national and supreme law of all and for all—"any provision in any State law, or State Constitution to the contrary, notwithstanding." If this be the true theory of the Constitution, each State being, on that hypothesis, an independent sovereignty, each must, as an essential element of all such sovereignty, possess the acknowledged right to decide for itself as to its own power, and, consequently, as to the validity of all acts passed by Congress, and also as to the correctness and effects of all the decisions rendered by the judicial organ of the Union, the Supreme Court of the United States; and, as a necessary consequence, each State would also possess the constitutional right to secede, whenever it might choose to abandon the Union. But, if the people of each State, in their own original right, are parties to the Constitution of the United States, and by it organized a National Government, supreme over all for all national purposes, then it is equally true and undeniable that the comprehensive General Government thus constituted, must be the highest sovereign, and possess, as an obvious and inevitable consequence, the authority to decide as to its own sovereignty, and the political power to uphold that sovereignty, and enforce its own acts and its own decisions; and, consequently, no citizen, nor any class or number of citizens, whether of one State or of different States, can constitutionally exercise a right to overrule, or resist, by force, the acts of the General Government, ratified and confirmed by the people of the United States through their judiciary. The right to decide as to its own constitutional power is an inherent and indispensable attribute of all national sovereignty.

The provisions of the Constitution of the United States—and its style—and its declarations—and its objects—and its history, and invariable exposition, and operation, ever since the adoption of it prove, beyond controversy or doubt, that it derived its existence and authority from the people who made or became parties to it, just as they made or became parties to their several State constitutions—that, in purpose and effect, it constituted a supreme National Government for all the people, and above all the States—that it is a fundamental law, and like all organic law, cannot be rightfully resisted or overruled by any party to it as long as it shall continue to exist; and that, consequently, it has, and must have, the political right and power to maintain its own existence and enforce its own authority. A single State cannot be practically a sovereign for local purposes, if any portion of its citizens have the consitutional right to overrule or resist its organized power or judicial authority. Nor, for the same reason, and fully in the same sense, can the United States be practically sovereign for national purposes, unless the General Government has the right to determine all questions involving its own sovereignty, and the power to uphold it.

When the constitution was under consideration for adoption, a minority advocated a league or confederation—the majority, with WASHINGTON at their head, feeling the absolute necessity of a supreme National Government with powers co-extensive with the interests and purposes of Union, prevailed and established such a Government. Mr. Jefferson was one of that minority, and, for years after the ratification of the constitution by the people of the States, endeavored to construe it as a compact of confederation among sovereigns. Being looked to as their leader, by the party opposed to President John Adams, and denouncing, as unconstitutional the alien and sedition laws just then enacted by Congress, Mr. Jefferson wrote and sent to John Breckinridge the resolutions of "98," which were adopted by the Kentucky Legislature. The first of these resolutions, after characterizing our charter of Union as a "compact under the style and title of a Constitution of the United States," proceeds to declare "that, to this compact each State, acceded as a State, and as an integral party; its co-States forming, as to itself, the other party; that the Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the constitution, the measure of its powers; but

that, as in all other cases of compact between parties having no common judge, each party have an equal right to judge for itself, as well of infractions as of the mode and measures of redress."

And by the second of these resolutions it was resolved—"That the constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes whatever, and it being true, as a general principle, and one of the amendments to the constitution having also declared "that the powers not delegated to the U. States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people;" therefore, also, the same act of Congress passed on the 14th of July, 1798, and entitled "an act in addition to the act entitled an act for the punishment of certain crimes against the United States;" as also the act passed by them on the 27th of June, 1798, entitled "an act to punish frauds committed on the Bank of the United States;" and all other of their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution, are altogether void, and of no force, and, that the power to create, define, and punish other crimes, is reserved, and of right appertains, solely and exclusively, to the respective States, each within its own territory."

These resolutions of '98 were transmitted to other States for their concurrence; but most of those State repudiated them as radically wrong. Mr. Jefferson, in that dilemma, wrote the resolutions of '99, endorsing those of '98, and prescribing a specific mode of enforcing, by a malcontent State, its imputed sovereignty, in these words: "The principle and construction contended for by sundry of the State Legislatures, that the General Government is the exclusive Judge of the extent of the powers delegated to it, stop nothing short of despotism, since the discretion of those who administer the government, and not the constitution, would be the measure of their powers—that the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction, and that a NULLIFICATION, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy."

The principle of the first of the resolutions of '98 is, that the States of the Union retain all their original sovereignty—that the constitution of the United States is only a compact or league between them as sovereigns—that there is no common judge over them—and that, consequently, each State has a *constitutional* right to judge for itself, in the last resort, of the validity of all the acts of the General Government. This must now be admitted to be a palpable error—a total misconception of the provisions, the objects, and the supremacy of that constitution. But the same false principle is the pivot and only support of the exploded doctrine of nullification; and Mr. Calhoun so understood; his platform was that of the resolutions of '98, and he relied on them as his authority. The resolutions of '99 reaffirm those of '98, and the author of both points out in the latter the remedy, for the right asserted in the first, of a single State to judge for itself, and prevent, within its limits, the enforcement of an act of Congress which a majority of its citizens should deem authorized by the constitution. And in announcing that remedy, "NULLIFICATION" is, for the first time, used. From this source, Mr. Calhoun borrowed the principle and the term. There can be no other rational construction of the resolutions of '98, than that given to them by Mr. Calhoun and by their author. If their principle be true, a right to nullify, as asserted in the resolutions of '99, must be admitted to be undeniable—and that it is a *constitutional* right, according to that principle, could not be doubted. If that principle be true, there is no General Government or national institution with authority to govern—there is no national constitution; for a constitution is a supreme law, and a law cannot be supreme, which the enacting authority has neither right nor power to enforce against all popular opposition. The suggestion in the first of the resolutions of '98, that the exclusive or final right in the General Government to judge of its own powers and the constitutionality of its own acts, would make its discretion, and not the constitution, the measure of its authority, is, with all proper respect, worse than puerile—it is suicidal. There can be no supremacy of law or government without such a right. In a contest between a State and any portion of its own citizens as to the constitutionality of any of its legislative acts, has not the State, through its judiciary, the undoubted, exclusive, and final political right to decide? No government could exist without that right—it is the ultimate object of all constitutional government.

The constitution declares that it shall be the supreme law over all the States and all the people; and it organizes a national court for all the States and all the people, as the final arbiter of all contests concerning that constitution, and vests it with final and conclusive jurisdiction of all such questions. In adopting the constitution, the people of all the States agreed that their own national supreme court—appointed by their agents, acting in their name and for them, and responsible to them—should, in all cases involving the powers of the General Government, constitute the final arbiter of the constitution and the law. Without some such fundamental provision for adjusting all collisions of power or questions of constitutional right, national uniformity, and

union, could not be maintained. And if men will call the constitution "a compact," still this provision is a cardinal part of it, and was adopted to prevent nullification.

The great object of the Federal Convention of 1787, was, as already intimated, to transform the confederation into a National Government vested with supreme national powers, co-extensive with national interests, and so organized as to be able to enforce its authority, and maintain the supremacy and uniformity of its constitution throughout the Union.

Mr. Madison, one of the chief architects of that temple of liberty, after alluding to the fact that, while local power was left with the States, all national power had been transferred to the General Government, said: "Nor is the Government of the United States created by the constitution, less a Government in the strict sense of the term, within the sphere of its powers, than the governments created by the constitution of the States are within their several spheres. It is, like them, organized into Legislative, Executive and Judiciary departments. It operates, like them, directly on persons and things. And, like them, it has at command, a physical force for executing the powers committed to it."

"Between these different constitutional governments, the one operating in all the States, the others operating separately in each, with the aggregate powers of government divided between them, it could not escape attention that controversies would arise concerning the boundaries of jurisdiction, and that some provision ought to be made for such occurrences. A political system that does not provide for a peaceable and authoritative termination of occurring controversies, would not be more than the shadow of a government—the object and end of real government being the substitution of law and order, for uncertainty, confusion, and violence. That to have left a final decision, in such cases, to each of the States, could not fail to make the constitution and laws of the United States different in different States, was obvious; and not less obvious that this diversity of independent decisions must altogether distract the government of the Union, and speedily put an end to the Union itself. A uniform authority of the laws is itself a VITAL principle. Some of the most important laws could not be partially executed. They must be executed in all the States, or they could be duly executed in none. An impost or an excise, for example, if not in force in some States, would be defeated in others. It is well known that this was among the lessons of experience which had a primary influence in bringing about the existing constitution."

"The constitution, for its safe and successful operation, has expressly declared, on the one hand,

1st. "That the constitution and the laws made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land."

2nd. "That the Judges of every State shall be bound thereby, any thing in the *constitution* or *laws* of any State, to the contrary, notwithstanding."

3d. That the judicial power of the United States shall extend to *all* cases in law and equity arising under the constitution, the laws of the United States, and treaties made under their authority, &c."

"On the other hand, as a security of the rights and powers of the States in their individual capacities, against an undue preponderance of the powers granted to the government over them in their united capacity, the constitution has relied on

1st. "The responsibility of the Senators and Representatives in the Legislature of the United States to the Legislatures and people of the United States."

2nd. "The responsibility of the President to the people of the United States."

3rd. "The liability of the Executive and Judicial functionaries of the United States, to impeachment by the Representatives of the people of the States, in one branch of the Legislature of the States, and trial by the Representatives of the States in the other branch—the State functionaries, Legislative, Executive, and Judicial, being, at the same time, in their appointment and responsibility, altogether independent of the agency or authority of the United States."

"Those who have denied or doubted the supremacy of the Judicial power of the United States, and denounce at the same time, a nullifying power in a State, seem not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land, without a supremacy in the exposition and execution of the law—nor to the destruction of all equipoise between the Federal Government and the State Goverements, if, whilst the functionaries of the Federal Government are, directly or indirectly, elected by, and responsible to the States, and the functionaries of the States are, in their appointment and responsibility, wholly independent of the United States, no constitutional control of any sort belonged to the United States over the States. Under such an organization, it is evident that it would be in the power of the States individually, to pass unauthorized laws, and to carry them into complete effect, anything in the constitution and laws of the United States, to the contrary, notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect through the Legislative, Executive, or Judiciary organ of a State, would be equally fatal to the constituted relations between the two governments."

In the 39th number of "*Publius*," on the authority of whose expositions the constitution of the United States was ratified by the people of several States, may be seen the following

stereotyped confirmation of the foregoing views of Mr. Madison: "It is true that, in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made according to the rules of the constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments—or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combatted."

That any act of Congress unauthorized by the constitution of the United States is void, no sound jurist can deny or doubt. But who is to decide whether the act be unconstitutional or not? Each citizen for himself? Then we have no government, or he is above it. The same answer, on precisely the same principle, is equally true and effectual, when any number of citizens, in either their individual, social, or political capacities, claim the right of final and authoritative decision for themselves.

Then it is not true, that the States, in their sovereign political capacity, alone, made the constitution of the United States, and are the only parties to it—it is not true that, under that constitution, they retain independent and plenary sovereignty—it is not true that, for deciding between them and the general government, or any portion of the people and the government, there is "no common judge" provided by themselves in their charter of Union—it is indisputably not true, therefore, that "each party has a right to judge for itself as to infractions, as well as the mode of redress." And, consequently, the first of the resolutions of '98, the only foothold of nullification, or of secession, evaporates into detonating and pestilent gas. The radical error of that resolution—which is the only vital principle of nullification—was exposed and denounced by the famous proclamation of President Jackson, in 1832, in which, after arguing against it with irresistable force, he concluded as follows: "I consider then the power to annul a law of the United States assumed by one State, incompatible with the existence of the union, contradicted expressly by the letter of the constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was made." And all this is manifestly true.

The second of the resolutions of '98 is, even more palpably, indefensible than the first. It proceeds on the monstrous assumption that Congress possesses no more or other power than that which is expressly delegated; for it asserts, in effect, that Congress cannot create an offence, or prescribe punishment for any crime not specified in the powers enumerated in the constitution—and it concludes, therefore, that, as the counterfeiting of the notes or securities of the Bank of the United States, is an offence created only by act of Congress, without express and specific power, that act was unconstitutional and void; and on that assumption, the resolution asserts that each of the States had the reserved and exclusive power to make such counterfeiting a crime or not, and to prevent it or not. This ultra doctrine has been, for more than half a century, universally abandoned as absurd, inconsistent and destructive, until within the present year, when the resolutions of '98 were incorporated in a party platform, as an article of the creed of "progressive democracy." If punishment be necessary for the fulfilment of any trust devolved on Congress, has not that department constitutional power to define the offence, and to provide for the infliction of the punishment, except so far only as that resulting power may have been denied or limited by the express provisions of the constitution? One illustration may be sufficient for all the cases. Congress has express "power to establish post offices and post roads," which was intended to mean plenary and exclusive power over the transportation of the mail. For effectuating that power, and fulfilling that trust, Congress has made the obstruction and robbing of the mail criminal offences, and denounced punishment for each offence. Is that unconstitutional? It certainly would be, if the second of the resolutions of '98 contains sound constitutional doctrine. But that legislation, though not expressly authorized, has ever been held and considered undoubtedly constitutional and binding. Without the right thus to protect and facilitate the transmission of intelligence and of money by the mails, Congress might not be able effectually to execute the high trust devolved on it by the constitution; and it would be inconsistent with the purpose of that trust, to leave the mails dependent on State power or discretion. Such legislation only employs usual, appropriate, and unprohibited means for effecting the ends of the national and express power over the mails—that is, celerity, security, punctuality, and uniformity. Those two resolutions of '98 are wholly inconsistent with the theoretic nationality and practical supremacy of the constitution—and essentially irreconcilable with the admitted existence and necessary power of a government of the Union, in the only true and effectual sense, either national or federal. The practical application of the principle of the first, would resolve the United States into the anarchy of a mere confederation of absolute and independent state sovereignties, each acting, in all cases, according to its arbitrary will; and the principle of the second would withhold from the general government (if conceded to be such theoretically) all implied powers, or all right to employ means for executing the express and enumerated powers. It is evident, therefore, that, if any party in power should

uphold those destructive principles, and carry them out in practice, the late compromise laws must fail, the fugitive slave law must become a mockery, the hydra of nullification and secession will be installed as a political divinity, and the Union itself must inevitably and speedily fall into imbecility, distraction, and hopeless ruin.

But each of those heresies is, we trust, as unacceptable to the intelligence and patriotism of the freemen of the United States, as they are absurd and licentious.

The powers of the government of the United States are altogether national—embracing exclusive control over all the concerns of peace and war, intercouse, right, and obligation, as between our Union as a nation and foreign nations, and including also all domestic interests in which the people of the States, or of more States than one, are concerned—the States retaining all powers exclusively local, or affecting the internal economy of each State separately and alone. No such local power has been delegated to the government of the United States, nor is any such national power retained by the States as separate governments. This theory is as philosophical as it is simple and beautiful—and it is the only one consistent with the preservation of the Union, in peace and harmony, or with the Declaration of Independence, or the American notion of the representative principle. So far as the interests of the people of different States may be affected by legislation, the legislative power ought to belong to the common counsels of all concerned. No one State ought to possess, or desire to exercise control over the affairs or the rights of the people of other States—and neither equal justice, nor political union could be secured, unless the aggregate will of the people of the United States, should be the regulator and guardian of their common rights, as one nation for all common purposes. And in harmony with this theory, an analysis of the national constitution will show that all powers necessary for the union and nationality of the people of the United States it delegates to the general government, and reserves to each State all power exclusively local—each being a sovereign within its prescribed sphere, the government of the Union possessing, in all cases of conflicting claims to power, the ultimate supremacy as declared by the constitution of the United States; and without which authority it could not be a sovereign, armed with power to effectuate the great object of its institution. And, though it possesses no power except what is delegated by its constitution, yet, as it has the inherent, as well as declared, right to employ all the means "necessary and proper," for fulfilling the ends of its express powers, incidental or implied powers, co-extensive with those means, are as much delegated as the enumerated and specific powers themselves.

Some of the constitutional powers of the general government are exclusive—others concurrent. All its foreign powers are exclusive. Among the domestic powers those are exclusive—1st. which are given in exclusive terms—as the express power to exercise "exclusive legislation" over the District of Columbia, and over territory purchased for forts, arsenals, &c. 2nd. Which, though given in general terms, are expressly prohibited to the States—as the unqualified power to regulate commerce, and the express interdiction against the laying of any duty on exports or imports by a State, except for inspection purposes. 3rd. Which, though neither given in exclusive terms, nor expressly prohibited to the States, could not be concurrently exercised by a State without impairing or frustrating the object of delegating it to the general government—as the power "to establish a uniform rule of naturalization," the citizens of each State being entitled, by an express provision of the Constitution, to the privileges and immunities of citizens in the several States, and the great object of conferring on Congress a power so essentially national being altogether incompatible with the power of local legislation over it. All domestic powers which are delegated to Congress, unaffected by either of those three tests, are constructively reserved to the States concurrently with the general government.

But, as a law constitutionally enacted by Congress is, by the Constitution itself, declared to be "the supreme law of the land," consequently, whenever Congress shall have passed a law on a subject of concurrent legislative authority, any inconsistent law of a State then existing on the same subject, will be constructively abrogated, and no State can enact any law on that subject, as long as that of Congress shall remain in force This may be illustrated by the power expressly given to Congress to establish "uniform laws on the subject of bankruptcies throughout the United States"—which has been construed to be a concurrent power, given to Congress for no other purpose than that of the advantage of having, on that subject, one uniform national law whenever Congress shall deem it prudent and beneficial. In reference to that power, the judicial and practical construction has been, that, until Congress has passed a general bankrupt law, each State has a right to enact special laws for itself on the subject of insolvency and bankruptcy: that a general law enacted by Congress, abolished all existing State laws on the same subject—and that, when such Congressional enactment expired, or was repealed, the right of each State to legislate on the subject was revived. And this is true of all power concurrently possessed by the States and by the general government.

The modes of interpreting the powers of the general government are various and contrarient—different processes leading to essentially different results. And on that subject, politicians, as a class, differ widely from jurists as a class. The Constitution of the United States should, like that of a State, be construed in such a manner as will be most likely to fulfill the intentions of those who made it. And the proper mode of attaining that end, is to con-

sider, in a liberal temper of candor and patriotism, the letter, the spirit, the context; and, if any difficulty or doubt shall still exist, to explore the objects, and history of its adoption, and the analogies of judicial and practical expositions of it. It should never be stringently construed like a penal statute, but always more liberally, as the charter of a great public trust for the welfare of the people, and for the maintenance of the harmony and justice of the Union; and as the best safeguard, therefore, of liberty, peace, and security. And, as for those objects, certain great powers were wisely surrendered by the several States, and, for the better and more uniform fulfillment of their ends, confided to the more paternal government of the Union, representing all, and accountable to all concerned in the faithful administration of its high trusts—and, as the people of the States are altogether dependent on their common government, for the exercise of those powers, and the beneficial fulfillment of those trusts, such a construction should be given to the Constitution as to make all such powers as plenary, efficient, and beneficent as the public good may seem to require. Such has been the habitual and more authoritative construction. The power "to establish post offices and post roads," might be literally interpreted to mean nothing more than to designate the places for those offices and the routes of travel for the mails; but it has been invariably construed as authorizing Congress exclusively and imposing on it the sole duty, to regulate and control the entire postal transmission of intelligence throughout the Union—and the powers for securing that great national object, have been conceded to be as comprehensive as the object itself, and as plenary as each State might have possessed them for itself, within its own limits before it surrendered and transferred them to the government of the United States.

The power "to regulate commerce with foreign nations," might be interpreted, by a strict constructionist, as meaning, according to its precise literal import, only a power to prescribe the *rules* of commercial intercourse—for to regulate literally means to prescribe rules. But the object of delegating that power was to deprive the States of all authority over foreign commerce, and vest in the general government, as their only international organ, all sovereignty over it, excepting only so far as the delegated power may be expressly limited by the provisions of the Constitution. The United States, as our only nation, has as much power over our commerce with foreign nations, as any other independent nation on earth can have over its own commerce, with the exception only of the restrictions expressed in the Constitution as to equality and uniformity among the States. England, like other absolute sovereignties, has unquestioned power to close her ports against the world, or to admit importations on her own terms—and the power consequently to protect and encourage her own industry and productions, against foreign rivalry, by the imposition of discriminating, or even prohibitory duties on the importation of foreign fabrics, or commodities. Have not the United States the same power? In their commercial intercourse with England have they not equal rights? May they not retaliate legislation against legislation? And is there a rational doubt that they may impose, to any extent, duties on English products, or manufactures, for the purpose of developing their own latent resources, promoting domestic industry, and securing wealth and independence at home? The people of the States have no such power. Was it nullified or crippled by the adoption of the Constitution of the United States? Certainly not; but it was all only transferred to the general government. This is not only self-evident, but illustrated by non-intercourse and embargo laws, and laws for the avowed purpose of promoting our own manufactures, by the imposition of duties on foreign articles of the same kind, and laws also for protecting our own agriculture and commercial marine—all of which, except the embargo and non-intercourse, were commenced the first year of Washington's administration, and continued down through every succeding administration.

The general power to regulate foreign commerce has been also always construed as including power to give facility and security to that commerce, by erecting light-houses, making brakewaters, and improving bays, harbors, &c., on our maratime frontier. And the same principle and process extend the correlative power, to regulate commerce between the States, to the improvement of interior lakes and rivers. This is just as indisputable as the other, and nearly as well illustrated by legislative history.

These liberal interpretations of express powers, beyond their literal imports, are justified by the objects of those powers, and required by the interests for the protection and advancement of which they were surrendered by the States and delegated to the national government; and a more restrictive interpretation would tend to the frustation of the purposes for which the people of the Union established and acceded to the Constitution of the Union.

If the powers granted to the general government by its organic law were essential—as they certainly were and ever must be—to the maintenance of the Union, and the security and promotion of its objects, it is the highest political interest, as well as duty, of us all, to sustain them in good faith, and never to attempt to curtail or paralyze any one of them on any occasion, or for any temporary, partial, or local purpose.

If, as will not be denied, undivided nationality, as between us and foreign nations, be desirable, no rational patriot can hesitate to admit that, to that end, a national government, vested with supreme and exclusive authority over all our international interests and relations, must be indispensably necessary. For the purpose of consolidating such an union of the people and the States, the Constitution of the United States was adopted, and estab-

lished such a government, delegated to it all such powers, and organized it in such a manner as to give assurance of stability, unity, and responsibility. And, therefore, all power over the international concerns of commerce, treaties, peace, and war, are delegated by the Constitution to the general government thus constructed. To that extent, or for any such purpose, the States, as such, possess no conflicting or antagonistic power; nor could they, so far, have retained their sovereignty consistently with the objects of the Constitution. And consequently, not only do all those great national powers and trusts belong to the general government, but, with them, are delegated all the unforbidden means of completely fulfilling the benificent ends for which they were confided.

And, to maintain internal peace, concord, and justice—each indispensable as an element of union—it was clearly, not useful merely, but necessary to delegate to the government of that Union, powers over and co-extensive with those ends, and protective of the common interests of the whole people as one united nation. Hence, among the expressly delegated powers, we find the following: 1st. To lay and collect taxes, imposts, &c., for the purpose of paying the debts, and providing "for the common defence and general welfare." 2d. To regulate commerce not only with foreign nations, but "among the several States, and with the Indian tribes." 3d. "To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States." 4th. "To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measure"—an uniform national currency, and a national standard of weights and measures, being useful to the internal commerce and harmony of all portions of the Union. 5th. "To establish post offices and post roads"—the transmission of intelligence by the mail being a national affair of common concern to the people of all the States. 6th. "To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions"—and to provide for organizing, arming, and "disciplining the militia." And, to illustrate the same object of depriving the States of any power, the exercise of which might frustrate the contemplated purposes of the Union, and of vesting the government of the Union with all power necessary to the preservation of it, we find that the national constitution guaranties to every citizen of every State, equal civil "privileges and immunities" in each State, and security against any *expost facto* act, or act impairing the obligation of contracts; and also prohibits each Srate from laying any duty on exports or imports, and from coining money, making treatles, emitting bills of credit, or making anything but gold and silver a tender in the payment of debts—or keeping any troops or ships of war in time of peace.

We thus see that, in adopting the Constitution of the United States, the people of each State surrendered the essential attributes of sovereignty, and, by delegating them to their common and only national government, deposited them on the altar of union. And we may rest assured, that no less a sacrifice of local power and pride could have assured the great objects of every patriot—national independence, liberty and peace.

We cannot fail also, to see that the asserted sovereignty of the individual States is altogether irreconcileable with the provisions of the Constitution of all the people of all the States, and would, if acknowledged, or usurped, lead to anarchy, confusion, and civil war; to prevent all of which calamities, the wisdom of our fathers adopted the Constitution, and established the government of the United States. And, as an inevitable consequence, we must all see that secession and nullification are revolutionary, and not constitutional, remedies for any local or personal grievance, whether imaginary or actual.

If, in adopting the resolutions of '98, the Kentucky Legislature intended to assert either of those ultra-unconstitutional remedies, our respect for the memory of that band of patriotic pioneers, would incline us to ascribe the political error to the then crude and unsettled theories as to the fundamental principles of the Constitution—to veneration approaching idolatry, which the leading men of our commonwealth then felt for the opinions of Mr. Jefferson—to an unlucky sentiment of jealousy and disaffection towards the general government, resulting from its imputed neglect in respect to the navigation of the Mississippi, and the Indian depradations in the West, and which, before they had been entirely healed, had been greatly inflamed by the alien and sedition laws—and lastly, to their impatient anxiety to put down those obnoxious enactments. But, it is not improbable, that a majority of the members, who voted for those resolutions, did not foresee all the consequences which might flow from the assertion that the States, as such, were the parties to the national constitution—that there was no common judge—and that each party had a right to judge for itself, as in every other case of compact between equals and sovereigns. Nevertheless, however all this may be, there can be no doubt that both secession and nullification, as constitutional remedies, necessarily result from the foregoing principles announced in the first of the resolutions of '98.

Nor can there be a rational or consistent doubt that it was not the natural right of revolution, but a political right to nullify, for which that resolution insisted. No citizen denies or doubts that the people have an inherent and inalienable right to upset their constitution, or revolutionize their government—and therefore, Mr. Jefferson cannot be presumed to have intended to announce and argue to prove that uncontroverted privilege. Besides, the resolution asserts that each State, as

a co-equal party to the Constitution, has the right to decide on the Constitution for itself, and that the general government has no such ultimate right. And, consequently, he must have intended to say, as he did undoubtedly say in effect, that each State had, under the Constitution, and according to the Constitution, the asserted rights; and which is nothing more or less than the absurdity that a State can, at the same time, be a party to the Constitution, and above the Constitution—in the Union and out of the Union: a suicidal solicism that Kentucky would now be the last to admit and the first to oppose.

Considering, in the spirit either of political philosophy, or of wise statesmanship, the structure of our national and local governments—the history of their progress—the dependence of the former on the latter—the influence of local sympathies and attachments—the responsibility of the national functionaries to the people of the States, and the irresponsibility of the State functionaries to the authorities of the Union—there can be but little doubt that the father of his country was right when he declared that there was more danger of disunion than of consolidation—that there is more of centrifugal tendency in the States than of centripital attraction in the General Government. And does not our political history, and especially the recent portion of it, almost demonstrate the prophetic wisdom of that opinion?

To prevent the catastrophe of a dissolution, by secession, or nullification, it is necessary that all the powers of the general government should be recognized, and faithfully and fully maintained. Such a national and patriotic course, characterized by a becoming spirit of mutual moderation and forbearance in the exercise of conflicting powers claimed by the States and the General Government, and a prudent abstinence, by each, from the exercise of such power as may be seriously doubted, may long preserve our union and liberty, and peacefully advance our beloved country in its career of substantial prosperity and true glory.

Our organic institutions have survived many trials of their purity and strength. They have been saved by the heroic patriotism of such men as Washington, and Clay, and Webster, and Cass, and Foote. But the signs of the times portend an approaching crisis more decisive of their fate, than any through which thay yet have passed. Foreign influence and foreign politics are taking root in the virgin soil of American Republics. The old world, oppressed with the incubus of a restless and starving population, is striving to empty itself on the new—and many of our politicians invite the disgorgement and claim, for the parvenues of all grades, the privilege of ruling the children of the American stock of patriots and statesmen, who achieved our independence, founded our institutions, and consolidated our liberties: The federal, against the national principle is revived and boldly challenges popular favor—and reckless propagandism, abolitionism, freesoilism, nullification, and secession, seem to have grounded their arms only, as many fear, to embrace each other and prepare for a fraternal crusade against the peace and integrity of the Union. If there ever was a time which called, in tones of thunder, for the proclamation of true American principles, invoking, by the memory of the past. and the perils of the present, and the hopes of the future, the manly patriotism of every true-hearted American citizen, that time is NOW. On you, and such as you promise to be, mainly rest the destinies of our heaven-blessed land. Search for the truth—learn your duties to country and posterity, and act like men knowing their rights and determined to maintain them—conscious of their duty, and resolved to perform it to the uttermost.

In a former introductory, I endeavored to establish the fundamental principle and object of the Constitution of the United States, and to expose, as palpably inconsistent with both, the doctrines of nullification and secession. In this inaugural address, it has been my purpose to present to you, a comprenhensive outline of the powers of the government of the Union, and, incidentally, to add further illustrations of the principles vindicated in that other address. For your more perfect satisfaction and assurance, on these vital topics, I recommend to your careful consideration, the far more authoritative facts and arguments to be found in the "Madison Papers" —the "Letters of Publius"—the judicial expositions of the Constitution by the Supreme Court of the United States, whilst John Marshall was Chief Justice; and, above all, the history of the model administration of the first and model President of the United States —the true exemplar of a wise and faithful President of a Constitutional Republic—"the Father of his Country"—GEORGE WASHINGTON.

PRELECTION.

LEXINGTON, KY., November 20, 1854.

JUDGE ROBERTSON—Dear Sir: The Law Class of Transylvania University respectfully solicit a copy of your Introductory Address, of the 9th inst., for publication.

WELLLINGTON HARLAN,
ROBERT C. FLOURNOY,
Committee.

LEXINGTON, KY., November 21, 1854.

GENTLEMEN: Our last Introductory Lecture was not prepared for any other publication than that of its delivery in your presence. But, in deference to your expressed wishes in behalf of the Law Class, I surrender it to you to be disposed of as you may think best.

Yours, respectfully,
G. ROBERTSON.

Messrs. HARLAN and FLOURNOY, Committee.

INTRODUCTORY LECTURE.

Inaugural addresses in the Law Department of Transylvania are intended to be introductory to the didatic course of the succeeding session. Our subject on the present occasion is therefore jurisprudential, or political rather; and we fear that it will not be attractive to many, and especially to the fair of our auditors.

No branch of American Jurisprudence is so important, or is, therefore, so interesting to every citizen of the United States as our organic institutions—all, whether social or civil, founded on equal rights and moved and sustained by the settled opinion of the majority of citizens. How that motive power is politically organized and how it should govern according to the principle and spirit of the constitution of the United States, is a vital question of Union and Liberty, the practical solution of which will test the durability and fix the value of American Democracy.

And this is our theme.

The first instinct of our race is selfish—the next social: society—indispensable to civilization—cannot exist without the guardianship of government, which, to be either rational or hopeful, must be adapted to the moral condition and genius of the people. If they are sufficiently equal in moral power and sufficiently virtuous and enlightened to maintain justice and stability, organized Democracy is the legitimate, and best form, but, for a people of an opposite character, it would be the worst.

As the best and wisest men often err in feeling and in judgment, no form of Democracy would be sound or safe, among any people, unless, by some fundamental organization, it secures individuals and minorities against the occasional passions and delusions of a dominant majority, however it may be constituted or however high may be its moral grade. That democratic form which recognises the political equality of all the citizens, must, to secure the ends of all good government—peace, justice and liberty—be so organized as to prevent the transient errors of the numerical majority from doing mischief before the sober reason of the commonwealth can be brought wholesomely to operate. This is proved by the imperfections of our race in its best temporal state, as well as by the history of all popular governments on earth. He who denies it virtually denies the necessity of any civil government, and he who doubts it is no statesman, and should never be a law-giver.

The founders of our religious and political liberty felt that great truth as self-evident; and, guided by its light, as their pole-star, they framed the constitution of the American Union on principles of practical wisdom as well as the dictates of universal benevolence.

This, an analysis of their great work will abundantly prove.

Our declaration of Independence recognises and proclaims the great phenominal truth that all American citizens are entitled to equal political privileges, and that any just government among them must be instituted by themselves, as co-equals, and solely for the benefit and security of each and all of them. Instructed in the principles of civil and religious liberty, trained in habits of social and political equality, and practiced in local self-government, as they had been in their colonial pupilage for more than three generations; the majority felt that they were prepared, if men on earth could be qualified, for such popular institutions; and, consequently, in their State and National constitutions, they determined to try the experiment of such self-governments on the basis of the representative principle qualified and guarded by organic checks and balances. Taught by enlightened reason and their own experience, as well as by the history of past ages, that a pure Democracy is both impracticable and unsafe and could never accomplish the ends of any just government, they had discovered that, to combine stability and security with universal liberty and equality, fundamental limitations on the legislative will of the majority are indispensable.

While they knew that, when in a state of natural freedom, the numerical majority necessarily have the right to establish the organic law, and that a dissentient minority must, therefore, either acquiesce in the form thus adopted or become expatriated, they also saw that practical government would often deviate from the track prescribed by any theoretic form which should leave to the majority legislative omnipotence. No prudent man would prefer such a delusive form, nor could any just man live under it long in either peace or safety. The great *desideratum* therefore was such an organism as would, as far as human contrivance could, leave to each citizen all the natural right and to the majority all the political power consistent with the security of the minority, however small or unpopular. This is the most difficult problem in Republican government, and has never yet been solved unless its solution may be found in our Anglo-American constitution.

The first object of the constitution of the

United States was to consolidate the people of these states into one nation, and only one nation, for all foreign and international purposes, and also for all domestic purposes involving the harmony, justice, and integrity of the Union, or in which no one state should be exclusively concerned. To effect that aim the next object was to establish a national government with powers co-extensive with the end, and so organized as to secure their practical, to the full extent of their theoretic, supremacy, and, consequently, divest the State governments of all antagonistic sovereignty. And the next object was to secure the people of the Union and States against any abuse or usurpation of power by the General Government, or by its organs or functionaries. To effectuate these objects the organic structure is skillful and elaborate: 1st, the government of the Union is endowed, to the extent of its nationality, with all the functions of the most absolute sovereignty, Legislative, Judicial, and Executive—2d, to prevent concentration and preserve a safe equilibrium, each of these functions is confided to a separate department of magistracy, each, to a conservative extent, made independent of the others, and intended, to the like extent, to be above popular passion and to act in defiance of it, so as to assure the prevalence of reason, the reign of wisdom, and the maintenance of justice and order. Each of these three organs represents, and one in equal degree with another, the popular sovereignty; the legislative, when acting within its prescribed sphere, exercises the legislative function of the people of the United States; the Judiciary, when it decides on and applies the law in a case within its jurisdiction, exercises the judicial function of the same people; and the Executive magistracy, under the like circumstances, exercises the executive function. Consequently, every constitutional act of either of these organs of the people of the United States is, for the occasion, deemed to be the echo of the rectified popular voice, and is, politically, the act of the constituent body. Wherefore, the act of each, within its prescribed sphere, is as supreme as the power of the original and ultimate sovereign, the people, could make it; and, the constitution being fundamental and inviolable, every such authoritative act is a supreme law to all the functionaries of the general and the local governments and to every citizen of every State and of the United States—when the Judiciary pronounces a judgment, it is as much the sentence of the people of the United States as any executive or legislative act could be deemed to be their act. The Judiciary, like Congress and the President, is the people's appointed organ of one of the three elementary functions of all sovereignty. And in a constitutional sense and for every legal purpose, the people speak as authoritatively through their courts as they do through their Congress or their President. The Legislative, therefore, is not *the* supreme power; but it is *a* supreme power. It is the constitutional exponent of the sovereign will of the constituent mass in the enactment of law. But the Judiciary is equally a supreme power, and equally utters the constitutional and sovereign judgment of the same constituency in the exposition and administration of all the laws of the Union in every judicial case. One of these departments is as supreme as the other; the one representing the organic sovereignty of the people in their legislative function, and the other representing their organic sovereignty in their judicial function; and no political organization can be theoretically wise or practically safe, unless it confides each of those distinct functions to separate organs of the people and, to a conservative extent, makes them independent of each other, and so far independent also of the passions of any ascendant party as not to be afraid to do their duty as contemplated by the founders of the government. The constitution of the United States is, organically, a beautiful illustration of this great principle of political liberty.

Fundamental guarantees of cardinal rights, and limitations on legislative power, are designed to restrain the governing majority. If that majority, through its legislature, should violate any of these guarantees or overleap any of those limitations, the constitution would only mock the outraged citizens unless it had provided, for their security, a tribunal vested with power and armed with the will to pronounce the unconstitutional enactment void, and to prevent the enforcement of it. An enlightened, conscientious, and intrepid judiciary is the only safe depository of that power. Any legislative act inconsistent with the constitution is necessarily void, and therefore, cannot be law; because the legislature, deriving all its authority from the constitution, cannot make that a law which is prohibited by the charter of its power, the organic will of the people, which is supreme over all and inviolable by all.

And the Judiciary, appointed to utter and uphold the law, must necessarily decide that a legislative act conflicting with the constitution is not law, but that the constitution inviolate is the supreme and, to the extent of the conflict, the *only* law. All men being frail and fallible, and the best of them being, in some degree, under the influence of interest and ambition, no Judge, who is dependent on a bare popular majority for his office and its emoluments, can be expected, always or very often, to enforce law or sustain the constitution against the interest or the will of that same dominant, and, often, proscriptive majority. And therefore Judges of the United States are appointed by the President and Senate, to hold their offices during good behavior, and cannot be removed except on impeachment sustained by two-thirds of the Senate. The Judiciary is thus placed by the constitution above the power of the majority. Some such fundamental anchorage is indispensable to security and stability against the passions and occasional errors of the majority of any free people entitled to universal suffrage. The legislative majority cannot safely possess the judi-

cial power or the right to control it. Such an unchecked authority might soon paralyze all the guarantees and limitations of the constitution.

The same conservative principle, though not so manifestly, is yet as essentially, embedded in the organization of the legislative department. The constitution of Congress—the mode of electing the two separate branches—the terms for which the members of each branch are elected—and the concurrent sanctions required for any legislative act, were, each and all, designed for assuring more intelligence, deliberation and care, than could be expected in the constituent masses, under the most auspicious circumstances; and the purpose of all this elaboration of checks on ignorance, passion, and precipitancy, was to save legislation from the instability, imperfections, and errors, incident to all popular masses of all grades of intelligence and degrees of virtue—but few individuals of them, feeling proper responsibility, and still fewer possessing the qualities of wise or competent lawgivers—and, altogether, therefore, if each were a Plato, an unsafe legislative body. Even a single representative assembly, especially when multitudinous, is an unsafe depository of legislative power. This has been demonstrated, as in revolutionary France, by all such bodies in every country and in every age which has tried the hopeless experiment. And, consequently, the constituent body itself, more numerous and excitable, feeling less responsibility, more subject to commotion, and alloyed with much larger infusions of ignorance and passion than any chosen assembly of select representatives, must always be incompetent for wise and just legislation. The representative is, therefore, a vital principle of a Republic: and a division of the Legislature into two independent branches, so constituted as that each may operate as a check on the other, is not much less necessary and useful. This theory is exemplified and commended by all the constitutions of the States, as well as by that of the Union. The constitution of the United States, much more impressively than that of any one of the States, stereotypes the conviction of its architects and approvers, that the safety of the people and the integrity of the Union require a Senate so elected and so constituted as to feel, in a much less degree than the popular branch, the contagious sentiments and passions of the constituent masses. That such was the chief purpose of the peculiar organization of the Senate of the United States is not only obvious on the face of the constitution itself, but is proved by the following extracts from the debates on that subject in the Federal Convention. On a proposition to elect Senators for nine years, Mr. Madison said:—"In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were, first, to protect the people against their rulers—secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men who might watch and check each other.

"It would next occur to such a people that they themselves were liable to temporary errors through want of information as to their true interest; and that men chosen for a short time and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such occasion would be that they themselves, as well as a numerous body of representatives, were liable to err from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number and firmness might seasonably interpose against impetuous counsels. It ought, finally, to occur to a people deliberating on a government for themselves, that, as different interests necessarily result from the liberty meant to be secured, the majority interest might, under sudden impulses, be tempted to commit injustice on the minority. How is this danger to be guarded against on the republican principles? How is the danger, in all cases of interested coalitions to oppress the minority, to be guarded against? Among other means, by the establishment of a body in the government sufficiently respectable for its wisdom and virtue to aid on such emergencies the preponderance of justice by throwing its weight into that scale. Such being the objects of the second branch in the proposed government, he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger—that, as it was more than probable that we were now digesting a plan which, in its operation, would decide the fate of republican government, we ought not only to provide every guard to liberty that its preservation could require, but be equally careful to supply the defects which our own experience had particularly pointed out."

Governeur Morris, speaking of the object of the Senate said:—"What is this object? To check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen, in the democratic branches of the State Legislature, precipitation—in Congress (then consisting of only one body) changeableness—in every department excesses against personal liberty, private property, and personal safety."

The convention having fixed six years as the Senatorial term, and Mr. Ellsworth having proposed that the Senators should be paid by their respective States, Mr. Madison said, on

that proposition, that he "considered this as a departure from a fundamental principle, and subverting the end intended by allowing the Senate a duration of six years. They would, if this motion should be agreed to, hold their places during pleasure; during the pleasure of the State Legislatures. One great end of the institution was that, being a firm, wise, and impartial body, it might not only give stability to the general government in its operations on individuals, but hold an even balance among different states. The motion would make the Senate, like Congress (the continental,) the mere agents and advocates of State interests and views, instead of being the impartial umpires and guardians of justice and general good."

These were the sentiments and objects of those who made, and of those who ratified the constitution. In the letters of *Publius*, expository of the principles of the constitution, and of the objects of its various provisions,—and on the authority of which exposition the people ratified what the federal convention had done,—the following, among other corroborative views, were presented:

In the 63d number, the authors, after urging, on various grounds, the utility of a stable body constituted like the Senate, add the following consideration: "For a people as little blinded by prejudice or corrupted by flattery as those whom (we) address, (we) shall not scruple to say, that such an institution may be sometimes necessary as a defence to the people against their own *temporary* errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will in free governments, *ultimately* prevail over the views of its rulers, so there are particular moments when the people, stimulated by some irregular passion or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the *interference* of a *temperate* and respectable body of citizens in order to check the misguided career, and suspend the blow meditated by the people against themselves, until reason, justice and truth can regain their authority over the public mind?"

The more popular branch is also organised with a purpose of its sometimes operating as a salutary safeguard against sudden impulses and delusions of a majority of its constituents. The biennial term of service was fixed with the view of enabling the members of the House of Representatives to acquire useful experience in the forms of legislation, and to exhibit, to each other, their true characters, and also to relieve them from unreasonable apprehension of being proscribed for doing right—time being allowed for passion to subside and error to be corrected, if any such passion or error should influence the electors to desire a course of conduct inconsistent with the general welfare—and a service of two years being often long enough to satisfy the taste or ambition of the representative. Even as to this branch, it was contemplated by the framers of the constitution that the most competent men would be chosen, and would, on all their responsibilities, do whatever, in their honest and considerate judgments, would be best for their whole country, which, when elected, each of them represents, and to which, therefore, each of them must be, and should feel himself to be, responsible. The theory of the constitution is that, through this organ, as well as through others, the crude mass of popular feeling and opinion, when not well digested, should be secreted and rectified, so as to make the sober reason of the Commonwealth the ruler and guardian of the Commonwealth. And, according to that theory, neither the passion, nor opinion, nor wish of the popular majority ought, in the first instance, always to prevail in their own House of Representatives. But the practical check through this branch is not equal to the theoretic purpose. Still, however, it has been sometimes felt and sometimes blessed. But, anxious to entrench the constitution, with all its guarantees of right and all its promises of justice and peace, behind barriers as sure as possible consistently with the ultimate and wholesome power of the majority, and fearful that both Congress and the Judiciary, as respectively organized, might not always be sufficient for that purpose, the federal convention and the concurring people gave, to the President, the authority to prevent acts concurred in by less than two-thirds of each House of the National Legislature.—Alexander Hamilton, Rufus King, Governeur Morris, James Wilson, and others of the convention, supposed to aim at aristocratic tendencies, advocated an absolute *veto*. While Dr. Franklin, Roger Sherman, George Mason, and others more imbued with the spirit of Democracy, were opposed to any *veto* by the President. For compromising these conflicting views, James Madison and Elbridge Gerry recommended the qualified *veto*, as afterwards adopted. But the avowed object of all who voted to vest that power in the President was to arm him with the means of defending the Executive against encroachments by either of the other Departments, and also of aiding the Judiciary in preventing the enforcement of unconstitutional acts of Congress; and most of the members seemed to think that the *veto* would not be perverted to any other object, and would be exercised only on extraordinary occasions; to prove which it was stated that no act of the Parliament of England had been vetoed by the crown since the year 1694. But the prophecy has not been fulfilled. And there may now be some reason to doubt whether the danger of perverting this high prerogative and of thereby frustrating important public policy and settled public opinion, will be compensated by all the good that it was ever hoped to achieve. Although the crown of England has forborne to employ the *veto* for nearly 200 years, yet Republican Presidents and Governors in America have made a quite frequent and familiar use of it for the last 25

years. The disuse of it in England has resulted from two principal causes; 1st, The patronage of the crown, which enables it, by influence, to control the votes of many members of Parliament so as, in most instances, to prevent measures not acceptable to Royalty; 2nd, The prescriptive power of the Commons to withhold supplies; which has been successfully used for ages as a lever for sustaining and elevating the rights of the people, and for making public opinion effectual. This is more than Tribunitial power. It is a power to stop the wheels of Government, and starve the Royal Household;—it is the club of Hercules uplifted over the head of a pigmy;—the sword of Damocles pointed at the heart of ambition: It is a veto over a veto. When the Commons pass a popular measure and ask the concurrence of the crown, they tacitly, but quite significantly, say to majesty, "approve or die,—give your royal assent or we will withhold all your supplies and subject you, not only to humiliation, but to dependence and destitution." And this is the chief cause of the veto's long slumber in England. But, under our constitution, the President's salary cannot be withheld; and it is the imperative duty of Congress to grant all other necessary supplies. The British wand is, therefore, not in American hands. But the patronage of our President is as potent as that of an English King or Queen. By a dexterous and unscrupulous use of it he may mould Congress to his will and even bring a majority of the people to an apparent approval of an arbitrary *veto* however selfish, ungracious, or hurtful. And consequently, as modern history proves, public opinion has not as much influence on elective American President as it has on the hereditary British monarch.

The qualified veto here is practically an absolute veto. No President has yet been overruled by the constitutional two-thirds—and no President, who knows how to exercise power for the sinister purpose of increasing his influence, ever will be. Had our fathers of '88 foreseen or seriously apprehended such a result, they never would have permitted the veto or left it unmuzzled and omniverous as it may be likely to become. They intended to bridle it so as to keep it in the constitutional track, and their journal and debates show that they intended to preserve Congress from the vortex of Executive patronage, by declaring its members ineligible to any other place of public trust which could be conferred by the President during their legislative term. Had they persisted in that determination, and especially had they extended the ineligibility to the Presidential term, they would have made representatives in Congress much more true and faithful to their constituents than many of them have been, or will ever be, as long as a President can seduce them from their duty to their country by the bait of office more profitable or attractive than their seats in legislative chairs of uncertain tenure. But, just before the close of the Federal Convention, the salutary interdict, which seemed to have been unanimously favored in the preceding stages, was stricken out by a majority of one on a silent vote. And that inadvertent act left the veto almost unchecked, and has armed the President with the means of corrupting Congress, and of either moulding public opinion to his will or resisting it when it ought to prevail. And thus a selfish and ambitious President may pervert that, which was intended as a wholesome check on popular haste and passion, to ends incompatible with the genius of our institutions. But this organic check, as provided by the constitution, shows that its founders were anxious to erect a strong breakwater against the tides of passion which but too often flow from unchecked, excited, and unreflecting majorities.

We thus see how the people of the United States, though unequal in moral power, yet made co-equal in political rights, organized the numerical majority and provided fundamental checks on its inherent authority, for the purpose of preventing hurtful precipitancy in public opinion and of securing the ultimate prevalence of intelligence and reason.

Knowing that large portions of the aggregate population would, if let alone, be incompetent for safe self-government, and that even those classes best qualified for it would be occasionally liable to passion and delusion, our fathers hoped that, in this virgin land of promise, universal suffrage might be tolerated if so organized and bridled as to secure to mind its just influence over matter, by a process of filtration which might afford time enough for sober deliberation and for cleansing public sentiment of the elimental impurities of its first indigested state. They believed that, if man in his best estate be capable of self-government, the opinion of the constituent majority, rectified by distillation through the organs provided by the constitution, ought to rule. By thus securing time for deliberate and thorough investigation, and for the prevalence of intelligence over ignorance and of reason over passion, they hoped that the opinion of those *numero pluris* would be sufficiently modified by that of those *virtute et honore majoris*. They intended that the crude aliment of public opinion should be elaborated and assimilated into vital intelligence by the digestive organs they provided in their constitution. And they expected, of course, that all those organs would be functionally sound, and that each of them would always perform its allotted function faithfully and wholesomely. Those organs are admirably adapted to promote the vitality and maintain the stability of political liberty. But any essential derangement in their natural functions will result in unhealthy secretions tending to disease and death. If Congress will think for its country, as it ought, and will firmly act as it thinks will be best for that country, if the judges shall be wise and honest functionaries and, looking only to their duties, shall uphold Justice and the supremacy of the constitution; and if the President, like Washington, shall, in all his official acts, be guided by an en-

lightened sense of the public interest, and a scrupulous regard to his constitutional duties; then each department will fulfil the purposes for which they were organized. And then, especially in a season of popular effervescence, when the public mind is not sufficiently instructed or too much agitated for safe deliberation, the impetuous tide will be stayed by some one or all of the organic barriers provided for all such occasions by the constitution, until the people shall have had ample time to become dispassionate and well informed, when, if wrong in the first instance, they will escape from the consequences of their error, but if right at first, they will finally, and in due time, effectuate their deliberate, persevering, and well considered will. This is the theory of the constitution as beautiful and wise as it is necessary and conservative; this is its vital principle; and this is its first object and its last hope. Without it Democracy, even of the representative type, must soon become anarchy, oligarchy, or autocracy; but, with it, in all its theoretical purity and full exemplification, the greatest degree of popular liberty and equality, compatible with any form of human government, may be secured and enjoyed. This is proved, not by our own experience only, but by the history of our race in every age. Without firm and effectual restraints on the sudden impulses of the majority, no popular government can either long stand or secure the rights of individuals or of minorities. This is as certain as that man is only man.

But a pestilent exotic has already taken deep root in the heart of the constitution; and, if it live and grow, it will paralyze the organic life of that unequalled political structure. Its germ, planted by ambition, has been watered by charlatanism, and nourished by egotism. The Demagogue feeds on it; and, like the serpent's charm, it fascinates and decoys but too many of multitudes who do not understand the spirit and object of the constitution, and have only an imperfect knowledge of the philosophy of organized liberty. It is called, "the right of instruction"—a popular name which imports that it is the political duty of the members of each branch of Congress to echo, by their votes, the known will of their electors. The sole argument in support of this seductive heresy, though to the superficial thinker quite specious, will not stand the test of severe scrutiny. Its postulate is the assumption that the representative is only the substitute of his electoral constituents; and the conclusion is, that he should, therefore, as their agent, represent their will.

It will be our purpose to suggest, on this inaugural occasion, some general considerations to show that the position just stated is not tenable, and that, if maintained, it would frustrate the aims and sap the foundations of the constitution.

The House of Representatives will be first considered. A member of that branch of Congress is not the mere agent of his electors; 1st. because they were appointed to elect only for the purpose of convenience and policy. All the people of the U. States could not conveniently elect all the members; and to secure the election of competent members, it is proper that those, who can know the candidates, should be trusted with the choice, and that the person chosen should be acquainted with their local wants and interests. But every member, wheresoever and by whomsoever chosen, is, when elected, a representative of all the people of the United States; he should consult the welfare of all; his votes affect the interests of all; and the laws, which those votes help to enact, operate on all; he, therefore, is a representative of the whole; and consequently, so far as popular interest and opinion should influence his public conduct, he should consult the interest and the opinion of the whole. His responsibility is co-extensive with the operations of his acts; and there is, therefore, no constitutional reason why he should obey the voice of his electors, rather than that of the whole constituent body of the Union, for whom they elected him. And the only reason why he would do so, is merely personal and selfish; that is, only because he desires to be re-elected.

But, if the member could be deemed the substitute and agent of his electors, he would be under no political obligation to vote their sentiments; 1st. because his votes operate on his own interests, as well as on theirs; and it is indisputable that, when an agent has a personal interest in his own acts, the only instructions which it is his duty to obey, are those given in the charter of his authority. The Constitution is the member's charter, and he is bound by no mandate from any other and subordinate source. 2nd. One of the chief objects and advantages of representation is the benefit flowing from argument, deliberation, and the inter-communication of information among the members of the representative body. These objects will be frustrated and these advantages will be thrown away by subservience to the voice of the electoral body; and the only true theory of such instructions, therefore, would be, that the member should vote, not as those constituents desire, but as he believes they would vote had they been in his place and heard all that he had heard. And consequently, if he even acknowledged any such right of instruction, he might, after voting against the will of his electors, well and truly say, "I might have thought as you thought, and voted as you desired, had I been only where you were, and heard only what you heard; but I have been convinced by arguments unheard by you, and facts unknown by you; and I have no doubt that, had you been in my place, you too, would have voted, as I felt it my duty to you, to my country, and to my own conscience, to vote; wherefore, I have voted as your representative ought to have voted." If this would not be a true and

sufficient answer to the strictest sect of instructionists, the constitutional organization of the representative principle would be a worthless humbug.

2nd. It is admitted, by all instructionists, that a member is not bound, by any form of instructions, to vote against his own construction of the constitution, because he is sworn to support the constitution, and he must be the keeper of his own conscience. This is a surrender of the whole principle of the doctrine of instructions. Every member is also pledged by an oath to be true and faithful to the United States. And who is to be the keeper of his conscience as to what is such fidelity? If he vote against his own conviction of the interest of the Union, is he, in his own opinion, faithful to the United States? Does he not, in his own conscience, violate his oath? Does he, in his own judgement, promote the general welfare; and is it not his unquestionable duty to endeavor, in his whole course, to do that, on all his responsibilities to his electors, to his conscience, and to his whole country? If he be bound to act as the mere agent of his own little district on questions of vital policy, is he not equally its agent in every vote he may be called to give? And if, consequently, his vote should be the echo of that district on any one question, should it not be so, just as much, on every question on which he votes as its representative? If he vote only as its substitute, its will should equally control all his votes. And the concession that he should vote his own opinion on one question necessarily implies that he should do it on every question.

3. Popular instructions are scarcely ever practicable, and will always be liable to great abuse. The principle is that the will of the constituent body should be that of the representative. If the constituent's will be known or inferred, the manner of communicating it is immaterial. Formal instructions are not necessary, and, if ever attempted, how is the member to know that they are endorsed by a majority of his electors, or what influence or management procured them, or how well those, who might have concurred in them, understood the subject, or what would be their opinion on full discussion and grave consideration? And, when there is no express instruction, he may be misinformed or otherwise mistaken as to the opinion of his constituents; and, in every such case, such mistake might be a good plea for a bad and unpopular vote. The doctrine of instructions impairs proper responsibility and induces temporizing members not only to feel the popular pulse, instead of their own minds, but often to help to excite pulsations in unison with their own selfish interest or ambition. It relieves lazy and timid members from the superfluous labor and responsibility of thinking for themselves, and encourages them to become servile and to engage in the vulgar trickery of prostituted and unprincipled demagogues, instead of being, as they were designed to be, vigilant sentinels on their country's watch-tower, and faithful guardians of their country's justice, honor and peace. Moreover it would not only be incongruous, but humiliating and unjust to require a member, and especially after long and able debate not heard by his constituents, to record, for all time, as his opinion, that which was not his opinion, and at the absurdity of which his conscience and judgement revolted when, as a poor cuckoo, he mechanically uttered it on a call for the yeas and nays. Can such be the imperative political duty of an enlightened, honorable, patriotic, and conscientious member of the august Congress of the United States?

4. The articles of Confederation made the delegates to Congress dependent on their respective States for their compensation, and expressly reserved to each State the right to recall any of its delegates whenever it might choose to do so. This made each delegate dependent on the will and pleasure of his State. But the constitution of the United States secures to every member of Congress a reasonable compensation out of the National Treasury; neither his State nor his district is bound or permitted to pay him; and he is also entitled to hold his seat for a prescribed term, even against the will of his district or State. All this shows that, in adopting the constitution, the people intended that their members in Congress should not, as under the Confederation, be dependent on them or subject to their control otherwise than as moral influence and responsibility might reasonably operate.

Besides, the constitution guarantees to the people the right to assemble peaceably and petition Congress for a redress of Grievances. This implies a conviction that the people had, and should have, no right, by instructions, to compel their representatives do that which the constitution was so careful to secure to them a right to merely to petition for.

5. The assumed mandatory authority of instructions makes the member a mere automaton, often a puppet in the hands of artful wire-workers, and may defeat the object and effect of elaborate discussion and consideration of subjects in Congress. The member may feel that it would be idle to think for himself if he be bound to act as others may choose to dictate; and all argument addressed to him will be useless if it shall be his duty to vote against the light shed and the conviction produced by it.

6. If a member of Congress be bound by instructions, why is not a judge equally bound? The Judge is as much the people's organ as the Legislator can be. Each is a representative of the peoples sovereignty, and the only difference is, that one represents the judicial, while the other represents the legislative function of the same sovereign over both. But whoever presumed to think that a judge is bound to decide as public sentiment may suggest? It is

his duty to utter the law, and administer justice to the poor, the humble, and the obnoxious, as well as to the rich, the exalted, and the popular, in defiance of public opinion. A Judge who will not do this is unworthy of his trust, and perverts the great object of it; a legislator is equally unworthy who fails to think independently, and refuses to act according to his own clear opinion. His department was organized as it was, and he was elected as he was for two years, to thus think and thus act, whenever he is convinced that his country's welfare will be promoted by it.

7. But the most comprehensive and conclusive argument against the political obligation of popular instructions arises from the organization and limitation of all the functions of sovereignty by the Constitution.

If, as is undeniably implied by the character of the constitution and proved by history and the leading object of representation, the people, however intelligent and virtuous, cannot directly legislate wisely or safely in primary assemblies, do not the causes of their incapacity apply, with even greater certainty and force, to their less considered and less responsible instructions? If they should not legislate, should they control those who, for that very reason, were chosen to make laws for them? If they could not be trusted to make law, could they be trusted with authority to compel Congress to pass a law which they, themselves, are too multitudinous, inconsiderate, and irresponsible, in primary meetngs, to enact wisely? Moreover liberty will be insecure, and justice unsafe, unless the popular majority are subject to organic checks which will compel them to pause and soberly reflect. And the objects of all the checks provided by the constitution may be defeated if the doctrine of instructions shall ever be generally recognized and carried out in practice.

With such barriers around them, Theseus would never have been banished from his country by an Athenian mob excited to fury by the primate of demagogues—Menestheus; nor Socrates doomed, by the same sort of a majority of numbers, to the hemlock; nor Aristides to ostracism; nor Cicero to exilement by the profligate Clodius, who stooped from a a patrician to a plebian rank, to deceive and lead an envious and ignorant multitude. On all those memorable occasions of reckless popular movement, the deluded actors, on sober reflection, repented. They built a monument to the memory of their great benefactor Theseus—they consecrated the ashes of their deified Socrates—they recalled their just Aristides to save, from foreign foes and domestic demagogues, that country which his invincible virtues so impressively illustrated—and Cicero was restored to his country and its confidence, and once more, saluted as the PATER PATRIÆ who had adorned his age by his eloquence and philosophy and had, by his patriotism, rescued his countrymen from a Catalinian vortex.

But, had right and justice been guarded, against the impulses of passion and the delusions of ignorance at Athens and at Rome, by such organic securities as those provided by our admirable constitution, undisturbed by popular instructions, the dominant party would have been held back until they had become cool and abjured their momentary errors, as they soon did; and organized and limited Democracy would then have escaped the suspicion cast upon it by those democratic outbreaks of liberty unorganized and unchecked.

If Congress must speak as the majority feels, all the wonderful machinery of our national government, organized for the purpose of regulating the motive power of public sentiment, often as explosive as steam, would, in time, be rendered powerless, and the transient passions and delusions of the majority, instead of their deliberate reason and final judgment, would reign unchecked and soon drive to anarchy, revolution, and ruin. To avert such a catastrophe was the object, and is yet the hope, of our fundamental distribution and organization of the power of ruling majorities. But the popular doctrine of instructions is a cormorant in the tree of life, and if long permitted to live and feed, will surely make it fruitless, sapless—dead.

The only constitutional power the electoral constituency can have, or ought to have, over a member, is that moral influence arising from sympathy, and his responsibility to censorship. They can neither remove nor otherwise control him during his term.

But public opinion, however formed, is entitled to respect, and, when deliberately made up, is entitled to, and will always command a great degree of deference. There is no danger that it will not, in any of its multiform phases, be sufficiently respected by every functionary. The only fear is, that it will have on all, and especially those of the legislative department, too much influence—more, much more, than will be consistent with the spirit and ends of the constitution. The great danger is, not that representatives will wantonly contemn deliberate public sentiment, but that they will be too much influenced by evanescent popular impulses, and will be governed more by the clamor of the noisy and designing, than by "the still small voice of reason," often modestly whispered by the honest and industrious, but too often drowned by the vociferations of demagogues and their Prætorian bands. A demagogue is a sycophantic parisite—a servile tool—a slave at the feet of power. And, though the object of his idolatry is not a titled king, yet he fawns at the feet of a Briaræan monarch, an excitable multitude, on whose credulity, vanity and passions, he plays with all the dexterity of an artful courtier. A member of the American Congress should be an American statesman—not, like Burke

or Cato, too tenacious of abstract truth to do whatever may be practically best; but—enlightened by proper knowledge, and animated by a true American heart, throbbing for his whole country—always doing that which he believes to be best for that country in all time. Such a public servant is a public blessing and will always be honored, even in exile. The opposite character will be a curse to any people, and his posthumous doom will be—infamy.

The Constitution of the United States contemplates a Congress of Statesmen: the contagious doctrine of instructions will make them sycophants—slaves—demagogues. We must speedily choose between the blessing and the curse. Blind subservience to the apparent will or feeling of the numerical majority has already impaired the efficacy of our organic institutions, and has even brought them to a state of fearful transition. It tends, more and more, to the Utopian folly of unregulated and uncontrolled democracy—representative in form, but simple and unmixed in practice. It tends to exclude from the national councils, our best and wisest men; and to fill them with a lower race, unfit and untrustworthy—too many of them ignorant and noisy, and too many selfish, unscrupulous and profligate: and, by its entire process, it tends to degrade office, to shake the confidence of good and wise men in the value and long life of the Union, and to bring the general government itself to the lowest ebb.

In addition to the foregoing considerations, there is another peculiarly applicable to the Senate, and that is, that it was created and organized for the sole purpose of staying the occasional tides of popular sentiment until they may flow back or become harmless. This will not be denied; and if it should be, no other proofs can be required than the extracts already quoted. How absurd, then, must it be to assume that a Senator shall be bound to submit to a thing which he was appointed to resist, and, if needful, overcome? And what form of instruction to him could be generally more authentic than that implied by the conduct of the more immediate representatives of the people? The act of this branch may, PRIMA FACIE, be presumed to be the offspring of the popular will. Resolutions by State Legislatures would certainly not be better evidence of it. Then, if a Senator ought to vote as the Legislature of his State may tell him to vote, he ought to vote as the House of Representatives, or that portion of it from his own State, had voted.—But the office of the Senate is to check the other branch, and to prevent its acts from becoming laws, whenever the Senate deems them inexpedient. And to afford an assurance that Senators would do this, the constitution makes them comparatively independent of popular sentiment, by extending their terms to six years, and providing for their election by a select body of public men, instead of the people themselves. The danger apprehended was that the members of the House of Representatives would sometimes be so much under the influence of symathy with excited masses of their constituents, or so much afraid of their resentment, as to be unsafe legislators. And to guard against mischief from that source, a Senate was instituted, and its members were required to be of a grave and ripe age, and were placed by the constitution so remote from the contagion or fear of popular ebulitions as to be presumed free, to a conservative extent, from their influence. But this object would be frustrated, and this theory totally subverted by inculcating the suicidal doctrine that Senators are bound, at all times and under all circumstances, to express, by their votes, the will of the Legislatures or of a majority of the people of their respective States. And the Senator who will ever do it, against his own clear convictions of his duty to his country, will be a cowardly recreant from his post, and a traitor to the constitution. Nor could he, for his ease or comfort, at such a crisis, resign his seat without being a deserter from the very service which the Senate was created to perform. To execute the great purpose of his commission, and exemplify the value of Senatorial firmness and experience, it is, on such an occasion, PRE-EMINENTLY his duty to stand at his post, and, in defiance of all personal considerations, fulfil his trust according to his own judgement. And he, who cannot, or will not do this, in times of trial, is unworthy of a seat in the venerable body of CONSCRIPT FATHERS, and would disgrace the Senatorial mantle.

But well settled public opinion should always so far influence Senators as to induce them to forbear the enactment of a law which the majority of the citizens of the United States would deliberately and perseveringly disapprove. Public policy forbids all such impracticable legislation. Law—to be practical and useful—must be ultimately acceptable to the people for whom it is made.

In opposing a measure also, a Senator, as well as a Representative, should respectfully regard apparent public sentiment as an important fact entitled to more or less influence as an argument although to none as a command. But, on all national questions, he should manifest a national tone of thought, of principle, and of action. Elevating himself above the clouds of vulgar ignorance and the lightnings of local factions, he should, with national eyes and comprehensive patriotism, survey the great and magnificent panorama of the Union, and feel that it is all his country, and his constituency. And, whatever he sees to be the interest of the whole, he should resolutely endeavor to accomplish, even at the expense of threatened political martyrdom at home. Every such Statesman will, under all vicissitudes, enjoy his own approbation and be sustained by

the respect of all good and wise men. And, if his heroic patriotism should doom him to a temporary ostracism, time will exalt his name to a proud eminence above the infections atmosphere in which temporising politicians, like other ephemera of a day, flutter and die. According to the true theory and animating spirit of our American Constitution, such is a model of an American Senator. Such was DANIEL WEBSTER—and such was HENRY CLAY.

But our modern Senates have been dignified with only a few of that noble class. Too many of them, intoxicated with the popular breath, seem to have been uninspired by the genius of their place. The progress of degeneracy has been so rapid, that, already, the Senate—almost as much vulgarized as the other Branch of Congress—has lost its distinguished caste, and has nearly abandoned the high position of guardian umpirage for which it was created. This decline to the level of the popular body—as ominous as it is humiliating—is the effect chiefly of an abuse of the power of local majorities through the direct and indirect agency of popular instructions. And, without a speedy and general retrogade movement, the theory of the Constitution will be changed, and undigested Democracy, without check, will rule and ruin.

The crisis is pregnant. We have been too much ruled by politicians, whose idol is ephemeral popularity of the most vulgar stamp—foreign influence, in both religion and politics, is paralyzing all pure American influence—and foreign policy is overrunning American policy—premature dogmas of free trade, inviting excessive importations of foreign products to the discouragement of domestic capital and enterprise, have already greatly curtailed our circulation, crippled our resources, and involved our country in a heavy debt—places of trust at home and abroad, are filled with second and third rate men to the injury of our people and the degradation of their national character—the elective franchise is prostituted—the ballot box is defiled and corrupted—political demoralization is consequently progressive in an alarming degree. Factions, local and personal, religious and political, distract our councils and disturb our peace—NULLIFICATION and SECESSION shake their Gordon heads in the face of the Union—and names, and party pride, and fugitive NON-ESSENTIALS, if not soon remedied, may subjugate the band of true American patriots, who, even yet, have the power to save all that is in danger, and restore all that is lost. Let them, forgetting the past, and looking only at the present and the future, magnanimously unite on a platform of VITAL PRINCIPLES in which all true-hearted Americans agree, and then, and not until then, the work of rescue and reform will be hopefully begun.

The call for such an union, for the sake of Liberty and Union, is loud and imperative. And, if it shall—before it will be too late—rally, as one man, the friends of a common cause, that cause will yet gloriously triumph and long prevail. And whenever victory shall crown its banners and emblazon their folds with the "CROSS and the EAGLE" on one side amd the "CONSTITUTION, UNION and LIBERTY," on the other, American independence will be redeemed, and American institutions regenerated. And then the Captain of the triumphant Christian Host, that shall restore religion to its native purity, simplicity and fraternal love, will be canonized as a better missionary and greater reformer than Luther. And the leader of the great Army of the Constitution, which shall save and restore what the "Father of his Country" fought for and established, will deserve the title and receive the reward of a second WASHINGTON.

PRELECTION.

A large body of the *elite* of the organized melitia of Kentucky having encamped in Franklin county near the capital, for the purpose of discipline and in commemoration of our National Anniversary—Mr. Robertson, nine days before the 4th of July, was invited to address the assemblage of at least 20,000 persons, male and female, old and young, citizens and soldiers—and the following address was accordingly delivered:—

Camp Madison, Franklin County, Ky., July 5, 1843.

To the Hon. George Robertson:

Sir—By a resolution adopted at a meeting of the officers and troops assembled at Camp Madison, the undersigned were appointed a committee to express to you their warm thanks for the able and eloquent address delivered to them by you on our National Anniversary, and at the same time respectfully to request from you a copy for publication.

We have the honor to be respectfully, your obedient servants,

JOHN MILLER. Col.
LUCIUS DESHA. Lt. Col.
C. M. CLAY, Col. Fayette Legion.
J. T. PRATT, Adj't. General.
T. L. CALDWELL, Surgeon Gen.

Camp Madison, 5th July, 1843.

Gentlemen:—In answer to your polite and flattering communication requesting for publication a copy of the address delivered yesterday, at the instance and in behalf of yourselves and those you represent, I cheerfully consent to the proposed publication, and will, in a day or two, furnish you the desired copy. Yours respectfully,

G. ROBERTSON.

ADDRESS.

Once more, my countrymen, we are permitted gratefully to behold the anniversary sun of American Independence; once more we salute the star-spangled banner, and rejoice that the cherished emblem of our union and liberty, spotless and peerless as ever, still waves over a nation now, as in time past, signally blessed by a benignant Providence; once more, on earth, the old and the young, of all classes, forgetting the distinctions of name, of fortune, and of faith, have assembled, under the canopy of a bright sky, to embalm the memory of "'76," to remember the tribulations and triumphs of our pilgrim fathers and mothers, and to thank God that we are yet a free and united people.

At the call of those trumpets and those drums—with short notice, and rather as a "minute-man"—the organ of that beautiful and gallant band of citizen soldiers—I appear before you on the forlorn hope of suggesting, for your contemplations, something befitting such an assemblage, on such a day. And, although the accustomed and more comprehensive topics, however trite, can never be unacceptable to those who delight to commemorate "the 4th of July," yet we have thought that a subject which, whilst it may be less directly applicable, is more local and novel, might be equally appropriate and more generally interesting. The birth, progress, and condition of our own Commonwealth, as an offspring of our glorious Revolution and a member of our blessed Union, are intimately associated with all that belongs to the becoming celebration of this day, and beautifully illustrate the beneficence of the principles of human right and civil government which have consecrated it as a national jubilee. Our theme, is KENTUCKY.

We have not come here to recite the annals of our State. All this beauty, and chivalry, and intelligence, and piety, with religious rites and martial music and display, announce a purpose far more comprehensive and important. Feeling, as we this day must, that we are standing on a narrow isthmus between the great oceans of the eventful past and of the still more eventful future, we instinctively glance backward on the one and forward on the other, and embrace, in the transient vision, a panorama of the pregnant present. Such contemplations are peculiarly appropriate and affecting; and, when intelligent, must be profitable. Mixed with joy and sorrow—hope and fear—gratitude and regret—complacency and humiliation—they must help to exalt our minds and purify our hearts, awaken us to a proper sense of our duties and responsibilities, and, by inspiring more virtuous emotions and resolutions, make us wiser as individuals, and as citizens more useful.

A bird's eye glance at Kentucky—physical, moral, and political—past, present, and prospective—may, and ought to, produce all those valuable results, as fruits of this day's commemoration. And if, in any degree, such should be the consequence, our assembling will have been neither barren nor vain; and it will be good for us all that we were here.

Time builds on the ruins itself has made. It destroys to renew and desolates to improve. A wise and benevolent Providence has thus marked its progress in the moral, as well as in the physical world. The tide which has borne past generations to the ocean of eternity, is hastening to the same doom the living mass now gliding downward to that shoreless and unfathomed reservoir. But whilst the current, in its onward flow, sweeps away all that should perish, like the Nile, it refreshes every desert and fructifies every wild through which it rolls; and, fertilizing one land with the spoils of another, it deposits in a succeeding age the best seeds matured by the toil of ages gone before. Asia has thus been made tributary to Africa and to the younger Europe, ancient to modern times, and the middle ages to the more hallowed days in which we ourselves live. One generation dies that another may live to take its place. The desolation of one country has been the renovation of another—the downfall of one system has been the ultimate establishment of a better—and the ruin of nations has been the birth or regeneration of others both wiser and happier. The stream of moral light, with a western destination from the beginning, has, in all its meanderings, increased its volume, until, swollen by the contributions and enriched by the gleamings of ages, it has poured its flood on the cis-atlantic world.

America is a living monument of these consoling truths. When, within man's memory, it was blessed with the first footsteps of modern civilization, the germs of inductive philosophy, true liberty, and pure religion, sifted from the chaff and rectified by the experience of ages, were imported by our pilgrim ancestors to a land which seems to have been prepared by Providence for their successful development in the proper season for assuring to mankind an exalted destiny, at last, on earth.

In less than 250 years from the first settlements at Jamestown and Plymouth, the temperate zone of North America already exhibits many signs that it is the promised land of civil liberty, and that the Anglo-Americans are the chosen depositories of principles and

institutions destined to liberate and exalt the human race.

But our own Kentucky is, itself alone, a colossal tower of God's benevolence and time's beneficence to man. Within three score years and ten—the short period allotted for all the works and enjoyments of a human being here below—this fair Commonwealth, now so blessed and distinguished, was a gloomy wilderness, the abode of wild beasts, and the hunting ground and battle field of the still more ferocious red men of the west. Its fertile soil was unfurrowed by the plow, its gigantic forest untouched by the axe of civilized man. Within all its limits wild nature's solitude was unblessed by the voice of reason, religion or law—uncheered by one spire to Heaven—by one hearth of domestic charity, or by the curling smoke of a solitary cottage. But, in the fullness of time, the red man was to be supplanted by the white—the scalping knife by the sword of Justice—the savage war cry by the church bells of christian temples—the panther and the buffaloe by domestic herds—and the wilderness was soon to bloom with all the beauty and fragrance of "the rose of Sharon and lily of the valley."

In 1774, the tide of civilization, moving westward from the Atlantic, approached the Alleghanies—the Anglo-Saxon race, destined to conquer and enlighten the earth, crossed the mountain barrier—and Finley, and Boone, and Harrod, and Logan, and Knox, and Whitley, and Kenton, hunters of Kentucky—came, and conquered. They brought with them the rifle, the axe, the plough, and THE BIBLE. And, thus armed, this vanguard of their race led the forlorn hope of western civilization to victory and to fortune. The Indians fell by their rifles, the forest by their axes, and savage idols tumbled before God's holy Book—until the current of population, rolling on, wave by wave in rapid succession, soon made Kentucky a rich and powerful State—the first born of the Union of 1788, and now, even now, unsurpassed by physical blessings and moral power—already the mother of younger Commonwealths in the great Valley of the Mississippi, and, in many respects, a fit exemplar to the nations of the whole earth.

The birth and legal maturity of such a Commonwealth are surely worthy of public commemoration. As Kentuckians, we should make periodical offerings of thanksgivings to God and of gratitude to our pioneer fathers and mothers for our enviable allotments in this age of light and in this land of liberty, plenty, and hope. Every nation leaves, on its pathway behind, some lasting memorial which it should never forget or neglect—some green spots in the waste of the past, around which memory lingers with ennobling emotions. And to commemorate, with grateful hearts, great national events either glorious or beneficent, is a double offering on the altar of patriotism and the altar of God. Few incidents in the history of nations have been more useful or can be more memorable than that of the first settlement of Kentucky by our own race; few have been more eventful—and not one exhibits more of romance or of those qualities and deeds deemed chivalrous and noble among men. And the adoption of Kentucky's organic law and her admission into the federo-national union of Anglo-American States, constitute an appropriate episode to the thrilling epic of her Herculean infancy. Our own interests, duty to the generations that shall succeed us, and respect for the memory of our illustrious predecessors—call Kentuckians, one and all, to the consecration of an occasional day or days to the becoming celebration of those two most interesting events in our local history. And let these Kentuckiads—like the saturnalia of the Romans, the Passover of the Jews, and the Olympiads of the Greeks—be sacred seasons, when all of every rank and denomination, animated by the same pervading sentiments and communing as one family, may refresh their patriotism, revive their civic virtues, and improve their social graces.

This, my countrymen, is a monumental land. Modern, as it is, in authentic history, it is covered with monuments of a remote antiquity—memorials, not only of successive generations of long extinct vegetables and animals whose transformed relics fill and fertilize the earth beneath us, but also of a race or races of men as far advanced perhaps in knowledge and the arts of social life as their contemporaries of Europe, Asia, or Africa; but of whose origin, history, or doom, no tradition remains. It contains monuments also of more recent races less civilized, and by whom the more ancient and enlightened inhabitants may have been exterminated or absorbed, as Southern Europe once was, and perhaps about the same time, by wandering tribes of Northern barbarians. By its central position as the heart of North America—its stupendous cliffs and labyrinths—its genial climate—its unsurpassed fertility—its physical beauty and magnificence—its institutions, its population, and its deeds—God has made it an everlasting monument as enduring as its own mountains and far more interesting than the Towers and Pyramids of the old world. And may we, of this generation, leave behind us memorials worthy of our country and our age.

Sites of large cities of the Cyclopean style; ruins of gigantic fortifications, temples, and cemeteries—perfect petrifactions of human beings of the Caucasian form, with the accustomed habiliments of the civilized dead—all disinterred after a sleep of many centuries—prove, beyond dispute, that our continent was once the theatre of a crowded population resembling, and probably equalling, the most civilized of their cotemporaries of the transatlantic world. When and whence those buried and forgotten nations came to America we have no clue for determining with historic certainty. If, as may be probable, any of them were superior to the Itzacans—who emigrating probably from the Caspian sea, built Mexico and Cusco—they may have been Car-

thagenians, Phœnicians, Phocians, or Etruscans—all of the Pelasgian race—or probably Danes; all of which nations navigated the the Atlantic Ocean, and the last of whom had planted settlements in the New England States at least twelve centuries ago. Modern geology, which discloses the history of the earth and vegetation and irrational animals for thoussnds of years, is dumb as to our race, of whom there is no fossil fragment in any of the stratifications of the globe. Nor, whilst it proves,, beyond question, that this whole continent was once covered by an ocean of water, does it intimate the origin, character, or destiny of the more enlightened people who lived on it after its emergence and long before the discovery of it by Cabot.

Their tale is untold. Were it known, it would doubtless be interesting and eventful. Ages ago, Kentucky may have been the busy theatre of incidents and catastrophes in the drama of civil and social life, of which a Hesiod, a Homer, and a Virgil might have sung with immortal melody. It is said that, when Alexander saw the hillocks supposed to contain the bones of Achillis and Patroclus, he sighed because he too had not, like them, a Homer to canonise his name.

May not Kentucky, centuries back, have had its Achilles and Patroclus, and Hector, and Helen, and Troy--its Marathon, its Athens, its Delghi, and its Parnassus—its Theseus, its Solon, its Socrates, its Epaminondas, its Themistocles, its Demosthenes—its wars, its friendships, its loves, and its human woes? But of these no Homer sang, and all is now desolation and oblivion. Whilst we tread on the ruins of generations unknown, all that history tells of Kentucky's past may be embraced in the narrow span of one century.

Long prior to the immigration of our ancestors, Kentucky had been depopulated, and, —covered with majestic fotests and luxuriant cane,—had become the hunting ground of various tribes of savages and the theatre of bloody conflicts between them. And, from those circumstances, it derived its name—Kantuckee, in Indian dialect being, "the dark and bloody ground." Though embraced constructively within the chartered limits of Virginia under James's grant of 1606, yet it was also claimed by France—both England and France claiming a great portion of North America by alleged prior discovery, which, according to the conventional law of Christendom, gave to a Christian nation dominion over any unchristian country which it first discovered. These conflicting claims of England and France not being adjusted until the treaty of 1763, the uncertainty of title, the remoteness of the territory, and the perils and privations incident to a colonization of it retarded its exploration and settlement until after that peace had been concluded. Some wandering Frenchmen, as well as Virginians, had occasionally had earlier glimpses of it, and made glowing reports of its fertility and beauty. But it remained unappropriated by the hand of civilization until the year 1767, when GEORGE WASHINGTON, afterwards commander-in chief and President of the United States, visited the Eastern portion of it, and under the proclamation of '63, made two surveys, chiefly within its limits, on Sandy, in the name of John Fry, the Colonel of the regiment, of which, in the war of '53, he himself was Lieut. Colonel. These surveys, like everything else attempted by Washington, were perfectly made and reported, so that every line and corner have been easily identified. They were the first surveys ever made within the limits of our present state—and thus Washington was one of the first "hunters of Kentucky." Finley and others, of North Carolina, having in the same year of 1767, explored the best northern portions of the territory, and returned with alluring accounts, Daniel Bone of the same state, the Nimrod of the day, was induced to come and look at it for himself in 1769. He was so charmed with the beauty and sublimity of its landscape, the melody and fragrance of its forests, and the variety and abundance of its wild game, as to linger in its solitudes, generally alone, for two years. In 1770, in escaping from Indians who killed one of his brothers by his side on Boone's creek in the present county of Clarke, he lost his hunting knife, which was found in 1822, and is now in the historic cabinet at Washington city. In 1773–4, several surveys were made near "the falls," and on Elkhorn and the Kentucky river under the proclamation of '63. And, in the fall of the year 1774, James Harrod of Monongehala, with about 60 others who were in "the battle point," built some cabins where Harrodsburgh now stands, and returned home with the intention of removing to them, which some of them did in the fall of 1775. Boone had come with his family as far as Holstein, was at Wataga in March 1775, and having there assisted in negotiating the contract whereby the Cherokees, who claimed all the territory south of the Kentucky river, sold to Colonel Henderson of North Carolina, their title thereto, he was employed by the purchaser to open the first Kentucky road—(from Cumberland gap to that river,) which being soon completed by blazing trees and calling the designated route a trace, he commenced, about the middle of April, 1775, the erection of a log fortification on the southern bank of the river, at a place since called Boonsborough, and which was finished in June of the same year. Thus it is almost certain that, whilst the first revolutionary guns were thundering on the 19th of April at Lexington, Massachusetts, in the cause of National Independence, the pioneer axe was resounding among the cliffs of Kentucky in the work of rearing the first modern fortress for founding and guarding civilization in this Hesperian wilderness. The fortress being completed, Boone removed to it with his wife and daughters early in September, 1775.—These were the first civilized females who ventured to settle in Kentucky. Without the co-operation of the

gentler sex, the settlement would never have been made. Woman was the guardian angel of the wild and perilous forest. And never, on earth, was the poet's conception of her value more perfectly exemplified—for it was here truly seen and felt that—

"The world was sad, the garden was a wild,
"And man the Hermit sighed, till woman smiled."

The anniversary of the first advent to Kentucky of Christian woman, by whom our State has since been so signally adorned and blessed, should itself he commemorated with grateful hearts. She was the tutelar genius of our settlements—she has been the foster mother of the domestic virtues which have hallowed our hearths and graced our society—and she it was that fired the heart of Kentucky patriotism and nerved the arm of Kentucky chivalry.

In 1776 many improvements were made preparatory to ultimate residence, and of such a character as merely to identify the selected spots as those intended for occupancy and cultivation.—Until the year 1777 all this cismontanian territory of Virginia was embraced in the county of Fincastle, and was virtually in a state of nature, without any local jurisprudence or organized administration of justice. But the county of Kentucky, coterminous with our state, having been established about the close of the year 1777, the new county was organized and a court of Quarter Sessions was opened in March, at Harrodsburgh. And of that Kentucky court of justice, Levi Todd was the first clerk.

As the Revolutionary war was raging, and no law had been passed for the appropriation of land on this side of the mountains, the settlement of this country did not increase very rapidly before the year 1779, when "the land law" was enacted. Having always asserted full dominion over all the territory within her chartered limits, conceding to the savage occupants the usufruct merely, Virginia declared illegal and void the purchase made by Col. Henderson, and another also by Col. Donaldson from the Six Nations, of the territory north of the Kentucky river, all of which was claimed by those tribes. But, considering those purchases valid for the purpose of divesting the aboriginal title, our parent state claimed the absolute right to the entire territory as a trust resulting to her from the illegal contracts, which were deemed void so far only as they purported to vest beneficial interests in the individual purchasers who had made contracts with Indians in violation of a statute prohibiting all such purchases. Thus claiming the use of the land, as well as jurisdiction over it, the Legislature, in 1779, enacted a statute, commonly called "the land law," authorizing, in prescribed modes, individual appropriations of land in Kentucky. This beneficent enactment brought to the country, during the fall and winter of that year, an unexampled tide of imigrants, who, exchanging all the comforts of their native society and homes for settlements for themselves and children here, came like pilgrims to a wilderness to be made secure by their arms and habitable by the toil of their lives. Through privations incredible and perils thick, thousands of men, women, and children, came in successive caravans forming continuous streams of human beings, horses, cattle, and other domestic animals, all moving onward along a lonely and houseless path to a wild and cheerless land. Cast your eyes back on that long procession of missionaries in the cause of civilization. Behold the men on foot, with their trusty guns on their shoulder, driving stock and leading packhorses—and the women, some walking with pails on their heads, others riding with children in their laps and other children swung in baskets on horses fastened to the tails of others going before. See them encamped at night expecting to be massacred by Indians—behold them in the month of December, in that ever memorable season of unprecedented cold called "the hard winter," travelling two or three miles a day, frequently in danger of being frozen or killed by the falling of horses on the icy and almost impassible trace, and subsisting only on stinted allowances of stale bread and meat; but now, lastly, look at them at the destined fort, perhaps on the eve of merry Christmas—when met by the hearty welcome of friends who had come before and cheered with fresh buffalo meat and parched corn—they rejoice at their deliverance, and resolve to be contented with their lots.

This is no vision of the imagination. It is but an imperfect description of the pilgrimage of my own father and mother, and of many others, who settled in Kentucky in December, 1779. When, resting from their journey, they looked at the cheerless home of their choice, and remembered, with sighs, the kindred and comforts left behind in the sunny land of their youth—they were yet consoled by trust in the martyr's God, and animated by the rainbow of hope which gilded the dark firmament lowering over the unchincked cabins which scarcely sheltered their heads. Blest be the memory of the patriarchal band; blest forever be the land ennobled by their virtues and consecrated by their blood; and blest be their children and their children's children, both in this life and in that to come.

The land law provided—that all persons who had settled themselves or others in the country in good faith antecedently to the 1st of January, 1778, should be entitled to 400 acres including each settlement, at the price of $2.50 for each hundred acres; that all who, in like manner, had settled in villages should be entitled, collectively, to 640 acres for their town, and individually to 400 acres each, at the same price of $2.50 for each hundred acres; that such as had settled since the 1st of January, 1778, should be entitled to a pre-emption of 400 acres, including each settlement on paying for each hundred acres £40 in paper money, then equal to about $40; that such as had, before the 1st of January, 1778, chosen

any vacant land marked it or built a house or made any other improvement on it, should be entitled, for the same price £40 per hundred, to a pre-emption of 1,000 acres for each improvement; that, to every settlement right a pre-emptive right to an additional 1,000 acres, at the government price of £40 in paper money for each hundred acres, should be attached so as to adjoin the settlement survey; and that, independently of any pre-emption claim, any person might procure a treasury warrant for any quantity at the said State price, to be located by his own direction.

Settlement and village claims were to be adjusted by commissioners appointed by Virginia, whose first session was on the 13th of October, 1779, at Logan's Station, near the present village of Stanford, and whose first certificate of title, dated the next day, was granted to Isaac Shelby, (the first Governor of Kentucky) for a settlement and pre-emption of 1,400 acres, "for raising corn in 1776" near the Knob Lick, about five miles south of Danville, where he afterwards resided and died.

The settlement of Kentucky was not the only aim of the land law of 1779. Unfortunately for the repose of the first settlers, Revenue was Virginia's principal object. She issued warrants for more land than she had, and the best lands were covered by successive appropriations. This was the fault of the law, which not only permitted each claimant to make his own entry, but required each location to be made with so much procision as to enable subsequent locators to appropriate, without collision, the adjacent residuum. This last provision was judicially construed as requiring notoriety, actual or potential, in the locative calls, an identity between the entry, survey, and patent. Unluckily, the courts decided also that an older grantee might be compelled, by a court of equity, to relinquish his legal title to a junior claimant under the better entry; and that a subsequent locator, whose entry was constructively certain and good, should be preferred to a prior locator whose entry did not possess, at its date, the prescribed notoriety or requisite identity, even though the subsequent appropriator knew, or might by reasonable enquiry, have known, when he made his entry, that he was encroaching on a prior appropriation.

These anomalous rules and doctrines operated unjustly to individuals and injuriously to the prosperity and peace of Kentucky. They produced vexatious and protracted litigation involving, for many years, most of the original titles—and that litigation generally resulted to the loss, and often the ruin of the earlier appropriators, who had neither craft nor the foresight necessary for eluding the legal net woven by the avaricious or unskilful legislators, cunning lawyers, and metaphysical courts. Many, perhaps most, of the advanced guard who rescued the country, were supplanted by voracious speculators.

Boone was one of the most conspicuous of these victims. Of the many tracts of rich land for which he had obtained titles, it is not certainly known that he was permitted to hold one foot. Like Moses he led the pilgrim army—and, like him, he saw but never enjoyed the promised land.

The Indian tribes, who had claimed the territory as their own, denying the validity of the contracts purporting to cede their titles to Henderson and Donaldson, and many other tribes—of which the Shawanees were the most ferocious—claiming it as common hunting ground—these combined savages determined to prevent the occupation of it by "the long knife," as they characterized the white men; and by persevering massacres of the early immigrants on their way to the country and after others had reached it, they endeavored to nip the settlement in its bud. This savage crusade against civilization was prosecuted in the settlements of Kentucky until after Clark's campaign in 1782, and on the borders of the Ohio, until Wayne's treaty at Greenville, in 1795. Prior to the treaty of Independence in 1783, neither the confederation nor any of the States contributed any efficient aid to the Spartan band of issolated pioneers who encountered alone all the horrors of exterminating war with numerous tribes of savages. In that bloody struggle even the children were soldiers and the women all heroines. The husband, with his rifle, had to guard his wife whilst she milked their cow; and the lonely mother with her children often defended their cabin against unsparing assaults at night. Day after day, and night after night, families were surprised and slaughtered—companies of immigrants massacred—stations attacked—and bloody battles fought—and captives taken and either rescued, or butchered, or burned at the stake.

The horrid massacres at Martin's and Kencheloe's Stations—'the defeated camps,' where a large company of men, women, and children, were nearly all slaughtered in their tents on the wilderness trace, in 1781, and where, in the darkness and chilling rain to which a fugitive mother had escaped undressed, a child was born whom many of us knew in manhood's prime:—the assault on the cabin of Mrs. Woods, near the Crab Orchard, in 1782—the bloody rencounter between an Indian who had forced an entrance, and her negro man—the attempts of other Indians to cut down her door—their repulse by her pointing through a crack a gun barrel used as a poker, and her finally cutting off the Indian's head with a broadax, whilst he and her slave were lying together side by side fighting on the floor:—the capture of Miss Calloway and Miss Boone, at Boonsborough, 1776—the pursuit by their parents, one of whom (Boone) subscribed an oath that he would rescue the children, if alive, or die in the effort—the instinctive sagacity of the captives in leaving shreds of their handkerchiefs and dresses as signals of their course and of the encouraging fact that they still lived—the anxiety of the pursuing fathers when, surveying the camp of the sleeping captors, they beheld their daughters lying arm in arm—the solici-

tude of those children when, shortly afterwards they saw their fathers themselves hopeless prisoners, tied to trees, facing tomahawks uplifted to slay them—and the mutual joy of parents and children when, at that awful moment, a fire from friends who had followed in the pursuit dispersed the savages and rescued the captives who were soon in each other's arms weeping with pious joy for their providential deliverance:—The capture of Simon Kenton, and his rescue from the fire of the sake by the renegado, Simon Girty, who, hating his race, had become a leader of Indians, and though more cruel than any of them, yet, in this instance, illustrated the triumphant strength of schoolboy associations; for he and Kenton had played together when they were boys, and, recognizing the familiar face just as the incendiary was igniting the funeral pile of faggots, he instinctively cried stop!—and the bloody hand was stayed:—The attack by more than one hundred Indians, on Capt. Hubbal's boat as it descended the Ohio with his family—his chivalrous defence until the blood gushed over the tops of his boots, and his successful resistance even then, and final victory by repelling the assailants with billets of wood until, coming in sight of Limestone, they ceased their efforts to board with their canoes and paddled off, leaving the noble immigrant and his blood-stained boat to float alone, a monument of valor never surpassed:—The many captures of women and children; the burning of infants or the crushing of their heads against trees in the presence of their mothers—the detention in savage bondage of men, women, and children for years—and the burning of many at the stake, ornamented with the scalps of their friends:—These were some of the scenes of peril and blood which characterized the first settlement of Kentucky by our race.

Battles too were fought as gloriously as those of Thermopylæ and the Grampian Hills. Who does not remember, with honest pride, the traditions of the heroic defence of Boonsborough, and Harrodsburgh, and of Logan's and Bryan's Station? And where is the heart that does not glow with admiration at the recital of the romantic incidents which signalized these and many others as memorable occasions in our short but eventful history? One only may illustrate the spirit of all of them. Nearly 400 Indians, lying concealed around Logan's Station, surprised and shot down one of its few defenders who, at the dawn of day, had passed the puncheon stockade in quest of the cows—and then, with savage yells, they attacked the fort; while pouring their rifle balls like hail upon the humble fortress, the wounded man, between two fires, raised himself on his hands and knees, but, unable to stand, he could not escape. Col. Benjamin Logan, observing this imploring scene, exclaimed "who will go and help our wounded friend?" Several made the attempt, but were driven back by the enemy's balls; at last Logan himself nobly ran to his relief and, lifting him on his shoulders, carried him safely in untouched by one of the hundreds of bullets aimed at their heads.

"Estill's defeat," near Mountsterling, on the 20th of March, 1782, was as glorious as disastrous. More skill and courage were never displayed on a battle field than Capt. Estill and his associates that day exhibited and sealed with the blood of all and the lives of the leader and many of his men. At the time of that ever memorable battle, "Estill's Station" was occupied and to be defended only by women and children, and by my own father, who was then lying there disabled by several wounds received from Indians a few days before.

And in "the Blue Lick defeat," August the 20th, 1782, the cormorant of death fed greedily on the flower of the first settlement. On that darkest of their gloomy days every settler lost a friend, and nearly every family a prop. And, on that bloody field, the noble Cols. Todd and Trigg, the chivalrous Capt. Harlan, and the gallant son of Boone, lay undistinguished among the promiscuous slain, all soon mangled by devouring wolves and vultures so as not to be recognized by their friends, who three days after the battle, buried the fragments. A few of their crumbling bones, since collected by their countrymen, now lie exposed to the elements, in a confused pile, on the summit of the bleak and rocky plain where the heroes fell. We cannot now imagine the grief and despondence with which the mournful intelligence of that day's catastrophe covered the land. But the survivors, though wofully bereaved, were not to be discouraged or dismayed. They were resolved never to look back or faulter in their first and last resolve to conquer the wilderness or die in the attempt. Israel's God stood by and sustained the noble but forlorn band—for their cause was his. On the long roll of that day's reported slain were the names of a few who had, in fact, been captured and, after surviving the ordeal of the gauntlet, had been permitted to live as captives. Among these was an excellent husband and father, who with eleven other captives, had been taken by a tribe painted black as the signal of torture and death to all. The night after the battle, these twelve prisoners were stripped and placed in a line on a log—he to whom we have specially alluded being at one extremity of the devoted row. The cruel captors, then beginning at the other end, slaughtered eleven, one by one; but when they came to the only survivor, though they raised him up also and drew their bloody knives to strike under each uplifted arm, they paused, and after a long pow-wow, spared his life—why, he never knew. For about a year none of his friends, excepting his faithful wife, doubted his death. She, hoping against reason, still insisted that he lived and would yet return to her. Wooed by another, she, from time to time, postponed the nuptials, declaring that she could not divest herself of the belief that her husband still lived. Her expotsulating friends finally succeeding in their efforts to stifle her affectionate instinct,

she reluctantly yielded, and the nuptial day was fixed. But, just before it dawned, the crack of a rifle was heard near her lonely cabin—at the familiar sound, she leaped out, like a liberated fawn, ejaculating as she sprang—"that's John's gun!" It was John's gun sure enough; and, in an instant, she was once more, in her lost husband's arms. But, nine years afterwards, that same husband fell in "St. Clair's defeat"—and the same disappointed, but persevering, lover renewed his suit—and at last the widow became his wife. The scene of those romantic incidents was within gunshot of my natal homestead; and with that noble wife and matron, I was myself well acquainted.

Almost every spot of earth within the limits of our State has been consecrated by some romantic adventure or personal tragedy; and were I to speak of these remarkable incidents of our early history until this day's setting sun, I could scarcely have begun the moving tale of Kentucky's first settlement by those whose blood still flows through our own hearts. The few facts we have briefly recited are but samples of countless events equally interesting and far above the power of adequate description by the pen or tongue of man.

But peril, privation and death, could neither extirpate the settlement nor prevent its progressive increase. And, in 1783, two auspicious events occurred—the treaty of peace with England, and the subdivision of Kentucky county into the counties of Lincoln, Fayette, and Jefferson, and the organization of a District courts with criminal as well a civil jurisdiction. Of that first local court of general jurisdiction, John Floyd and Samuel McDowell were the first Judges, John May the first Clerk, and Walker Daniel the first prosecuting attorney. Its first session was at Harrodsburgh, March 3rd, 1783; but it was permanently fixed at Danville by a contract with the Clerk and Attorney General, the proprietors of the land, who agreed to erect, of logs, the public buildings.

As early as 1784, the population had become so confident of its capacity to govern and defend itself, as to desire a separation from Virginia; and in that year, a Convention was held at Danville preparatory to the establishment of an independent government. But a disagreement with the parent State as to the terms of separation, frustrated the object of that and other successive conventions, and Virginia having, in 1789, assented on prescribed terms ratified by a Convention at Danville in 1790, Congress passed an act, February the 4th, 1791, admitting Kentucky into Union prospectively, on the first of June, 1792. And, on the 19th of April, 1792—the anniversary of the battle of Lexington—the first Constitution of Kentucky was adopted. Isaac Shelby, the first Governor, arrived in Lexington (the temporary seat of government) June the 4th, 1792, and a quorum of the Legislature, there convened on the 5th, having elected Alexander S. Bullit President of the Senate, and Robert Breckrinridge Speaker of the House of Representatives, received the first Executive communication, read to them in joint meeting by the Governor in person, in imitation of the practice of Washington, as President of the United States.

It was perhaps lucky that Kentucky was kept in a state of pupilage and dependence until after the adoption of the Federal Constitution. Her own constitution probably was much better than it would have been had she adopted one before 1788. Her detached position—the non-surrender of the Northwestern posts, as stipuluted by the treaty of 1783, in consequence of which the Indians were instigated to persevering hostilities—the occlusion by Spain of the Mississippi river below the 31st degree of noth latitude—and a general, but unjust suspicion, that the federal government was inattentive, perhaps indifferent to Western interests—had generated a spirit of distrust and disaffection which might possibly have been exasperated to the extremityof final alienation had Kentucky, as an independent state, possessed the power to act as she might have willed, before she was covered with the panoply of the National Union of 1788. But rescued, either by Virginia or her own good sense, from the vortex of self-independence or foreign alliance, she now stands a Doric column in the American temple of Union. Although, in fact, an integral member of the Union not quite as soon as Vermont, yet, as the act of Congress prospectively admitted her, without qualification or restriction except as to time, was the first of the kind enacted by Congress, we claim for our own native Commonwealth the honor of primogeniture. And may she long continue to enjoy and deserve her birthright, and be the last to soil or surrender the blessed national motto of her own flag—"UNITED, WE STAND—DIVIDED, WE FALL."

The adoption of a political constitution, and such a constitution in the wilds of Kentucky by the free will of a majority of its free inhabitants, was a novel and interesting spectacle. The first constitution—the production principally of George Nicholas—was a very good one—certainly equal, if not superior, to any other state Constitution then existing. As it provided for another convention at the end of seven years, a new constitution was adopted in 1799. Both constitutions were alike—in outline the same. The last is more popular in its provision for the election of Governor, and less so in the mode of selecting sheriffs and clerks; and the first secured more stability to the judiciary by prohibiting, like the federal constitution, any reduction of salary during the tenure of judicial office. There may be reason to doubt whether, altogether the last is better than the first. But the fundamental law of Kentucky, as it is, recognizes the cardinal principles of the declaration of independence of 1776—distributes all political power among three co-ordinate departments of representative magistracy—divides the legislative council; intending one branch to operate, when proper, as a check on the passion or in-

considerateness of the other—secures the elective franchise to all free, white, male citizens twenty-one years old—and provides a strong anchorage of stability in prescribing, as the only lawful mode of revocation or alteration, such an one as secures the dispassionate exercise of reason by a greater number of citizens than that which will ever vote on the grave question of a new convention. Kentucky pioneers seem to have well understood—what the wise men of antiquity and even of modern Europe never knew—the conservative principles of safe, just, and practicable democracy. Our State Constitution is an organized model of those principles. The ultimate object of the entire structure was to secure fundamental rights, not to the numerical majority who, but seldom, if ever, can need such extraneous support, but to the minority and each individual against the passions or injustice of the major party—to assure the predominance of reason over passion, knowledge over ignorance, and moral over brute force; to prevent a mischievous prevalence of factious designs and of hasty and inconsiderate public opinion; in fine, to secure the blessings of democracy, unalloyed with its curses, by organizing political sovereignty in such a manner as to deprive each citizen of so much natural liberty as would be inconsistent with the practical supremacy of just and equal laws, and, at the same time, secure to each, against the governing party, as much of natural right as it can be the end of the best State government to guarantee. In every breath it repudiates the suicidal doctrine that the will of the actual majority—unsanctioned by the constitution or expressed otherwise than that requires—is law, or should be respected as a rule of conduct, or of right. And, in organizing the representative principle, it was the great aim of our fathers to secure to legislation a degree of responsibility, deliberation, and knowledge, which the constituent mass, under the most favorable circumstances, could never be expected to embody. And in this way they intended to make legislation the safe work of reason and deliberation, and not the monstrous offspring of the passions or inconsiderate emotions of an impatient or irresponsible multitude. Thus only can "*vox populi*" be "*vox dei.*"

Though complex in structure, yet, in its practical operation, according to its true theory, this constitution exhibits an admirable simplicity and rare wisdom. And its wonderful philosophy and beauty appear in this pervading characteristic—that, whilst it recognizes the ultimate authority of the popular will, it intends that the representative functionaries in each department of sovereign power, and especially in two of them, shall, by faithfully acting according to their own honest and enlightened judgments, arrest the tide of passion or ignorance until the constituent body shall have had sufficient time for thorough investigation and dispassionate conclusions, but that, after the public mind shall have been thus distilled through the constitutional ordeal, and not before, its final judgment should be deemed the highest attainable evidence of right, and should, of course, then be supreme. *This is the principle and the end of the entire frame and of all its checks.*

This theory, if observed in practice, will exalt representative democracy; any other must always, as hitherto, prostitute and degrade it. A constitution less guarded or more democratic than that of Kentucky would authorize licentiousness and tend to anarchy, the most oppressive despotism, and the ultimate destruction of democracy itself. Let our public functionaries all feel the true spirit of our constitution and of their stations, and always act upon a comprehensive and elevated consideration of their responsibility to the whole constituency on whom their acts will operate, and to their deliberate judgments, and to God—and, as long as they shall thus fill their places and discharge their duties, and no longer, our ark of liberty may save us all from every storm and every flood. One of its best features is that which secures its own stability. Without this, it would not effectually operate as a supreme law; for, if the majority could abolish or change it at pleasure, it would be no more inviolable or fundamental than an act of ordinary legislation. Our fathers, wise and prudent, were not willing to trust all their or our rights to the will of a majority without imposing on that majority itself such restrictions as would afford a satisfactory guaranty against a capricious or unjust abuse of power. Such is the organic law made for themselves and their posterity. Honest men made it, and it may last and bless as long as men equally honest, minister at its altars, in its own pure spirit. But it is a chart of one only of a constellation of republics, each revolving in its own orbit round a common centre, and altogether constituting, for all purposes common to all, one pervading, comprehensive, supreme Commonwealth. A confederation of independent sovereigns is not the union into which Kentucky was admitted as a member. Her union is national to the extent of all national interests, and federal only so far as her own local interests are exclusively involved. She arrogates no authority, as a State, to control rights or interests common to her co-states, nor does she admit the authority of any of them to decide for her on any right or interest of hers. As to all national concerns, whether foreign or domestic—all things essential to the maintenance of the harmony, justice and integrity of the Union, to its nationality and ultimate national supremacy—she had, by the act of becoming a party to the Constitution of the United States, wisely surrendered all her sovereignty to the common government, instituted for the sole purpose of preserving that sacred Union by regulating and controlling all those great interests which no one State could regulate or control consistently with the rights of

others. It was in the cause of that union that Kentucky has often raised her arm and shed her blood—and to preserve it in its purity and original design will she not, if ever necessary, spill the last drop that animates her patriotic heart? "*Yes*," is the response of those nodding plumes.

Such is the constitution and such are the principles handed down to us by the generation that is gone or fast going away. The spirits of the dead and the prayers of the yet living conjure us to defend them.

The power and value of our local constitution have been severely tried; and never more signally than in the violent controversies about a "new election" of Governor in 1816–17—and "relief" and "new court" from 1822 to 1827—each of which agitated our State almost to civil convulsion, and in both of which the sober intelligence of the people finally prevailed over the earlier impulses of passion and the promptings of partizan leaders, which, had they not been checked in the first case by a firm and honest Senate, and in the last by a pure and enlightened judiciary, would, as almost all now admit, have trampled under the feet of an excited majority some of the most important provisions of the organic law. Our Senators and Supreme Judges then firmly and nobly performed the task allotted to them by the constitution, by faithfully doing what their departments were organized to effect. They did not follow the too contagious example of illustrious demagogues by stifling their own consciences, prostituting their own judgments, and committing treason to the constitution and their stations, in subservience to the passions and submission to the clamor of the unreflecting multitude. They saved the constitution and commended the cause of constitutional democracy. Any other course by such functionaries must always tend to unhinge the constitution—to destroy its stability—to pervert its spirit—and finally, to subvert democracy itself.

Our legislation has generally been consistent with our constitution and promotive of the public welfare. But the besetting sin of partial enactments, and of hasty, crude, and excessive legislation, has sometimes stained our legislative history; and in no class of cases more frequently than that of Divorces of husband and wife, in which, since 1805, but never before, our legislatures have, in many cases, seemed to assume the judicial function granted exclusively to the judiciary by the most important provision of the constitution.

But, under her State Constitution, essentially as it is, Kentucky has already grown to a matured and distinguished Republic—matured in Knowledge, in social organization, and in physical improvement—and distinguished for lofty patriotism and eminent talents in peace and in war. Her arm never hesitated—her voice never faltered in the cause of constitutional liberty and union. She has often sealed her patriotism with her richest blood. By the victory of Orleans, Kentuckians gloriously contributed to immortalize Kentucky valor and their federal leader's name—and by their gallant support of the lamented Harrison in the North-western campaigns of the last war, they made him, too, President of the United States. How many more Presidents she may give to the nation, from her own bosom, time alone can disclose. Already two of her sons are enrolled among the distinguished few from whom the approaching choice is to be made; and she has many more who are qualified for the same distinction. By her principles, her conduct, and her high moral power, Kentucky, though only fifty-one years old, has acquired an exalted and priceless character, and, having contributed to the population and strength of other and younger Commonwealths, is now honored by the significant title of "OLD KAINTUCK." Her blood is good. The richest of this noble blood flowed in the viens of our untitled pioneers, than whom a more heroic, hardy, and honest race of men and women never gave birth and fortune to any nation on earth. As to this world's trash they were poor enough; they had no blazoned heraldy, and but little of scholastic lore. But they were blessed with robust health, sound heads, and pure hearts—practical sense, simple and industrious habits, dauntless courage, social equality, virtuous education, and habitual reverence for human and divine law. These were the elements of our first social organization and civil state. Better never existed. What a generation was Kentucky's first! Who could be so falsely proud as to be ashamed of such an ancestry? Who among us would prefer to trace his pedigree to a nobler stock? To that primitive race—to that "*root out of dry ground*"—are we indebted, not only for our present comforts, but for all those qualities which have most honorably distinguished the name of "Kentuckian." Let us never prove ourselves unworthy of our origin.

Most of the pilgrim band, who made the first footsteps of civilization on our virgin soil, have consecrated by their bones the land of their choice. Many of them lived long enough to enjoy the first fruits of their toils—a few—but very few—survivors yet linger here and there among us as monuments of the memorable age that is past, and of the noble race that is almost gone. This venerable group deserves a passing tribute.

SURVIVING FATHERS AND MOTHERS OF KENTUCKY'S DAWN!—We salute you as the honored relics of eventful days to our country and to us, which we, your posterity, never saw. Yet spared by Providence to commemorate the adventurers of the hey-day of your youth, may you still be permitted to gleam forth, yet a little while longer, the light of the generation now gone

before you, and also to bless the children who may live after you.

You feel this day what none but you can feel. You saw Kentucky in her native wildness. You well remember the manifold difficulties you met and overcame. You remember the friends you have lost and the children you have buried. You now review the scenes of your dark and bloody days—look around for the companions of your sufferings and triumphs and sigh that they are gone and you alone here. But you live to reap the rich harvest sowed by your sweat and your blood. You behold Kentucky as she is now before the middle of the nineteenth century, and contrast her with what she was in the last quarter of the eighteenth. Full of years and full of honor, you bless God for what you have been and all you have suffered and seen. May you still be permitted to live until you can know that the fruits of your lives will long bless the country and the children you will soon leave behind. And then, in the light of that bright assurance, may each of you, as your last earthly moment approaches, be able to say from your heart—"Now Lord lettest thou thy servant depart in peace—for mine eyes have seen thy salvation."

But among you here is one—the lonely trunk of four generations—to whom the heart of filial gratitude and love must speak out one emotion to-day. *Venerable* and *beloved* MOTHER! How often have we heard from your maternal lips the story of Kentucky's romantic birth—of "*the hard winter of* '79"—of all the achievements and horrors of those soul-rending days?

You have known this land in all its phases. You have suffered with those that suffered most, and sympathised with those who have rejoiced in well-doing and the prospect before them. You have long survived the husband, who came with you and stood by you in your gloomiest, as well as your brightest days, and has long slept with buried children of your love. And now, the sole survivor of a large circle of cotemporaneous kindred and juvenile friends—a solitary stock of *three hundred shoots*—with a mind scarcely impaired, you yet linger with us on earth only to thank Providence for his bounties and pray for the prosperity of your flock and the welfare of the land you helped to save and to bless. And when it shall, at last, be your lot to exchange this *Canaan* below for the better *Canaan* above, may you, on the great day of days, at the head of your long line of posterity and in presence of the assembled universe, be able, with holy joy, to announce the glad tidings—"Here Lord are we and all the children thou hast ever given us."

But the ashes of many of the first settlers of Kentucky are scattered, my countrymen, in foreign lands. And those of the first Hunter, who named many of her rivers and creeks, lie undistinguished on the banks of the turbid Missouri whither he had removed as soon as Kentucky could stand alone, and where he died in 1820, with his rifle by his side.

Yet though our favored land is not honored as the repository of the earthly remains of Daniel Boone, it was loved by him to the last.* After exploring the richest portions of the great west in the same virgin state, he declared that, *all in all, there was but one Kentucky.* That Kentucky, far more advanced in improvement than even Boone could have anticipated, is now ours. It was given to us by our fathers to be enjoyed, and improved, and transmitted to our children as an abode of plenty and peace, liberty and light.

This is indeed a rich inheritance. A child of the Revolution—born in the gloom of a then distant and bloody wilderness—our beloved Commonwealth is even now an illustrious monument of the wonderful progress of American civilization and of the beneficence of the American principles of human government, the 67th anniversary of whose public announcement to the world we this day commemorate. Look at her!—bright as the sun—beautiful as the morning—and hopeful as the seasons. Her lap is full—her arm strong—her head sound—eloquent her lips, and *true* her heart. Though young in years, she is old in wisdom and matured in all that dignifies and adorns a great State. Her policy, her arms and her eloquence, have swelled the volume of American renown; her soldiers, and her orators are admired in foreign lands; and she has a son, whose eloquence, diplomacy and statesmanship are known throughout the civilized world, and who has been pre-eminently distinguished among the conscript fathers of our own union. Her faith, too, is as untarnished as her prowess is undoubted; and now, when ostensible bankruptcy and virtual repudiation of solemn obligations are but too fashionable among individuals and States, Kentucky has, as she ought, stood firm on her integrity, and, Kentuckian-like, her credit is full up to high-water mark.

Yet, with all our blessings, there are some among us who complain of hard times, and appear to be dissatisfied with our self-denying policy and the present posture of our local affairs. Let them remember that the unsullied character of their State is every thing; and that, without *this*, there can be nothing earthly which honorable men could enjoy as they would wish. And let them also contrast their condition, whatever it may be, with that of our first settlers, and, when they remember that these repined not in their peculiar destitution—even in the winter of "'79"—they will surely feel rebuked for their unreflecting ingratitude to their noble predecessors and a kind Providence for their own comparatively enviable allotments.

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*In 1845, the remains of Boone and his wife were brought by Kentucky, to the cemetery in sight of her Capitol, and there interred.

But gratitude to our adventurous fathers and mothers, as well as duty to ourselves and posterity, demands that we should maintain and improve the blessings, physical, social, and civil which we have inherited. The physical improvement of our State, great as it has been, is but just begun. We must persevere in prudent improvements for developing our latent resources, facilitating our intercourse, increasing our population, augmenting our wealth, and thus still adding to our local comforts and attractions.

It is our sacred duty to all the friends of liberty and equality, dead, living, or yet to be born, to maintain inviolate the supremacy of law, and especially fundamental law—and, as indispensable to this end, we must uphold that political and social organization which will afford the greatest security against the popular vices and passions which will afflict the Commonwealth even in its best estate. And must we not, as hitherto, resolutely maintain the union of the States, and, as indispensable to that end, the supremacy of national authority over national affairs? Will Kentucky ever be guilty of the suicidal act of rupturing the vital *Siamese* artery which unites our 26 States, as one in blood and destiny? One and all Kentuckians answer *no*—NEVER—Ohio echoes "*never*"—and "*never*" is reverberated from the Alleghany to the Rocky Mountains.

Our characters and institutians can be maintained only by the virtues that produced them. It is moral power that makes a State free and truly great. It is this to which we are indebted for the glory and prosperity of Kentucky. Do we intend to preserve and increase those national treasures? Then we must preserve and increase the stock of moral power left us by the generation we are succeeding. *Industry, public spirit, intelligence, simplicity of manners, charity, self-denial, and social equality*, are the elements of this conservative and ennobling power. And, instead of improvement, is there not danger of deterioration in all these particulars? We have more refinement, and luxury, and literature, but are we equal to our fathers and mothers in the sound and sturdy qualities that made Kentucky what she has been? Are there not general symptons of physical degeneracy? May not the rising generation be the victims of a false pride and pernicious education, already too prevalent? We must correct the procedure. If we desire the honor, happiness, or health of our children, the reputation of our State, or the preservation of its civil liberty, we must change our systems of physical and moral edueation. Sound constitution, vigorous health, industrious habits, pure and fixed moral principles, and that sort of practical sagacity and rectitude which these produce, constitute the best of all human legacies. Without these blessings ancestral wealth or honor will generally curse rather than bless its unquallified recipient. With the wise and virtuous, the moral virtues that dignify and the rational graces that most adorn our nature are the tests of merit and the only passports to favor. Let us then be careful to imprint on the hearts of our children the cheering republican truth—

> "The rank is but the Guina's stamp,
> The *man's* the *Gow'd* for all that."

Every child in the Commonwealth should be educated in such a manner as to enable them all to be good and useful citizens. This is not benevolence merely, but obvious policy. In a free State, where the majority govern, what social organization or code of human laws can secure the rights of all or any unless the governing mass be intelligent and moral? And would not the rich lose more by the ignorance and vices of the undisciplined poor than the cost of any prudent system of universal enlightenment and amelioration? It is the interest of each and of all that every one should be acquainted with the elements of the useful arts and of natural, moral, and political science.

But of all laws, that of the *heart* is the most supreme among men; and the finger of God can alone effectually inscribe that law on the tablet of the mind. This is the only unfailing prop of just and secure democracy. But it is not the metaphysics of schools, nor the polemics of dogmatists, nor the belligerent theologies of sects, which exalt or save a State. It is the religion of *the heart*—pure, simple, and god-like—that *Christian religion*, which subdues bad passions, eradicates vicious propensities, and infuses humility, self-denial, and universal benevolence. This it is which equalizes and renovates social man and effectually guards all his rights, person and political. Wherever it prevails, liberty and peace abound; whenever it is absent or is mocked by scepticism or hypocrisy, anarchy and despotism must, sooner or later, be the people's doom.

Could the whole pioneer band, living and dead, now bless their own Kentucky by one valedictory counsel, they would, all with one voice, say to her—"Educate your children—all—all—*and be sure to teach them right*. On this hangs the destiny of Kentucky, and, perhaps, that also of the American Union."

This last remnant of our sacred band of pioneers and that also of our revolutionary soldiers and Statesmen is now, with trembling steps, descending the final slope of their earthly pilgrimage to sleep with the compatriot friends who have gone before them; and soon, very soon, not one will be left behind to tell the story of their eventful lives, or behold on earth the beautiful country blessed by their noble virtues and commended to Heaven by their dying prayers. But shall they ever die in the heart of Kentucky? When the last of the Patriarchs shall have returned to the dust, we may rear to their memory a towering pyra-

mid of earth, on whose lofty summit the Bald Eagle may build its nest and hatch birds of liberty for ages—and that majestic mausoleum, pointing to the skies, may, centuries hence, sublimely stand alone the historic monument of our heroic age and heroic race. But is it not due to the memory of the past, as well as to the enjoyment of the present and the hopes of the future, to signalize our own wonderful age by other and more useful memorials which may attest, to succeeding generations, our own title to the gratitude of our posterity and our kind? Is it not our duty to our fathers, and to ourselves, and to our children, and to all mankind, to preserve inviolate and improve the rich deposit of moral and political truth and of moral and political organization left with us in trust for ourselves and our fellow men of every clime and of every succeeding age? And can this sacred duty be performed without maintaining the principles and practicing the self-denying virtues of our glorious age? And can we safely transmit the blessings of civil and religious liberty to our children or commend organized democracy to mankind unless, by faithful discipline and rational teaching, physical, moral and political, we train up those children in habits of truth, industry, and morality? If such wholesome discipline be neglected, or parental authority be perverted by false pride or mistaken indulgence will not the legacy of self-government prove a curse rather than a blessing to the unworthy recipients to whom we are so anxious to bequeath it? Should we not, therefore, exalt our own age and prove ourselves worthy of the manifold blessings we enjoy by cultivating and exemplifying all the social and civic virtues of truth, temperance, industry, justice, public spirit, parental fidelity, and submission to the laws of our country and of God? And, whilst we should ever maintain the integrity and stability of our institutions, should we not prudently repair, rectify and improve them so far as a wise experience may show that their great end requires modification and improvement? Without such occasional infusions of new elements of conservative vitality they might, in time, either explode or expire from decay. But if, *Argo*-like, they ever require renovation or repair, let them, *Argo*-like, still retain their original identity; for the efficacy of our own fundamental laws depends on *sentiment*, at last. We all know how we love the ancient oak that sheltered our infancy, or the old armed chair that rocked our mother. Nor can we be unmindful of the fact that we feel more veneration for the work of our fathers than for that of our own hands; for we see daily exemplifications of the latin aphorism—"*vitera extollimus, recentium incuriosi.*" And what is it, so much as antiquity and historic glory, that has, so long and so wonderfully, secured the stability and supremacy of the old *statutes* of England which constitute all that is called the British Constitution?

But the most glorious and enduring monument which can distinguish our age of enjoyment and peace is that which should testify that we have been faithful to our children and made them fit, in body, in habitude, and in mind, for the enjoyments and the works of civil liberty that await their entrance on the great theater which we must soon leave.

Thus, and only thus, may we, of this generation, evince our gratitude to those of our countrymen who have gone before us, and secure the grateful remembrance of those who shall come after us. Thus Kentucky may discharge the duties of her seniority and local position in this great valley, and show, to her younger sisters of the west, the only pathway to safe liberty or renown. And thus, too, in the ultimate and moral ascendency of this valley of hope that may be destined to teach the world, she may be instrumental in the redemption and regeneration of mankind. All this we might, perhaps, accomplish;—all this, therefore, we should attempt. Who knows that we might not make Kentucky, morally and politically, (as well as physically,) the heart of our Union, and thereby also, in time, the heart of the whole earth. Let us try. If we fail, yet the honest effort will be honorable. But if we succeed, everlasting glory is ours. And even if we or our children should be doomed to see the genius of constitutional democracy exiled from this land of its birth, we may be consoled by the hope that it will take refuge in some more congenial soil and propitious age; for what we have already felt and seen under the shadow of its wings assures us that its cause is the cause of Heaven and must finally prevail.

Whether we look to propheey, the intimations of natural theology, or the wonderful events of the last half century, we have reason to hope that our race is destined to attain on earth a moral rectitude and elevation far more general and ennobling than any human excellence hitherto exhibited. Even now the progress of general amelioration is rapid and pervading. The average career of mankind is upward, as well as onward. Christianity, rational philosophy, and constitutional liberty, like an ocean of light, are rolling their united and resistless tide over the earth and may, ere long, cover it as the waters do the great deep. Doubtless there may yet be partial revulsions. But the general movement will, as we trust, be progressive until the millenial sun shall rise in all the effulgence of universal day.

For that momentous day what shall we have done? And, when it comes, will that star-spangled banner still wave, with all its stars and stripes undimmed by time, and "E PLURIBUS UNUM" still emblazoned on its blue Heavens? And will that hallowed light beam on Kentucky's flag—and will that flag then, as now, bear on its folds the national motto—"*United we stand, divided we fall!*"

And all this may possibly depend on the conduct of this generation. Then let us all, here under this metropolitan sky, make, for ourselves and our children, a sacramental pledge that we will try to promote the final triumph of *Light* over *Darkness*, and of *Right* over *Might*; and that, so far as, under Providence, the event may depend on our conduct, Kentucky's twinned ensign, with its motto unchanged, shall bathe in the rays of millennial sunshine.

But the fashion of this world, like the shadow of a cloud, flitteth away. Mutability and decay are inscribed on all things earthly. Thebes, and Tyre, and Palmyra, and Babylon, the downfall of empires, and the ruins of the old world, are not the only memorials of this solemn truth. In sepulchral tones it is echoed from wastes of time scattered over our own continent. Successive generations who, ages ago, inhabited this fair land, have passed away and left not a trace of their destiny behind. Here and there a mound of earth attests that they once were;—but all else concerning them is buried in oblivion. Tradition tells not their tale. The signers of our Declaration of Independence, and the signers of the Constitution of the United States, are all gone to another world. Even the graves of our departed pioneers are generally undistinguished and unknown. We tread, daily, on their ashes unconscious and unmoved. Already we have embalmed their memories in our nursery tales and begin to look on them as the legend heroes of a romantic age obscured by time. We ourselves must soon sleep with our fathers, and be to earth as if we had never been;—and our children and their children will soon follow *us* and repose with the nations of forgotten dead. Our institutions, too, and even this beloved country of ours, and all it contains, must perish forever.

Yet we have hopes that ar eimmortal—interests that are imperishable—principles that are indestructible. Encouraged by those hopes, stimulated by those interests, and sustained by and sustaining those principles, let us, come what may, be true to God, true to ourselves, and faithful to our children, our country, and mankind. And then, whenever or wherever it may be our doom to look, for the last time, on earth, we may die justly proud of the title of "*Kentuckian*," and, with our expiring breath, may cordially exclaim—*Kentucky*, as she was;—*Kentucky*, as she is;—*Kentucky*, as she *will* be;—KENTUCKY FOREVER.

PRELECTION.

In the Spring of the year, 1844, Dr. Abner Baker—a graduate of the Louisville Medical College, and born in Clay county, Ky., 26th March, 1813—was married to a daughter of James White, of said county, and who was a brother of John White, once speaker of the House of Representatives of the United States. Baker and his wife lived with Daniel Bates, whose wife was Baker's sister. Shortly after the marriage, he charged Bates, and her *own father*, and others, with illicit intercourse with her, (Baker's wife) and sometimes in *his own presence.* And, apprehending also that Bates was seeking his life, he killed him by a pistol shot, and went immediately to James White's, and proclaimed and exulted in the act! He was tried by an examining court, and acquitted on the ground of insanity. He then was taken to Cuba for health, under the advice of medical and other friends. Bates, not dying immediately after the shot, published a will, by which he bequeathed $10,000, to be expended in the conviction of Baker. The executors procured from Gov. Owsley a proclamation offering a high reward for the apprehension of Baker during his absence in the South. On being advised of the proclamation, Baker's family brought him back to Clay county, and surrendered him to the custody of the law, to answer an indictment for murder. Though the prosecuting party, composed of influential and wealthy men, had a decided sway in that small and frontier county, Baker's counsel and friends, feeling confident that he could not be convicted, declined to move for a change of venue, and went into the trial in July, 1845. The executors employed W. H. Caperton, Silas Woodson, and —— Caldwell, to aid the official attorney for the commonwealth, W. B. Moore. The jury (under duress, as many believed) returned a verdict of guilty, and Judge Quarles overruled a motion for a new trial. The following appeals to the Governor were then made for a pardon. In addition to which, petitions signed by numerous multitudes of citizens of several counties, and by lawyers, among the most eminent of Kentucky, were also laid before the Governor, backed by strong and thrilling addresses to him by Baker's father, and brothers, and sister, (Mrs. Cozier) none of which will be herein republished.

To prevent escape the Governor had the jail, in which Baker was confined, guarded by about 200 men, under the command of Gen. Peter Dudley, of Frankfort. On the 18th of September, 1845—the 3rd of October being the day fixed for execution—Baker's father and his brother, H. Baker, believing that the Governor, who had not then intimated to them any decision on the petitions for a pardon, had the power to direct an inquisition, and that Gen. Dudley's troops would not obey a writ of *habeas corpus* from a Circuit Judge, submitted to him a petition for an inquest as to the then state of Baker's mind, on the ground, verified by affidavits, that he was then a maniac, and could not therefore, in that condition, be lawfully executed. The Governor requested Mr. Crittenden, Secretary of State, to request from *Mr. Robertson*, as counsel for Baker, a statement of the reasons why he thought that the power to do what

was asked was in the Executive. Mr. R. instantly communicated his reasons, but received no response from the Governor. Believing afterwards that orders had been despatched to Gen. Dudley for the execution of Baker, Judge Buckner was applied to for a writ of *habeas corpus*, for the purpose of having the inquisition. He granted it; but, satisfied that it would not be obeyed without the Governor's sanction, wrote to him accordingly—but the Governor declined doing any thing, and it was then (only a day before that of the execution) too late to do anything more for the rescue of the unfortunate Baker, who fell a victim to ignorance, prejudice, and his own unquestionable insanity of mind.

The following extracts are republished from a book, entitled, "Baker's Trial." The object of the republication of them here is to show that Mr. Robertson's speech, which succeeds them, was sustained in its facts and its principles, and that his doomed client ought to have been sent to a Lunatic Asylum, as a maniac, instead of being hung as a murderer.

TRIAL OF DR. ABNER BAKER.

To Governor Owsley:

The undersigned asks leave to make the following representations to your Excellency, respecting the case of Dr. A. Baker, lately tried for the killing of D. Bates. Having attended the trial, examined the accused, and heard the evidence, he trusts that the following facts and deductions will be accredited

On examination, he found said Baker in a high state of mental and physical excitement—his pulse quicker than natural, his extremities cool—his countenance wild and unnatural—the muscles of his face flaccid and of a peculiar hang; and his eyes, when a particular subject was alluded to, becoming singularly wild and red, as if radiating red rays, and his conversation incoherent, erratic and irrational. From his appearance, his condition and his conversation alone, I would not doubt that he was insane.

But the facts proved on the trial, independently of the foregoing circumstances, would leave no room for doubt, that Dr. Baker was insane as to his wife and Daniel Bates, when and before he killed the latter. Among other facts, it was proved that, before the marriage of the Doctor, his father and other members of the family apprehended that he was insane; and after the marriage, and before the killing of Bates, his father communicated confidentially to others, and in a letter to his sons at Knoxville, Tennessee, that he was insane. He (the Doctor) believed that Bates and others had combined to prevent his marriage, and to destroy his reputation and his life. He believed that Bates maltreated his sister, (the wife of Bates,) and was endeavoring to take her life; and that it was necessary for him to remain in the family to protect her. He believed that Bates was attempting his own life, and had also employed his slaves to assassinate him. A few days after his marriage, he published the conviction that his wife, when not more than nine years of age, had been prostituted by the gentleman who was her teacher, and whom he charged also with prostituting, in like manner, his whole school, or nearly the whole—and all the circumstances of manner, time, place, and signs, he imagined and stated most minutely. He also charged many other persons with illicit intercourse with his wife, some time before, and some time after marriage—and among them was an uncle, an ugly negro, his brother-in-law, Bates, and her own father. He imagined and asseverated that Bates and her father came to the bed in which he and his wife were sleeping, at Bate's house, and had intercourse with her, there in his presence. He alleged that Bates had gotten his (Baker's) young sister—with child. He asserted that, at Lancaster, about a month after the marriage, his wife had an abortion, which was shown by other testimony to have been impossible. He said, and persisted in declaring that, at Lancaster, his mother, every night, after he and his wife were asleep, opened their chamber door, upstairs, and let another man into his wife, whom one night he made jump through a window, by drawing his pistol on him. He also charged his mother with keeping a licentious house. He stated to two of his brothers that he tried the teacher's sign on a married lady in Knoxville, whom the teacher had educated, and that she understood the signs perfectly. He denies insanity, and says he would rather be shot than acquitted on that ground—insisted that he was able to prove every fact he had ever stated, and was offended with his counsel because they would not defend him in that way alone. Many other facts of a similar character were proved; and, from all the facts, I did not doubt that he labored under an insane delusion as to his wife and Bates; and under the influence of a morbid derangement of the brain, imagined facts that did not exist; for the supposed existence of which there was no evidence whatever, and of the falsehood of which no argument or proof could convince him; because a diseased brain communicated false images and distorted objects, which made all the impression on the mind that the evidence of sound sense could make as to what is true.

I have no doubt that the killing of Bates was the offspring of that insane delusion—was the act of a deranged mind, and would never have occurred if Baker's mind had not been deranged.

It was also proved that, after Baker had left Kentucky, he returned to settle his affairs, and that before he got to Bate's furnace, which he had to pass, he was informed by several persons that Bates had said he would kill him on sight if he ever returned, and that Bates and his negroes were armed for that purpose; and he was advised to postpone passing the furnace until after night. I believe that he was convinced that Bates would kill him unless he should kill Bates first. It also appeared that he expressed the conviction that he had violated no law of Heaven or earth. He made no attempt to escape, but endeavored to go to his wife's father's, and missing the way, staid all night at Hugh

White's, and seemed unconscious of having done any wrong in killing Bates.

There was no testimony showing any motive for hostility to Bates, and a disposition to kill him, except his convictions as to his treatment of his wife, and of which supposed mistreatment, there was no other evidence than his own statements, in either case.

That Baker believed, and yet believes firmly, all the facts he repeatedly stated respecting Bates and his wife, there can be no doubt. He urged his counsel to suffer him to prove them, all of which he insisted he could prove beyond question!. If he had been sane, and so unaccountably diabolical as to wish to destroy Bates and the character and happiness of his wife without any imaginable motive, he would have told tales more plausible—something that might have been believed; and surely he would not have charged Bates with impregnating his (Baker's) own young sister, or his mother with prostituting her house.

Ever since the case of Hadfield, in 1794, persons in Baker's condition, have been invariably acquitted or pardoned—and a stronger case than Baker's does not appear in either medical or criminal jurisprudence. If you have any doubt as to the case of Baker, I would be obliged to you to examine carefully Ray's Medical Jurisprudence on Insanity, and Esquirol and the case of Hadfield—that also of Lord Orford, and of the man who shot at President Jackson; in all of which cases there were acquittals on the ground of insane delusion on one subject or more, whilst there was apparent rationality on others; and in none of which was there any inquiry as to whether the accused had a general knowledge of right or wrong; but in all of which, it was taken for granted that the act being the offspring of insanity, the accused, as to that act, should be treated as he should have been, had he been totally insane on all subjects. There is, in no asylum, one case in twenty in which the lunatic does not reason well and is not rational on some subjects. Intellectual insanity is, in fact, nothing else than the morbid imagination of false facts. The reasoning of lunatics is generally correct—their premises only are false, being merely imaginary.

The jury, as you will see from their petition, were satisfied of Baker's insanity—but found him guilty because he was rational on some subjects! It is almost impossible to make a jury understand such a case correctly; and, in this case, it was impossible to procure a jury that had not been excited against the prisoner, and formed an opinion of his guilt. Even the judge, and all the four prosecuting attorneys, at first, denied the existence of particular insanity or unsoundness of mind on particular subjects. But they all, I believe, (and the Commonwealth's Attorney, I know,) became convinced of it during the trial. And I have no doubt that a jury of enlightened medical men or jurists, could not have been selected who would have hesitated five minutes to find a verdict of not guilty.

This is a novel and interesting case. It will be reported and become a leading case; and allow me to say that, in my undoubting judgment, no case ever occurred which was more entitled to the interposition of the executive, whose power to pardon was given for no class of cases more clearly than for such as this.

I am well satisfied that no informed man could have heard the trial and seen Baker, without being convinced, beyond a doubt, that he is now insane, and was even more so when he killed his brother-in-law. And it does seem to me that he who, upon a full knowledge of all the facts, doubts Baker's insanity, would, by such incredulity, exhibit himself strong evidence of monomania—and I honestly think that the execution of Baker would be a judicial murder.

I never asked for the pardon of a convict, because the cases, in my judgment, are rare, in which the innocent are, through ignorance or passion, convicted. But I feel sure, beyond any doubt, that such has been the doom of Dr. Baker, and that he ought not to be punished, but placed, (as he will be, in the event of a pardon,) in our Lunatic Asylum,

Respectfully,
G. ROBERTSON.

Lexington, July 25, 1845.

Postscript.

P. S. The foregoing was written when I did not know that a transcript of the evidence on the trial, would be laid before you. But having been since furnished with a certified copy of that evidence, I present to you that as more satisfactory than my synopsis of it. But, as Dr. Cross' opinion was formed on this general statement of mine, I must, for the benefit of the opinion of that eminent gentleman, ask your attention to this statement, for the purpose of seeing that Dr. C.'s opinion on those facts, would certainly be his opinion on the certified evidence. And I think that I hazard nothing in the opinion that no intelligent jurist or medical man could be found, who would entertain any other opinion when possessed of full information on the subject.

G. R.

Opinion of Dr. Jas. C. Cross, on the Synopsis of evidence prepared by Geo. Robertson, Esq.

From the statement within made of the facts, and which Judge Robertson assures me were proved on the trial of Dr. Abner Baker, for the murder of Daniel Bates, I have no hesitation in saying that said Baker is, and was at the time of the murder, laboring under monomania, if, indeed, there has not been a complete subversion of the faculty of judging between what is right and wrong. This being the case, Baker cannot be regarded as responsible for his conduct, and therefore, should not be subjected to the penalty which has been decreed by the jury.

JAMES C. CROSS,
Late Prof. in the Med. School of Transylvania.

To His Excellency, William Owsley.
Governor of Kentucky:

The undersigned, composing the jury that found a verdict of guilty, in the prosecution of Abner Baker, for the alledged murder of Daniel Bates, feel it their duty to recommend him to your Excellency as a fit object of Executive mercy. Whilst we felt constrained, by our opinion of the law and the evidence, to pronounce a verdict of guilty, we are satisfied that the said Baker, when he killed said Bates, and before, and since, was in a state of mental excitement and delusion respecting his wife and said Bates, which may be considered insanity. And although we were of the opinion that he was, at the time of the killing, able to discriminate right from wrong, yet we believed that his said state of mind was such as to entitle him to a pardon. And we further state that the prisoner is, from his appearance, and from the evidence, in a worse condition of mind at this time, than at the time of the killing.

JULIUS ✕ ROBINSON,
ABRAHAM CARTER.
WM. BISHOP,
WM. B. ALLEN,
BRYSON ✕ BISHOP.
THOS. COOK.

We say, from his present appearance, in our own judgment, we have no doubt the prisoner is insane.

L. HOLCOMB,
HENRY HENSLEY.

This is to certify that the undersigned was one of the jury who tried Abner Baker on a charge of murder, in killing Daniel Bates; and do further certify, that it was proved by several witnesses that Dr. Abner Baker had, some three or four months previous, and at different times, told them that Daniel Bates, he believed, intended to kill him—that Daniel Bates had formed schemes and conspired with his negroes, and to carry those schemes into effect, he had sent his negroes out in ambush armed with guns—and that they believed that Baker thought at the time he told them, that such were facts. It was also proved by several witnesses, that Dr. Baker had told them, at different times, that Daniel Bates treated his wife, who is Baker's sister, badly; and that Bates had, at different times, in the night, when his wife was in her bed, wielded his Bowie knife over her head and throat and threatened her with instant death; and that he believed that Bates intended to kill her, and that he was staying at Bates' to protect his sister, and they believed that Dr. Baker thought that the same was true. It was also proved by several witnesses, that Dr. Baker told them that his wife was a whore, and that Daniel Bates had seduced his wife and had intercourse with her while he was boarding, with his wife, at Bates'; and that her teacher had kept her since she was nine years of age, which statements they believed Dr. Baker thought were true at the time he told them. And from the evidence they believed that Dr. Baker was deranged upon those subjects and not a fit subject for example; but from our understanding of the law applied to the evidence, we had to find a verdict of guilty. I do further certify, that if the delusions which were proved upon Baker had been facts, it would have been a full and good excuse for killing him. And do futher certify, that we did not, in the jury room, consider the works read on the part of the defence to be good authority, which works were Beck's Medical Jurisprudence, Ray's Medical Jurisprudence, and other works, which, if we had taken them to be good authority, we should have been obliged to acquit, or found a verdict of not guilty, from the evidence. And it was considered that the Commonwealth's Attorney was a sworn officer, and was bound to give the whole law governing us in the finding of our verdict. And some of the Jury called upon the Court for some instruction, and from the general instructions given, we construed it to go so far as to make the prisoner guilty, if he knew that there was such a being as a God, or such laws in existence as would punish the killing of a man; or knew, generally, right from wrong. But if we had understood that the instruction would have excused him if he sincerely believed that he was called upon to kill Bates in self-defence, or was called upon by some superior power to kill Bates for his fancied injuries, we should have been obliged to have found a verdict of not guilty.

ABRAHAM CARTER.

Clay County, *sct:*

This day, Abraham Carter personally appeared before the undersigned, one of the Commonwealth's Justices of the Peace, and made oath that the facts stated in the foregoing certificate are true.

Given under my hand this 5th of Agust, 1845.
J. H. GARRAD, J. P.

This is to certify, that the undersigned are a part of the Jury who set upon the case of the Commonwealth *vs.* Abner Baker upon a charge of murder, in killing Daniel Bates. And do further certify, that it was proved by several witness that Baker had told them some three months or more previous to the killing of Bates, that Bates had formed secret schemes to kill Baker at different times, and that at different times he had sent his negroes out in ambush, armed with guns, to kill Baker which they believe was believed by Baker to be true. It was also proved by several witnesses that Baker had told them at different times, that Bates treated his (Bates') wife badly, who was and is Baker's sister, and that Bates had threatened her life, and he was staying at Bates' to protect his sister, and that Bates had, during different times in the night, wielded his Bowie knife over her head, threatening her with instant death; which

statement the witnesses believed that Baker thought was true. And also, it was proved by several witnesses that Baker had told them Bates had, at different times, had intercourse with his wife at his (Bates') own house, where he boarded at the time with his wife; and that her uncles and her old teacher had likewise had intercouse with her, and that her teacher had kept her since she was about nine years old, and they believed that Baker thought, at the time he told them, that the same was true, and from the evidence, they believed that Baker was deranged upon the above subjects; which evidence will be, or is already laid before you, as we are told. And from the evidence they do not believe that he is a proper subject for example; but from what we considered the law we had to find a verdict of guilty. We do futher certify, that if the delusions which were proved upon Baker had not been delusions, but facts, that Baker would have been justified or excused in the killing of Bates. We do further certify, that we do not look upon the authorities which were read on the part of the defence as law, which authorities, or some of them, were Beck's Medical Jurisprudence, Ray's Medical Jurisprudence, and other works; but they considered that the Attorney for the Commonwealth was sworn and bound to give the law which governed us in the finding of our verdict, and upon that impression, together with the general instruction given by the Court at the request of the Jury, we found our verdict.

H. HENSLEY,
JULIUS ⋈ ROBINSON,
L. HOLCOMB,
ZADOCK PONDER.

CLAY COUNTY, *sct:*

This day, Henry Hensley personally appeared before the undersigned, one of the Commonwealth's Justices of the Peace for the county of Clay, and made oath that the facts stated in the foregoing certificate were true.

Given under my hand this — day of August, 1845. THO. McWHORTER, J. P.

MT. VERNON, July, 1845.

Dear Governor:—I am informed that there will be an application to your Excellency for the pardon of Abner Baker, who was condemned by a Jury of Clay county for the murder of Daniel Bates. From the evidence in the case, I am inclined very strongly to the belief that he now is, and has been for some two years at least, laboring under monomania. The evidence will all be laid before you, from which you can form your own opinion; and I should be very much gratified to see him pardoned. W. B. MOORE, Att'y for Com'th.

LEXINGTON July 21st, 1845.

To His Excellency, William Owsley:

Dear Sir:—I beg leave to make the following representation to your Excellency respecting the case of Dr. Abner Baker, lately tried in Clay county, Ky., for shooting his brother-in-law, D. Bates. I was induced to attend the trial, and whilst there examined Dr. Baker in jail before the trial came on. I found him in a high state of mental excitement, with manifestations of bodily derangement; such as quick pulse, cool extremities, countenance wild and unnatural, the muscles of his face flaccid and of a peculiar hang, with a fierce, wild, and ferocious expression of his eyes—this latter symptom was greatly aggravated when he dwelt on those subjects, or delusions, that lead to the unfortunate and unnatural murder.

I learned his appetite and digestion were irregular, and his sleep imperfect and irregular. When in conversation, his manner, and tones of voice all indicated mental alienation. I heard the material circumstantial evidence on both sides, detailing as well the manner and circumstances attending the murder, as his previous and subsequent conduct, the motives that seemed to impel him to commit the act, the probable provocation, &c. &c. From all the facts and circumstances of the case, I became thoroughly satisfied he labored under mental derangement caused by a morbid state of the brain, and so expressed myself under oath to the Jury sworn and empanneled to try the case.

I could embody copious extracts from the testimony given by the witnesses on trial, as evidence of the correctness of the professional opinion given. It would be, however, on my part, uncalled for and irrelevant, especially as your Excellency will, in all probability, be furnished with it in an authentic and accurate form. From a thorough conviction of the insanity of Dr. Baker, before and at the time of his shooting his brother-in-law, D. Bates, I beg leave most respectfully and earnestly to commend him to your Excellency as a proper subject for Executive clemency and mercy.

With assurances of great respect,
I am your obedient servant.
W. H. RICHARDSON, M. D.

To William Owsley, Governor of Kentucky:

The undersigned, members of the Medical Faculty of Transylvania University, having heard from Dr. Richardson a recital of the material facts proved, as well by the Commonwealth as by the accused, in the late prosecution of Dr. A. Baker, for killing his brother-in-law Daniel Bates, in Clay county, in this State, feel it to be their duty, as well as their privilege, to declare to your Excellency their conviction that before, and at the time of said homicide, the said Baker was of unsound mind, in fact and in law; that he labored, without doubt, under an insane delusion, especially respecting his wife and said Bates, which is sometimes characterized as monomania, and which, in various forms and degrees, is the most prevalent kind of insanity, intellectual and moral: and they cannot hesitate to express the confident opinion that the killing of Bates was the direct offspring of the said insanity: and that, while it may be that Baker was conscious of right and wrong generally, or in the abstract, he was, from the

proofs, so far insane, on this particular subject and occasion, as to have been impelled to the homicide by an irresistible motive of delusion, without a consciousness of a violation of the law of God or of man in that particular act.

Wherefore, they have no difficulty in coming to the conclusion, that said Baker is a proper object of Executive mercy; that neither the letter nor the policy of our criminal code would require, nor justice and humanity permit his conviction and execution for the blind and insane act of killing his said brother-in-law. They, therefore, without hesitation, but with great respect for your Excellency, and solicitude for the result, beg leave to unite ther petition with that of others for the pardon of said Baker.

THOS. D. MITCHELL, M. D.
Prof. Materia Medica and Therap. Tran. Univ.
L. G. WATSON,
Prof. Theory and Practice, Tran. University.

LEXINGTON, July 25th, 1846.

Subsequently to signing the foregoing paper, the undersigned has heard the testimony given in the case, and has no hesitation to say that his opinion in the premises is confirmed.

THOS. MITCHELL, M. D.
Prof. Materia Medica and Therap, Tran. Univ.

The undersigned has heard the evidence in the case of Dr Baker, and conceives it a case of monomania as conclusively made out as can be found upon record.

B. W. DUDLEY, M. D.
July 25th, 1845.

LEXINGTON, July 25th, 1845.

Gov. Owsley:—From the fact that I have been officially connected with the Lunatic Asylum, at this place, I have had more extended opportunities of becoming acquainted, both practically and theoretically, with the diseases of the human mind, (in all their endless variety) than ordinary members of the profession. Therefore, I have presumed, at the solicitation of Dr Baker's friends, to give you a most unqualified opinion, after a critical examination of the evidence in the case, that before, and at the time of, the commission of the act, for which he has been convicted, he was of unsound mind, and should not be held responsible, either in law or in morals, for an act committed under such a state of mind.

Respectfully, &c.
S. M. LETCHER.

P. S.—I have not conversed with a Physician who don't concur in the above opinion.
S. M. L.

KENTUCKY LUNATIC ASYLUM, July 24, 1845.

I have examined fully the testimony, both on the part of the Commonwealth, and the defendant, in the case of Dr. Abner Baker for the murder of Daniel Bates. After having seen a great number of insane persons, and after an uninterrupted intercourse with more than two hundred of them for twelve months, I feel no hesitancy in giving it as my opinion, that Dr. Baker had been before, and was at the time of the murder, affected with monomania, upon the subject of his wife's chastity, and ideas naturally connected with it; with symptoms indicating a strong tendency to degenerate into general derangement.

I would further state, as my opinion, that there can be no doubt that there are many cases, in which the most acute observation fails to detect disorder of the understanding upon more than a single idea or train of ideas. Examples of such are reported by all the best authors upon the subject, and I have had under my charge a number of them. And I can from my experience, join heartily in the statement advanced by one versed in this subject "That all cases of crimes of violence, in which previous mental disease is proved, should have the whole benefit of the presumption that such disease may, in a moment, run into irresponsible mania, and the unhappy patient be judged fit for confinement and not for punishment."

With the facts of the case before me, I should feel that I was omitting a duty to justice and humanity, to withhold my earnest recommendation of Dr. Baker, as an object deserving, if not demanding, Executive clemency.

JNO. K. ALLAN.
Superintendent Ky., Lunatic Asylum.
His Excellency, William Owsley.

LOUISVILLE, August 1st, 1845.

To His Excellency, William Owsley,
Governor of Kentucky:

Sir:—We, the undersigned, would respectfully represent to your Excellency, that after a careful examination of the testimony taken in the case of Dr. Abner Baker, charged with the murder of Daniel Bates, we are of opinion that said Baker is of unsound mind, and consequently a fitter subject for a lunatic asylum than for the gibbet.

We have the honor to remain
Your Excellency's ob't servants.
CH. CALDWELL, M. D.
L. P. YANDELL, M. D.
H. MILLER, M. D.
S. D. GROSS, M. D.

LANCASTER, July 24th, 1845.

To His Excellency, William Owsley:

Sir —Having been called upon to examine the testimony adduced on the trial of Dr. A. Baker, (who is now under sentence of death,) we proceeded to do so in as thorough a manner as the circumstances would allow, and have unanimously come to the conclusion, from the extraordinary character of the testimony of the case, that the said Baker, at the time of committing the crime for which he now stands convicted, must have been laboring under that form of mental alienation called monomania. That there is such a disease is not questioned by any scientific man of the present day. We would, therefore, respectfully direct the especial attention of the Ex-

ecutive to the facts of the case, and implore the interposition of his power.

Respectfully, your friends, &c.
O. P. HILL, M. D.
WM. H. PETTUS, M, D.
JENNINGS PRICE, M. D.
L. M. BUFORD, M. D.

The undersigned Physicians of Danville, having been called to examine the evidence submitted to them, as given before the Circuit Court of Clay County, Kentucky, in the case of the Commonwealth against Dr. Abner Baker, tried for the murder of Daniel Bates–which evidence was written out by Alexander R. McKee, Esq., clerk of Garrard county, present at the trial—are, on due consideration, unanimously of opinion that the said Abner Baker was, at the time of the killing of Bates, and for some time before and subsequently, laboring under monomania, in a very marked and severe form, and as such we recommend him to the clemency of the Executive.

D. J. AYRES, M.D.
JOHN TODD, M.D.
JOS. WEISIGER, M.D.
WM. PAULING, M,D.
JOSEPH SMITH, M.D.
J. HOLLINGSWORTH, M.D.
R. W. DUNLAP, M.D.

Frankfort, Aug. 11, 1845.

We, the undersigned, Physicians of Frankfort, after a careful examination of the testimony in the case of the Commonwealth against Dr. Abner Baker, on the charge of the murder of Daniel Bates—of which the said Baker now stands convicted in the county of Clay—are unanimously of the opinion, that said Baker, previous to and at the time of the committal of said act, was laboring under mental derangement.

JOS. G. ROBERTS, M.D.
CHAS. G. PHYTHIAN, M.D.
LUKE P. BLACKBURN, M.D.
LEWIS SNEED, M.D.
A. F. MACURDY, M.D.
E. H. WATSON, M.D.

Nicholasville, July 25, 1845.

Hon. William Owsley:

Dear Sir:—At the request of a friend of Mr Abner Baker Sr., I have examined the testimony in the case of Mr. Abner Baker. The record was submitted to me that I might give my opinion as to the sanity of Dr. Baker.

It is due to myself and the parties to state that from the rumors which I had heard of the circumstances attending the death of Mr. Bates, my opinion was that it was murder most foul; and I believed that the acquittal of Baker was the result of effort and the influence of wealth.

I, however, had not gone through the testimony introduced by the prosecution, before I became perfectly satisfied that Dr. Baker was a madman.

I am confident that it is impossible that any man can examine the evidence of Mr. James White, without being satisfied that no man could speak to a father, of his child as he spoke, and give utterance to such absurd charges against his own wife, who was sane. The statements of all the witnesses, especially Dr. H. Baker, go most conclusively to prove this fact, that Dr. A. Baker was, and is the subject of monomania—a disease as well known and clearly defined (though strange and unaccountable) as fever or any thing known to exist. In my practice, I have met with cases as singular, but not more perfect than Baker's, and I would as soon have thought of passing sentence against an infant or an idiot as against Dr. Baker, with evidence as set forth in the record.

I am, Sir, with great respect,
A. K. MARSHALL, M.D.

I have also examined the testimony in the case of the Commonwealth against Dr. A. Baker, in connection with Dr. A. K. Marshall, of our town, and fully concur in his opinion as stated to you in the foregoing.

W. J. BALLARD, M.D.

To His Excellency William Owsley,
Governor of the Commonwealth of Kentucky:

The undersigned, Attorneys at law, were present (but not employed by either party) at the trial of Abner Baker for killing Daniel Bates, and heard all, or much the greater part of the testimony introduced, both on the part of the Commonwealth and the Defendant, and from the testimony so introduced, we were fully convinced of his derangement, at the time he killed Bates, and also that he had been deranged for some time prior to that act; that he has been ever since, and is now, in a state of mental derangement, both upon the subject of his wife's inconstancy to him, and of Daniel Bates having been too intimate with her, and of his (Bates) contriving plans to have the said Baker killed.

We further state, that every witness who testified to anything bearing upon the case, disclosed some fact conducing to show that he (Baker) was laboring under a state of mental derangement, and we were utterly surprised and astonished at hearing the jury had brought in a verdict of "guilty," contrary to the law and evidence in the case. In fact, we did not think that the jury would hesitate ten minutes in agreeing to a verdict of "not guilty."

We therefore petition your Excellency to interfere in his behalf, to extend the Executive clemency to him and release him from the verdict of the jury, and the judgment of the Court.

LEWIS LANDRAM,
J. BURDETT,
L. F. DUNLAP,
D. H. DENTON,

Lancaster, Ky., July 19, 1845.

Lexington, August 8th, 1845.

Gov. William Owsley:

Dear Sir:—I have been requested to give my views as to the effect of monomania upon

the criminality of acts committed under its influence. The principle laid down in all the books is, that insanity must proceed to such an extent as to disable the person from distinguishing right from wrong, and the defence must be well made out. There is certainly no disputing either of the propositions above stated. And I believe juries should always convict where the defence fails in either point, leaving to the Executive the discretion given him by the Constitution of distinguishing and giving pardon, where the reason is only partially wrecked, and guilt palliated, but not entirely taken away.

In the application of the above principles, I entertain no doubt that if a monomaniac, under the influence of an insane delusion kills or does any other act, is not criminal, though on other subjects he could scarcely distinguish between right and wrong. I admit the case of Billingham would seem to be, in some measure, opposed to this; but in that case the law was correctly laid down, the error was in its application, for Billingham killed Percival under an insane delusion, and believed in that act he was doing right, and the chief error was by the jury. His conviction and execution must be regarded rather as a political than a judicial action by the Courts of England. It has received the reprobation of eminent jurists, and I have read an able and clear view given of it by Lord Brougham, (I think) but am not able to lay my hands on it at present. Practically the case of Billingham has been overruled in the strongest manner in the trial and acquittal of the monomaniac that attempted the life of the Queen.

It seems to me that it follows as a mathematical truth, that the only inquiry is, whether the act done was an act of insanity. If it was, it cannot be with a "felonious intent." And this renders it wholly immaterial whether the reason was wrecked generally, or only on the particular subject which produced the act.

I know nothing of the case for which it is desired that these views should apply. But I would add that I consider that there are many cases in which I believe it would be right that the jury should convict, but in which pardon should be extended by the Executive. Where a real and well founded doubt exists in a community, on the subject of insanity, the execution of such person can produce no beneficial effect. His death is apt to change doubts into certainties, and it is highly prejudicial to all future trials that a general belief should exist that a man, innocent in law had suffered.

Respectfully, yours, &c.

M. C. JOHNSON.

I had occasion lately to examine the subject upon which the above opinion is expressed, and concur with the views therein expressed.

A. K. WOOLLEY.

I concur in the above views.

C. S. MOREHEAD.

I think the above views of M. C. Johnson so clear and correct that no two men would differ in regard to them.

GEO. B. KINKEAD.

To His Excellency, William Owsley,
Governor of Kentucky:

Your petitioners state they have been acquainted with Dr. Abner Baker, who is convicted for killing Daniel Bates, and who we present to your Excellency as an object of mercy, and one who we believe is not subject to the penalty of the law. We state that Dr. Baker is by nature a high and lofty minded man, as incapable of stooping to a low and mean act as any man living—his capacity and qualification fine—he promised to be useful to himself and society—his prospects were fair and promising. Among the people, he was popular, beloved and respected, both as a man and a physician.

But the Lord laid on him his afflicting hand—his mind was impaired and exhibited signs of derangement which increased and was developed in the destruction of D. Bates. We stated that previous to this unfortunate event, and at the time, he was under such a state of derangement, that he had no control over his mind—he did not imagine, just as the notion would flit across his deluded mind, and which was palpably wrong was perfectly right, as the killing of Mr. Bates; and that individual contemplated his death, and that combinations were formed against him for evil—and that his father and mother and his best and nearest friends were his greatest enemies. No reason or argument could change his mind. He has no reasoning mind on certain subjects, which is fully presented in the documents before you—we mean the subject of his wife and Bates, &c. Here it is plain he believed that which was evidently wrong in the sight of God and man, he firmly, under his delusion, believed to be right. It is then clear to every rational mind that said Baker did not know right from wrong, as to the object of his attack, and then not responsible for the act, and so innocent of the murder of Bates, it having been the effect of insane delusion. He was evidently excited by Bates' threats, as proved by more than one witness, and was beyond doubt, irresistibly compelled under his derangement, and he had no rational control over himself to prevent the deed at a moment when, from the threats of Bates, or the information of Cobb and Morris, two witnesses, he was excited in a high degree and believed that Bates would kill him if he did not prevent him by killing Bates first. We believe that deranged persons are capable of excitement, anger, and revenge. Several of the subscribers have seen Dr. Abner Baker from time to time since his conviction, and we believe he is still a deranged man, and that lately he has attempted his life. And we further believe it would be murder to inflict the sentence of law upon him. We further state that, said Baker's deluded mind may be clearly seen in this: He believed that Judge Rob-

ertson and John Moore, two lawyers that appeared for him, came to Court and designed to have him convicted. He regards them, under his delusion as his enemies.

We therefore beseech your excellency to reconsider the case of said Baker and grant him a pardon, which, we have no doubt, will meet the public approbation.

THOS. T. GARRARD,
WILLIAM GARRARD,
DANIEL GARRARD,
J. H. GARRARD,
S. M. WILLIAMS,
W. H. YOUNG,

From observation and testimony, we believe every fact stated in the above petition, to be true.

S. C. PEARL,
HUMPHREY T. JACKSON.
ABRAHAM BAUGH,
THOS. POPE.

LEXINGTON, 20th September, 1845.

My Dear Sir:—I have just received yours of this morning, informing me that the Governor had authorized you to say, "upon consideration of the petition presented to him the day before yesterday by Capt. Baker and his son Hervey, he is of the opinion that he has no official authority to institute, or direct any inquisition or legal inquiry as to the sanity or insanity of Dr. Abner Baker, or to order his removal from his present place of confinement for the purpose of any such inquisition. These matters, he thinks, belongs to the judiciary, and to them must be left the duty of applying whatsoever proceeding or remedy the law allows. *The Governor further says, he would be glad to hear the grounds upon which you supposed him authorised to institute such an inquisition, or to remove Dr. Baker.*"

Availing myself of this invitation by the Governor, I will, through you, as his selected organ of communication on this occasion, suggest the general considerations which induced me to suppose that he has legal authority to do all the petition alluded to requests him to do.

1st. If a man, sentenced to death, be insane after judgment, the law requires that he should be respited until he shall become *compos mentis*—and his execution, when insane, would be wrong and inconsistent with the policy and justice of the law.

2nd. In England, the Judge has power to respite on the ground of insanity whenever that disability can be pleaded against entering judgment, because the case is still open and under the power of the court. But here in Kentucky the judgment fixes the time and place of execution, and gives the only warrant for execution:—and consequently, after such judgment and the final adjournment of the court, the judge who rendered the judgment, is, as to that case, *functus officii*, and has no more jurisdiction over it than any other circuit judge of the State. And it is worthy of grave consideration whether, after the judiciary has thus exercised its judgment and consigned the convict to the executive department, it can exert any other power in the case. In some of the States of our Union, and in New York especially, there is statutory provision for trying the question of insanity in just such a state of case. But there is none such in Kentucky. And I apprehend that here the only object of an inquisition would be to subserve the power of respiting or pardoning by the Governor. The only reason why insanity, after sentence, should suspend execution is because the insensate is not in a proper condition for prosecuting his claims to a pardon.

3rd. In Kentucky, has not the Governor alone power to suspend execution after judgment and the adjournment of the convicting court? The prisoner is then in his exclusive custody—for he is the head of the executive department, and the jailor is but his subaltern agent or minister, and is subject to his supervision and control. And who but himself can change that imprisonment, or rescue from the judgment as rendered?

4th. As the Governor has the sole power to pardon and liberate the prisoner, either absolutely or conditionally, he surely must possess all subordinate or subservient power comprehended in, or subsidiary to the exercise of this plenary power. If he can liberate him unconditionally, he can certainly do so on condition that he be found a lunatic and be placed in the Asylum; and consequently, as the prisoner cannot be placed in the Asylum without an inquisition, the Governor can authorise the inquisition and the prisoner's removal so far as it may be proper—and if the inquisition find the lunacy, the Governor can alone remit the imprisonment and punishment adjudged by the court, and authorise and compel the jailor to surrender the custody of him, and deliver him to a different custody. And this he can do under his exclusive power to respite and pardon.

5tth. Why, without the authorisation of the Governor, would a judge hold an inquisition, when, even if the prisoner be found a lunatic, the judge cannot remit the judgment of conviction, nor substitute any other custody than the legal imprisonment adjudged against him? The judiciary, in the case of Dr. Baker, has no power now to suspend or remit the punishment adjudged against him. The only constitutional power is in the Governor. It seems to me, therefore, that the Governor undoubtedly possesses and ought to exercise the authority to direct the inquisition which has been called for by the petition, as he alone can give the full and proper legal benefit of a finding of lunacy, and no one but himself can know what he will do in the event of such a finding, which can have no beneficial effect unless he shall choose to grant a respite or pardon, and which finding may also be desired by him to enable him to decide whether he ought to grant a respite or pardon.

6th. I apprehend that a *habeas corpus* from a judge would not be obeyed without the Go-

vernor's endorsement—and if he have power thus to effectuate it, he must have power to direct the removal for the same purpose without the judicial writ, which, without his concurrencey, would be ineffectual. And if a formal writ shall be required, (though I cannot imagine why,) may not the Governor say to the jailor that, in the event of its being presented to him, he shall obey it? And why, and for what end, or with what hopes, should an application be made to a judge without the Governor's official sanction and co-operation? No judge now can have jurisdiction to hold an inquisition for any other purpose than to enable the Governor to grant a respite or a conditional pardon and change of custody. Ought not the Governor then to institute this inquiry—and can it be either legally or availably had without his direction for the purpose of subserving his official action?

7th. Having said that there is no statute of Kentucky providing for a judicial intervention in a case of insanity after judgment of conviction, may I not now add that our *habeas corpus* statutes constructively deny the power of a judge to issue a *habeas corpus* in favor of a convict imprisoned under a final judgment for felony, and murder especially? See act of 1797.

In such a case there is no revisory power nor any authority to prevent execution elsewhere lodged by our law than in the Executive. And should a Judge strain a point and issue such a writ, and hold an inquisition finding lunacy, what will he then do with the prisoner? He cannot avert the sentence of the law by depositing the prisoner in an Asylum—for, by putting him there, the judgment is suspended or nullified—and the constitution concedes this power to the Governor only. For what purpose then will he hold the inquisition? Certainly there can be no other than to furnish to the Governor a new fact entitling the prisoner to a suspension of the judgment and a change of custody, which the Governor alone can order. And how does the Judge know that the Governor desires this, or will recognise, or act on it? And after the inquisition, what is he to do with the prisoner? And whence did he derive authority to take him out of jail? And suppose the prisoner shall escape. Who will be responsible? He took him from Executive custody without authority, and had no such power of safe keeping as the Executive magistracy had. But if the Governor order him to be brought out for inquisition and he escape, there can be no complaint, because he was still, as before, in the Governor's custody, and might have been constitutionally liberated by him altogether.

It seems to me, therefore, that the Governor now has exclusive power in the case, and I cannot doubt that it is sufficient for every purpose of respite or pardon, absolute or conditional. Having the exclusive power of respite and of pardon, he must have the power to employ all non-prohibited means which may be necessary and proper for enabling him to exercise this unqualified power understandingly, justly, and effectually. But, if the Governor *persist* in a different conclusion, *we must try the Judiciary. And in that event, may we expect an Executive order to the jailor to obey the mandate of the Judge?* *

These, sir, are, very hastily, my general views—and which I desire you to submit to the Governor in his official capacity. I have no other authorities than the reasons I have suggested and the probable and almost certain and very singular circumstance also that, while the Judiciary cannot act without executive authority or sanction in advance, if the Governor, doubting his own power, shall refuse to act, a man known to be insane may be unjustly hung to the discredit of the Commonwealth, to the mortification of its just citizens, and to the disparagement either of its functionaries or its jurisprudence.

We care not about the form of the inquisition—whether it be by the Governor's own inspection, or by proof, or trial. But an inquisition we ask, and to one, in some form, we are, as we humbly think, undoubtedly entitled. And we are sure that we cannot procure one without Executive sanction, and co-operation nor for any other end than Executive information and action.

Yours, &c.,
G. ROBERTSON.

To Hon. John J. Crittenden.

[A true copy.]

Sept. 29th, 1845.

Dear Governor:—If you intend to permit my son to die, for God's sake intimate it to me, and relieve me from this suspense.

A. BAKER.

As soon as it was ascertained that the Governor had declined extending his constitutional power to pardon Dr. Baker, and that he had further declined issuing the writ of inquiry—alleging that this power was vested in the Judiciary only—application was made to Judge Buckner for that inquisition. The following letter will explain the purport of this petition and the response of Judge Buckner.

LEXINGTON, Oct. 1st, 1845.

Dear Sir:—Application has this day been made to me on the petition of a Mr. Baker, sr., for a writ of habeas corpus in favor of A. Baker, jr., now under sentence of death by the judgment of the Clay Circuit Court. The object of the petition is to have an inquest of lunacy. The effect of lunacy at the commission of the crime has already been tried, but the petition charges that he then labored under monomania, but that it is now total mania.

I am of the opinion that I have the power to hold such inquest, and would grant the writ, if it would not interfere with the execution of the sentence of another Court. If he were now of unsound mind, it could be of no avail, *unless you should thereafter think proper to interfere. But if you shall think proper to*

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* Neither any such order nor any answer ever came from the Governor.

respite the execution of the sentence, I will grant the writ and direct the inquest as a means of ascertaining a fact to *satisfy your mind.* The object of the suspension, at this time, is only to give time to hold an inquisition.

Yours, &c.

R. A BUCKNER, Jr.

Gov. Owsley, Frankfort, Ky.

When the above letter was presented to the Governor, he observed that he would consider of it by morning, (Thursday one day preceding the execution.) It was represented to him that it would be impossible to reach the prisoner in time to suspend the execution, if he delayed granting the respire until the next day. He then remarked he had decided the case and would not take it up again—and when he was informed that the friends of Dr. Baker had been induced to believe that he intended to grant a pardon or further respite, from the impressions made by him on Dr. Baker's friends and his own relatives—and that he was awaiting the arrival of General Dudley before he could decide upon the case—the Governor replied that he had *"never intended pardoning Dr. Baker," that he had "no idea of turning him loose upon the community,"*

MR. ROBERTSON'S SPEECH.

The wreck of God's image now before you, under trial for murder, entered the threshold of manhood with hopeful prospects of a long, useful and honorable life. Richly blessed with personal graces and mental gifts, he cast his lot among you, and commenced his professional career, as you all know, under a clear sky, beaming with gilded promises. But how deceitful often are the brightest hopes of men. Already he, whose young horrizon was so recently bright and promising, trembles on the precipice of a yawning gulf, under a black cloud that hangs portentous over his destiny. Doomed to the greatest of earthly calamities —an eclipse of mind—and, as a consequence of that tremendous misfortune, doomed to be the blind instrument of a brother's death—he is now also doomed to an ordeal rare, if not unexampled, in a land of justice, liberty, and law.

The man he killed, influenced on his deathbed by a strange spirit of revenge, bequeathed $10,000 to insure his conviction and execution, promised freedom to a slave on condition that he would slay him, and, as a legacy to his own infant son, charged him to see that his victim should certainly fall by the hand of vengeance. Although he was tried and acquitted by an examining Court on the ground of insanity, and was then sent by his friends to a southern climate for the improvement of his health, yet the Governor of Kentucky, at the instance of some of the kindred of the deceased, issued a proclamation advertising him as a fugitive from justice, and the prosecutors offered a high reward out of this legacy of $10,000 for his apprehension. As soon as his honorable father saw that proclamation, he brought his unfortunate son to the jail of your county, in which he has ever since been most uncomfortably imprisoned at the peril of his life. But here he is, voluntarily surrendered for trial in the midst of a high and pervading excitement against him, produced, we know not how, in the county of his numerous, wealthy, and influential prosecutors—relatives of the deceased, *and one of them the husband of a sister of the accused.* And to such an extent have this excitement and prejudice run that it is not possible to be sure of a sober and impartial trial; for you know that even each of you avowed on examination, that you had formed an opinion as to his guilt, and we all behold armed men wherever we turn our eyes.

Yet, confident that the law and the facts ought to insure his acquittal, his friends determined to hazard a trial even here and now—believing that no honest and enlightened jury can, after a full hearing, feel authorized to find him guilty of murder, as charged.

But the legacy of blood must do its full work—and as one of its fruits, we behold the appalling spectacle of four able counsel all zealously seeking, in the name of the Commonwealth, the life of the accused. Apprehensive that the official organ—though known to be faithful and competent—might not exert a moral influence sufficient to insure the object of the legacy, the prosecutors have employed the celebrated gentleman of Madison—not still sure of their victim, they also employed the eloquent gentleman of Knox—and, "to make assurance doubly sure," they have added to this formidable array the shrewd and dexterous gentleman of Laurel. Having already the prepossessions of the county of trial, they have thus secured, as far as they could, the combined influence also of Madison, Knox, and Laurel. And you have seen this four-horse team pulling, as for their own lives, the heavy load of this prosecution, and, at every up hill step of the hired three, you might have heard the whip of the $10,000 crack over their heads.

We do not complain that the Commonwealth is represented by extra counsel—nor do we object to the unusual number. But we do rightfully complain that the hired supernumeraries have argued this case—not soberly and solemnly on the law and the testimony—but, by leaving the field of legitimate argument, and, by assumption and declaration, struggling to inflame your passions and deceive your judgment. It is a melancholy truth that, in some respects, they have all argued as if they were speaking to earn contingent fees and please their clients, instead of faithfully and candidly representing the commonwealth.—And, thus seeing money in one scale and blood in the other, we have cause to fear that the money will outweigh the blood, and that our cause may sink under the weight of a combination unsurpassed in activity and wealth.

The gentleman from Madison, who opened the argument, devoted at least one hour to the irrelevant purpose of proving the alarming prevalence of crime and immunity, and the importance of convicting and hanging "*one of the ruffle-shirt gentry,*" and especially "*a Doctor or a Lawyer.*" Was he *then* representing the Commonwealth? Does she desire unjust conviction by *such* appeals? And when the law and the facts require conviction, is it ever necessary and proper for her to make the

demagogue's harangue? The guilty should be punished, and I know that too many have escaped. But it is the art of lawyers, chiefly, and not so much the ignorance and compassion of juries, that has paralyzed the criminal law. And my friend from Madison must allow me to remind him that no criminal advocate within his range of practice has been more instrumental than himself in preventing the condign punishment of the guilty. And I am not sure that his resort, in this instance, to his accustomed arts in defence of criminals, may not do for the Commonwealth what he has so often done against her—produce an unjust verdict. *I* am for upholding and enforcing the law. But does not this gentleman know that the law is made for the protection of the innocent even more than for the punishment of the guilty? We too invoke the law—and in its name, and under its panoply, we ask for an acquittal; for we feel that nothing but God or the law can save the accused from the powers of destruction that are combined against him. It is not mercy so much as money that has effected the escape of criminals, and thereby encouraged crime. And the only danger now is, that money may produce the opposite result—the condemnation of a guiltless man. And does the gentleman, suddenly changing from the advocate to the prosecutor, expect to restore the law he has so much helped to paralyze, by hanging an insane man? And why does he so wish? Why now shall insanity be hung? And why has guilty sanity so often escaped the gallows through the gentleman's influence? "*The love of money is the root of all evil!*" It is this, more than anything else, that saves the guilty—and it is this, too, that the accused in this case has most to fear.

The same counsel, not being able to meet fairly the conclusive testimony of Dr. Richardson, assumed that he is himself rather insane on the subjects of phrenology and mesmerism—and told you that these "*Lexington Doctors*," one of whom was brought here "*to enlighten and astonish ignorant mountaineers*," could look at you and through you, and feel your pulse and your head, and "*then tell you all you are, and all you think and feel.*" Is this a grave argument of our just mother, the Commonwealth? Was there any testimony which could give even a color to these improper assertions? *I* know that Dr. Richardson has no faith in mesmerism, and but little in phrenology. And, though he is a Lexington Doctor, I presume that truth from his lips will be as true in the mountains as in his own city. But he is "*an enemy to free government*," said the gentleman. And what if he be? Does this impair the force of his evidence or tend to prove the guilt of the accused? I will tell the accuser that Dr. Richardson is as devoted to the free institutions of his country as he himself, and was risking his life in the Northwestern army, in the year 1813, when we were both at home learning or practising law. But such a course of argument as this should be answered in a manner more light and ludicrous; and I will, in that way, give it and much else like it, the finishing blow by an appropriate anecdote. When the steam locomotive first began to run from Lexington to Frankfort, a little curly-headed and horned animal with a bobbed tail, while grazing on the poor lands near the latter place, seeing a car approaching him with its accustomed force and velocity, and thinking that this great "*Lexington*" machine was no better than himself—though only a scrub of the Franklin hills—fixed himself in the track and, drawing himself up for battle, gave it a triumphant butt as it approached him; and, as might have been expected, he was thrown several rods and effectually "*used up;*" at the sight of which a venerable gentleman exclaimed, that he admired the animal's courage, but thought very badly of his discretion. Now, whoever has the temerity to butt against the Lexington Doctor and ridicule the facts and the law on which we rely, should remember the doom of the short-tailed bull. On this subject let the counsel take this *coup de grace*.

But the gentleman from *Knox*, after pouring on you floods of eloquence, endeavored to alarm you by telling you that, like *Hannibal*, young Bates had made to his deceased father, a solemn pledge to avenge his wrongs—and that, as Hannibal had sworn that he would destroy Rome, this youth had asservated that he would kill the prisoner at the bar—thereby intimating that *you ought to hang him, to prevent his being shot!* And does this, too, come from the mouth of the Commonwealth? It is not only extraneous but signally unlucky. Let it be remembered that, after the battle of *Cannæ*, *Hannibal* was compelled to desert Italy—*Scipio carried the war into Africa*, vanquished him at Zama, drove him to inglorious exile and death, and destroyed Carthage—and that, years afterwards, *Caius Marius* of Rome, sat a hopeless exile, on its melancholy ruins. We desire peace. We appeal to the law. There have been war and bloodshed enough. But if the menaced crusade against the life of the accused shall be lawlessly waged, then, too, the war may be carried into Africa, and a proud Carthage, instead of devoted Rome, may fall never to rise.

The gentleman from Laurel also has gone out of the way to excite and deceive. He has read to you the Mosaic law on homicide, and shown you that, by that law, the manslayer could legally escape the avenger of blood only by fleeing safely to "*a city of refuge.*" And does he wish you to understand that such is law here? If it be, the accused has reached a city of refuge. His country is that city, and you are that country and that refuge? And if you will determine his doom from the law, and the testimony alone, we feel that he is safe, and fear not the avenger of blood.

Instead of arguing the question of insanity, the same counsel has also endeavored to ridicule the insane expression of the prisoner's countenance, and said that it showed only the mark of *Cain*. This idle assertion is contradicted by the unanswerable facts—and therefore these have been answered only in this unauthorized manner. And in reference to all these *unusual* efforts made by the three hired counsel, I must be permitted to warn them that, in my opinion, if the prisoner shall be hung, their hands will be dyed with his blood.

But, gentlemen, I am sorry that I felt it my duty thus to notice fragments of the great mass of extraneous matter that has been thrown into the argument of this case by the triumvirate counsel of the prosecutors. I know that all such irrelevant arguments indicate the want of those that are better: and therefore ought to operate for us rather than against us. But lest you might be improperly affected by them, duty to my client required that I should take some preliminary notice of them. *They shew the spirit of the prosecution.* I will now proceed to those facts and to that law, according to which you are sworn to decide this case; and I will not again depart from them.

Our chief defence is insanity—though we would not despair of his acquittal of the charge of murder on the ground of aggravated provocation and strong necessity of self-defence.

The Commonwealth herself has proved that the accused, *antecedently to his marriage*, often declared that Daniel Bates had maltreated his own wife (the sister of the accused) by lying, every night, for nearly a year, on the floor in her bedroom with a negro wench, and frequently going to his wife's bed and drawing a a bowie knife across her throat and threatning to kill her—that she invoked his (her said brother's) protection, and entreated him to remain at her house to save her life—that Bates, understanding this, became, therefore, very hostile to him, had conspired with his slaves to take his life, and had, in fact, attempted his assassination. And it appears that, on one occasion, the accused when in the town of Manchester, received a note from said sister warning him not to return to their house that evening, because, as she wrote, her husband was prepared with guns to shoot him from an upper room as he approached the house. The Commonwealth having introduced these facts, they are legitimate evidence, which you have both a legal and moral right to believe. If they be false, the prisoner's belief in them is evidence of his insanity; and if they be true, they must operate powerfully in his favor. The fact that he was undoubtedly insane, *afterwards*, as to his own wife and the imputed connexion of Bates and others with her, cannot destroy the credibility of these facts as to Bates' conduct to his own wife and his determination to assassinate the accused; for a person insane on one subject may know the truth on another. Besides, there is intrinsic evidence of the truth of all that the accused said and seemed to believe respecting Bates' treatment to his wife and himself—or he was undoubtedly insane on that subject also; for, if there was no ground for his belief of them, *there is no adequate or even rational motive for his great hostility to Bates, and his suspicions of his designs on his life, before his marriage.* Then, not only have you a right to accredit them, but in charity and justice, you ought to believe them, as there is no proof of their impossibility or even great incredibility. *There is no disproof of any one of them.*

Moreover, on the day of the catastrophe and before the accused had reached the fatal spot, he was told by several persons whom he met on the road, that, since he left Kentucky, Bates had declared that, if he should ever return, he would shoot him on first sight—that he and his slaves carried guns for that purpose —and that he was then at his furnace on the only road the accused could travel to Manchester, the place of his destination—*and some of those informants urged him not to pass the furnace until night.* Being resolved, however, not to leave the highway or hide himself and steal along in the dark, he endeavored to procure a gun, so as to have some chance of defence against the guns of Bates and his slaves; but failing in this defensive object, he went on with no other weapon than one of the smallest pocket-pistols. Now these simple and undeniable facts, forbid the presumption that the accused, before he heard them, intended (*if he then were sane*) to shoot Bates when and where he did—for, as a rational man, he could not have hoped that he could be able, alone, as he was, to succeed in killing him at the furnace with a small pistol and at a distance of eighteen yards. But as a sane man, hearing what he had, he must have apprehended that, in passing the furnace, Bates must see him before he could escape the range of his gun, and, so seeing, would shoot him, unless he could, on a forlorn hope, accidentally shoot Bates first with his pistol, and thus *possibly* save his own life. If he were rational, had he not abundant cause for such apprehension?—and did he not thus reason, think, and act to save himself from destruction? If so, the law, read on the other side, acquits him. Was he guilty of cold-blooded murder? Who could hang him on such facts?

But the fact that the accused incurred so much unnecessary peril, and acted with so much temerity is strong evidence of his insanity. And it is not only probable, but almost certain, that, had he been perfectly rational and self-poised, he would not have passed the furnace as and when he did, or that he would not have shot Bates then, if ever—although we maintain that he had a right to pass the highway in daylight, and to defend himself. Upon the facts as proved, is not this case one of justification or of very strong mitigation, even if the prisoner had been as sane as you? But

he was insane, and this we will now endeavor to prove.

Both the mind and body of man are, in the ultimate sense, incomprehensible. We know also that the physical element of our nature is material and mortal, and we believe that that which is rational and moral is immaterial and immortal. And consequently, man is the subject of two distinct sciences—physiology, or the phenomena of animal life—and psychology, or the phenomena of the spirit or soul. Vitality, whether vegetable or animal, we cannot understand. The material organization, which produces and sustains physical life, or is produced and sustained by it, we may well comprehend. But being so constituted as not to be able to understand any ultimate truth, element, or principle, but only their phenominal developments or results, we can know no more of the principle of life than of that of gravitation or electricity. We do, however, know that animal life depends on physical health—and that derangement of the body, whether organic or functional, is unsoundness or disease. So also we all know that life, even of the lowest grade in the scale of animal existence, feels, perceives, remembers, and is self-conscious; and consequently, it is not easy to discriminate the essential difference, except in degree, between the mind of a man and that which we may denominate the mind of a horse. The distinctive difference, as generally recognized, is that between reason and instinct. The beaver, the bee, and even the caterpillar, and every living creature, possesses the faculty of adapting the means of existence and enjoyment to the ends of that existence and enjoyment. The silk-worm knows, and finds, and feeds on, the mulberry leaf, and the calf and the child alike know, and find, and suck, as soon as born, their mother's pap. This adaptive and conservative power, common to men and brutes, may be called the understanding; and the health and perfection of this depend necessarily on the soundness and perfection of the physical organism. But man possesses a higher faculty—a power both moral and intellectual—a capacity to know all his moral relations and obligations, and to ascertain, by analysis or induction, abstract truth, mathematical truth, ultimate truth. It is this that ennobles his nature and elevates him above all other animated beings. This ennobling attribute we may, for the purpose of contradistinction, call reason. Many enlightened minds believe that the understanding or instinct of sound animal life is the offspring of organic matter, and is, therefore, material and perishable; and that the reason, peculiar to man, is alone immaterial, and is, of course, indivisible and immortal.

But it is not necessary here either to detain or confuse you by speculative reasonings on metaphysics, or by elaborated theories either phrenological, physiological, or psychological; every person knows that the mind of man—understanding, reason, and all—as long as that mind co-exists with the body, is affected by the condition of the body; the theory of dreams, and the influence of sickness, of infancy and of old age, on the mind, are alone sufficient to prove that reason itself, however ethereal and pure, is dependent on the perfection and soundness of the physical organs, through the instrumentality of which it acts and is acted on in the entire drama of earthly existence. All that is external is communicated to the mind by the material organs of sense. These are the heralds of the mind; and we are so constituted as not to be able to discredit the testimony of our senses. Consequently, sensible facts are, and must be, as much accredited as intuitive or self-evident truths;—and, when the mind reasons or acts from these premises, its deductions or its acts are inevitably wrong whenever the premises are wrong. The brain, which is the centre of the nervous system, is the seat and throne of the mind. If the reason be immaterial and immortal, it cannot be unsound; but still, as it acts through the ministry of the brain, it must be either obscured, eclipsed, or dethroned by any unsoundness or disorganization of the brain.—Whenever the brain is unsound it will, to some extent, present to the mind, false and delusive images, which the reason necessarily believes to be true, and of the falsehood of which no proof or argument can convince it—because it must believe that which the senses communicate. When any organ fails to perform its proper function, it is said to be unsound; and, consequently, when physical unsoundness is the cause of false sensations, images, or impressions, which delude the reason or pervert its action, the mind, dependant as it is, on the body, is, to the extent of the delusion, said to be—and certainly, for all practical purposes, must be admitted to be—unsound. And this is intellectual insanity. It proceeds necessarily from physical disease or derangement—and is, therefore, nothing more or less than the morbid imagination of a fact which does not exist—for the supposed existence of which there is no evidence that could possibly operate on a sound mind—and of the non-existence of which no proof can convince the reason. If, for example, the brain or organ of vision be so diseased as to present to the mind an object as red, which, in truth, is green, or imprint on the retina images of objects which do not exist, the mind is inevitably deceived, and reasoning correctly from the facts and premises, impels erroneous belief and wrong action. And thus, while the reason is sound and the reasoning correct, the conclusion is false, because the foundation is deceptive—the very source of thought impure—the premises imaginary and not real. And not only is the source of the delusion physical, but as long as the morbid cause exists, it will be impossible to undeceive the mind because what we feel, or see, or hear, no extrinsic argument or

proof can convince us that we do not feel, nor see, nor hear. And we must reason and act as if what thus only seems to us, be, as it appears to us to be, undoubtedly true. If, when your wife stands before you, a morbid condition of the brain, superinduced by some moral or physical cause, imprint on your mind the vivid impression of a tigress, a fiend, or a demon, no argument could convince you that it is your wife you behold, nor prevent you from acting as you would if indeed the object were what it seems to you to be. Your reason, however clear and true, drives you nevertheless to false conclusions and erroneous conduct, because, assuming false premises to be true, it makes correct deductions from them; and the delusion is not in the faculty or process of reasoning, but in the imagination of a false fact, the necessary offspring of an unsound condition of the sensorium. These delusive images, all produced by some physical derangement, are either illusions of the senses as to external objects, or hallucinations which arise from the internal feelings or emotions of a distempered body. Thus from our own observation, as well as authentic books, we know that, while the subject of *delirium tremens* imagines that he sees furies, hobgoblins, ghosts, and demons—another victim of delusion feels that his legs are glass, or, though a male, that he is in a family way—another that he sees a robber escape from his room through a key hole—another that he saw a stranger to his bed defile it in the illicit embraces of his faithful and affectionate wife—and another imagines conspiracies to ruin him, and plots to assassinate him by his nearest and best friends—another believes that he is the savior of the world—another, like Hadfield, that his own destruction is a necessary offering to the peace and happiness of mankind—another, like the great reformer, Luther, imagining that he is beset by the devil incarnate, therefore throws his inkstand at his black majesty and thus drives him from his presence—and another yet, feels like the great Paschal, the author of the famous provincial letters, who, while elaborating a beautiful solution of the cycloid curve, had himself tied in his arm chair, lest he might fall into a deep abyss, which he imagined he saw yawning beneath his feet. Such illusions of the senses and hallucinations of the internal feelings are almost infinite in kind, as well as in degree. And, whenever they exist, their delusive influence on the reason and the conduct of their victim, within the sphere of their operation, is as irresistible as it is certain. In each of these instances the delusion results from partial excitement or derangement of the brain, and in each there is, at least, particular insanity of mind, or monomania, which is insanity on some one subject only, and which, as to that subject and every thing connected with it, may be as entire and incapacitating as universal insanity or a total eclipse of the mind would be as to all subjects. Insanity of mind, like that of the body, may be partial either in the extent of its prevalence or in its degree of intensity. And although the Court has intimated and the counsel engaged for the Commonwealth has said that there is no such thing as monomania, I am prepared to prove it by argument and an appeal to observation, and to show also, that there is not a treatise extant on insanity, or on medical jurisprudence, which does not recognize and define it. I know that the vulgar notion of insanity supposes fury and total deprivation of reason, and I know, too, that it is not easy to convince the popular mind that a person is insane who can reason well on most subjects. But both science and law recognize particular insanity while the victim of it may be apparently sane and rational on all other subjects than that in respect to which there is insane delusion. And this mental derangement which is partial in the extent of its sphere is, in its various kinds, the most prevalent form of insanity, intellectual or moral. It fills the lunatic asylums—and there is not one of them in which a majority of the patients do not belong to that class, in one form or another. It is no new thing, therefore, and I am surprised to hear any who profess a knowledge of jurisprudence speak of it in a spirit of incredulity and ridicule.

A few quotations will impregnably establish all we have said or shall ask you to believe on this interesting subject. Esquirol was superintendant, for 40 years, of the lunatic asylum, at Charinton in France. He was an eminent medical philosopher—devoted extraordinary attention to mental unsoundness in all its various forms—and his elaborate and learned treatise on insanity is, therefore, not only entitled intrinsically to unusual respect, but is referred to as a standard authority by medical and legal men. Ray's "*Medical Jurisprudence*" is also entitled to great respect—because it is an American production of extraordinary ability, and is devoted altogether to the single subject of the medico-legal character and effects of insanity. On these two books, therefore, I shall chiefly draw.

And here let me premise that modern writers on insanity, and even many jurists, recognize a morbid derangement of the moral faculties as distinct from that of the intellectual. How far any such merely moral insanity may exist without some intellectual derangement also, I do not pretend to know. But I do not doubt that, as our moral and intellectual natures are indissolubly associated and intertwined, moral derangement is the necessary consequence of intellectual insanity, and is co-extensive with it. For example, when the mind of Hadfield, in consequence of some morbid derangement of his brain, labored under the insane delusion that he must offer himself a sacrifice to the welfare of his race, and, being opposed to suicide, he therefore de-

termined to assassinate his sovereign, George III. as the certain precursor of his own execution for murder and treason, I doubt not that his moral nature was also so far deranged as to induce him to believe that, though murder was a crime, yet, in that particular case, he would be guilty of no violation of the law of God or of man, or the delusion must have been so overwhelming as to have destroyed all moral resistance. And such was the argument of his counsel and must have been the opinion of the jury who acquitted him. How far moral insanity, if there be such a thing alone—such as—*pyromania*, or an irresistible passion for incendiarism—or *erotomania*, or an insane propensity for sexual intercourse—or *kleptomania*, or an overwhelming temptation to steal—should exculpate its victim, I am not prepared to say: That it should excuse a criminal act in any case, without any proof or presumption of intellectual delusion also, I cannot venture to assert. But I do maintain that, whenever there is any such moral insanity, it is either the parent or the offspring of an associate intellectual insanity also. Mental unsoundness is, in my judgment, a two-headed monster—feeding at the same time on the intellectual and moral man.

Esquirol, (p. 21,) defines mental insanity to be—"a *cerebral* affection, ordinarily chronic, and without fever—characterized by *disorders of sensibility, understanding, intelligence*, and *will*.

On the same page he makes the following quotations from *Conolly*:—"Insanity is the impairment of one or more of the faculties of the mind, accompanied with or inducing a defect of the comparing faculties"—and from *Prichard* the following: "Insanity is a chronic discase manifested by deviations from the healthy and natural state of the mind, such deviations consisting either in a moral perversion or a disorder of the feelings, affections, and habits of the individual, or in intellectual derangement, which last is sometimes partial, namely, in monomania, affecting the understanding only in particular modes of thought; or general and accompanied with excitement, viz: in mania or raving madness"—and then *Esquirol* himself concludes as follows: "In general it is regarded as a disorder of the system by which the sound and healthy exercise of the mental faculties is impeded or disturbed. That every case of mental derangement, from the first moment of its existence, can be perceived, and referred with accuracy and precision to one or another of these definitions, just as in science every fact may be referred back to its principle, is not, by those at all conversant with the subject, supposed to be in all, or perhaps in any case, possible. Who can tell when health ends and disease begins? When disease is found to have shed its blighting influence over the system, is it possible, after establishing this fact, to decide what amount or kind is necessary to occasion aberration of mind, and when this amount and quality is developed? When developed, does it, at once, manifest its baleful influence upon the brain, by producing insanity, or does it rather brood over the delicate organ of the mind and gradually fulfil its dread commission? When again the mind begins to totter and reason to sit insecurely upon her throne, do the friends and acquaintances of the unhappy sufferer recognize these first monitions? Or do they not rather behold—if indeed they observe anything—a simple change of habit, slightly perverted moral feelings, or trifling eccentricities of character.

"Now it is conceived to be quite possible, not to say probable, that even during this early stage of insanity, before the friends or immediate associates of the patient are aware of its existence, or before it becomes developed to a degree that brings it clearly within the limits of any of the above definitions, that a source of excitement, fear, apprehension, or mental disturbance of some sort, shall so operate upon the mind, through the medium of its deceased organ, the brain, as to lead the person so afflicted, now to the commission of suicide, now to homicide, or other acts of a grossly immoral and highly criminal character. Experience also justifies the belief that these results may follow in the train of excitement occurring from ordinary intercourse with society, and equally from the perverted thoughts and emotions of the individual—thoughts and emotions, too, which he may never have expressed, or merely hinted at in conversation with his friends."

Ray (p 139) says:—"Insanity observes the same pathological laws as other diseases"—"it arises from a morbid affection of organic matter, and is just as much, and no more, an event of special Providence as other diseases"—"it follows the same course of incubation, development, and termination in cure or death, as other diseases—sometimes lying dormant for months and even years, obscure to others, and perhaps unexpected by the patient himself—at others suddenly breaking out with no premonition of its approach"—"just as consumption, for instance, sometimes begins its ravages so slowly and insiduously as to be perceptible only to the most practical observer for years together, while, in another class of patients, it proceeds from the beginning with a progress as rapid as it is painfully manifest. But its presence no one thinks of denying in the former case, merely because its victim enjoys a certain degree of health and activity, though it would be no greater error than to deny the existence of insanity while the operations of the mind are not so deeply disturbed as to be perceptible to the casual observer."

On page 142 the same author says: "Madness is not indicated so much by any particular extravagance of thought or feeling as by a well marked change of character or departure from the ordinary habits of thinking, feeling, and acting, without any adequate external

cause." And on p. (?) "It is the prolonged departure, without any adequate external cause, from the state of feeling and modes of thinking usual to the individual when in health, that is the true feature of disorder in mind."

Speaking of some of the characteristics of insanity, *Esquirol* says:—"The insane often entertain an aversion towards persons who were previously dear to them. They insult, misuse, and fly from them. It is a result, however, of their distrust, jealousy, and fear," (p 26.) "The insane man becomes timid and suspicious. He fears every one that he approaches, and his suspicions extend to those who were most dear to him. The conviction that every one is endeavering to torment and slander him, to render him miserable, and to ruin him, in body and estate, puts the finishing stroke to his moral perversion. (p 74.) "We would remark that the insane conceive a dislike and aversion to certain individuals, without any motive, and nothing induces them to change their views. The object of this hatred is usually the person who, before their illness, enjoyed their love." (p 75.) "Thus a mother believes she is abandoned by her husband, and desires to slay her children to save them from a like misfortune. A vine dresser slays his children in order to send them to Heaven. A lady gets the idea that her husband wishes to shoot her, escapes from her chateau, and throws herself into a well," (p 208.) "Mrs. A. entertains the belief that men enter her chamber during the night; on being shown that this is impossible, she replies they pass through the lock." (p 23.) On page 214, he says: "Disappointed affection, jealousy, fear, &c., are the passions which produce the greatest number of lypemaniacs, (that is, melancholy monomaniacs,) particularly in youth."

Jealousy, as we might, from its force and character, presume, is more frequently, than other passions, the cause or consequence of partial insanity. For illustration, we will quote from *Esquirol* some cases of that kind in the asylum at Charinton: M. P., who was an officer under Napoleon and an affectionate husband, became a monomaniac in consequence chiefly of the downfall of his leader; and, after the last abdication, "takes up a frightful aversion to his wife and her family, who were previously the objects of his strongest regard. Nothing removes his dislike. He deserts his adopted family." "I have often spoke to him of his wife and family, in order to recall his former affection. They wish, says he, to deny the faith; and they are enemies of God and I renounce them, (p 96.) M. D., 40 years old and after he had been sometime in the asylum "believes he sees a patient of the house violate his wife. In a furious passion he throws himself upon the object of his wrath, and injures him most seriously," (p 103.)

M., at the age of 27, was married to a beautiful woman, both amiable and wealthy. "He is jealous"—"a change in his character is perceptible. He is quarrelsome, too exacting, overbearing, uneasy, restless, and unjust towards his relatives." "He conceived an opinion that the food at the eating-house at which he was accustomed to dine had been poisoned. He indulged in violent fits of passion against his father-in-law, who lavished upon him every attention—he quarrelled with his wife, notwithstanding the affection she entertained for him. He visits the houses of his acquaintances, complaining that he is poisoned in the family of his father-in-law, and accuses his wife of exercising an undue influence over him." "His physiognomy is changeful, his eyes red and projecting, and his step haughty. He is polite toward all, familiar with none." "I cannot close this account without remarking that, from being a hypochondriac at first, then a lypemaniac fearing poison, he became a monomaniac," (p 324–'25.)

Esquirol makes the following classification of the various kinds of insanity:

"1. *Lypemania.*—Delirium with respect to one or a small number of objects, with predominance of a sorrowful and depressing passion.

"2. *Monomania,* in which the delirium is limited to one or a small number of objects, with excitement and predominance of a gay and expansive passion

"3. *Mania,* in which the delirium extends to all kinds of objects, and is accompanied by excitement.

"4 *Dementia,* in which the insensate utter folly, because the organs of thought have lost their energy and the strength requisite to fulfil their functions.

"5. *Imbecility or Idiocy,* in which the conformation of the organs has never been such that those who are thus afflicted could reason correctly."

Perhaps a different and more comprehensive nomenclature, leaving out *lypemania,* and including both types of particular insanity under the title of *monomania,* would be more scientific, as well as simple and intelligible. And we shall so treat the subject.

"*Monomania* and *lypemania* are chronic cerebral affections unattended by fever and characterised by a partial lesion of the intelligence, affections, or will. At one time the intellectual disorder is confined to a single object, or a limited number of objects. The patients seize upon a false principle which they pursue without deviating from logical reasonings, and from which they deduce legitimate consequences which modify their affections and the acts of their will. Aside from this partial delirium they think, reason and act like other men. Illusions, hallucinations, vicious associations of ideas, false and strange convictions, are the basis of this delirium, which I would denominate *intellectual monomania.* At another, monomaniacs are not deprived of the use of their reason, but their affections and dispositions are perverted." "It

is this which authors have called *reasoning mania*, but which I would name *affective* monomania. In a third class of cases a lesion of the *will* exists. The patient is drawn away from his accustomed course to the commission of acts to which neither reason nor sentiment determines, which conscience rebukes, and which *will* has no longer the power to restrain." (*Esquirol*, 320.)

On page 200 the same author says: "*Monomania* is, of all maladies, that which presents to the observer phenomena the most strange and varied, and which offers for our consideration subjects the most numerous and profound. It embraces all the mysterious anomalies of sensibility, all the phenomena of the human undrstanding, all the consequences of the perversion of our natural inclinations, and all the errors of our passions."

"The more the understanding is developed and the more active the brain becomes, the more is monomania to be feared." "Monomania is essentially a disease of the sensibility. It reposes altogether on the affections." "This malady presents all the signs which characterize the passions. The delirium of monomaniacs is exclusive, fixed, and permanent, like the ideas of a passionate man,"

In illustration of the delusions and passions accompanying monomania, the same author, on pages 364–'65, says: "A father immolates his son on a funeral pile in obedience to the voice of an angel, who commanded him to imitate the sacrifice of Abraham." "Another slays an infant in order to make an angel." *Prohaska* slays his wife and two children *because he believes that an officer pays his addresses to the former*." "A mother is compelled to decapitate that one of her children whom she loves with the greatest tenderness." Can we reconcile reason with the murder of that being most dear." We can understand the phenomenon only by admitting the suspension, temporarily, of all understanding, all moral sensibility and volition"

On page 162, *Ray* says: "The most simple form of this disorder (monomania) is that in which the patient has imbibed some single notion contradictory to common sense and to his own experience, and which seems, and sometimes no doubt really is, dependent on errors of sensation. Thus thousands have believed their legs were made of glass—or that snakes, fish, or eels had taken up their abode in their stomach or bowels. In many such cases the hallucination is excited and maintained by impressions propagated from diseased parts the presence of which has been revealed by dissection after death." And, on page 167, the same author, says: "In the simplest form of monomania, the understanding appears to be, and probably is, perfectly sound on all subjects *but* those *connected* with the hallucination." "If we would follow these people to the privacy of their own dwellings, narrowly observe their intercourse with their friends and neighbors, and converse with them on subjects nearest to their thoughts, we should generally detect some perversity of feeling or action altogether foreign to their ordinary character." "It is a fact *that must never be forgotten*, that the phenomena of insanity *do not lie on the surface, any more than those of other diseases, but can be discovered only by means of close and patient examination.*"

The foregoing views of insanity, and monomania especially, are corroborated by the concurrent testimony of every respectable writer on either medical jurisprudence or insanity—and most fully and emphatically by *Elliotson*, by *Prichard*, by *Beck*, by *Taylor*, and by *Guy*, all standard authors on those interesting subjects—and more particular references to whose writings, although I have one of them before me, would be an useless consumption of our time. And let me here guard you against any delusion from oblique intimations, already made and probably to be repeated in the concluding arguments for the Commonwealth, that these are all "*doctor's* books" and not therefore to be regarded as authority in a criminal trial. How does the Lawyer, the Juror, or the Judge, become well acquainted with the true doctrines of insanity unless he shall be instructed by the learning and experience of eminent medical philosophers who have devoted their lives to the observation and study of it? And from what source do we and must we derive our knowledge of the law on subjects peculiarly medical? Necessarily and confessedly from works on medical jurisprudence, which are, in fact, law books—being the best and most approved treatises on so much of civil and criminal jurisprudence as is connected with and depends on medical science. And I aver, without fear of contradiction from any candid and intelligent source, that the books, from which I have read to you copious quotations, are the very best and most authentic on the subjects on which they are written. Had they not been both admisible and credible on this trial, the Judge would not have allowed me to read them to you. There is no higher or better authority on the subject we are considering. I shall therefore yet draw on them, or on one of them, copiously in another portion of the argument. And I am quite sure that the Commonwealth will not attempt to evade the force of these books, otherwise than by repeating that they are "*doctor's books.*" But not only are they intrinsically authoritative, but they are, for all the purposes of this case, conclusively fortified by judicial recognitions in both civil and criminal trials. In 1794, James Hadfield was acquitted by a *British* Jury, in England's Royal Court, on the ground of monomania alone. Although he was indicted for treason in shooting at his sovereign, and was admitted to be perfectly rational on most subjects, the Jury found a verdict of not guilty, only because they believed that he labored under insane delusion on one subject which led him to attempt to kill his king: and that verdict has, so far as I know or believe, been approved by all enlightened jurists, and has been ricognized as a leading authority ever since.

Subsequently *Lord Orford* was acquitted on an indictment for murder on the ground of monomania alone, there being no doubt that he was rational and sane on all subjects unconnected with the homicide. In 1835, *Lawrence* was acquitted by an *American* jury for shooting at *President Jackson;* and his acquittal was on the sole ground of monomania as to the President; and on that trial, the court recognized *Hadfield's* case as establishing the true legal doctrine. In Kentucky the Court of Appeals set aside Moor's will on the ground that the testator, though rational on all other subjects, was believed to have been insane in the conviction, without cause, that a brother, whom he pretermitted, had attempted to poison him. And, more recently, one of the ablest judges on England's Bench, in the celebrated case of *Dew* v. *Clark*, set aside a will on the single ground that the testator, who was a physician, was a monomaniac as to his only child, (an amiable and beautiful daughter,) whom, from her birth, he charged with being possessed of the Devil, and being born as a judicial curse, to degrade his name and destroy his happiness; and whom, therefore, he not only neglected in his will but had invariably persecuted and abused with a cruelty more than savage. And the cases of a similar kind, in England and America, and in which, whether civil or criminal, the doctrine of Hadfield's case has been judicially recognized, are too numerous to justify even a reference to their titles on this occasion. We may therefore conclude, without hazard, that the legal as well as actual existence of *monomania*, and its disabling exculpatory influences, are recognized and established by that very law by which you are bound to try this case.

There is then, beyond doubt, such a thing in law and in fact, as insanity on one, or a few subjects, while, in all other respects, the same mind is apparently sound and rational. And this is technically called *monomania*, which is indeed the most prevalent form of insanity, as all lunatic asylums will prove. Go into any one of these receptacles of the insane and you will, as already suggested, see a large majority of the unhappy tenants who reason well and manifest intelligence and self possession on many, perhaps most subjects, and some you will be sure to see, whose infirmity you will not be able to detect without a clue from the keeper or some acquaintance who had ascertained the particular subject of insane delusion. But comparatively few among the insane are totally so: few are so far deranged as to appear to the casual observer *mad men*, or what is vulgarly considered *crazy men*. But still, insanity even on one subject only, may, to the whole extent of its sphere of operations, be as complete and stultifying as total derangement on all subjects.

You may now also perceive that *intellectual* insanity proceeds from some morbid excitement or derangement of the brain, or from some disturbance of the physical health, or of some one or more of the five senses operating on the brain, in consequence of which false and delusive images or ideas are communicated to the mind, which are necessarily accredited as true, and from which, reasoning correctly from false premises or imaginary facts, it deduces erroneous conclusions, with intuitive certainty of their truth. You may understand also that partial insanity, whether limited in degree or in the extent of its range, is, like other chronic diseases, latent and insidious in its incipient stages, frequently slow in its progress, always discoverable first by the nearest friends and associates of the afflicted subject, and rarely suspected or admitted by strangers or others whose intercourse with the victim is only occasional or transient. You may presume too, as is undoubtedly true, that all insanity of mind is accompanied and indicated by certain physical signs—in the countenance, the temperature, the pulse, the hang of the muscles, and the general expression—which none but those intimately acquainted with its phenomena can rightly interpret, but which are, to the skillful and experienced few, as infallible as the external symptoms of any other internal malady. And hence you must feel the great and controlling force of the opinions of enlightened medical men on all questions of insanity: and, you should not be ignorant of the fact, that the law gives to such opinions peculiar credit and decisive effect, just as it does to the opinions of jurists on questions of law, or to those of artists on questions of art.

And, gentlemen, you cannot, I trust, now fail to perceive that *intellectual* insanity is not any unsoundness of the reasoning faculty or derangement of the mind itself, psychologically or spiritually considered, nor erroneous reasoning only, nor violent passion *merely as such;* but is a morbid delusion of the senses, the feelings, or the imagination, which furnish the material on which the reason acts. As the serene and unchanged sun of heaven reflects, from a deranged atmosphere, unreal and often distorted images, and even such as the beautiful *fata morgana* in the Bay of Naples, so the mind of man, operating through a diseased brain or the false suggestions of unsound senses, presents delusive objects or imaginary facts which have no existence elsewhere than in a diseased brain or morbid imagination. The cause is physical, the effect mental. It is delusion—delusion of a diseased brain or unsound senses. Man is so constituted as to be fitly adapted to the material and moral world around him. He is so organized physically, when his organs are all perfect and sound, as to perceive external objects as they are, and, so constituted morally, as to be able, by his reason, to deduce true and right conclusions from existing facts, and to conform his acts to the will of God and the laws of his country. And, when in this perfect condition of constitutional harmony and adaptation, he is, in the legal sense, sane, and is responsible for his conduct; because being possessed of all faculties necessary for perceiving the truth or doing his duty,—for the proper exercise of

those powers he should, as a moral and accountable being, be responsible to God and his country; and whatever the degree of his intelligence may be, he is legally sane.

But let this harmony be disturbed, and this organic adaptation be dislocated, and then, the mind being perverted and the reason deluded by causes which can neither be eluded nor controlled, erroneous judgment and moral deviation are as unavoidable as the laws of nature—the man is so far out of his element—not as he was made, and to that extent unsound or insane; and consequently responsibility ceases as far as the reason of it ceases. If a man's vision is so far deranged as to present objects which do not exist, or to exhibit in a distorted or false aspect, such as do exist, he is, in that respect, insane: and, as by a fundamental law of his constitution, he *must* believe what he sees, and *will* act according to that belief, he cannot be reasonably responsible for the effects of the optical illusion. Nor, for the same reason, can he be responsible for the natural consequences of a delusion which is the necessary offspring of false images or imaginations produced by a disorganized or diseased brain.—And this, therefore, is an illustration of legal insanity, which is defined by Erskine, in *Hadfield's* case, to be *delusion*. But this is too comprehensive. All delusion is not insanity; for errors of judgment or of conduct arising only from a bias of interest, sympathy or education, or from a mere want of proper consideration, or from enthusiasm, or from violent passion, are the common fruit of sound, as well as of unsound minds, and are not, therefore, proofs of insanity. When a man is actuated by a rational motive arising from facts actually existing, then, however excessive or exceptionable his conduct may be, or however burning the enthusiasm or violent the passion that impels him, he *may* not be, in the legal or scientific sense, insane. He is not deceived by false images—there is no delusion of the senses or the brain; the facts on which he reasons and acts, do actually exist, however insufficient they may be for influencing a sober and rational mind; and therefore having the power to make right deductions from them and to control passions by reason, he may not be insane, and might be responsible. But when his motive arises from a mere chimera of a disordered brain, or the morbid imagination of a fact, or evidence of a fact, when there is neither such fact nor any evidence of it,—then his reason *cannot* undeceive him, his judgment *must* be wrong, and he is, consequently, insane and, so far, irresponsible. The sacrifice of *Desdemona*, by her devoted husband *Othello*, was the effect of passion, and not of disease. His reason acted on facts which existed and were communicated to him by *Iago*; and, in both ethics and law, he was responsible for drawing wrong inferences from those facts, and for permitting his passions to subjugate his reason. He was not therefore insane, in the technical sense, and was a murderer, But, had there been no such facts, nor any evidence of them, and had he only imagined them, or had he, for example, *only imagined*, that he saw a paramour of *Desdemona*, night after night, enter his room and defile his bed in *his own presence*, and *escape through the window or the key-hole to avoid his own drawn sword*,—then he was undoubtedly insane, and his homicide would have been excuseable *as the natural* offspring of a disordered mind. This is the kind of delusion which is meant when insanity is said to be delusion: it is, I repeat, a delusion resulting, not merely from false reasoning, but from imaginary *facts*, the images of which are so vividly imprinted on the mind by some distempered organ as to force the belief of their truth and baffle all external proof of their falsehood. And this too is the conception of intellectual insanity recognized in the cases of *Hadfield* and *Lord Orford*, and *Dew* v. *Clark*, in England, and *Moor's* will, and *Lawrence* in our own country, and in many other leading cases both in England and America.

From the foregoing considerations and authorities, we feel authorized to conclude, that intellectual insanity is delusion unavoidably resulting from some unhealthy or deranged condition of the physical man, which necessarily produces false impressions and emotions, and consequently perverts the reason from a mentor of truth into an inexorable guide to strange and perilous error.

And tried by this definition, the facts proved in this case, as we confidently believe, shew, beyond a rational doubt, that, when he shot his brother-in-law, *Dr. Baker* was of unsound mind—laboring, especially under insane delusion as to him and his own wife, and, to that extent, *totally insane*.

But here I feel it to be my duty to admonish you to be careful to discriminate between legal insanity, and the ordinary delusions of a sound mind arising only from passion or false and imperfect reasoning, and also to understand clearly that, in such a case as this, public justice and security require that the plea of insanity should be maintained, not only by satisfactory proof of delusion, but by *affirmative* and *intrinsic* proof that the source of the delusion was a disordered or excited brain producing the honest conviction of the existence of facts which do not exist, and for the assumed existence of which there was no evidence that could have operated on the belief of rational mind. In the case of Moor's will, had there been no other evidence of the testator's insanity than the simple fact that he said his brother attempted to poison him, the will ought to have been established—because that fact alone was neither sufficient proof of the sincerity of the testator's declarations, nor of the non-existence of any rational ground for believing what he declared—and, in the absence of other evidence, the fact that there had been an attempt to poison him would have been intrinsically less improbable than that of his insanity. But it was proved affirmatively, not only that he had no rational ground for his charge, but that it sprang from an insane conception when he had been in the

delirium of a severe and protracted fever. So, too, had the only evidence of Dr. Baker's insanity been the fact that he had said that Daniel Bates was a ferocious husband and secretly meditated his ruin because he was protecting his sister, and also that he (Bates) had illicit intercourse with his (Baker's) wife, I would candidly admit that the plea of insanity is not sustained. But if, as we contend, we have indisputably proved that Dr. Baker believed what we have shown that there was no evidence to support, and moreover, that which was intrinsically improbable and even, to some extent, impossible, then, without the testimony as to his physical appearance and condition, but more conclusively in connexion with it, we shall, with undoubting confidence, insist, not only that our plea is incontrovertibly maintained, but that a stronger and clearer case of partial insanity than this is not recorded in any adjudged case on earth.

With such qualifications and cautions, there can be no danger of an unjust acquittal on a false plea of insanity—without them, the guilty will often be acquitted on the ground of simulated insanity or of a misconception of its true character, and the innocent insane may, as often, be unjustly convicted. But we feel sure that proper application of the true doctrines of science and of law to the facts proved on this trial, will insure the acquittal of the accused. If there be any wisdom in experience, truth in science, or certainty in knowledge, there are two classes of facts in this case, either of which must be sufficient to prove Dr. Baker's insanity now and when he shot Bates, and both of which united, present as conclusive a defence as ever was established in a case of acquittal on the ground of insane delusion.

First. His physical appearance and condition were, at the time of the shooting, and yet are just such as, according to all instructive experience, derived from observation, from tradition, or from books—indicate *monomania*—quick and excited pulse, a peculiar temperature, a wild expression, a restless and jealous temper, a singular flaccidity and hang of the muscles of the face, and, when particular topics are touched, an indescribable stare of the eyes and enlargement and apparent electrification of pupils, and incoherence of speech, vehemence of temper, and total absorptoin of feeling. These and other nameless badges of partial insanity are not always marked nor generally understood or rightly interpreted by unskilful and casual observers—but they are soon noticed with concern by intimate associates, and are deemed infallible symptoms of mental derangement by all well acquainted with the true character and signs of such insanity. Dr. Richardson testified that an examination of the accused in the prison convinced him that he is an insane man, and not only did he detail to you all the evidences just enumerated, but others have proved that Dr. Baker's condition, bodily and mental, is now rather better than it was when Bates was shot. And who, I ask each and all of you in full confidence, has closely observed the prisoner during this whole trial without feeling that he is now the victim of insane excitement and delusion? Not even one, I am sure.

The first class of facts alone ought therefore to be deemed satisfactory proof of Dr. Baker's insanity when he killed his brother-in-law.

Second. But the other class of proofs is even more irrefutable and conclusive. If Dr. Baker believed the charges he made against his wife and his mother and sisters, and others—all of whose characters are spotless and exalted—he was certainly insane; because there was no evidence to excite, in a sound mind, even a suspicion of the truth of any one of the facts charged, and most of them were so exceedingly incredible and even morally impossible as to make it infinitely more difficult to believe their truth than his derangement. Not one fact has been proved which could tend, in the slightest degree, to authorize a rational man, however jealous, to believe any one of those charges. This is admitted by all the counsel for the commonwealth.

Nor can there be a rational doubt that Dr. Baker honestly believed that every charge was true. This is demonstrated by the frequent and almost constant reiteration of those charges, the circumstantiality and identity of all his statements, his peculiarly earnest and excited manner whenever he made them, and especially also by the conclusive fact that if he labored under no insane delusion, there was no imaginable motive for his unaccountable conduct in making such outrageous charges, or for his unparalelled cruelty to his wife. The imputation of a desire to get a portion of Bates' estate, or of revenge for Bates' delicate evasion, or suspension, of Bakers' proposal to unite with him in a certain small adventure, is perfectly gratuitous and absurd. Possessing, in an eminent degree, the confidence and friendship of his brother-in-law, and enjoying without stint, his hospitality and bounty, Dr. Baker had every motive that could influence a rational, prudent, or grateful man, for continuing to cultivate their friendly and confidential relations, and had every reason to expect, as a consequence, the increased munificence of Bates. But, by hostility to Bates, and especially by effecting his death, Dr. Baker ostracised himself, cut off all possibility of ever enjoying his bounty, his aid, or any portion of his large estate. This itself would prove insanity, if his charges against Bates were all false. It would be equally ridiculous to suppose that, as a rational man, Dr. Baker married his wife for the purpose of sacrificing her, or that he meditated her sacrifice as a clumsy device for extorting money from her wealthy and honorable father. His communication to that father, and his proposition to remove to Missouri on the condition of an advance of a comparative small sum, are only corroborative evidences of his insanity. And certainly no rational man, desiring to enjoy the liberality of a father-in-law, would have acted as he did Such a course was sure to defeat such an end. If he ever suggested to Davis,

before marriage, that he did not expect to live long with his wife, (and of this there may be much doubt,) he meant only that, as, in his opinion, Bates was conspiring with others to prevent the union, and was maliciously plotting his assassination, he would in the event of a marriage effect a separation either by his death or by intrigue and calumny. This is evident from all the circumstances.

It cannot be believed that any respectable man perfectly sane could have conducted himself as Dr. Baker did. Such a monster—such a devil incarnate does not exist among men. If he knew that all he published was false, no other than a purely diabolical motive could have impelled him. It cannot be believed that any man of his character, education, family, hopes, prospects, and associations, could have, all at once, become such a demon. And what could a rational man have expected from such a monstrous course, but the most destructive consequences to himself and to all whom, as a human being, he most loved? He could then have had no rational motive for simulation of insanity; and if he had, he could not, as a man of sound mind, have acted, and talked, and looked as, for a long time he did, and even yet does habitually. Moreover had even this been possible, and could it be believed that he was so mysteriously bent on mischief and ruin as to determine on the destruction of his wife and his brother-in-law, and to feign insanity for screening himself from punishment, there can be no doubt that he neither could nor would have done as he did. By making others believe that he was insane he would have defeated the imputed purpose of blasting his wife and Bates; for not only was the incredibility of his charges against them the proof of his insanity, but the conviction of insanity would rescue them from injury. And, besides, had he intended to counterfeit the appearance and conduct of an insane man, he would have attempted those of a maniac or madman, which all who saw him would have understood as insanity, and he would not have conversed and acted rationally on general subjects and occasions—*nor would he have charged Bates with impregnating his (Baker's) own young sister, nor his mother and sisters with keeping a house of prostitution.* Nor, if his object had been to induce a belief of his wife's guilt and Bates' alleged misconduct, would he have implicated *so many* and *such other* persons, or have told so many tales that no rational being would or could believe. For instance, he would have made a general charge of illicit intercourse between Bates and his wife, which might have been accredited, or at least have created such suspicion as to effect his mischievous end,—but he surely would not have said, as he often did, that this intercourse was on his own bed and in his own presence—nor that his young wife had prostituted herself to the embraces of her uncle, an ugly negro, and her own reputable and devoted father—nor that her preceptor, who was and is a minister of the gospel of as pure a character as any that lives, had seduced her when she was only nine years old, and had also seduced a majority of his female pupils and kept a *harem*—nor would he have publicly tried the signals (ascribed by him to that teacher), on a respectable lady who had been educated by him, nor have declared, as he foolishly did, that she understood them perfectly and responded to them favourably. No, no! Such could not have been the conduct of a sane devil, (if such a monster can exist in human form,) who wished to impress the conviction that his wife was foul and faithless. Had such been his purpose, such devices would have insured its frustration.

But he still insists that he can prove every charge, and would rather be shot than acquitted on the plea of insanity, which he indignantly denies. Then I feel authorized to conclude that Dr. Baker believed all he said concerning his wife and Bates. And could any rational man have so believed? Is it possible for a sane man to doubt either that Dr. Baker believed all he charged, or that such belief is conclusive proof of an insane delusion? In addition to the absurd and monstrous charges just alluded to, he repeatedly said that, when on a visit to his father's, his mother, after he and his wife had retired to bed in an upper room, was in the habit of opening the door of their chamber to let in to his wife another man, and whom he compelled, one night, to escape through the window, by drawing his pistol on him; and also that, during that same visit to his father's, a negro man had lamed his (the Doctor's) horse, for the purpose of compelling him to prolong his stay, so that this black man might continue to enjoy the embraces of his (the Doctor's) wife. I might remind you of many other facts conducing strongly to the same conclusion of insanity; but the more prominent, which have just been grouped together, stand out in such bold relief as to leave no ground for a doubt of the truth and necessity of that conclusion.

If the accused was or is sane, who on earth was ever a lunatic! In him we have found, not a few equivocal signs of insanity, but every badge known or described by those conversant with the subject. This is, therefore, a perfect case. In every point and lineament of the monomaniac it is well defined and complete. This I affirm on the clear and indisputable facts, on the authority of the books, and on the undoubting and concurrent opinions of all the medical men who have testified in this case.

The opinions of common men, of common observation, on a question of insanity, are entitled to but little, if any influence. Such is the doctrine of reason and of the highest judicial authority in Kentucky and elsewhere. But both the same sources of authority unite in giving great, and generally decisive effect to the opinions of enlightened medical men on that subject. And do you not perceive the reason of this distinction? On a question of partial insanity of mind, ordinary men, in an ordinary condition, are not competent judges, any more than they are competent to

decide the most difficult questions of abstruse law. So far as such witnesses may be concerned, in such cases, the facts proved, and not their opinions, must form the basis of the jury's decision. But, on a question of sanity or insanity of body or mind, the opinions of eminent physicians and of medical philosophers must be regarded as persuasive, if not controlling. On this point we will read, from *Ray*, the following forcible remarks: "As the conclusions of the jury relative to the existence of insanity, must necessarily be based on the testimony offered by the parties, it is a subject of the utmost importance, by whom and in what manner this testimony shall be given. If the decision of this point were purely a matter of fact, the only duty of the jury would be to see that they were sufficient for the purpose and produced from authentic sources. But on the contrary, it is a matter of inference to be drawn from certain *data*, and this is a duty for which our juries, as at present constituted, are manifestly unfit."—"Such however is made their business, and, in the performance of it, there is but one alternative for them to follow—either to receive, with the utmost deference, the opinions of those who have a professional acquaintance with the subject, or to slight them altogether, and rely solely on their own judgment of the facts." "It is perhaps of little consequence who testifies to a simple fact which it requires only eyes to see or ears to hear; but it is all very different with the delivery of *opinions* that are to shape the final decision. As this requires the exercise of judgment, as well as observation, there ought to be some kind of qualification, on the part of those who render such opinions, not required of those who testify to mere facts," (p 57.) And again from page 59 as follows: "An enlightened and conscientious jury, when required to decide in a case of doubtful insanity, which is to determine the weal or woe of a fellow-being, fully alive to the delicacy and responsibility of their situation and of their own incompetency, unaided by the counsels of others, will be satisfied with nothing less than the opinions of those who have possessed unusual opportunities for studying the character and conduct of the insane, and have the qualities of mind necessary to enable them to profit by their observations. If they are obliged to decide on professional subjects, it would seem but just, and the dictate of common sense, that they should have the benefit of the best professional advice."

The suggestions, therefore, of a few common men on the side of the Commonwealth, that, in an occasional view transiently taken of Dr. Baker, they did not perceive that he was insane, are entitled to no effect whatever—1st., because they were incompetent judges: 2nd., because their opportunities were insufficient; and, 3rd., because the accused is admitted to have been apparently rational on the common subjects on which they happened to hear him speak.

But the opinions of many of our unprofessional witnesses are entitled to influence—1st., because they were intimate associates, and father, and mother, and sisters, who had extraordinary opportunities of finding out the truth; and. 2ndly, because they also testified to facts which sustain their own opinions. And, so far as opinions can operate, we have, what is yet more satisfactory, the concurrent and unhesitating opinions of the three medical gentlemen who have testified before you, two of them at the instance of the accused and the other at that of the Commonwealth. Dr. Hervey Baker has told you that he had no doubt of his brother's insanity when he shot Bates: and he has also told you facts which prove, beyond a doubt, that this opinion is right. It is true he said that, for sometime, he was perplexed between the deduction of his brother's insanity and the presumption that his wife might have been afflicted with *nymphomania*—but that, as soon as he had read an approved treatise on insanity, and learned the facts correctly, which he had never previously done, he came to the clear and fixed conclusion that his brother was a *monomaniac*. Dr. Richardson is eminently qualified to judge. His long experience, his peculair position for more than 25 years, and his extensive observation of insanity in all its forms during that time, entitle his opinions in this case to very great respect. He has testified that his examination of the accused would alone have convinced him of his present insanity; and for this opinion, he has given you all the reasons you will find in the most approved books as signs of insanity. He also heard the testimony given by other witnesses, and said peremptorily that, on the facts proved by these witnesses, he could feel no doubt that Dr. Baker, when he killed Bates, was insane as to him and his own wife, at least; and that the killing was the offspring of that insane delusion. He moreover, gave you many strong reasons for his conclusions, and emphatically affirmed that he had never seen or read of a clearer or better defined case of particular insanity than that of the prisoner when, before, and since he shot Bates. The other professional witness, your own physician, Dr. Reid, who was introduced by the Commonwealth, had not heard the other witnesses; but, on a hypothetical statement of the prominent facts as proved, (and which was admitted to be true,) he said that the prisoner was "undoubtedly insane" when he killed Bates, and was, in his opinion, "undoubtedly" irresponsible for that insane act.

And, gentlemen, why has no physician been brought to testify that the facts do not prove insanity? Have not the numerous, wealthy, and vigilant prosecutors long known that the accused would be defended on the plea of insanity? The only reason is, that they could not find a respectable physician in Kentucky who would not have concurred, as their witness, Dr. Reid, did, with Dr. Richardson. And I

am confident that no honest and enlightened physician in America would venture to express any other opinion on the facts than that so firmly, clearly, and imposingly given by Dr. Richardson.

But we have been asked why the prisoner was not placed, by his friends, in a lunatic asylum? The question is irrelevant; because the omission to confine him in an asylum cannot impair the force of the facts conducing to prove his insanity. Nevertheless, the answer is:—1st., because his friends did not apprehend any mischief—2nd., because they were advised that a winter's residence in Cuba, far from the disturbing scenes and associations, might restore his physical strength, and, with it, his mental sanity—and 3rd., they apprehended that, were they, before a final trial, to attempt to send him to the asylum, the act would be ascribed to a disposition to elude a trial by false means. But there can be no doubt that his father, mother, and sisters, and others at Lancaster, discovered, and conversed with each other about his derangement before he killed Bates—and the letter written, before that event, by his father to his sons at Knoxville, proves that *he* was of opinion that his son Abner was then insane.

You should not here forget that no fact is proved by the prosecution inconsistent with the evidences of insanity established by the defence. The fact that the accused manifested some skill and self possession when he shot Bates is not at all inconsistent with the existence of insane delusion as proved. All lunatics and all suicides manifest similar sagacity and dexterity on similar occasions; and, if this should disprove insanity at the moment of killing, no man would ever have been acquitted on the ground of derangement, nor should ever plead insanity on an indictment for murder; and then, too, Hadfield, and Lord Orford, and Lawrence, and a host of others were acquitted illegally; for, in all these cases, the homicide was skillfully executed or attempted.

Now, gentlemen, considering the true nature and signs of intellectual insanity, general or particular, as established by experience and improved science—considering the physical appearance and condition of the accused—considering the facts proved as to his conduct and his conversations—and considering the medical opinions of all the professional witnesses and the great respect to which these alone would be entitled—can any one of you, all sworn to decide this case according to the law and the testimony, allow yourself to doubt that the accused, when he killed his brother-in-law, (which act itself, without any rational motive, is strong evidence of insanity,) labored under an insane delusion as to said Bates and his own wife? May we not reiterate that a clearer, stronger case of monomania cannot be found on record? Can there be a doubt that the prisoner imagined strange facts that did not exist, for the supposed existence of which there was no evidence whatever, and of the falsehood of which no arguments or proofs could have convinced him? Did not a morbid brain impress all these false and delusive images on his mind; and did he not, therefore, believe them all to be true, as firmly as a man of sound mind would be bound to believe the testimony of his own senses? Then, in fact, and in law, he was insane and this branch of his defence is satisfactorily sustained.

The three employed counsel, who have argued this case, have not discussed the facts, as proved, nor attempted to reconcile them with the assumption of the prisoner's perfect sanity —nor has any one of them ventured to deny that he was and yet is partially insane, otherwise than by insinuating that there is no other insanity than that which is general; and thus virtually conceding that, if there be such insanity as monomania, the accused was a monomaniac on the subject of his wife and Bates. But nevertheless, they all have argued that, admitting this insane delusion, the accused, being apparently rational on other subjects, should be presumed to have known right from wrong, and to have been conscious, therefore, that he was violating the law in killing Bates. And, if he should be found guilty, I feel confident that the verdict will be the consequence of error on this point.

It is important now, therefore, to endeavor to understand the doctrine of the law which should govern this case.

The first of the hired counsel for the prosecution, who opened the argument, did not touch the law. He dealt chiefly in appeals to your passions and prejudices, and drew largely on his own convenient imagination for facts, as well as arguments; the second, though he glanced at some law, was equally fanciful and pathetic. But the third, whom I succeed, read copiously from Blackstone the common law of homicide, which no lawyer controverts; and from the Bible also several chapters on the same subject, and not one word of which, as he finally admitted, had any legitimate application to your present duty.

Why you were detained with so much superfluous reading from Blackstone cannot be imagined, unless the object was to make you believe that it is all pertinent and against the prisoner. But the purpose of introducing the Bible cannot be mistaken; and it is matter of regret that this holy book should be perverted and prostituted to any such unholy end as that of hanging a man who is entitled to an acquittal by the local law of the land—the only law by which you can try him. Does the counsel suppose that he can delude you into the belief that you can administer the Mosaic law of God? I trust that you will undeceive him, and let him know that the accused can be sacrificed by your verdict on no other altar than that of human law. Responsibility to God must be enforced by God.

The only portions of the extensive readings in behalf of the Commonwealth, which is applicable to this case, is so much of the definition of murder as requires, as indispensable to temporal punishment, that the manslayer shall be of sound mind, and declares that, if he had discretion enough to know that he was doing wrong, and a sufficient degree of moral power to avoid it, he should be criminally responsible.

Our criminal code, whose end is, not retribution or revenge, but prevention and security only, intends that the example of punishment shall effect this end; and consequently, as example could not deter those who have not the capacity of knowing their duty or the power to perform it, the law will not punish for an act springing from an insane delusion, and which the actor had not the power to avoid. A voluntary abuse of free will, by a rational creature, is the foundation of all guilt, moral or legal. When the will is either perverted, or overwhelmed by unavoidable delusion, the blind agent is not responsible to any forum, human or divine. To perish for an act which was the offspring of such a deluded will, would be inconsistent with humanity, justice, and public policy. No punishment, however certain and sanguinary, could prevent the recurrence of similar acts under similar circumstances. Consequently, judicial punishment, in such a case, would be judicial murder—and therefore the punitory sanctions of our law are addressed to those who have the intellectual power to perceive right and the moral power to abstain from wrong. Hence, an idiot is not punishable for any act; and, for the same reason, a lunatic, when deranged on all subjects, should not be liable to any punishment for any act done during the prevalence of the general insanity. A very large majority of lunatics, however, are only partially insane; and to this comprehensive class, belongs the monomaniac.

But, within the sphere of the derangement, whether general or only partial in its extent, is not the unfortunate victim of delusion as insane in the one class of cases as in the other —in other words, if a man be insane on one subject only, is not his insanity, within the whole circumscribed range of that subject, as total as it would have been had he been equally insane on all subjects? And, if then, a monomaniac, acting under the influence of his insane delusion, kill a fellow-being, as to whom he is deranged, is he more guilty than he would have been had his insanity been general? As to every thing within the insane zone, may not the mind be unhinged, and, for all rational purposes, powerless? And should it be predicated of a man in this position, that, because, beyond the circle of eclipse, he enjoys, in some degree, the light of reason and the blessing of moral power, therefore he shall be presumed to have the benefit of a reflected light, or of some dim twilight to guide his steps through the delusive labyrinth of intellectual darkness also? We insist that this presumption is authorized by neither reason nor justice, philosophy nor law.

Ever since the acquittal of Hadfield in 1794, the jurists of England and America have recognized the doctrine that a person, doing an act under the influence of insane delusion and who was, in consequence of derangement, unconscious of doing wrong or was impelled by an irresistible motive, is not subject to legal punishment for such inevitable conduct. But, whether an act done within the range of partial insanity and under its influence should be presumed to have been impelled by irresistible impulse or been committed without a full consciousness of its being wrong, is a question which may not have been authoritatively settled in England with satisfactory precision or undoubted certainty. We are satisfied, however, that a careful analysis of the adjudged cases and of the elementary discussions on this subject should result in a conviction that such is the presumption of reason, and ought to be, and is that also of the law.

The scientific and eminent jurist Evans, in his Annotations to Potheir on obligations, recognizes what we consider the true rule in the following perspicuous and precise terms—"I cannot but think that a mental disorder operating on partial subjects, should, with regard to these subjects, be attended with the same effects as a total deprivation of reason, and that, on the other hand, such a partial disorder, operating only on particular subjects, should not, in its legal effects, have an influence more extensive than the subjects to which it applies; and that every question should be reduced to the point, whether the act under consideration proceeded from a mind fully capable, in respect to that act, of exercising free, sound, and discriminating judgment; but, in case the infirmity is established to exist, the tendency of it to direct or fetter the operations of the mind should be, in general, regarded as sufficient presumptive evidence, without requiring a direct and positive proof of its actual existence."

The only doubt we feel concerning this view is, whether it may not be too vague and even not altogether accurate in the concession that an act on one subject cannot be presumed to have been influenced by insanity on any other subject; for, there may be doubt whether a mind insane on some subjects can be perfectly sane on any other subject, and still more doubt whether insane delusion on one point only may not exercise a controlling influence over all the operations of the mind and emotions of the heart. We admit, however, that this general qualification suggested by Mr. Evans has been judicially recognized and established as being true both in civil and criminal jurisprudence. But what reasonable objection can be made to his rule in any other respect? If the law—assuming that a person admitted to be insane on one subject only is perfectly rational and free to act as he ought on all other

subjects—therefore, presumes that there is equal consciousness of right and wrong and ability to pursue the right and avoid the wrong in all the monomaniac's conduct within the scope and influence of the particular insanity—then the plea of insanity could be no available defence to any but idiots or those lunatics who are totally insane on all subjects. It could be no defence to those whose insanity is partial either in degree or extent; none to a vast majority of the occupants of our mad-houses; none whatever, to any, except such as will never need it; for it is not probable that an idiot will ever be indicted for murder, and we should not presume that a lunatic, totally deranged on all subjects, and, while in that state committing a homicide or other breach of the penal law, will ever be prosecuted as a criminal. But we know that particular insanity is a legal defence in a criminal prosecution, and that it has been successfully pleaded in many cases. And it can have been thus successful on one hypothesis only—and that is, that, when it has been proved that the act charged as a crime was done within the range and under the influence of monomania, the law presumes, prima facie, that it was done involuntarily or without a consciousness of criminality—for, if the existence and potential exercise of reason generally, should legally imply the capacity to exert it conservatively on the subject of particular derangement, then, certainly there could no proof of facts sufficient to shew that it could not, and therefore ought not, to have been preventively exerted in every case and on all occasions unaccompanied by actual duress. To shew that reason on some subjects does not imply effectual reason on the particular subject of insanity, Ray says—"No one will be bold enough to affirm that a certain idea cannot possibly be connected with a certain other idea in a healthy state of mind, least of all when it is disordered by disease, so that the existence of partial insanity once established, it is for no human tribunal to arbitrarily circumscribe the circle of its diseased operations." (p 253.) If there be such insane delusion on a particular subject as to imagine the existence of things which have no semblance of real existence, is not the mind totally insane on that subject? And if so, would it not be unphilosophical to presume an unfettered will on that subject, or a perfect consciousness of the moral and legal character or consequence of any act excited by that insanity? Such a presumption would be, moreover, absurd; because it would presuppose the non-existence, (partially at least,) of insanity. Besides, when an act of violence—homicide, for instance—results solely and directly from an insane delusion respecting the person killed, would it not be unreasonable to presume that there was no moral delusion also, or that, in the act of killing, the agent enjoyed moral freedom and well knew that he was doing wrong and ought to be punished? Would it not rather be more reasonable to presume that, under the influence of the derangement and in the tumult of passions kindled by it, he was impelled by overwhelming delusion, or conscientiously and firmly believed that he was the rightful avenger of his own wrongs, and that the mode resorted to was a proper and legal right? On this question, Ray, p 260, says—"Each delusion alike was the offspring of the same derangement, and it is unjust and unphilosophical to regard one with indifference as the hallucination of a madman, and be moved with horror at the other and visit it with the utmost terrors of the law, as the act of a brutal murderer." Again, on p 259, he says—"Now, though such a person may not be governed by any blind irresistible impulse, yet to judge his acts by the standard of sanity, and attribute the same legal consequences as to those of sane men would be clearly unjust, because their real tendency is not and cannot be perceived by him. Not that his abstract notions of the nature of crime are at all altered, for they are not, but the real character of his acts being misconceived, he does not associate them with their ordinary moral relations. No fear of punishment restrains him from committing criminal acts, for he is totally unconscious of violating any penal law, and therefore the great end of punishment, the prevention of crime, is wholly lost in his case." And again, on p 255–6, speaking of homicide produced by monomania, he says—"It must not be overlooked that, in cases like the latter, the insanity manifests itself, not only in the fancied injury, but in the disproportionate punishment which he inflicts upon the offender, and it is absurd to consider one manifestation as a delusion and the other a crime." This appears to be sound logic and good law. And, in this case, the act of killing Bates—if there was no rational motive or actual provocation—was, alone, strong evidence of insane delusion, as much as to the moral and legal character of the act, as it could be as to the imaginary cause and end of it. The fact that the accused appeared to be rational on some subjects, may be sufficient to show that he knew right from wrong, and had moral ability to abstain from wrong, within the scope of those subjects; but it ought not, therefore, to be deemed sufficient proof of his possessing such reason and moral sense and power as to objects or acts within the range of his insanity. He doubtless knew that murder was criminal—but should not be presumed to have known that the killing of Bates, as to whom he was insane, would be murder, or, in any sense, a criminal act.

Considering this palpable distinction between a consciousness of right and wrong generally and in the special case as to which there is insanity, Ray, p 33–4, says—"The purest minds cannot express greater horror and loathing of various crimes than madmen often do,

and from precisely the same causes. Their abstract conception of crime, not being perverted by the influence of disease, presents its hideous outlines as strongly defined as they ever were in the healthiest condition; and the disapprobation they express at the sight arises from sincere and honest convictions. The particular criminal act, however, becomes divorced in their minds from its relations to crime in the abstract, and being regarded only in connexion with some favorite object, which it may help to obtain, and which they see no reason to refrain from pursuing, is evinced, in fact, as of a highly laudable and meritorious nature. Herein, then, consists their insanity—not in preferring vice to virtue, in applauding crime and ridiculing virtue—but in being unable to discern the identity of nature between a particular crime and all other crimes, whereby they are led to approve what, in general terms, they have already condemned." Again, on p 41, he says—"The existence of the illusion is obvious and cannot be mistaken, but what may be the views of the maniac respecting the moral character of the criminal acts which he commits under its influence can never be exactly known, and, therefore, they ought not to be made the criterion of responsibility. But it is known that one of the most striking and characteristic effects of insanity in the mental operations, is to destroy the relation between ends and means—between the object in view, and the course necessary to pursue, in order to obtain it. It was in accordance with these views that Lord Erskine pronounced delusion to be the true test of such insanity as exempts from punishment, and that the correctness of the principle was recognized by the Court."

Providence has wisely harmonized our intellectual and moral faculties so that whenever we are able to perceive the truth, we generally have the moral power to act in conformity to it; and, therefore, we are culpable if we do not so act; and, for the same reason, when, in consequence of intellectual derangement, we are unable to perceive the truth, or, instead of it, imagine that which is false or has no real existence or foundation, our moral power is, or should be presumed to be, to the same extent perverted or paralyzed; and, therefore, not being, in that respect, free and rational moral agents, we are irresponsible for the acts of our diseased minds.

But if it be not universally or even generally true that moral derangement or inability accompanies intellectual insanity, still there can be no doubt that the moral power of the monomaniac is not always, if ever, able to control the volcanic eruptions frequently produced by the insane delusions of a disordered intellect. On this subject we will again read from Ray, p. 251, the following appropriate suggestions:—"Amid the rapid and tumultuous succession of feelings that rush into the mind, the reflective powers are paralyzed, and his movements are solely the result of a blind, automatic impulse with which the reason has as little to do as with the movements of a new-born infant. That the notions of right and wrong (may) continue unimpaired under these circumstances proves only the partial operation of the disease; but in the internal struggle that takes place between the affective (moral) and intellectual powers, the former have the advantage of being raised to their maximum of energy by the excitement of disease, which, on the other hand, rather tends to diminish the activity of the latter. We have seen that generally after the fatal act had been accomplished and the violence of the paroxism subsided, the monomaniac has gone and delivered himself into the hands of justice." Again, on p. 262:—"the real point at issue is, whether the fear of punishment or even the consciousness of wrong doing, destroys the supposition of insanity—and this is settled by the well known fact that the inmates of lunatic asylums, after having committed some reprehensible acts, will often persist in denying their agency in them in order to avoid the reprimand or punishment which they know would follow their conviction." And again, p. 263:—"We have an immense mass of cases related by men of unquestionable competency and veracity, where people are irresistibly impelled to the commission of criminal acts while fully conscious of their nature and consequences: and the force of these facts must be overcome by something more than angry declamation against visionary theories and ill-judged humanity. They are not fictions invented by medical men (as was rather broadly charged upon them in some of the late trials in France) for the purpose of puzzling juries and defeating the ends of justice, but plain and unvarnished *facts* as they occurred in nature; and to set them aside without thorough investigation, as unworthy of influencing our decisions, indicates any thing rather than that spirit of sober and indefatigable inquiry which should characterise the science of jurisprudence. We need have no fear that the truth on this subject will not finally prevail, but the interests of humanity require that this event should take place speedily." And lastly, on p. 265:—"The criminal act for which its subject is called to account, is the result of strong and sudden impulse, opposed to his natural habits, and generally preceded or followed by some derangement of the healthy action of the brain or other organ. Where is the similarity between this man who, with a character for probity, and in a fit of melancholy, is irresistibly hurried to the commission of a horrid deed, and those wretches who, hardened by a life of crime, commit their enormities with perfect deliberation and consciousness of their nature?"

I will read no more on the subject from elementary books, but, for confirmation of all I have read to you from Ray, I refer to every modern work on insanity and medical jurisprudence, and particularly to Prichard, Esquirol, Beck, and Guy—between all of whom and Ray there is a substantial coincidence.

And adjudged cases are still more authoritatively confirmatory of the same just and consistent doctrines. In Hadfield's case the only enquiry was, whether he was lead by intellectual delusion to shoot at his sovereign; and, on this ground alone, he was acquitted by the jury with the approval of the presiding judge, without enquiring whether the alleged insanity being established, the prisoner should be presumed, nevertheless, to have known right from wrong generally, or even in that particular instance. And will any one of the prosecuting counsel deny that this is a leading case which has been approved by the most learned jurists?

On an indictment for murder, as already suggested, Lord Orford was acquitted on proof of monomania or insane delusion as to acts of hostility supposed to have been committed against him by the person whom he killed.

In that case Lord Lyndhurst told the jury they ought to acquit the prisoner if satisfied "that he did not know, when he committed the act, what the effect of it, if fatal, would be with reference to the crime of murder"—5th Carrington and Payne 168. There was no other circumstance tending to show a consciousness of wrong in the particular act (to which the instruction restricted the enquiry) than the simple fact of the insane delusion just mentioned. Yet a British jury very wisely presumed, from that insanity alone, an unconsciousness of wrong or the want of a rational free will; and their verdict has been approved without question, so far as I know and believe. Nor, as I believe, has any person, since the trial of Hadfield, been hung in England for murder, by an impartial tribunal, when there was satisfactory proof that the homicide was committed under the influence of monomania. In all such cases (and they have been various and numerous) there were either verdicts of not guilty or royal pardons. The doctrine recognized in Hadfield's case has never been overruled or disregarded in England; and the principle of that case is, "that a person is not criminally responsible for an act done under the influence of insane delusion."

The last of the prosecuting counsel who addressed you, read, from Notes to Starkie on Evidence, some loose dicta of one or two nisi-prius judges, which he seems to interpret as importing that a general knowledge of good and evil might be sufficient to impart legal criminality to a homicide committed under the influence of insane delusions. A full and perfect consciousness of wrong in the particular act is what was intended, as the history of this matter and the instruction in the case of Orford will clearly prove. The same juridical history will prove also that the practical doctrine, without deviation since 1794, has been that homicide committed under the influence of particular insanity, is not criminal, and that such insanity alone authorises the presumption, *prima facie* at least, that the act was done without a consciousness of its illegality, or without moral power to abstain from it. And we have a right to presume that both the theory and practice are the same in our own Union.

In 1835, Lawrence was indicted and tried in the District of Columbia, for maliciously shooting at President Jackson. His plea was insane delusion as to the President only; and, on proof of facts conducing to sustain that plea, the Court instructed the jury to regulate their verdict by the principles of the case of Hadfield, and the jury returned a verdict of not guilty, which has been approved as right.

In 1836, Theodore Wilson, who was tried for killing his wife when in a paroxysm of particular insanity, was acquitted in New York—the Court having instructed the Jury to acquit if they believed that the prisoner, when he committed the fatal act, "was not of sound memory and discretion."

And the Legislature of New York, for the purpose, as we presume, of recognising and conclusively settling the principle that an act done under the influence of insanity shall not be deemed criminal, has enacted that "no act done by a person in a state of insanity can be punished as an offence." This might be literally too comprehensive. But, as just intimated, we should understand it as meaning that an act influenced by insanity should not be punished. And, thus understood, does this statute do more than echo the announcement of the common law—that a homicide resulting from unsoundness of mind is not murder; or, more literally in the language of that law, that the murderer is a person of "sound mind" who slays his fellow creature without legal authority or excuse. When insane delusion prompts the person so afflicted to take the life of the object of delusion, is not the homicidal act that of an insane being? Is the manslayer, as to that act, "a person of sound mind." And, consequently, being, as he must be admitted to be, of unsound mind, can he be deemed guilty of murder, if tried by this acknowledged common law itself? Surely, on that particular subject, he should not be presumed to have had such discretion and self control as an infant 7 years old.

But the counsel, who last addressed you on behalf of the Commonwealth, seemed to think that, by "a person of sound mind," the law intends one whose mind is not unsound in all respects? After what I have already said, a further answer to this would be superfluous. He appears to think also, however, that the doctrine of Hadfield's case is overruled by other cases, or so much shaken as not to be entitled to much respect; and he has alluded to the cases of Earl Ferrers and of Bellingham in support of that allegation. But this, too, is altogether a mistake. The case of Ferrers was decided before that of Hadfield; and cannot, therefore, have overruled or shaken it. Besides, Earl Ferrers was not insane, according to my conception of insanity; because all the facts which incited him to the killing for which he was indicted, actually existed as he understood them to exist, and were not the mere figments of a diseased imagination—and,

consequently, it was vindictive passion, and not insane delusion, that instigated him. So Lord Erskine himself argued in Hadfield's case; and by that argument he illustrated the difference between furious passion and intellectual delusion or insanity; and therefore, insisted, as I reiterate, that Earl Ferrers was guilty of murder. But, in the same argument he distinctly admitted and successfully urged, in behalf of Hadfield that, had the facts been imaginary, and not real, then the Earl was so far insane—and that, the homicide being the offspring of that insane delusion, he was not legally guilty. Nor is there reason to infer that the jury considered Earl Ferrers as insane. The case, then, when fully and rightly considered, tends to strengthen, rather than to weaken, the leading principle recognized and defined in the case of Hadfield.

The case of *Bellingham*, who was hung for the assassination of the British Premier, Percival, is entitled to no respect or influence for any purpose; because the prisoner was tried, condemned, and executed within one week after he shot *Mr. Percival*, and was refused time to send across the British Channel for witnesses to prove that he was insane. He was hurried to sacrifice in a whirlwind of excitement and political alarm—and the report of the trial furnishes no reason for presuming that he was insane—indeed the facts, *as proved*, when tested by our definition of legal sanity, might conduce to the conclusion that his delusion was in his deductions from existing facts rather than in the morbid imagination of non-existing facts—in the process rather than in the source of his reasoning. And if this had been his actual condition, he was not, in the technical sense, an insane man. There is certainly nothing in the report of the case indicating that he was convicted *as a monomaniac* on the ground, nevertheless, that he had a *general* knowledge of right and wrong, or because the law should *presume* a consciousness of wrong in the particular act done unless the contrary had been clearly proved—and which, however true it may have been, would have been impossible in any other way than by proof of his particular insanity and of the fact that it led to the homicide.

Besides, after this conviction, the *monomaniac*, who attempted to assassinate the *Queen*, was acquitted *without any extrinsic evidence of his unconsciousness of doing wrong.*

In March, 1843, a British jury, under the instructions of *Ch. Jus. Tindal*, acquitted *McNaghten* on an indictment for murder in killing *Drummond* under the influence of an insane delusion while he was rational on other subjects. And, in June succeeding, the twelve Judges of England, gave a written opinion on the following abstract question propounded by the House of Lords:—"What is the law respecting alleged crimes committed by persons affected with insane delusion in respect to one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alledged crime, the accused *knew he was acting contrary to law*, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some supposed public benefit?" The Judges hesitated to express an opinion, because, as they very prudently said, every case should be decided on its own peculiar facts, and because also—in assuming that the person, though laboring under an insane delusion, *knew that he was doing wrong*—the question virtually answered itself, and shewed that the act was not *an insane act*. But they answered the question; and their answer, of course, was, on the facts propounded, if they could exist consistently with physiological truth, that the accused would not be legally excusable. But they did not intimate that insane delusion on a particular subject should be presumed to be accompanied with a perfect freedom of will or consciousness of wrong in submitting to the influence of the delusion: but, as I think, they clearly intimate the contrary. They say that, if the accused labored under no other unsoundness or defect of mind, or will, or reason, than an insane delusion as to a particular fact—an imagined injury, for example—then he should be tried just as a rational man should be, conceding the imagined fact to be true. This is all very clear, and as reasonable as it is clear. But does it imply that monomania is to be presumed, until the contrary be proved, to be thus restricted in the range of its influence? Certainly not. It only means that if, as assumed in the propounded case, the accused did, in fact, know that he was doing wrong, and (as should have been added) had the moral power to avoid it, he should be tried on the concession of the truth of the fact his morbid imagination had assumed to exist and his peculiar illusion should entitle him to no greater indulgence. And, on that point, the Chief Justice, speaking for himself and ten of his associates, said "he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime, that he was acting contrary to law." Now, if a general knowledge of right and wrong imply a consciousness of wrong in the particular instance of insane delusion also, why did the Judges say "if he knew that he was acting contrary to law?" They moreover say that the consciousness of wrong must be "in respect to the very act with which he was charged."

In this case, therefore, we find nothing against the position we are endeavouring to maintain, nor, in any degree, inconsistent with the judicial practice ever since Hadfield's trial; but much in confirmation of it. And the sustained verdict and judgment of acquittal in the case of *McNaghten*, as late as 1843—is itself a powerful confirmation.

I now feel authorised to repeat that there is no precedent in the criminal jurisprudence of England since 1794 which unsettles the principle then settled in the memorable case of

Hadfield, and that, on the contrary, that case has been made authoritative there and in the United States also by repeated practical and judicial recognitions. Nor can there be any doubt that the principle of that case is as we have explained it to be—that is that homicide which is the offspring of an insane delusion on a particular subject is *prima facie*, not murder, *because the law presumes that it was done without legal malice.* The verdict in that case was doubtless the result of the argument, which insisted on the principle just stated; and to prove this to you, I will read only a fragment of that argument, by Lord Erskine. It is that portion of it in which he animadverted on the acquittal of the unfortunate woman who killed Mr. Errington for deserting her after cohabiting with her for years in a blessed concubinage. After arguing that *delusion as to facts*, for the supposed existence of which there was *no evidence*, was insanity—he illustrated this conception by insisting that, as this discarded woman acted on *existing facts* and not on such as were the phantasms of a morbid brain, she was, not insane—and also by then urging the following considerations—"But let me suppose (*which would liken it to the case before you,*)—that she had never cohabited with Mr. Errington, that she never had children by him, and, consequently, that he neither had *nor could possibly have deserted or injured her.* Let me suppose, in short, that she had never seen him in her life, but that her resentment had been founded on the morbid delusion that Mr. Errington, who had never seen her, had been the author of all her wrongs and sorrows, and that, under the diseased impression, she had shot him. If that had been the case, gentlemen, she would have been acquitted upon the opening, and no Judge would have sat to try such a cause; the act itself would have been excessively characteristic of madness, because, being founded on nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved, in every case of murder, as the foundation of the conviction."

Baron Hume, in his commentaries on the criminal laws of Scotland—vol. 1, p. 36—after vindicating, with great power and on conclusive precedents and reasons, the doctrine we are maintaining, concludes in the following words:—"and, though the person may have that vestige of reason which may enable him to answer in general that murder is a crime, yet if he cannot distinguish a friend from an enemy, or a benefit from an injury, but conceives everything about him to be the reverse of what it really is, and mistakes the ideas of his fancy in that respect, for realities—those remains of intellect are of no sort of service to him, in the government of his actions, in enabling him to form a judgment as to what is right or wrong on any particular occasion."

In all such cases acts done within the sphere and under the influence of insane delusion are not to be assumed to be voluntary, in the rational and responsible sense. There is certainly a volition, and a demonstration of it; but it may be, and generally is, an animal will, impelled by the storms of passion without the guidance of right reason's compass, or the helm of moral sense. So far as the delusion extends, he is the mere automaton of it. And this was forcibly illustrated by a criminal trial in France described by Georget—in which, under a jargon of incongruous instructions, such as the Commonwealth's counsel now vindicate, the jury found specially that the accused acted voluntarily and with premeditation, but that he was insane at the time of thus acting? And, on that finding, he was discharged. And what does this prove? Why, that the Judge, who, notwithstanding his silly instructions, was compelled to discharge him, was of opinion that the accused had acted voluntarily and premeditatedly just as the tiger does when he devours the innocent and unoffending babe—from mere brute passion or appetite, and without reason or sound moral sentiment. The tiger knows what he does, is actuated by motive, and his act is voluntary, and, if you please premeditated—but still the knowledge, the volition, the motive, and the forethought are those only of an irrational, and, therefore, irresponsible beast of the forest. So, precisely, the lunatic, when acting under the dominion of his insanity, knows what he does, is influenced by some motive, may act as freely as any mere animal ever can act, and may also have predetermined to act—but still, as to all these matters—being deprived of the preserving light of reason or of the restraining influence of moral power, he is not, in these respects, what God made him, a rational and accountable being. So the French Judge decided; so every honest and intelligent Judge would decide on the same special verdict, and such are the premeditation and voluntary action of mental insanity.

And of all the causes or effects of monomania, *jealousy* is the most certain, the most common, and the most infuriating and ungovernable. It is a lawless monster—deaf to the voice of reason, led astray by delusion, and tortured with sleepless, hopeless, reckless, agony. Thompson's description of it is as true as it is beautiful, when, after portraying the anxious bliss of virtuous and confiding love, he says:—

"These are the charming agonies of love—
But should *jealousy* its venom once diffuse,
It is then delightful misery no more;
But agony unmixed, incessant gall, corroding
Every thought, and blasting all love's paradise—
Ye fairy prospects, then, ye beds of roses, and ye
Bowers of joy, farewell. Ye gleamings of
Departed peace, shine out your last."

If such be the effects of jealousy on the heart of a sound man, what law can prescribe rational bounds to its destructive power when it is the monstrous offspring of a mind in

ruins? Who shall then say that it has a moral sense or ray of reason—or can imagine that it can be guided by the one or made to crouch before the power of the other? No—like the Blind Giant, it strikes in the dark, is as dangerous to friends as to foes—and no law, nor fear, can stay its Briarian hands.

When the infuriate jealousy of an insane man impels him to the destruction of the victim of his delusion, without any rational motive or actual wrong, should not our reason, as well as charity, ascribe the deed, altogether to insanity, and believe that, had the destroyer been perfectly sound and rational, he would have revolted at the thought of such a motiveless and horrid act, or never would have had even a dreaming thought of it? Was it not an act of insanity? And can any act of insanity be punished by the criminal code of this or any other just and enlightened land?

Now, gentlemen, I think that I have a right to conclude that reason, and policy, and justice, and elementary books, and adjudged cases all concur in establishing the legal position for which I am contending—that is, if you are satisfied that the accused in this case was, when he killed Bates, insane as to him, and that the killing was the offspring of that insanity, the law must acquit him on this indictment.

And can one of you doubt that the killing of Bates was either justifiable or was the insane act of a deranged mind? The act itself proved it; because, if his charges were false, there was no rational motive for his hostility to Bates—no other probable or imaginable reason than his insane conviction that Bates had, before and immediately after his (Baker's) marriage, plotted his assassination, outrageously maltreated his sister, (the wife of Bates) and basely defiled his nuptial bed, and ruined his conjugal peace, happiness, and honor. It is demonstrated also by the simple fact that he was thus insane as to his wife, and Bates' connexion with her, and that, whilst so deranged, he shot him. Would it be possible for you to believe that, had he never been thus irrational or deluded, he would have been, without cause, so violently inimical to his brother-in-law, or would, in the first instance, if ever, have thought of taking his life, and thus bringing on himself infamy and ruin—on his sister widowhood—her children orphanage—and all his kindred such multiform and hopeless sorrow?

That he was insane when he shot Bates there can be no rational doubt. While at Knoxville, whither he had gone—while on his return—and on the road during the day of the homicide, and even just before it occurred—all the insane delusions which had previously agitated him seemed to haunt his mind with as much force and vividness as ever. This is abundantly proved by various witnesses; and moreover there is intrinsic proof of it—for the physical condition, which produced those delusions, still continued without any essential amelioration; and had he been perfectly sane, after what he had heard of Bates' threats to shoot him on sight and of his preparation to do so, he would not have attempted to pass his furnace by daylight and especially without any other defensive armor then a small pocket pistol, with a ball but little larger than a common buck-shot—nor would he have intimated to Mrs. White on the way his determination to take Bates' life for his conduct to himself and wife. The reckless and almost hopeless act of passing, as he did, and of shooting, as he did, at the distance of 18 feet, when he must have known that, if he failed to kill, he would certainly have been killed with a gun shot from Bates or some of his slaves, was the offspring of insanity. Had he been self-possessed, he would either have avoided that perilous dilemma or been prepared to meet it more prudently and on more equal terms. No rational being would have acted as he did; nor ought there to be any doubt that, had there been no insane delusion, he would not, that day, have shot at Bates, as he did, with his little pistol. The facts which he believed respecting Bates' cruel conduct to his own wife (Baker's sister,) and his attempts to assassinate him, whether true or only the imaginings of a diseased mind had not prompted any effort to take the life of Bates when he had various opportunities of effecting such a purpose without much, if any immediate peril. But in a paroxism of insane jealousy, he had attempted to shoot Bates in his own house and in the presence of their wives. It was, then, insane delusion as to his wife, and Bates' imputed connexion with her, that prompted him to seek his life. And if he were insane also as to Bates' supposed maltreatment of his sister and designs on his own life, this only aggravated his imagined wrongs. Having repudiated his wife and left Kentucky, he had abandoned his paroxismal designs to kill Bates. But returning to settle his affairs, he was excited, by his delusions and by the apprehension that Bates meditated his destruction, to pass heedlessly within the range of his gun, and being, on the first sight of him, transported with ungovernable fury, he insanely dismounted and fired at the side of Bates as he sat under a shelter where he could not rationally have expected to kill him, and where, whether he hit or missed, Bates must have instantly seen him and been able to have killed him before he could have escaped. Who can doubt that, had he not labored under insane delusions and been impelled by ungovernable emotions arising from them, he would not then have thus passed and dismounted, or then, if ever, have shot at Bates? And who can doubt. therefore, that, whatever cause of complaint or apprehension of danger he may have had, the killing, as it occurred, was the offspring of insanity—the insane act of an insane man?

And, under all these circumstances, will the law assume—or can you presume—that the accused knew that he was doing wrong, and also had the moral power to avoid it? Never, never, if the law be just and you rational. Does it appear here (as in the moot

case on which the 12 Judges of England expressed an opinion) that the accused knew that he was violating the law, was actuated by revenge, and acted with a moral free will and full discretion? Revenge for what? For Bates' imputed conduct to his wife, and designs on the life of the accused? Then why had he not attempted to kill him for this cause when he had multiplied opportunities of attempting it without personal hazard? No, it was not the voluntary vengeance of a sane mind, but the unavoidable act of a mind diseased and dethroned, impelled by an insane conviction that the act was one of lawful and righteous self-defence and retribution. Such, in my judgment, is the deduction of enlightened reason, and the presumption of rational and well established law.

But not only will the law presume that such an act, prompted by such insane delusion, was committed without a consciousness that, under all its imagined as well as actual circumstances, it was wrong, or without the moral power, at the time, to avoid it—but, in this case, there is affirmative proof of unconsciousness of wrong, and also of moral inability. The accused neither attempted to escape, nor manifested any contrition or alarm. On the contrary, he seemed unusually tranquil, and self-satisfied—endeavoured to go on foot to the house of his wife's father, whom he had so much outraged, but, missing the way, went to her uncle's; slept there all night peacefully, narrated all the facts and causes in a spirit of triumph and self-complacency, asseverated that he had done a necessary and glorious deed—and voluntarily surrendered himself to examining Justices, who, upon full examination, discharged him on the ground of insanity. Then, were it possible for you to believe that an insane man, when actuated by insanity, might be conscious that he is, in that particular act, doing wrong, and might have the moral power to refrain—still you have, in this case, as strong evidence as could exist in any case to satisfy you that the accused honestly believed that, when he shot Bates, he did right and discharged a sacred duty to himself, his family and his country.

But, as previously shown, the plea of insanity is fortified by an accidental consideration which has seldom, if ever, before marked a case of homicide by an insane man. The accused had ample cause (had he been perfectly rational) to apprehend, as he doubtless did, that, if he should attempt to pass the furnace, when Bates was there, he would be in imminent danger of being shot. He might have avoided the furnace, or passed in the night. Had he been rational and self-possessed he would have done so, though it was not certainly his duty to leave the highway or skulk along it under the cover of night. When, on passing the chimney of the furnace, he first saw Bates sitting with his side towards him, he had good reason to believe that Bates would soon see him, and would, as soon as he should see, shoot him with a gun. Then, impelled, thus far, by an insane mind, he was, at this pregnant crisis, excited by resentment at the threats of Bates, and by strong apprehension that his own life was in imminent peril. And, if these facts would amount almost, if not altogether, to a legal justification in the case of a man of sound mind, what irresistable force must they have exerted over a shattered mind, lacerated with imagined wrongs of the most aggravated kind, and tortured with the strongest and most aggravating passions that could ever spring from insane delusion? And who can tell how completely his mind may have been dethroned on such an occasion? Was there any such proximate cause of excitement in the case of Hadfield, or Orford, or Wilson, or McNaghten? Or could a clearer or more conclusive case for unhesitating acquittal on the ground of monomania ever occur or be imagined?

There could not possibly be a stronger case than this for the *prima facie* presumption of law, as well as the satisfactory deduction of reason, that the killing was the offspring, directly or remotely, of insane delusion, and was without a consciousness of illegality or moral power, at the time, to act otherwise than the accused did act. It does seem to me that, if this be not satisfactorily manifested in this case, it never can be in any case of particular insanity. And, therefore, I feel, gentlemen, that it would be trifling with your patience and intelligence to argue this matter with more minuteness or elaboration. Consequently, I will now leave it, as it is, in full confidence that, as to this, you must be perfectly satisfied.

But now let it be supposed that there is neither justification nor strong mitigation in the case of a sane man, and, moreover that the law does not presume, *prima facie*, that a a homicide, under the influence of insane delusion, was without full consciousness of wrong or moral power to avoid it—still, even on this hypothesis, applying the rule of law recognized by the twelve judges of England—that is, that the accused shall be tried as if the facts, he insanely imagined, were true as he believed them to be—would you, could you, dare you convict him of murder? Let us put the case. Then it is to be admitted that Bates treated his own wife as Dr. Baker believed he did; that he had conspired with his own slaves to assassinate the Doctor, and had made attempts on his life; that he had often had criminal connection with the Doctor's wife, in his own (Bates') house, and in his (the Doctor's) bed—and then add the undoubted fact that Bates had declared that he would shoot the Doctor, on sight, if he should ever return to Kentucky; and that the Doctor had good cause to apprehend that this would be attempted as he passed the furnace, and, that, to shoot Bates, if possible, with his pistol before Bates could draw his gun on him, was his only defensive expedient for avoiding his own destruction

while in the act of passing the furnace. Upon these facts, was he guilty of murder? To decide that he was, would outrage reason, justice and law.

Then, gentlemen, we have, as we think, sufficiently shown, 1st. That the accused, if he had not been, in any degree, insane, had strong grounds of justification, and that, at least, his case is reduced below the grade of murder; 2nd, That he was insane as to Bates and his own wife; 3d, That this insane delusion influenced him to pass the furnace as he did, and was either the predisposing or actuating cause of the homicide: 4th, That the law presumes that he was either not conscious of doing wrong when he fired his pistol at Bates, or had not the moral self-control necessary to enable him to forbear; 5th, That there is strong affirmative proof, in this case, of the absence of such consciousness and moral ability; and 6th, and lastly, that even if you could, nevertheless, believe that the accused had no ground of justification, and had both a consciousness that he was doing wrong, and the moral power to forbear, still, admitting, as you then would be bound to do, that all he imagined and believed was true—you could not justly or legally bring in a verdict of guilty of the charge of murder—but ought to acquit the prisoner.

It seems to us, therefore, that you cannot doubt that he is not legally guilty of murder. But the law, in its wisdom and benignity, declares that if, on any essential point, you have a strong rational doubt of his guilt, you must return a verdict of "*not guilty.*" While conceding this in general terms, the counsel for the prosecution attempted to evade it, by insisting that insanity being urged as an exculpatory fact, the accused cannot escape, unless he shall have proved it beyond a rational doubt. But, gentlemen, this is a hyper-technical perversion that would nullify the admitted rule of law. If you have a serious and rational doubt of the prisoner's guilt, you are bound to acquit him. This is not denied. Then if you have such doubt as to any one essential element of his guilt, can it be true that you have no doubt that he is guilty and ought to be hung? And if you had perplexing doubt whether the killing was the act of an insane mind, must you not, to the same extent, and in the same degree, doubt his legal guilt? I affirm, therefore, that if you have a legal doubt, as to any point or fact essential to guilt, your oaths require you to acquit. Looking impartially at the facts and intelligently at the law, can any one of you, on the solemn oaths you have taken, say that you have no rational doubt of the prisoner's guilt on any material fact or constituent element of guilt in law? We hope not—we presume not. Then "*not guilty*" is the verdict.

I must now close the argument in defence of the accused. Your verdict may seal his doom forever. Your decision may consign him to the gallows as a criminal, or will send him to the Lunatic Asylum as an unfortunate victim of insanity. In the event of an acquittal his friends are determined, for his own welfare and the security of themselves and the public, to place him in the Asylum in Lexington, where he can do no harm, and may be finally restored to health, and to reason—to himself, and to them. If, in these last hopes, they should be disappointed, and his case should prove to be immedicable, still it would afford them consolation to know that "*murderer*" had not been stamped on his forehead by his country's verdict! And, if he should be restored, he might yet live to bless them and that country by his virtues and his talents. They look, with intense anxiety, but with flattering hope, to your decision. They feel that there has already been desolation enough in his once happy and united, but now mourning and dismembered family. His own afflictive visitations and bereavements, and the melancholy death that they produced, have filled, to the brim, his grey-headed and pious father's cup of earthly sorrow. Must this poor son's ignominious sacrifice be added to make that cup overflow with tears and with blood? Can the public security be promoted, or the public welfare advanced by hanging a crazy man—who, as a man, is already dead? Does justice demand—does the law permit it? *No*, we say—and a just and enlightened country will echo, *no*. Then at "the tomb of the Capulets," let the progress of premature death be now stayed. Let us dig no more graves—but rather invite all parties to meet over the grave of Bates, and once more, become friends. Gentlemen, I came here to heal, not to wound—to defend a guiltless man, and restore peace—not to rescue the guilty and inflame unfreindly feelings that have already been too much exasperated. And if I should be an humble instrument in effecting these desirable ends, I shall be grateful for the blessing of being prompted to the benevolent mission. But these objects can be effected only by the acquittal of the accused. His conviction can add nothing to the happiness of his widowed sister. His death would not restore to her the husband whom his fatal phrenzy bore from her bosom. Nor could it heal the wound his insanity has made on his innocent wife and her excellent family. His conviction might falsify his plea of insanity, and thus tempt a censorious world to suspect that, being rational when he charged her with infidelity and deserted her, he had some cause for the charges and desertion. And, in this way, her character and the memory of Bates might unjustly suffer. But your acquittal of him on the ground of insanity, would put the seal of delusion and falsehood on all his suspicions and accusations, and thus rescue his innocent and injured wife, surround her with universal sympathy and confidence, and relieve the character of Bates from obloquy and suspicion. And then, too, there would no longer be any cause

for the distrust and non-intercourse of the members of these alienated and distracted households. Of all his sisters, Mrs. Bates should be the most anxious for his acquittal. And the venerable father, who watched over his infancy, and now mourns over his fallen condition, should not pray more fervently for his acquittal than the indignant father of his outraged wife. The only thing that can reinstate her perfectly and restore her to her unfortunate husband, is a verdict of not guilty on the ground that his conduct to her was so destitute of any cause to excuse it as to prove that he was a madman.

You have, gentlemen, a singularly solemn and important duty to perform. This is the most interesting and eventful case I have known in Kentucky. It will be a leading case in the criminal jurisprudence of the West. It involves principles as important as its facts are novel. And not only the safety of the accused, but public justice and security also, may depend, in no slight degree, on your proper understanding of those principles and right application of those facts.

The case is, in my judgment, altogether full and perfect in all its features; and there is none on record that can afford a more complete and useful precedent on the law and the facts of insanity in their criminal bearing.

I have defended the accused fairly, candidly, and I trust fully. I have made no appeal to your fears or your hopes—your passions or your prejudices. I have uttered nothing that I do not believe; have descended to no pettifogging artifice—but have, throughout, endeavored to maintain truth, the law's integrity, and my own professional honor. If you err, I shall feel guiltless. If my client fall, I shall still feel that, though others might have defended him more ably, none could have done it more faithfully. And, whatever may result from your verdict, to him or to others, now or hereafter, I shall enjoy the comfort of the persuasion that I have honestly vindicated hi rights, the wisdom of the law, and the interests of my country.

Upon you, then, gentlemen, rests the responsibility of a just administration of the law in this great cause. And, whatever shall be your decision, let it be impartial, conscientious, and fearless. I am sure that none of you can thirst for this man's blood, or could derive any pleasure from his condemnation. And allow me to add that, in my opinion, neither your own consciences, nor enlightened public opinion, nor even the feelings and more dispassionate judgments of the now excited and persevering prosecutors can, in after times, approve the condemnation and sacrifice of this unfortunate prisoner. To hang him—the mournful catastrophe being produced as, if it ensue, I believe it will have been chiefly produced, by the local influence, and extraordinary exertions of that opulent and multitudinous band of prosecutors—will, in my humble judgment, excite future remorse in their bosoms and reflect reproach on the proud and spotless State of Kentucky.

I must do you the justice to avow, in perfect candor, that your prudent deportment, so far as I have heard or observed, during this trial, absolves you from any imputation of *consciously* yielding to any such influences. But you know that unusual means of conviction have been employed, and that general excitement and delusion have been produced; and I know that they are contagious and difficult to escape or subdue. I trust that your verdict will be an honest one—and I hope that it will be impartial and just. If it shall acquit the accused, I believe that it will tranquilize your bosoms, hush the tongue of complaint, and extract from the tooth of calumny all its poison. And I cannot doubt that a verdict of "*Not Guilty*" will be sustained by the law—approved on earth—and ratified in Heaven.

PRELECTION.

During the winter of 1849, the Legislature of Kentucky so far modified the law of 1833 interdicting the importation of Slaves as to allow citizens of the State to import them for their own use. Against that modification, operating as a virtual repeal of the law of 1833, Mr. Robertson, then a member from Fayette, made the following speech.

On his return home, solicited by persons of all parties and persuasions in his county, to become a candidate for the Convention called to remodel the State Constitution, he finally allowed himself to be announced as a candidate, with every prospect of being elected by genral consent. But shortly afterwards, the agitation of the question of emancipation, became so all-absorbing as to induce most of the electors in Fayette to organize themselves into two BELLIGERENT parties—"EMANCIPATION" and ULTRA "PRO-SLAVERY"—EACH NOMINATING AND PLEDGING ITS MEMBERS TO SUPPORT A COALITION TICKET, COMPOSED OF ONE WHIG AND ONE DEMOCRAT—the county being entitled to two members in the Convention. Mr. R. could have been on either of the Tickets. But, unwilling either to countenance a premature and suicidal movement for emancipation, or to surrender his non-importation principles and co-operate with EXTREME AND UNREASONABLE PRO-SLAVERYISM, he refused to sanction either coalition, and denounced both of them as unnecessary, unwise, and tending to licentious and destructive results.

A majority of the people of the county, thus committed, became excited by the canvass to an extraordinary and almost stultifying degree. Mr. R. was, CONSEQUENTLY, not elected, but was beaten by a DEMOCRAT IN THE CITADEL OF WHIGGERY—even though there can be scarcely a doubt that a large majority of the voters concurred with him in his Constitutional aims and principles. In addition to the following speech, other addresses made by him are also herein republished, to show the general character of those aims and principles, and his prediction of the consequences which would result to conservatism from SUCH AGITATIONS AND COALITIONS. And did not these consequences follow?

During that stormy canvass so morbid were the feelings of some pro-slavery men, as to lead a few into the delusion that Mr. R. was inclined to abolitionism. And even ever since that election, the vague suspicion thus uttered, fortified by the unexplained fact of his defeat by the Ticket that triumphed, has induced some few blockheads to INSINUATE that Mr. R. is tainted with SOME SORT of anti-slavery DISEASE. Let all he ever said, or wrote, or did, on the subject of slavery, test his principles—whether right or wrong.

MR. ROBERTSON'S SPEECH.

Speech of Mr. George Robertson, of Fayette, in the House of Representatives of the Kentucky Ledislature, on the bill to modify the law of 1833, *prohibiting the importation of Slaves.*

Mr. R. observed, that his present condition of deranged health and oppressed lungs would not allow him to hope that he should be able, by anything he could now say, to compensate the committee for its courtesy in adjourning over to hear him on this interesting occasion; but his position on the Judiciary committee, which reported against the bill under consideration, and his, perhaps peculiar, and certainly very anxious feeling respecting its destiny, would not leave him the choice of entire silence whilst its fate remains uncertain.

We are, this day, said he, legislating, not for ourselves only, but for our children—not for this generation merely, but for posterity—not for Kentucky alone, but possibly for our glorious Union. Hence, he must be allowed to say, that he was surprised and concerned to hear, as he had heard, from more than two members already, that, whatever might be their own opinions—even though, as might be inferred, they believed the passage of the bill would operate disastrously to ourselves, and to those who shall come after us for generations to come—yet they feel bound to vote for it, because they think that a majority of their more immediate constituents are in favor of some such legislation. Sir, said he, I could neither thus feel nor thus act. The opinions of the voters of Fayette, I neither know nor have sought to learn—I know my own convictions of duty to my oath, to my country, and to my children—and that is enough for me. He felt, he said, responsible, not alone to the freemen of his county on this subject, but responsible to his own conscience, to all Kentucky now and hereafter, and to the God of the Universe. The opinions of a majority of those who elected him could not absolve him from that more sacred and comprehensive responsibility. He hoped, and was disposed to believe, that those opinions harmonized with his own. But, however that might be, he could not, on such an occasion as this, record, for the inspection of his countrymen and his posterity, as his opinion, that which was the direct opposite of his clear conviction of truth and of duty. The philosophy of the great American principle of representative democracy seems to be often misunderstood and perverted. The mass of the people, however virtuous and enlightened, would be, when assembled in *campus martius*, or elsewhere unsafe legislators. Such assemblages would be so liable to the contagion of tumultuary passions, and so inconsiderate, irresponsible and head-long in legislation, as to allow no rational hope of consistency, moderation or conservatism in their legislative acts. To insure the prevalence of reason over passion, in the enactment of laws, our constitutions have all wisely organized representative departments for legislation. By our own State Constitution, the people entitled to suffrage have the right to select the most enlightened, firm and patriotic representatives to make laws for the Commonwealth. Those representatives, not too multitudinous for a proper sense of individual responsibility and grave and dispassionate deliberation, assemble in the Capitol for consulting together, obtaining correct information, reasoning with one another, and finally agreeing, after such intercommunication, counsel, and mutual enlightenment, on such measures as will, in their honest judgments, promote the general welfare. There is no danger that the popular sentiment, and even passion, right or wrong, will not have sufficient influence; the only danger is, that it will have too much. If the local feeling, however ephemeral or unreasonable, should control the enlightened and dispassionate convictions of the representative, then the very same elements that incapacitate the mass of constituency for wholesome legislation, do virtually legislate in defiance of the judgments of the representative body, and notwithstanding all the precautions of our Constitution for preventing any other enactment than such as may be the offspring of reason and deliberation.

When any portion of the people send a proxy to consult and to reason, and to be reasoned with, concerning the common good, if that proxy be convinced, by facts and arguments elicited in legislative council, that his country's interest requires him to vote for or against any proposed measure, those who deputed him ought to acquiesce, because they sent him under the Constitution for that very purpose. In organizing the principle of representation, the chief object of the Constitution was to secrete, through the constituted organs, the popular sentiments, and thus rectify, and, as far as possible, crystalize the indigested and too often turbid elements of uncounselled popular decision. Why communicate to a member in this hall new facts—why address to his judgment or his patriotism arguments to convince him? Only because we all expect that, if he be

convinced by these facts and arguments, he will vote according to that conviction. But, if he must not do this, all those facts and arguments are thrown away, and should have been addressed, not to him, a petrified statue, but to those who sent him. We should do here as we think they would or ought to do, if they were here and heard all we have heard.

Mr. Chairman, said Mr. R., on this floor, Kentucky is my constituency—and my instructors here, on such a subject as that now before us, are the opinions and interests of my whole State, the suggestions of my own conscience, and the convictions of my own judgment. Under these guides, I have always acted in my legislative career; and though, while thus acting under all these sanctions, I have often given votes which I apprehended would, for a season, be unpopular, my course has, in every instance, been finally approved, and, so far as I know, has never been rebuked. And, sir, when we are right, and have firmness properly to maintain it, we need not fear that our constituents will long condemn us. We underrate them when we suppose that they will not, sooner or later, be right also. And if, on the eventful subject now before us, we act as our own matured judgments of our duty to our whole country shall dictate, we will secure, not only the public approbation, but that which is even more grateful to the patriotic statesman, the approval of our own consciences, now and forever.

Hoping that every member would, under a proper sense of all his responsibilities, express by his vote the conclusion of his own reason, he would, said Mr. R., proceed in as summary a form as he could, to address, to the understandings of the members present, some reasons to show why this bill ought not to pass; and, in attempting this task, he invoked the careful attention and candid consideration of all present.

The programme of his argument, said Mr. R., would be to offer, in a condensed form, some reasons to show: 1st, That this bill, if enacted, would operate as a virtual, practical, total repeal of the non-importation law of 1833. 2nd, That the act of 1833 was wise in its purpose, and has been beneficent in its results. 3rd, That the present crisis is unpropitious for a repeal of the act of 1833, or any essential modification of it; and moreover, any such movement now is pregnant with unprofitable commotion, and with other consequences which must greatly impair, perhaps utterly destroy, the conservative influence now possessed by Kentucky in the Union—and the preservation of which influence, unimpaired, may by necessary to save the peace and integrity of that Union; and 4th, That instead of relaxing the policy of the act of 1833, the interest of the Commonwealth and its prospective glory, require that non-importation of slaves should be made fundamental and inviolable, by being imbedded in the Constitution with a sanction which would secure it from evasion.

Negro slavery was introduced into South America for the benevolent purpose of rescuing, from oppressive servitude and final extermination, the more effeminate Indian aborigines. Foreign cupidity and regal power first imported it into the Anglo-American Colonies, and fastened it on Virginia against her will. In her declaration of Independence, in 1776, she charged the King of England with cruel injustice in nullifying, by Royal vetoes, her colonial enactments interdicting the importation of negroes; and, in 1778, she enacted a statute prohibiting further importation "by sea or by land," except by immigrants from other confederate States, and made the interdict effectual, not by denouncing high pecuniary penalties merely, but by also providing that any slave, illegally imported, should be *ipso facto* free. Under the auspices of that conservative law, Kentucky was born and grew to manhood; and, until after the adoption of her first Constitution, not even a citizen could lawfully bring within her borders a slave bought beyond them. By a legislative act of 1794, the Virginia act of 1778 was relaxed so as to legalize importations of slaves from other States, by citizens of Kentucky for their own use; and, with some slight modifications, the act of 1794 was re-enacted in 1815, and continued in operation until it was supplanted by the more comprehensive enactment of 1833, which revived the prohibitions of the act of 1778, but unfortunately left them without any other than a pecuniary sanction, which is not easily enforced, and therefore has had but little influence on the mercenary and unscrupulous.

Thus it may be clearly perceived, that the characteristic difference between the act of 1815, and that of 1833, is just this, and only this—that the former permitted citizens of Kentucky to buy and import slaves for their own use, and the latter forbids all such purchase and importation; and it will be seen, also, that these acts are as different in purpose and effect, as they are in the extent of their application; for whilst the act of 1815 contemplated an increase of slaves by accession from abroad—and the effect of it was a great augmentation from that source—the act of 1833 intended to prevent any such accession, and, as far as it has operated, has had that salutary effect. Then, as these enactments are thus radically contradistinguished, all who approve the act of 1833, must approve it for those features which distinguish it from the act of 1815, and which constitute and identify it as "the act of 1833." For this reason the act of 1833 repealed that of 1815; and, for the same reason, the restoration of the act of 1815 will repeal that of 1833. For all characteristic purposes of identity, the bill under consideration, and the act of 1815, are the same. The bill, if it shall become a law, will, there-

fore, restore the act of 1815; and of course will operate as a total repeal of the act of 1833, by repudiating its peculiar policy, and restoring that of 1794 and 1815.

But had the act of 1833 been the only law ever enacted for prohibiting the importation of slaves, the bill would operate as a virtual and practical repeal of it. An unrestricted right in all persons to bring to, and sell in Kentucky, foreign slaves, would not increase the number of slaves here beyond the domestic demand—the supply would rarely, if ever, exceed the demand. Slaves would not be imported for sale in Kentucky, unless persons here would buy them for use. And it is not material whether the citizen buy here from a trader, or whether he go, or employs another to go to some other State and buy and import for his own use; as long as he wants an additional slave, has the means conveniently to buy, and can purchase out of Kentucky, for a less price than in it, he will import directly or indirectly.

It is equally evident that, when citizens either want no more slaves, or have not the means to purchase more, or can buy cheaper here than elsewhere, slaves will not be imported for sale in Kentucky. Besides a practical acquaintance with the ways of mercenary men, and with the history of importations of slaves, will leave but little, if any, doubt that, by various devices, the prohibition of importation for commerce *eo nomine* will be evaded and that Slaves, some how or other, will be imported as long as profit can be made by the importation; and no mere penal sanction, as history proves, will check the tide.

This, said he, is not only probable *a priori*, but is demonstrated by the practical nullity of the acts of 1794 and 1815. These enactments did not curtail importations of slaves. This is proved by the ratio of increase during the existence of these statutes. And this unerring experience of the past prompted the enactment of 1833. Then, as the act of 1815 did not curtail importations for merchandise, can we go back to that act, and, with a grave countenance, say we have not repealed the act of 1833, virtually, practically, totally? No, must be the answer of every candid and rational man. Then let no member repeat that he is for this bill for the purpose of upholding the law of 1833—let none such say that he is a friend of that act: By the bill he supports he knocks it in the head. One thing, at least, cannot be disguised, and that is, that every pro-slavery member, and every one who desires an increase of slaves in Kentucky is an advocate of this bill; and that every member who does not desire the perpetuation of slavery, or who is opposed to the augmentation of the number of slaves and a deterioration of their quality is in favor of the act of 1833, and against the bill.

The act of 1815, as well as that of 1794, was substantially the same as the bill now under consideration. Each of those statutes interdicted the importation of slaves as merchandise, but permitted it for the use of citizens of this State. But under each of them, slaves continued to be imported for all purposes, without any practical restraint—and, before 1833, this Commonwealth had become a slave market, and seemed to be in danger, not of contamination merely, but of inundation by superfluous and vicious slaves. Wages were reduced—mechanics were discouraged and many expatriated—agriculture was declining in quality and productiveness—commerce was becoming less and less profitable, in consequence of the reduced net value of domestic products, and disadvantageous exchanges of exports for the refuse slaves of the South instead of money—and the gloomy prospect ahead was that of progressive deterioration and the hopeless prolongation and aggravation of Kentucky slavery, without a rational hope of rescue or amelioration otherwise than by a radical change in the non-importation law of 1815. This change was effected by the act of 1833, which extended the prohibition to importations by our own citizens for their own use. This was the only characteristic feature of that act. It was this, and this alone, that identified and distinguished it as "THE ACT OF 1833." All who advocated or approved that enactment were, of course, opposed to that of 1815, which it repealed. And now, therefore, no person can be friendly to the act of 1833, who desires to supplant it by that of 1815, or (which is, in effect, the same thing,) to abrogate its conservative interdict against the importation of slaves "for use"—and it is consequently indisputable, that a substitution of the policy of 1815, for that of 1833, is a repeal of "the act of 1833."

Moreover, said Mr. R., the statistics of slavery, in Kentucky from 1820 to 1840, would alone be sufficient for maintaining the foregoing conclusion. They show that, from 1820 to 1830, the slave population of the State had increased about 40,000—and that, from 1830 to 1840, the increase was only about 1,400—and as this last period includes two years before the enactment of 1833, during which time the increase may be fairly assumed, according to the ratio before 1833, to have been at least 8,000, consequently the number of slaves in Kentucky must have been reduced more than 6,000 from 1833 to 1840. These historic facts prove that the tendency of the policy of 1815, now sought to be revived, is to great progressive augmentation, and that of the act of 1833 (when upheld) to a gradual diminution. Hence, again, this bill, if passed, will operate as a virtual repeal of the act of 1833—because it will destroy its effect and invert its policy. A direct repeal would be more magnanimous. Then, let not any one, who professes to be in favor of the act of 1833, skulk behind such an ambuscade as an ostensible modification, which is a renunciation of the

whole purpose of substituting that act for that of 1815.

A consideration of the act of 1833 involves two questions—its constitutionality and its policy. He was surprised that the constitutional authority to enact and enforce it had been denied in this debate. The Supreme Court of the State had given a *quietus* to further agitation of that objection, and both public sentiment and the concurrent opinions of the enlightened jurists had ratified and confirmed the unanimous opinions of the Judiciary. He would not, therefore, he said, elaborate an argument on the question of power; but it might not be improper to make some passing suggestions upon it. The Legislature has all legislative power which is not prohibited either by the National or the State Constitution. The only provision of the Constitution of the United States which could affect the authority of the State to inderdict the importation of slaves within her limits is that which delegates to Congress the power to regulate commerce among the States. But slavery is, by that very Constitution, made a basis of representation and taxation; and is, therefore a fundamental element of State power. Can such a State right be the subject of control by Congress? Is it an affair of commerce? Does it come within the scope of commercial regulation by the General Government? An affirmative answer would concede to Congress power to change the relative political strength of the States—a power which cannot exist consistently with the constitutional co-equality and proper independence of the States of the Union. Moreover, slavery, in the States in which it is legalized by the local law and therefore recognized and protected by the Federal Constitution, is a domestic institution —and, which is as much under the exclusive control of State sovereignty as marriage or the legal rights and obligations of paternity. The relations of master and slave are as purely local here as those of master and servant, husband and wife, parent and child, or guardian and ward. If Congress, under the power to regulate commerce among the States, could prevent Kentucky from stopping the importation or immigration of slaves, it might, by the exercise of that power over slaves as mere property, fasten slavery on the people of the State perpetually and even against their will. This would be monstrous enough. But the power to do this involves the power to prevent the non-slaveholding States from continuing so, by denying to them the right to prohibit the introduction and enjoyment of slaves within their limits as articles of property subject to commercial power. No patriot, regardful of justice, or liberty—of social order, or of State rights, could hesitate to denounce such an assumption as absurd and ridiculous. Moreover, if the act of 1833 be unconstitutional so far as it forbids importation for use, it must be even more clearly void for conflict with the commercial power of Congress so far also as it prohibits importation for sale? And the consequence would be, that the bill now urged does not go half far enough, and that the acts of 1794 and 1815 were nullities.

Nor is the act of 1833 a violation of the Constitution of the State. The Legislature of Kentucky, as already stated, has all legislative power that is not prohibited by the Constitution of Kentucky or by that of the United States. To inhibit the importation of slaves is a legislative act; and the authority therefore to pass such an act needs not to be delegated by the Constitution—it exists unless it is prohibited by that supreme organic law. There is no such prohibition nor any rational pretence for presuming its existence. Then the power exists.

The vindication of the policy of the act of 1833 did not seem to Mr. R. to be more difficult than that of its constitutionality. The objects of the enactment were twofold—1st, Some improvement in the quality and some amelioration in the condition of our slaves—2nd, The salvation of ourselves and our posterity from the curse of inevitable and perpetual slavery, by drawing a *sanatory cordon* around the Commonwealth while in a salvable state, and thereby preventing such an augmentation, as well as deterioration, of slaves as might not only aggravate but injuriously prolong the slavery of the black race against the interest and even the wishes of the white. In other words—the second and chief object of the act of 1833, was to secure the power to abolish slavery if public sentiment should ever be prepared for proclaiming liberty to the captive.

On the subject of African slavery in the North American States, Mr. R. had, he said, always endeavored to look with the eye of considerate philanthropy and practical statesmanship. He would rejoice to see all men, of every color and clime, equal in privileges and endowments, and well qualified for the peaceful enjoyment of civil, social, and religious liberty and light. But a wise and inscrutable Providence had otherwise ordainded; and no art or policy of man can change the purpose of God. Whenever the black and white races of our species are thrown together in the same community it had long been his opinion that it is better for both that the inferior should be in a state of subordination to that which, under all circumstances, is the superior. The two races are immiscible. Amalgamation would be deteriorating to the white race, and, in his judgment, inconsistent with the laws of social welfare and the dignity and progress of the more improved portion of mankind. The two incongruous races cannot live together on terms of social or civil equality. And freedom, without power or privilege, is the worst form of slavery in disguise. No population can be more wretched or pestilent than a degraded, disfranchised cast. A well regulated slavery

is far better for the security of the white race and the happiness and safety of the black.

His conscience, continued Mr. R., had never, therefore, been disturbed by any morbid sentimentalism on the subject of slavery as it exists in Kentucky. And he could not feel that it is either impious or irrational to presume that the enslavement in America of the superstitious and ferocious Africans was approved by Omniscience for the ultimate redemption, regeneration, and exaltation of that degraded and once hopeless race. He believed that it would, at no distant day, eventuate in the aggregate welfare of mankind, and especially in the civilization, liberty and restoration to their native land of the captive Africans. In the dispensations of Providence, immediate evil is often the instrument of ultimate good. The Egyptian bondage and self-sacrificing pilgrimage of the devoted Jews were designed for the wholesome reformation of that distinguished people; the bloody overthrow of the Canaanites was the precursor of the enjoyment of the promised land by the depositories of the oracles of the true and only God; the terrible havoc and final subjugation of the Gauls and Britons by the Roman Eagle, infused into the Celtic race, then in a state of semi-barbarism, the elements of civilization and the principles of Christianity; the subjugation of the imperial Romans and the desolation of their fair and voluptuous country by the Vandalism of the North, engrafted on a declining stock the vital germ of that enduring liberty so gloriously illustrated by the Anglo-Saxon race; the sanguinary persecutions of the Puritans, and their consequent exile to the wilds of America, planted in this congenial land the seeds of civil and religious liberty; and these seminal principles, dropped, as from the clouds, in a country reserved until the fullness of time for the hopeful development and glorious illustration of moral truth and power among men, even now have grown to maturity and promise to fructify the world; and, to prepare this theatre for the accomplishment of the greatest ultimate good, the uncivilized aborigines were driven from their council fires and the graves of their fathers, and now, almost exterminate, wander in the far West, homeless, hopeless, and forlorn. These, said he, are but a few of the infinite multitude of historic events, illustrating the mysterious truth that instrumentalities, wrong and grievous to human vision, are often employed for consummating the most benificent ends—all things working together for the ultimate good of mankind and glory of the Ruler of the Universe.

There is a striking analogy, in this respect, between the phenomena of the moral and those of the physical universe. The fire from Heaven in the lightning's flash strikes down the young and the old, the beautiful and the strong, the patriot and the sage; and the people mourn; the relentless tempest of the skies leaves desolation in its mournful track; and the elements are charged with reckless ruin. But the lightning and the whirlwind purify a morbid atmosphere and drive away pestilence. In like manner moral agents, grievous in their immediate operation on special objects, may finally result in aggregate blessings. And who can venture to presume that negro slavery in America may not have been sanctioned by Heaven as the most fitting means for effecting the providential end of saving and ennobling the doomed African race? The average condition of the wretched barbarians captured in Africa either by their own countrymen or by the kidnapping whites and brought in chains to America as slaves, may not have been made more miserable by any form of slavery to which they have been subjected as a collective class; and that of their descendats has been improved by their progressive assimilation to the free and christianized whites with whom it has been their fortune to be associated. Already hosts of the sons and daughters of African cannibals, redeemed and regenerated by the genius of America, are, through the benevolent process of colonization in their fatherland, hopefully contributing, by their example, to rescue their color from degradation, and, by their influence and instruction, to enlighten and civilize long lost Africa.

As early as the year 1620, only about twelve years after the advent of the white man to Jamestown, in Virginia, a British ship imported, into that infant colony of forlorn bachelors, a cargo of unmarried white women, and a Dutch vessel landed at the same place a few negroes. The women became wives and mothers; and thus though poor and obscure in the country of their birth, they became the founders of this renowned Commonwealth of freemen, which herself has been blessed as the mother of Republics, and has won the honored title of "*magna mater virum.*" But the negroes were doomed to abject and hopeless slavery in a foreign climate and strange land. Yet it may be that each of these differently freighted ships was the unknown harbinger of future blessings—one to the white race, by giving anchorage to the drifting colony and promoting its free population—and the other to the black race by their ultimate improvement and final regeneration. Cruel and unjust as slavery may be admitted to be in itself, and mercenary and selfish as may have been the motives of its introduction and prolonged existence among us, said Mr. R., nevertheless, in its colateral and ulterior results, it may, as one element in the combined agencies in the world's onward affairs, be finally productive of more of aggregate good than evil in human destiny. And although, in itself, considered either abstractly or in its immediate and personal consequences, it is an enormous evil, yet he had never doubted that it is more hurtful to the master than to the slave—to the white than to the black race. He was not of the pro-slavery party—far, very far from it. He had never considered slavery in itself a

blessing. He had always felt it as a curse to the white race. But, as it exists in Kentucky, it is not now within the compass of human wisdom, philanthrophy, and power all combined, to adopt any system of compulsive liberation which will be practicable, just, safe, and sure. Immediate emancipation would be madness; and, in his opinion, any organized effort to initiate now a prospective scheme, would be premature, unwise, and self-destructive. For himself, he could never consider any system wise, however practicable, unless it is accompanied by some effectual and benevolent plan of deportation. He would never consent that the incubus of a large mass of free and degraded blacks should be thrown on the bosom of his posterity. Such an evil would be more intolerable than perpetual slavery, bad as that might be. And, there being now about 200,000 slavesn in Kentucky, he could conceive no proper and effectual provision for deporting all the persons who would become free under the operation of any system of gradual emancipation which he had ever heard or seen suggested. But if, as many believe, the physical adaptations and products of Kentucky would not, of themselves, prolong the existence of slavery while it shall exist elsewhere, ultimate rescue, in some just and peaceful mode and in the proper time, is neither hopeless nor improbable. Preparatory to the consummation of any such purpose, non-importation of slaves would be indispensable. To wear out slavery its natural course must not be obstructed by successive increase from extraneous causes. If let alone the problem of Kentucky slavery will soon be solved, and the period is near when the dawn of universal freedom will cheer the heart, or the cloud of inevitable slavery will blast the hope of philanthrophy. Undisturbed by accessions from abroad, slavery here, if not in its congenial element, will soon decline to a condition in which its extinction may be accomplished without hazard. But if Kentucky be as congenial as her Southern sisters to slavery, it will exist here as long as it shall continue there, and no legislative policy for hastening its natural death would be wise or effectual. In this view the pro-slavery and the emancipation parties should unite with the great conservative party in closing the door to the further importation of slaves, and all try the experiment of inherent and natural causes on its existence and value. If the pro-slavery party be right, the experiment will secure a sufficient number of slaves and certainly improve their quality and value. If the emancipation party be right, this policy will effect their object as soon as any they contemplate, and much more certainly and beneficially. Consequently, added Mr. R., the conservative party, of which he was one, must be on the most eligible platform; and, therefore, all parties ought to co-operate in making the policy of the act of 1833 fundamental, self-sustaining, and inviolate.

Such was the view and such was the chief purpose of those who enacted the statute of 1833, and of all those also who so perseveringly sustained it ever since the enactment of it. And, sir, said he, this was no new policy. It was but the echo of the sentiments of our beloved fathers from the first colonization of Virginia to the year 1794, and was but a revival of the conservative policy of WASHINGTON, *Jefferson*, and *Madison*, in 1778, but with a less effectual sanction for upholding it. Had the law of 1778 been permitted to remain unmodified until 1799, when the present Constitution of Kentucky was adopted, he thought it not improbable that, on this day, Kentucky would have been blessed with more than a million of "the free" and "the brave," without one solitary slave. Whether a similar result would soon or ever be produced by now making the prohibition and the sanction of the act of 1779, fundamental, is a problem which time alone can solve. But without further illustration, he submitted these considerations, as sufficient to prove the wisdom of the act 1833. And, continued he, so far as that act has been permitted to operate, the beneficence of its operation should not be doubted. During the first seven years of its existence, though it was often evaded, not only was the number considerably reduced and value improved, but home production was more profitable, domestic commerce more productive, slave property more secure and less vexatious, and the aggregate wealth of the Commonwealth was augmented from $126,601,004 to nearly double that amount. This wonderful augmentation is proved by the Auditor's books, which show that, in 1833, the total value of taxable property was $126,601,004, and that in 1840, it was $272,250,027, which, deducting the increase under the equalization law of 1837, would leave about $240,000,000 as the value of taxable property in 1840, instead of $126-601,004, the entire value of it in 1833. Although the act of 1833 was doubtless not the only cause that had agency in the production of this sudden affluence of wealth, yet undoubtedly it was the chief and most efficient agent. It inspired a new confidence and hope —it stimulated and improved agriculture—it increased the net value of products—it raised the price of wages, encouraging manufacturing and mechanical production, and greatly augmented the income from our domestic commerce by returning money instead of negroes for our exports. Moreover it enhanced the value of our slaves to an aggregate probably exceeding that of a greater number increased by inferior and superfluous accessions from the South, and added to the capital of the State hundreds of thousands of dollars annually by the more profitable sales of slaves for exportation—several counties having obtained, in this way, at least $50,000 each every year, which was much more than they would have received had the number of slaves been increased instead of being diminished and the quality made worse instead of better.

But, since the year 1840, the number of slaves has been gradually increasing at the

rate of from one to four per cent, annually; and now the totality is about 193,000. This progression itself, and more especially the oscillation in the ratio of it, demonstrate that it has resulted from importations, sometimes to a less and sometimes to a greater extent, in violation of the act of 1833. And the Auditor's report shows also, that, during that period of eight years, the wealth of the State has been increased only $597,689—although during the period of only seven years immediately succeeding the act '33, and when its provisions were but slightly violated, the increase was about $115,000,000. That report also shows that, within the last eight years, the slaves in Christian, a border county represented by the author of the bill under consideration, had increased from about 5,000 to about 7,000; an increase which must have resulted chiefly from illegal importations. These brief, but undeniable, statistics prove the beneficial operation of the act of '33 when it was reasonably observed, and equally preve the injurious effects of any material evasion or relaxation of its sanctions.

But (said Mr. R.,) the policy of '33 has had also a salutary influence on the political position of Kentucky. Since that enactment and by her continued adherence to it, she has abstained from any indication of party sympathy with either the abolitionism or Wilmot provisoism of the North, or the ultra pro-slaveryism of the South. She has prudently maintained an independent ground of patriotic neutrality between these antipodal parties of sectional antagonism, threatening, by their hot temper and reckless collision, the peace and integrity of the Union. While manifesting a determination to maintain her existing institutions against all foreign influence, she has, at the same time, evinced a repugnance to any act that might tend to increase the embarrassments of her slavery condition, or prolong its endurance beyond the period of its natural life, depending alone on the operation of internal and natural causes. To this neither the North nor the South ever excepted, or could reasonably except; and therefore each section has cordially embraced Kentucky as an impartial member of a discordant sisterhood. Hence she alone may exercise a successful umpirage—she alone may still the fearful agitation of the free-soil question; and, thus embedded as an Itshmus between two boisterous and turbid oceans, she can, if she stand firm, save the Union as she has hitherto saved it, and as her present position will enable her still to save it. But let her, at this critical juncture of our National Union, make a direct movement either for decided emancipation or for the perpetuation of slavery, and then her "occupation's gone"—then she will be no longer a presiding arbitress, but a common partizan.

And now, Mr. Chairman, (continued Mr. R.) why this new-born and burning zeal to repeal a wise and benificent enactment that has survived the ordeal of 15 years' severe scrutiny and trial? Why thus heedlessly jeopard our peace and that of the Union? Kentucky needs no more slaves—she has more now than she wants; and is, every day, exporting. If 50,000 more should be imported, the aggregate value of all the slaves in the State would not exceed that of the present number, and the quality of the entire mass would be certainly degraded. Would not this impolitic reduction in price and quality be gratuitously unjust to the present owners of slaves in Kentucky? Not even individual purchasers of foreign slaves would be benefitted. As negro buyers purchase here extensively for export to the South, the presumption is that they cannot buy slaves of equal quality cheaper elsewhere. But, if they could, a repeal of the act of '33 would, in less than one year, equalise the prices. Even now a citizen of Kentucky may buy here for his own use better slaves, at the same price, and with less hazard and trouble than in Virginia or the South. In his county of Fayette, (said Mr. R.) with only about 2,500 voters, there are nearly 11,000 slaves—considerably more than are useful or desired. Only three States in the Union have more slaves than Kentucky. And not only has Congress prohibited foreign importation of slaves and denounced the slave trade as piracy, but Virginia, Maryland, South Carolina, and Mississippi, as well as Kentucky, have long since forbidden the importation of slaves from any other State. It is evident therefore that the interests of Kentucky do not require the importation of more slaves, but forbid it. The passage of this bill would reduce the value of the slaves now here—diminish the value of slave labor—reduce wages—injure the useful class of free mechanics—agitate the people and perhaps convulse the State—and, by suddenly changing her commanding position of neutrality at the most critical and unpropitious crisis in both domestic and national affairs, might impair the just influence of the Commonwealth, and jeopard her own peace, the security of the South, and the integrity of the Union. The passage of this bill is therefore forbidden also by respect for the wisdom of our predecessors, respect for a venerable policy, and prudent regard for harmony, peace and security, here and elsewhere, now and hearafter.

It has been said here (said Mr R.,) that the act of 1833 was an emancipation movement! If this be true, a majority of the freemen of Kentucky and of their representatives were then and have ever since been emancipationists. Yet one of the chief authors of the act of 1833 by his vote and otherwise, is the owner of 300 slaves, and pro-slavery almost to fanaticism. He supported that law doubtless for the purpose of increasing the value of his slaves and improving their quality. There are, Mr. Chairman, continued Mr. R., three parties in Kentucky in reference to slavery—one consisting of persons who consider slavery a blessing to the white race, and perfectly consistent with morality and religion—another composed of persons who look on slavery as a moral, social and political curse, and desire

the adoption, at once, of some system of emancipation, instantaneous or prospective—and a third composed of persons who, occupying intermediate ground, deprecate negro slavery as an evil especially to the white population, but, believing that, in the existing condition of it in Kentucky, any provision now for emancipation would be premature, impracticable and ultimately suicidal, are yet opposed to any act that will increase the difficulties obstructing the work or retarding the time of eradication, and prefer to await time's developments without disturbance by foreign importation. Of these three classes, he thought the first the smallest in number, and the last much the largest. Of this major class were a large majority of those who adopted and have continued to sustain the act of 1833. The wise and patriotic men who enacted that law looked backward on the history of slavery and forward to the probable consequences with which, without legislative guardianship, it was pregnant—to the waste of lands, reduction of profits, insecurity of property, and to demoralization, degeneracy, and possible insurrection—they knew that the acts of 1794 and 1815, repealing that of 1778, had not, at all, repressed the importations of slaves for use or for sale—considering the latitude, soil, and products of Kentucky, they hoped that perpetual slavery was not her inevitable destiny—and, desiring not to leave their posterity overwhelmed by such a state of slavery as to be unable to do in respect to it what they might prefer—they resolved to soothe and bandage the morbid tumor of negro slavery in Kentucky before it should become an *immedicabile vulnus*—an incurable ulcer.

If men who thus thought and thus acted were emancipationists, he, Mr. R., must repeat that a majority of Kentuckians are, and long have been in the same category. The Legislature has rejected, every session since 1833, bills similar to that now under consideration.

In one sense, it may be true, that the act of 1833 itself, might prove to be a movement towards emancipation; for, if Kentucky be not adapted to long continued slavery, that act, vigorously enforced, would, in time, place the country in such a condition of interest and of sentiment, as to secure ultimate and easy extrication. But no patriotic and sensible pro-slavery man would be opposed to such a consummation in such a mode. Had slavery never existed in Kentucky, how many of her citizens would vote for introducing it now for the first time? Certainly not many, if any. He who would not do that, could not consistently vote for importing a fresh supply of slaves—for if it would be unwise to initiate, it must be wrong to do anything to perpetuate or increase it.

But the chief and only remaining reason urged for the repeal of the act of 1833, is, said Mr. R., the fact that the act is not enforced, and that even the Legislature itself encourages evasion of it by special acts legalizing individual violation of its prohibitions. It is but too true that such personal legislation does, to a great and mischievous extent, paralyze the act of 1833. But this is clearly wrong. The act ought to be repealed or enforced; and, unless repealed, it is the duty of the Legislature to make it effectual by giving it a sanction that will secure it from evasion, instead of offering, as it does, almost every day, encouragements to the violation of it. It is also true, that the penalties denounced by the act are so rarely enforced, that the prohibition operates on the conscientious only, and thus, to a deplorable extent, the act has become a dead letter. But the remedy for all this is plain. Instead of a fine, which scarcely any person will attempt to enforce, let the Legislature or the Convention substitute the emancipation of every slave who shall be imported in violation of the act; and then the law will live and reign supremely and effectually; for, as every such slave would assert his rights, the sanction would enforce itself, and slaves would no longer be illegally imported. This argument for a repeal, therefore, is a *felo de se*—it cuts its own throat, and is disparaging to Legislative candor and wisdom.

But, said Mr. R., were it even consistent with sound policy to abrogate the law of '33, this is not the proper time for such a decisive movement. And even the agitation of the subject at this unpropitious session will do much harm. Kentucky, now in a crysalis state of eventful transition, looks with mingled hope and fear to the coming Convention for organic renovation. All her wisdom and unimpassioned thought are necessary to a safe result. The subject of slavery will engage the consideration of the Convention, and will be adjusted by the new Constitution, as far as fundamental law can settle it. Would it not be prudent, as well as respectful, to defer this whole matter to the Convention, unaffected by legislative instruction or presumptuous anticipation?

This body has already on more occasions than one gone beyond its legal sphere and expressed abstract opinions altogether motiveless, unless they were intended to instruct the people or influence their delegates in Convention. This, sir, is an inversion of the proper and accustomed course; instead of reflecting, it is attempting to manufacture public opinion. On the subject of slavery especially, the people will think and act for themselves. If they approve the purpose of the act of '33, they will see that it shall be made permanent and effectual by a provision in their constitution. And if a majority be against it, that constitution will be sure to contain such provisions as will paralyse legislative will, so as to keep the door wide open for the influx of foreign slaves. The anticipating movement made by this bill is, therefore, premature and unnecessary at least. It is much more; it is pregnant with danger. There are thousands of the best and most intelligent of Kentuckians who are willing to make a fair trial of the issue of slavery, so circumscribed as to escape all foreign or extraneous influence. But if this bill be pass-

ed they will construe it as a pro-slavery move, designed to perpetuate slavery by immediately augmenting the number of slaves to such an extent, as to place the convention *in vinculis* and render the initiation of prospective emancipation hopeless to this generation. They will feel that a new issue is proposed to them; and, convinced then that the only or best time to strike for ultimate relief will be before the approaching convention, they will rally on that question. And, on such an issue, so forced, there will be all-absorbing agitation, almost to convulsion; one consequence of which will be that, throughout the State, the controling question in the selection of delegates to the convention, will be that of initiative emancipation now, or perpetual slavery. The delegates will be elected without regard to their fitness or their opinions on other fundamental subjects; and consequently, there would be danger that a bad constitution would be proposed, which ought not to be adopted. *

Sir, said he, let us not rouse the slumbering lion. Look to the posture of slavery here and the popular feeling respecting it, Kentucky now quivers at the base of a heaving vulcano. Uncover not the crater. Desolation may be the consequence of an eruption provoked by the temerity of passing or even agitating this reckless and portentous bill.—If the people are permitted to be sober and tranquil, until after the election of delegates, the constitution will be safe and good. But heedlessly agitate them on the stultifying topic of slavery, and there will be neither peace nor safety —here nor throughout this entire Union. Many aspiring politicians, of selfish ambition, and a still larger number of fanatics, on one side of "Mason's and Dixon's line," are striving to consolidate the non-slaveholding States on free-soilism as the paramount test of National party—and there are but too many Hotspur's and ultra pro-slavery men on the other and numerically weaker side of the line, who rashly play into the hands of these "North Men," and encourage an issue which, if ever fully made up, must result in the political subjugation of the South, or a disruption of the Union. It is the interest of Kentucky to prevent that fearful issue; and she can avert it only by abstaining from slave agitation and remaining self-poised, firm and moderate.

He regretted to hear, as he had heard, a hope expressed on this floor, that Kentucky would throw herself into the arms of the South and denounce defiance to the North. It would, he thought, be much more consistent with her responsible position and her lofty patriotism, as hitherto illustrated, to throw one arm around the South, and the other around the North, and with a sister's embrace, hold them fast, as an affectionate sisterhood of the same blood, the same name, and same the destiny. A gallant ship in the perilous strait between *Scilla* and *Charybdis* is not unlike Kentucky now. And, carrying out the simile, he hoped that the self-denying crew, like old *Ulysses*, would tie themselves to the mast, and, looking neither to the right nor to the left, but straight ahead to the port of safety—would escape the whirlpool of perpetual slavery on the one side, and the rocks of political abolition on the other.

He repeated that free-soilism, as exemplified by the "*Wilmot-proviso*," is the offspring of fanaticism and political ambition. That philanthrophy must be affected or insane, which would coop up slavery so as either to perpetuate it in the States where it now exists or drive it to the bloody crisis of St. Domingo. Without some outlet for exportation, the present impracticable numbers in Kentucky could not be diminished. Forced on us without our consent, what, said he, are we to do with them? Emancipate them and leave them here? That is impossible. Will the States in which abolitionism is urged as a paramount duty, receive them and elevate them to a social and civil equality with their white population? They would scorn the proposition. Would they agree to set apart New Mexico as a sacred fund for paying for such slaves as the owners might consent to liberate on receiving indemnity? At such a proposal they would laugh. Then the only ultimate remedy is expansion. But fanaticism insists that it is both a civic and christian duty to dam slavery up till it shall become putrid, or rising to a resistless torrent, overwhelm all the social foundations of order, security and peace. This is insanity, or moral treason. But there are those who, knowing all this, will urge the "Wilmot proviso," in reference to New Mexico and California, where without any Congressional restriction, slavery can never exist. Their object, therefore, cannot be to prevent the desecration of the soil of those countries by the footsteps of slavery. But the non-slaveholding states, if consolidated on such a national question as that of "free-soil," would hold the rod of empire, and rule not only the elections of President, but the destinies of the Union. Here may lie the lurking clue to the perseverng agitation of free-soilism by Northern politicians. If the territory recently acquired by the common blood and common treasure of the states in which slavery exists and in which it does not, were congenial to its existence, could any just and patriotic man, considering the compromise and recognition of slavery in the Federal Constitution, believe that any act of Congress prohibiting slaveholders in any of the states from emigrating thither with all their property would be either politic or just? Why deprive the inhabitants of that territory of the right to decide for themselves? To permit perfect liberty on that subject, would neither increase the evils nor prolong the duration of American Slavery, nor even recognise its legality otherwise than it is sanctioned by the supreme law of the Union. But, though he could never vote for the "Wilmot-proviso," he would not resist it by war, secession, or nullification. The South ought not to suffer itself to be uselessly excited by it so as to jeopard its own just share of

*This prophecy was literally and woefully fulfilled.

power, or the peace and integrity of the Union. But whatever the South may do, let Kentucky stand aloof, and exhibit another illustration of the emblematic motto inscribed in sunshine on her escutcheon—"UNITED WE STAND, DIVIDED WE FALL."

Had this lot been cast in a land of universal freedom, he never would consent that its virgin bosom should be soiled by the tread of slavery, or its tranquility disturbed by the cry of a slave. Of course, were he a resident of California, he would oppose the introduction of slavery there. But the people of that country, like the people here, should be left free to regulate their own domestic relations in their own way; and, if they should desire to have slaves, Congress—though in his opinion possessing the power to prevent them while in a territorial state of dependence on the unlimited legislation of the General Government—would act unwisely, as well as unjustly, to exercise it, and more especially as, in that case, the act, being altogether unnecessary, would seem to be wantonly intended for the political aggrandisement of one section of the Union, and therefore would be the more ungracious and offensive to another section, which, though not quite so populous, is at least as intelligent and patriotic.

Slavery in Kentucky, continued Mr. R., is a moral and political evil. The children of slaveholders are injured, and many of them ruined by it; and it has greatly reduced Kentucky's ratio of political power; for whilst she, the first born of the old "13," has only ten representatives in Congress, Ohio, younger in origin and inferior in physical adaptations, has already twenty-one representatives in the same body. But the slaves here are so numerous, and slavery itself is so interwined with the social or personal habits of the free population as, in his judgment, to forbid the adoption now of any system of emancipation with a rational hope of a consummation either satisfactory or beneficial. Before this can be done, the number of slaves must be considerably diminished and the people more and more assimilated to the non-slaveholding habits and condition. The experiment of non-importation will soon decide whether Kentucky is destined long to continue a slave state, and will in proper time we hope develope public sentiment on that subject. It is the interest of all—the duty of all—to try that experiment. Whatever may be its final results, its operation will be beneficial to all parties—masters and slaves, the pro-slavery party, the emancipation party, and the conservative party. This he had already endeavoured to show, and he would add nothing more on that subject. The only mode of effectuating the non-importation policy of 1778, and of 1833, would be to make the prohibition and the sanction of the former act fundamental, by imbedding them in the constitution. Then, the sanction upholding the prohibition, both would be placed above legislative caprice, and stand without violation or evasion. The constitution ought also to prohibit any legislative act emancipating any slave existing at the date of the enactment, without the owner's consent, or full compensation. And he would prefer that it should also prohibit any legislative act for emancipating the *post nati* without a concurrence of three-fifths of each branch of the Legislature, and also without some effectual provision for the benevolent and certain deportation and settlement of all the persons emancipated. He would desire a concurrence of more than a bare majority, because he would doubt the policy and stability of any system to which about one half of the freemen of the State are opposed. But no reasonable man could object to the initiation of a prospective system when three-fifths of the voters, after a satisfactory experiment, should concur in the adoption of it. But on this point he would not be tenacious. He would be satisfied, if a majority prefer it, with a constitutional power to amend the State, just as the Federal Constitution, in any one provision without a revision of the whole. He would be willing also to make illegal importation a Penitentiary offence.

In reference to slavery, said Mr. R., the true and only proper or available contest in the selection of delegates to the convention, would be on the question whether the policy of the act of '33, with the sanction of the act of '78, should be incorporated in the constitution. That issue will be easily understood by all; and if the conservative party prevail, the triumph will be permanent, and its fruits will be satisfactory to every considerate patriotic and practical citizen. If Kentucky ought not to be a slave State, this policy will liberate her as soon as any other, and more certainly and satisfactorily. If she be destined to perpetual slavery, the fact will be soon ascertained, and the country will acquiesce, without agitation, in a destiny which will then be found to be natural and inevitable. And, sir, said he, when the issue is made between those who are in favor of perpetuating slavery and those who are for standing still and doing nothing which will tend to its perpetuation, the vote will be apt to prove that the pro-slavery party are in a small minority—and then the overwhelming party of conservatism will, for all just ulterior purposes, have the power in their own hands to use at the proper time and in the best mode.

For advocating the foregoing plan, and for uttering the foregoing sentiments he had (he said) been charged with encouraging abolitionism. If this be abolitionism, God bless and prosper it. He had also been rebuked on this floor as recreant from fidelity to Kentucky, and ungraciously warned that his cheeks would be mantled with the blush of shame. He feared no such consequence as likely to follow his opposition to a bill for the benefit of "negro traders," at the expense of the prosperity and happiness of his native and beloved Commonwealth. But who made this charge, and against whom was it made? The accuser is comparatively a young man who has no peculiar stake in the welfare of the

State, nor has done anything extraordinary for promoting it—a batchelor, unmoved by any of the sympathies which bind the heart of man most strongly to his country—an isolated being—wifeless—childless—homeless—"a root out of dry ground." And of whom does this young man thus hazardously speak? One whose parents immigrated to Kentucky in the "hard winter of '79," encountered all the perils and privations of the early settlement, and, after having helped, by their virtues and their example, to make her what she is, now sleep beneath her sod in honor and peace—one who was born in Kentucky and married in Kentucky—whose children dead are buried here, and whose children living are all around him with a large posterity identified with the honour of their native State—one who, now grown old in the service of Kentucky, never did anything of which she complained, but has always endeavoured to contribute his humble mite to the establishment of her renown—one who is indebted for all he has or hopes for on earth, to the kindness of Kentucky, and expects ere long, to repose, with his kindred, in the bosom of the mother clay which gave him birth—one, in fine, who, without egotism, may be permitted to say that he is, as he could not but be and ever has been, every inch, a true Kentuckian in the sterling import of that honored title. And it is because he is what he is and feels therefore for Kentucky's welfare as he does feel, that he is so much opposed to this "negro trader's" bill. Believing, as he does, that the agitation and passage of it now will be pregnant with dishonor and irreparable mischief, he feels that, though he claims no more stoical patriotism than any other free and filial Kentuckian ought to possess in regard to sacrifices for the benefit of his State, rather than be instrumental in passing this bill, he would, *Mutius* like, suffer his right hand to be burnt to the stump. But he feared that, in endeavoring to defeat this pestilent law, he was on a forlorn hope. He had heard that the party in favor of it had been organised and enrolled, and counted a majority of 22. Still he had some hope that so great a misfortune as the passage of the bill may, some how or other, be averted from the country. But, having endeavored faithfully to do his duty, he would be guiltless of the consequences, whatever they may be. On the subject of slavery, his posterity should never shake "their gory locks" at him. And if it shall ever be his posthumous fortune to have a monument to commemorate his poor name, he would desire no better epitaph than this—"*Born in a slave State, he never disturbed his country's peace on the subject of Slavery nor uttered a sentiment or did an act tending to aggravate its evils or prolong its existence.*" Veneration for the precedents stereotyped in the past history of Virginia and Kentucky—respect for the memory of the patriots and statesmen who established and upheld them, and regard for the welfare of posterity, all require the rejection of this bill. And, to help, if anything earthly can help to defeat it, he would call on the memories of the past, appeal to the interest of posterity, and invoke, (pointing to the portraits of *Washington* and *Lafayette*,) the Spirit of the Father of his country and that also of his friend and coadjutor by his side, both benefactors and liberators of mankind—to hover over this House, and inspire its members with practical wisdom and becoming moderation. The welfare of Kentucky, for generations to come, may be involved in this bill. If it fall, Kentucky ought to clap her hands with joy; and if the coming Convention shall also incorporate in the new Constitution, the policy of '33 with a sufficient sanction, the page recording these glorious events, will be one of the brightest in the annals of our noble Commonwealth, and the names of the statesmen who shall have contributed to the luster of that enduring record, will be embalmed in the memory, and consecrated by the gratitude of a long line of blessed posterity.

ADDRESS

To the People of Fayette when a Candidate for the Convention.

The position which I occupy as a candidate for the Convention, being misunderstood or misrepresented—especially on the subject of slavery—I feel it my duty to you, as well as to myself and to my principles, to define that position in a mode which will be accessible to all and leave no pretext for misconception hereafter.

The present Constitution of Kentucky is, in my judgment, the best in the Union. It is not perfect, because no work of man ever was or ever will be. Nor is there, probably, one intelligent citizen of the Commonwealth, who would not make some alteration in it, if he could. But no constitution was ever adopted, which any one, even of those who concurred in the adoption of it, preferred in every respect. Being a common work, it must be the offspring of a compromise of conflicting interests and opinions, whereby each party to it surrenders more or less of what he would individually prefer. Although I have but little hope that we are now prepared to make a better Constitution than that under whose banner many of us were born and our State has prospered and been eminently honored, yet it is my interest and my desire that we shall adopt one as good as our collective reason and experience will enable us to make, all acting soberly for ourselves and for those who shall come after us.

There is great danger that a headlong agitation of questions concerning slavery will dethrone reason and instal passion as the arbitress in the approaching Convention, and place in it many members who are neither soundly conservative on other more radical subjects, nor in any proper respect qualified for framing an organic law for the great Commonwealth of Kentucky. This agitation I have long apprehended and anxiously endeavored, as far as I could, to prevent; and consequently, come as it may, I shall feel guiltless of any of its injurious consequences. It is unreasonable and could and should be avoided.

I am not one of those who believe that domestic slavery is a blessing, moral or physical, to the white race. I cannot believe that it makes us richer, more moral, more religious, more peaceful, more secure, or more happy—nor can I admit that, under its various influences, our children become more industrious, more practical, or more useful; and I am sure that free labor is degraded, and laboring freemen greatly injured by slavery. If, in the dispensation of an all-wise Providence, it could be obliterated from the face of the earth, I should consider the achievement as most glorious and beneficent to mankind; and trusting in the benevolent purposes of that overruling guardianship, I cannot doubt that the day will come, when all mankind will be prepared to enjoy, and will therefore enjoy, civil, religious, and personal liberty and light. But I apprehend that day is not our day. I have no hope of living to see even Kentucky a free State. To cease peacefully or advantageously here, slavery must run its natural course and wear out. And, if let alone—if neither increased by importations, nor tampered with by fanaticism—it will run its race in Kentucky and find its appropriate grave, in its appointed time, as certainly as wisdom, benevolence, and power preside over the destinies of men. Its natural life may be longer or shorter; but, sooner or later, its doomed death is certain. I am not for trying, by empirical patent medicines, to prolong its artificial life, or hasten a premature and convulsive death. But I would administer such remedies as may make it as sound and healthful as it is capable of being, as long as it is destined to exist. For reasons which I will explain on more proper occasions, I am opposed to all attempts to provide in the new Constitution, for a prospective system of Emancipation. At the same time, I am opposed to doing or suffering to be done, any thing that will increase the evils or jeopard the soundness of slavery as it now exits among us. I am, therefore, in favor of preventing the importation of more slaves from abroad by some fundamental provision, which will be supreme and inviolate. And, for this policy, I will briefly suggest the following principal reasons, hereafter to be elucidated and enforced on more eligible occasions:

1st. The non-importation policy has been adhered to by our mother, Virginia, ever since 1778; with the approbation, of course, of her statesmen and people, headed, too, by such patriots as Washington, Jefferson, Madison, Patrick Henry, Marshall, and Monroe. This is strong proof of its wisdom.

2nd. It has, in some degree, and with various sanctions, been persisted in by Kentucky ever since she became a State—and was made more comprehensive and stringent than before by the act of 1833, which stood the test of scrutiny and trial for fifteen years, and was never shaken until last winter—when it was virtually repealed under the influence, as I think, of erroneous conceptions and misguided feelings, and against the earnest opposition of all your representatives.

3rd. There are now as many slaves in our State as the best interests of slave-holders themselves would allow; the importation of more would only reduce the value of the services of those we now have, and tend to make slaves worse and their tenure less secure and comfortable; and, hence, northern abolitionists would be pleased with that result, and therefore they favor the policy of increasing the number and circumscribing the theater of slaves in all the slave-holding States.

4th. As the law now stands, persons who wish to buy slaves for their own use will not generally, if at all, import them, because the kind they would buy cannot be obtained in any other State cheaper than in Kentucky—the experiment has lately been tried by a company, whose agent has just returned from Virginia without one slave. But exporters of horses, mules, &c., may exchange their stock for likely slaves of bad and mischeivous qualities, because these they may buy for a reduced price, which will afford them a profit here—selling, as they might, the slaves according to appearance, without communicating, and perhaps without knowing their vicious propensities or other bad qualities. And thus our slave population would be injuriously corrupted, and our peace and security endangered. And thus also our export trade would be comparatively unproductive in consequence of the importation of slaves instead of money, and slaves too that would not increase the aggregate wealth of the State, but probably reduce it by a resulting reduction in the value of slave labor. *The history of our domestic trade before and since* 1833 *proves this deduction undeniably.*

As long as that law was reasonably observed, the prosperity of the State increased in an unexampled ratio. In seven years immediately succeeding the enactment of it, the aggregate wealth of Kentucky rose from one hundred and twenty-six millions to about two hundred and forty millions of dollars!

It is idle to argue that slaves will not be imported by negro traders and exporters of stock. They were the chief importers under the laws of 1794 and 1815, both of which, like the existing law, authorized importations for use and not for sale; and they will yet be the almost exclusive importers—and by their operations, the currency, as all experience testifies, will be embarrassed and reduced by large investments in negroes, and by extensive exchanges of stock and produce for slaves, instead of money, imported.

5th. As labor is the ultimate test of the price of products, a reduction in the price of slave labor, resulting from increasing the number of slaves, will produce a corresponding reduction in the exchangeable value of the proceeds of that labor: and though a buyer or hirer of a slave may have something less to pay, yet he will not be, relatively, a gainer—for the value of the slave and of his service will be reduced correspondingly with the diminished cost of purchase or of hire, and even in a greater ratio—the value of augmented production. Not only also does slave labor tend to the disparagement of free labor, and thereby make it comparatively rare, but a considerable reduction in the price of servile labor must result in the starvation or expatriation of mechanics and other freemen, whose honorable destiny it may be to live and feed their dependent wives and children by the sweat of their brow. And as these useful and productive citizens leave us, their places will be filled by worthless and comparatively unproductive slaves, and this garden of the great West may finally be monopolized by a bloated aristocracy, whose staple business will consist of breeding, feeding, and selling negroes. Besides, as this generation is not responsible for the existence of slavery, it ought not, by the voluntary importation of more slaves from abroad, to make itself responsible for throwing on posterity an accumulated and perhaps unmanageable and destructive burden.

6th. Not only Virginia, but Maryland, both Carolinas, Georgia, Alabama, and Mississippi have, long since, adopted the importation policy—and Mississippi has inserted it in her Constitution. This ought to prove, even to the most ultra of the pro-slavery men, that the policy is wise and must be beneficial to them, as well as all to others. And if any of them will still denounce it as an "emancipation move," they must also consider the Father of his Country, and other illustrious Virginians, emancipationists, and Virginia, South Carolina, Mississippi, &c., emancipation States!—This is all humbug—which ought not to deceive or mislead honest and patriotic citizens; and of this you ought to be satisfied when you see such counties as Bourbon, Mason, Shelby, Jefferson, Boyle, Garrard, Madison, and a host of others, uniting, some of them almost unanimously, in the purpose of prohibiting, in the new Constitution, the further importation of slaves.

For these, as well as other reasons, the owners of slaves, and those who neither own nor wish to own any, ought to favor non-importation. If it be the interest of Kentucky that slavery should be perpetuated, this policy, however fundamental, would not frustrate, but would prudently, tranquilly, and progressively promote that destiny by rendering slave property more desirable and productive.

The emancipationist, as well as the perpetualist, should advocate the same policy of non-importation of more slaves for the following reasons:

1st. If, in climate and products, Kentucky be as much adapted as the planting and more Southern States to slave labor, slavery will exist here as long as it shall continue there, and no legislative expedient can prevent it; and, on this hypothesis, surely the philanthropist would desire to see slaves as good and as comfortable as possible, and as little subject as possible to be torn from those they love.

2nd. Emancipation now is utterly hopeless—public sentiment is not prepared for it—and even if it were otherwise, no permanent, just and practicable scheme could be devised until the number of slaves shall be considerably diminished—and this can be effected only by non-importation and voluntary exportation. If this generation, or its successor, be destined to see the day of universal freedom in Kentucky, the dawn of that day will have been preceded by non-importation.

3rd. If it be the interest and destiny of Kentucky to get rid of slavery, that result will be accomplished by non-importation more certainly, more satisfactorily, and more speedily than in any other mode. On the hypothesis suggested, public sentiment, backed by interest, would soon begin to converge to that point, and the ultimate result would be accelerated by anticipation. This, I think, might be made evident by various considerations, if it be assumed as true that slavery is incompatible with the interest and high destiny of our State. If, then, emancipation be prudent and practicable at any future period, non-importation will not only be indispensable, but will certainly lead to it. And if it be not prudent or practicable at some future day, non-importation will improve the quality and value of slave property, and promote the peace, security and wealth of the State.

I, therefore, am not of any extreme party. I am for a Constitution which will guaranty the inviolability of slave property—and also prohibit future importations of slaves, with a sanction that will uphold the prohibition. I am also in favor of a provision authorizing, like the Federal Constitution, partial amendments without involving, as our present Constitution does, the whole organic fabrick. And in this I am sustained by the Convention party, who, in their published programme, recommend such a provision. I would not object to the legislative power to provide for prospective emancipation whenever three-fifths of the people decide in favor of it; which majority, or something near it, I would require for any other amendment—believing that no Constitution could have proper stability if a bare majority could, at any time, change it.

I have, much to my surprise, however, heard of some persons, who, whilst they aver that they approve the non-importation policy, are, nevertheless, somehow or other, so much opposed to its being made fundamental, as to have resolved to vote for no person as a delegate to the Convention, who, though coincident with them in every other matter, will vote to embed non-importation in the Constitution so as to make it operate effectually! This feeling is, to me, inscrutable. The act of 1833 was, for years, almost a dead letter—the acts of 1815 and of 1794 were mere mockeries, and had no operation. Besides, if the legislature have the power, it will, as always hitherto, legalize individual importations, at the cost of the public treasury, and thus paralyze and render unequal and contemptible any mere legislative enactment prohibiting importations. If non-importation be right—it must be right to secure the enforcement of it; and it must be as right and proper to secure this by the Constitution as any thing else that should be secured inviolate. And, as history abundantly proves, he cannot be practically in favor of the act of 1833, who would even disapprove a constitutional provision to the same effect. If it should be found inconvenient, the people, under the clause authorizing special amendments, could, and soon would strike it out. The only object of inserting it in the Constitution is to place it above legislative caprice, and make it stable and uniform as long as public sentiment shall approve it.

Now, why cannot all good and wise men—all who wish to preserve the peace, the reason, and the safety of the Commonwealth—all who, prudent and firm, of whatever party, desire to accomplish the best of practical ends, and to not lose even these, as well as more, by recklessly attempting what is either unattainable or unreasonable—why cannot—why will not all such men unite on the foregoing platform?

Emancipation, prospective or immediate, in my judgment, is not the true or proper issue; and I do seriously apprehend that the agitation of it by pro-slavery men or emancipation men would result in the defeat of the non-importation policy and in the production of pernicious passions and disorganizations which the forlorn wisdom of an age may not cure. The late Convention at Frankfort, as I understand, proposed to waive that issue and insist only on non-importation and the right to adopt special amendments of the Constitution.

I believe that, in their sober senses, a large majority of the people would co-operate in preserving the peace and guarding the security of the State, by uniting on the only safe or practicable point of concurrence, whereby all would be finally benefited and none would surrender anything of principle or of attainable interest. It seems plain to me, indeed self-evident, that all, whose paramount object is their country's welfare, should unite on the non-importation policy, and thereby give repose to society, stability to our policy, and security to our institutions. And then also the people, looking dispassionately at other and more fundamental issues, may prudently select, throughout the State, their best and most trustworthy citizens to the Convention—without doing which they cannot expect a good or safe Constitution.

Will it be prudent or safe for those who may be opposed to emancipation in any form or at any time, to oppose the non-importation policy merely because others, who have been characterized as emancipationists, have resolved to support it and are willing to compromise upon that basis? I could not approve

such a course. I would prefer to go for my country and its peace, even at the expense of some individual preference as to a matter of controverted policy. But surely no patriot ought to oppose a wholesome measure only because persons, of whom he may feel jealous, would concur with him in adopting it.

Many others, and some of them more radical matters, will be considered and settled by the coming Convention. As I cannot, in this mode of communication, fully notice any of these important subjects, I shall not now attempt it; but will cheerfully and candidly express my opinions as to any or all of them on more appropriate occasions.

But there may yet be some danger that the stultifying topic of negroes, bond and free, may be suffered to overrule every other subject, however important; and, in that event, not concurring with the ultras of either of the extreme and uncompromising wings of an unnecessarily belligerent line, I might be placed between two consuming fires; but, I would still wish to be an humble mediator; and, whether heeded or not, should enjoy the consolations assured to the "peace maker." If some impracticable persons will still strive to produce an unreasonable excitement and an unblessed organization on what now seems to be a barren and gratuitous issue, it will be seen how far the *real people* of Fayette will approve or disapprove the effort. But I do earnestly hope that extremists of all sorts will prudently cool down into a considerate moderation and forbearance, and that finally, all, or a large majority of the sovereign people, will unite, as patriots and brothers, in the solemn work of reconstructing our organic system.

I have hitherto stood quietly by, reposing on my own fixed principles; and, with a pure conscience and an upright purpose, there I expect to stand or fall. I should be pleased to receive the support of all of every party and denomination who concur in those priciples and are willing to stand on the platform laid down in my speech in the last Legislature, and herein again exhibited. And I am yet to learn why I might not only receive but reasonably expect the aid (in every form in which it may lawfully be given,) of all parties and of all individuals who concur with me in policy. Standing under the unpatronized flag of my own principles I would gratefully accept the nomination and support of all those who are willing to stand by me on these principles, and uphold the same or a kindred banner.

GEORGE ROBERTSON.

VALEDICTORY ADDRESS.

Extracts from the Valedictory Address of Mr. Robertson, as Speaker of the House of Representatives of the Kentucky Legislature, at the close of the session of 1851–2.

Gentlemen of the House of Representatives:

The end has come. We are about to part, probably never to meet again—certainly not in our present associations.

For your recorded and unanimous approval of my conduct in the position to which your suffrages called me at the beginning of this session, I tender you, collectively and individually, my cordial acknowledgements. I had neither wish nor motive to fill this arduous and responsible station—and, in occupying it in obedience to your call, I made a sacrifice of my own judgment and personal interest. I prefered the floor, because there I might have been able to do more for my constituents and more in my own behalf than I could hope to do in the confinement of this chair. Here, however, I have faithfully endeavored to do my whole duty as your presiding officer. The only reward I desired or could have expected, was the approbation of my own conscience and of your judgments. These I enjoy—the first I know—the last I hope. And now, in this closing scene of an eventful drama, before I pronounce my last duty of dissolving this body and all our relations on this floor, I invoke your attention to some valedictory suggestions which I think the occasion allows, and justice to myself, as well as to you and my country, demands.

In attempting this delicate task, I desire to say nothing unbefitting the dignity of this chair, the decorum of this House, or my own proper relations to principles or to men, hitherto, now, or hereafter. My chief purpose is to place myself *rectus in curia*—right before you, and right before the world, concerning certain events which occurred during our present session. This I would have been pleased to do on some more appropriate occasion—but this having been prevented by my position in this chair, I trust that a brief allusion to a few personal topics at this parting moment, will not be deemed unreasonable or indelicate.

1. If my election to this chair has been felt as a wound to others who desired to fill it themselves or would have preferred some younger man, I am sorry for it. I had no voluntary agency in it. I was placed here without my solicitation and against my will, as I now declare, and as I thought you all knew. I regret this more than, perhaps, I ought.—But I felt that I could not honorably or consistently avoid it. As many of you know, I did all I could to prevent it. If, by a reluctant acceptance of the place, I have provoked the jealousy of any human being, the fault is not mine, and the wrong lies not at the door of my conscience.

2. In the organization of the standing committees, I may not, as no other Speaker ever did or could, have given universal satisfation. I could not be expected to know the exact aptitudes of all the members—and if I had possessed that rare knowledge, it could not be presumed that I should agree with every member in his self-estimation. I employed unusual care in ascertaining the peculiar qualifications of the members, and with all the information I was able to obtain, I made those arrangements which I considered best for the House, and best for the country. And though I may not, in every instance, have made precisely the most fortunate location, I am now, after the experience of two months, as well satisfied with that, as with any other public act of my life. A few persons objected that I gave the Democrats an unjust share of influence. To this I now reply, that I felt it to be my duty to be impartial in the execution of the trust confided to me—to endeavor to be the organ of the House, and not of one portion of it to the exclusion or degradation of another—and, in the exercise of the patronage of the chair I did no more than distributive justice—indeed I did not give to the Democratic party a share of power fully equal to its ratio of numbers.

In the organization of the committee on Federal Relations, my motives and purposes seem to have been misunderstood by some. At this I was much surprised. To discharge, in a proper manner, the duties of that position, and those also of a member of the committee on the Code, to both of which I allotted the the same gentleman, was as much as any one man could be expected to do—and I considered those two as among the most important committees of the House. Had I been on the floor, I would rather have been chairman of the committee on Federal Relations than to have occupied the same position on any other committee. A full, prudent and orthodox report—a report which might have been unanimously endorsed—on the character, the value, and the destiny of the Union—on the heresy of nullification—on the monstrous absurdity of secession as a constitutional pretension, or any thing else than a revolutionary act—on the history and constitutional principles of the tariff and slavery agitations—and on the

wisdom of the "Compromise," as a final and equal adjustment of those sectional controversies—such a report would have become Kentucky, and, if well done, would have told for its author, his State, and the Union, now and in all time to come. It was expected of Kentucky, and would have placed her where she ought to stand—as the chief pacificator and conservator of our common country. The member I selected for that great work was, in my opinion, as well suited to it as any other I could have chosen, and I supposed that he would delight to perform it. But he seems to have considered such a report as I have indicated, or any report, unnecessary.

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3. The political atmosphere—too often infected by the pestilent breath of selfish and unscrupulous demagogues—has been lately disturbed at the capitol, by rumors which, though artfully vague and intangible, were designed to misrepresent my poor opinions and conduct concerning domestic slavery. To rectify honest error, if any such exist, and to leave no honorable excuse for delusion in future, I consider it proper now to take notice of a subject in which I had hitherto presumed that the public would feel no interest. Duty to you, as well as to myself, requires it.

On no institution, domestic or political, have I, ever since I was a man, thought with a more intense and constant anxiety than on that of African slavery in our country; and on no subject of social organization or economy have I written or spoken more frequently, more explicitly, or with a consistency more uniform and undeviating. My sentiments in relation to it in all its bearings, have, for the last 30 years, undergone no material change; and I have never concealed or dissembled any opinion or principle I held on any subject of public concern.

I have never believed that the enslavement of the black can be a blessing to the white race; I do not esteem slavery, in itself, an individual or a social good. But, whatever may be said of its morality, national or personal, I have a strong hope that American slavery will eventuate in the ultimate civilization of doomed Africa—and in the aggregate welfare of mankind. I am not sure that it has not been sanctioned by Omniscience as a providential mean of promoting human progress and amelioration. And I have never doubted that when the white and the black races live together, as they now co-exist in Kentucky, the welfare of the inferior and the security of the superior race would both be promoted by the subordination of the former to the tutelage and dominion of the latter. Having gradually "grown with our growth, and strengthened with our strength," slavery cannot be speedily eradicated without convulsion. Whenever all mankind shall become civilized, then all may be free. Until some such approximation to equality and ultimate destiny, slavery, in some form may be expected to exist; its total extirpation, to be desirable, must be the spontaneous result of a moral, peaceful, and progressive causation. If it be the will of Providence that it shall ever cease in Kentucky, it will decline gradually into a natural death or to such a state of decay as to induce general acquiescence in a law of the land anticipating that mode of extinction. Emancipation by law, in any just, satisfactory, or even practical mode, has hitherto been, and yet is altogether hopeless in Kentucky for years to come. This, in my judgment, is the view of enlarged benevolence, comprehensive patriotism, and enlightened statesmanship. It has always seemed to me that our true policy is to let the problem of slavery work out its own solution without intestine commotion. If thus allowed to run its natural course under the guidance only of interest, reason, and the moral sense, time would, in the only congenial season, mark its destiny—and, whatever that might be, all would be peaceful and right. If, as many philanthropists esteem it, slavery in Kentucky be a curse, premature and compulsive emancipation would, as I think, be, to both races, a greater curse. Consequently, holding these opinions, I have, on all occasions, opposed any agitation of the question of emancipation, instant or prospective—and have probably suffered as much, by that course, as any other citizen.

To give as much stability and security to slavery here as possible, as long as it shall continue among us, and to promote the wealth and true political economy of the State, I was in favor of the non-importation policy of 1833, which has been sustained, for many years, by a majority of the slaveholding States of the Union, and was initiated and long continued in Kentucky by a majority of wise and good men of all classes and denominations. And to prevent the discussion of slavery in any form on the stump and in the halls of legislation, I would have been pleased to see that principle imbedded in the Constitution. To prevent convulsion and assure progressive improvement in the fundamental law, I also advocated a provision authorizing specific amendments by a conservative majority, without the delays, expense, and hazards of a convention with power to change, at once, the whole fabric of the Constitution. This theory has been illustrated by the Constitution of the United States, and those also of nearly every State in the Union except Kentucky. It has been tried in nearly all the slaveholding States, and, instead of inviting, it has repressed agitation on the subject of slavery, because, when there is a known majority against emancipation, there will be no danger of the agitation of a specific amendment for that hopeless purpose only.

I have often, and on all proper occasions, denounced abolitionism in all its forms. And I have also denounced all interference, by

Congress, with the domestic relations of the States, or even of the Territories over which it exercises legislative power. In 1819, on a bill introduced by myself to organize the Territorial Government of Arkansas, an attempt was made by the north to interdict slavery in that Territory. A protracted and exciting discussion ensued; and, on that occasion, I argued against the principle, justice and policy of such an interdict, and predicted the consequences which have followed the persevering efforts to adopt the "Wilmot Proviso." In 1820 I opposed in Congress the attempted restriction on Missouri. In 1848–9, I again denounced all such efforts as the offspring of blind fanaticism and of ambition of political power and aggrandisement—as inconsistent with philanthropy—as unjust to slaveholders—as perilous to the Union—and as in open conflict with the American doctrine that every free people ought to regulate their own policy, and especially their own domestic relations.

In all I ever wrote or uttered on the subject of slavery, the foregoing sentiments were embodied; and nothing I ever said or did can be shown to conflict with them in the slightest degree. On this subject I challenge scrutiny, in this presence and elsewhere.

4. A more delicate subject remains to be touched. It happened to be my fortune to be among those from whom a choice of two Senators in Congress was made. And in those contests I was made to suffer—most unjustly, as I must be allowed to think—not only on the ground already alluded to, but still more severely for presuming to vote for one distinguished Whig against another!

I trust that I will be pardoned for here making personal allusions which, under other circumstances, might savor of egotism, and of indelicacy to others.

When a small boy—a native born of Kentucky—I was doomed to orphanage. At the age of 19 I was married and commenced the business of life, without a dollar on earth. At the age of 25 I was elected to Congress, and was twice successively re-elected. I was pleased with political life, and was cheered with encouraging prospects of success. But paramount duties to a young and growing family required me to stifle all political ambition and to resign my seat for my entire third term. I had but just reinstated myself in the practice of my profession when, in 1822, my fellow citizens of Garrard, required me to come to the State Legislature on the occasion of the relief agitation. Having thus embarked on a tempestuous sea, I felt it my duty to ride out the storm of "Relief" and "Old and New Court," which never ceased until 1827. For five years I devoted myself, at great pecuniary sacrifice, on the stump, through the press, and in the legislative halls, to the discussion of the great questions which then agitated Kentucky to convulsion and almost to revolution.

In 1828 I accepted the appointment of Secretary of State under Gov. Metcalfe, intending to remove to Frankfort, where I expected to make a comfortable independence in a few years by a practice in the superior courts, which then promised to be unusually productive. But, in December of that year, I was prevailed on against my own judgment, and at the hazard of much sacrifice of interest and liberty, to accept a seat on the appellate bench, with a salary of not more than $1,000 in legal currency. In that unwelcome office I labored nearly fourteen years, with scarcely ever the leisure of a "Cotter's Saturday night." I never sought an office in my life, though I had been offered some of the best offices under the federal government; but acceptance being inconsistent with domestic comfort and obligation, I had declined them. In the memorable "New Election" contest in 1816–17, I had staked myself as one of a forlorn hope against a powerful majority, led by some distinguished men who have since been good Whigs. In 1843 I resigned the Chief-Justiceship of Kentucky, and resumed the practice of law, by which I have since made the chief portion of a small estate, sufficient for all purposes of rational comfort and independence. Thus having subjected myself to self-denial and self-sacrificing drudgery for thirty years, and finding myself at last in a condition in which I could afford to occupy a seat in the Senate of the Union, I presumed to say, for the first time, that if the Legislature should think fit to elect me, I would feel it an honor, and endeavor to deserve it by faithful service not unworthy of myself or my distinguished State. This was my position when I came here. I asked no member for his support—I resorted to none of the accustomed modes of conciliating favor. I stood perfectly still, awaiting the spontaneous decision of the people's representatives.—Looking at the history of the State and the fortune and destiny of its public men, I did really feel that the time had come when *I might* be a National Senator.

I soon found that friends of two others were resolved on running each of them. I did not feel it my duty longer to give back. And my friends determined to nominate me. One of those others was not nominated at the start—but most of his friends voted against me; and when one of the three Whig nominees was withdrawn, they nominated another Whig. Foreseeing the unpropitious results of such a contest, I determined not to be responsible for them, and directed the withdrawal of my name in defiance of the opposing wishes and counsels of many of my friends. My vote afterwards subjected me to proscription by many old and constant friends, some of whom had, in the first instance, been for me against any person contemplated as a candidate. Not to complain, but only to illustrate the force of that feeling I here state—what you all know—that, after the vote alluded to, some of my oldest

friends—my own senator among others—under their obligations to conscience, to constituents, and to their country, voted against me on all occasions and for every body who was put up against me. How far this proscription for the same liberty of opinion which they themselves exercised, may promote the harmony or increase the strength of the now dominant party, time may tell. According to my creed, it is hardly consistent with justice, policy, or the spirit of our free institutions; and I fervently hope that, though it may have victimized me, it may here pause and not become contagious.

In casting the pregnant vote, I was influenced by no other consideration than a regard to distributive justice, the harmony of the Whig party, and my sense of duty to my immediate constituents. Had I submitted myself to personal or to selfish motives, my vote might have been very different. I did only what I felt to be my duty, as well as privilege—and, so believing, no fear of ostracism could have changed my course.

In the election of Mr. Clay's successor, my friends were consequently placed between two waves. Nevertheless, they failed, as they and I believe, by an accident which might not occur again in a thousand trials.

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Had not this accident occurred, the result would have been altogether different from what it was—as many of both parties of this House confidently believe. But notwithstanding all the combinations and accidents which led to the actual result, I acquiesce cheerfully in it.

Perhaps it is best—best for me—and best for the country. The people's representatives are presumed to know who are the best qualified to sustain, in the National Senate, the honor of Kentucky and the integrity of the Union. And I bow to their decision, however brought about. I have thought proper to say what I have just said to show that my name was not, at my instance or for any factious or hopeless purpose, obtruded on the Legislature in the late memorable contests for seats in the Senate of the United States.

Our session, gentlemen, has been unusually eventful. It has produced more in the same time than any which ever preceded it.—Whether our constituents will be greatly blessed by its labors, the fruits of them will soon show. It is but an act of justice, however, to declare that patriotism, industry and intelligence have generally signalized your deliberations. And now about to separate, I fervently hope that we may all part in peace and friendship. Should it be the fate of any of us never to meet again on earth, may we cherish no unkind memories of the past. For myself, I can sincerely declare that, whatever may be the future destiny of any or all of you, I shall ever sympathize in your good fortune.

May you all return in good health to your homes, and meet the smiles of your families, constituents, and friends. And may our beloved country grow and prosper under our legislation.

This is a momentous age—an age not of transition only, but of wonderful progress and development. And the position of Kentucky is peculiarly interesting and responsible. This land of promise—this western world, may soon wield the destinies of America, and, through its power and example, those of all mankind. Kentucky—the first born of the *Cis*-Alleghenian States, and the mother of some of them—may, by right principles and conduct, save or destroy institutions most glorious in the past and most hopeful for the future. Let her cling to her motto—let her preserve untarnished her escutcheon—let her maintain her national position—and all will be well. But, whatever may betide us, may none of us live to see the broad flag of the Union bow to faction, or the hull of the constitution of Washington split into fragments. May it be our better destiny to live long enough to behold that noble ship survive, unhurt, the storm which besets it, and that bright banner float higher and higher, until it shall be the guardian emblem of the civilized earth.

I shall never again occupy this chair, or a seat on this floor. I now take my leave of both forever. Farewell.

This House is now adjourned *sine die*.

PRELECTION,

Pursuant to public notice, a large portion of the citizens of the city of Lexington and county of Fayette who are opposed to the adoption of the new Constitution, met at the City Hall on Saturday morning, the 2d inst., at 11 o'clock. James O. Harrison, Esq., was called to the Chair. The object of the meeting being explained, as being for the thorough organization of the friends of Constitutional Liberty in this city and county, and the formation of an association opposed to the adoption of the new Constitution; on motion a committee of four was appointed, consisting of the Hon. George Robertson, Wm. O. Smith, Geo. B. Kinkead, and Dr. John C. Darby, to present a suitable plan of organization. The committee retired, and in a few minutes returned and presented the following resolutions.

Resolved, That we will earnestly and firmly oppose, by all such means as may become necessary and proper, the adoption of the new Constitution; and that as a mean of effecting efficient co-operation, we hereby organize ourselves into an association, to be called "The friends of Constitutional Liberty in Fayette County."

Resolved, That our friends in all parts of the county be requested to organize themselves as soon as possible for the work before them; and employ all proper means for disseminating truth on the great subject to be decided at the polls in May.

Resolved, That the following persons be appointed officers of this Association.

President—James O. Harrison.

Vice Presidents—Jacob Hughes, Joseph Bryan, Benj. F. Graves, McCann, R. J. Spurr, John Cooper, O. D. Winn, Coleman Graves, John Lyle, John Q. Innes, James Morrow, Geo. W. C. Graves, John C. Hull, Wm. Cooper, W. M. Atchison, C. C. Moore, Robert Nutter, M. C. Johnson, Elisha Warfield, sr., Thomas Hughes, Thomas Hemingway, Richard Chiles John Chisham, Ab'm. Bowman, James Sullivan, J. B. Cooper, Garrett Watts, Hiram Shaw, P. E. Yeiser, Wm. Vanpelt, Gen. Wm. Bryan, S. S. Grimes, Dr. G. B. Harrison, James McNeill, Daniel Brink, I. N. Yarnall, H. Lamme, Gen. G. W. Darnaby, Roger Quarles, Edward Hart, Jacob Hostetter, J. Glass Marshall, Col. J. H. Chrisman, H. Elgin, John Caldwell, R. Courtney, Talbott, John L. Elbert.

Vigilance Committee—Dr. B. W. Dudley, E. S. Broaddus, A. B. Carroll, J. R. Sloan, E. W. Hunt, Geo. R. Trotter, Dr. John C. Darby, Jacob Ashton, Geo. B. Kinkead, Elisha, N. Warfield, Levi O. Todd, Dr. S. M. Letcher.

Secretaries—Wm. H. Brand, S. P. Scott, Geo. W. Abernethy.

The resolutions were unanimously adopted, after which, the meeting adjourned to meet at the Court House, at half-past two o'clock, to hear an address from the Committee.

JAS. O. HARRISON, President.

W. H. Brand, Secretary.

Pursuant to adjournment, the Association met at the Court House at half-past two o'clock, when the Hon. Geo. Robertson arose, and after a few preliminary remarks, in which he briefly but forcibly recapitulated the objections to the new Constitution, closed by reading the following address which was unanimously adopted.

Upon motion of Geo. B. Kinead, 5,000 copies were ordered to be printed in pamphlet form for circulation.

W. M. O. Smith was then called upon, and in a short speech gave his reasons for opposition to the new Constitution. His brief remarks were impressive and effective

After which the Association adjourned.

JAS. O. HARRISON, Pres't.

W. H. Brand, Secretary.

TO THE CITIZENS OF FAYETTE.

Fellow Citizens:—A portion of the citizens of Kentucky lately assembled, from various quarters of the State at the capitol, for the purpose of organizing "*the friends of Constitutional Liberty*" in opposition to the adoption of the new scheme of Government proposed by the Convention elected to revise our existing Constitution. The day of their assembling was auspicious to a happy result. On the birth-day of Washington, freemen of Kentucky met together in council to assert and maintain the principles of Washington; on the anniversary of the commencement of the glorious battle of Buena Vista, they commenced a civil contest far more eventful—a battle of civil liberty—the battle of the Constitution —*the battle of Kentucky;* on the final issue of which may depend the destiny of our distinguished Commonwealth.

In conformity to a suggestion by that assembly we, citizens of Fayette, have convened at Lexington to pledge our zealous co-operation in the patriotic work it has proposed, and briefly, but candidly, to address our fellow citizens of the county on a subject most interesting to us all, and to our children and children's children, for generations to come.

To be free is the natural right, as well as the instinctive desire, of all civilized men. If all men had the absolute liberty to do whatever they might will to do, no man could be secure in the enjoyment of any right. Therefore some common government over all, and with power to protect each in the enjoyment of the cardinal rights of life, liberty, property and civil equality against a dominant party, is indispensable to the practical freedom and security of the citizens of every Democracy, of whatever form. Liberty without security is a delusive mockery—it is anarchy, which is the worst form of despotism. To secure to every citizen as much of natural liberty as may be compatible with the stability of public authority and the security of the fundamental rights of all, is the great problem of Republican Government, which, if ever to be effectually solved on earth, has been already exemplified only by the Anglo-Saxon race in the present age, and in our blessed America. The American mode of effecting this great end—the desire of all just men—is by the adoption of written Constitutions, recognizing the civil equality of every citizen, imposing limitations on the power of numbers, and distributing all popular sovereignty among three co-ordinate bodies of magistracy, each the organ of the people within its separate sphere, and so constituted as to operate as a wholesome check on the others; and, by thus preserving a conservative equilibrium of power, to uphold all guarantied rights against unconstitutional encroachment by even a ruling party of the people themselves No limitation on legislative power would be effectual, nor any guarantee of life, property, or liberty of speech or of conscience availing, without a Judiciary armed with authority to expound and administer all law, and so organized as to be able and willing to do justice between the high and the low, and maintain the supremacy of the Constitution in defiance of the seductions of popularity or the terrors of power in an ascendant party, however large or domineering. This, at last, is the anchor of a free State—the palladium of true liberty and security. For want of such anchorage, every Republican Ship of State which the wisdom of antiquity or the patriotism of the middle ages ever launched on the ocean of popular will, has sunk under the waves of party passion.

Instructed by the experience of ages, Washington, Franklin, Madison, and their compeers in the Federal Convention of 1787, constructed a national government on the true and only available plan: and their mighty work is justly considered the model Constitution of every free, virtuous, and enlightened people. Kentucky—the first born of the "old 13," fashioned her Constitution by that finished model. And hence our Constitution, under which we have lived and prospered for more than half a century, may be justly said to be the offspring of the matured and rectified wisdom of the Father of his Country, and his enlightened co-laborers in the cause of American liberty. It is a shoot from the stock planted by their hands—the anatomy is the same—every thing organic, every thing vital, is essentially the same. And therefore, if one be radically defective, the other must be equally so—and, if the frame-work of the one be right, that of the other cannot be wrong. We are satisfied that in the stamina of a Republican Constitution each of them is as perfect as human wisdom will ever be able to make. But, like all the works of fallible man, both of them are, in some portions of their superstructure, imperfect, and might, in that respect, be improved. None of these, however, are esential to vitality or stability. No prefect Constitution will ever be made by the hands of man; nor, if such an one should be given to us by Omniscience, would we all be satisfied with it. Human wisdom will never make a Constitution which

will be, in all respects, precisely what any one of even those who made it would prefer: all will have some objection to it. And, consequently, every citizen of Kentucky, who thinks for himself, has felt some objections to our Constitution, comparatively excellent as enlightened candor must admit it to be. Each of us would be pleased to see it amended if such partial amendments as, in our judgments, would improve it, could be adopted.—But none of us would touch a fibre of its roots: none of us would essentially change one of the three great organs of its being. Nor have we any hope that a Convention, constituted as the late one was, and determined to tear up the Constitution and plant a new one in its place, will ever establish one as good, or which will live as long, or bear as good or as much fruit. Under that old Constitution every citizen, however humble, has enjoyed all the guarantied rights, and the Commonwealth has been distinguished by a prosperity and a name which should satisfy the reasonable ambition of any republic on earth.

Although every citizen of Kentucky has looked on its Constitution as imperfect, and would therefore have desired to alter it in such a manner as would, in his opinion, improve it, yet, apprehending that it might be made worse instead of better under the radical process of a total renovation by a Convention armed with power over the whole of it, an overwhelming majority persisted in overruling a call for such a Convention until the eventful year of 1847 when, as a consequence more of the timidity of rival parties struggling for the predominance than of the deliberate choice of the people, an act was passed for taking their vote; and, chiefly as the effect of the same paralysing circumstance, the call was made rather by default. To enable the people to vote with their eyes open to the consequences, the advocates of the call published a "*platform*" of the reforms, for effecting which they desired a Convention. On that platform, believing it to be made in good faith, the people concurred in the solicited call. None of the proposed reforms would have made any radical change in the organic structure of the Government. The most essential and conspicuous of them were, 1st. A change in the mode of altering the Constitution, so as to allow partial amendments by votes at the polls without the expense, agitations and hazards of Conventions with full power to change the whole—and 2d. A change in the tenure of judicial office from life to a prescribed number of years—but disclaiming any purpose otherwise to impair the necessary independence of the Judiciary.

But, notwithstanding that implied pledge, the Convention has offered for adoption a new scheme radically different from that proposed to the people for their consideration, when they voted to try the experiment of reform. The new form not only does not permit the people to improve their Constitution by partial amendments, in modes similar to those by which the Constitution of these United States, and the Constitutions of a large majority of the States, and of all the slave States in the Union except Kentucky, may be amended—but withholds the right to make any change whatever, however much or unanimously it may be desired, in any other mode than by a Convention, and after a persevering and agitating struggle for at least *seven years*. And instead of changing merely the tenure of office as proposed, it makes all Judges, as well as almost all other officers, high and low, elective, reduces judicial tenure to unreasonably short periods, and allows the Judges to be re-eligible. These changes are not only radical but essentially irreconcilable with those proposed by the platform. Moreover, instead of such a re-organization of the County Courts as was contemplated, the Convention provides for more than 300 new Judges, who, if they should be abler lawyers than the ordinary Justices, must cost the state at least $150,000 annually—or, if they should not be jurists, will probably increase the drafts on the treasury as much as $50,000 a year—all for nothing; the present County Courts costing nothing and doing their business as well.

In chaining down the Constitution to prevent alteration, the Convention, instead of progressing with the spirit of the age, has, by one gigantic leap, gone backward to the gloomy days of feudal lords and vassals—has turned its back on modern light and on every American precedent—has tied a Gordian knot which can scarcely ever be unloosed unless it be cut—and would thus fasten on this generation and its posterity a Government which, however oppressive or odious it may become, but few men will ever hope to change otherwise than by revolution. This surely is not "progressive Democracy." We should suspect rather it was a device of Whig lawyers in the Convention, to damn the whole scheme of the little Democratic majority in that body.

Had the "platform" proposed such a Constitution we are satisfied that the call of a Convention would have been overruled by a majority as large as that which, relying on the published basis, voted for it.

And can it be beleived that the Judiciary, as constituted in the new plan, will be such as all experience demands and the theory of every American or modern Constitution (even this new one) requires for maintaining inviolate the guaranties of the fundamental law, and securing impartial justice between man and man? In the whole annals of jurisprudence no such judiciary ever proved adequate to either of these indispensable ends of every good Government. To declare that certain individual rights shall be sacred, or to declare that the Legislature shall not invade any one of them, is a humbug, unless the Constitution containing the declaration shall also provide proper and effectual means of maintaining its supremacy over the repugnant will of a dominant party, however strong. When this is not done, the practical power is not where it ought to be, in the Constitution, but,

where it ought not to be, in a Legislative majority, which it is the chief object of every constitutional limitation to control, in the only effectual mode, by a firm, honest, and enlightened Judiciary.

With a pliant Judiciary, subservient to the will of a ruling party, the Constitution will fail to protect whenever its protection shall be most needed—to save the poor, the weak, and the unpopular from unconstitutional oppression. Should a triumphant party pass an act impairing the obligation of contracts, or an *ex post facto* act, or an act punishing a freeman for his conscience, or robbing him of his property, the doomed citizen could, with but little hope of rescue, appeal to a Judge elected by the same party, for a short period, and anxiously hoping for re-election .Had such been our Judges during the memorable "old and new Court" controversy which agitated Kentucky for many years, they would sooner or later, have bowed to the persevering and tremendous majority interested in unconstitutional "relief acts," and the Constitution, instead of triumphing, as it did most gloriously through a firm Judiciary, would finally have gone down and become the play thing of faction. Popular election may not be the best mode of selecting good Judges. Admitting the competency of the people to appoint Judges, as well as the incumbents of the other departments, when they have proper opportunities of doing so, yet the great reason why they should elect the latter does not apply to the former. In legislation the constitutional will of the people ought to prevail—and, therefore they should elect their legislative representatives. The same principle applies also to most of the duties of the Executive: but a very different one applies to the Judiciary, whose province is, not to echo the public sentiment, but to decide the law and uphold justice and the Constitution against an opposing torrent of popular feeling. To make Judges of the law representatives of public opinion, like the makers of the law, is inconsistent and suicidal. And consequently, whatever will tend to subject the Judiciary to the fluctuating tide of passion or of party is, so far, subversive of the American theory of Constitutional liberty and security. Had the Convention only provided for the election of Judges for a period of ten or twelve years, and declared against a re-election, we would not have opposed the adoption of the new Constitution on that ground alone. But, by reducing the term of office to so short a period as six years, and allowing re-eligibility, that new scheme of Government holds out a bait which must subject the Judiciary to a capricious power, whose will the objects of its creation and of the Constitution itself require it often to resist and control.

Who could expect such a Judiciary, by a self-sacrifice, to maintain the integrity of the Constitution against an exceedingly popular act of Assembly? Who would hope, that before such Judges the poor and rich, the weak and the powerful, the popular and the friendless, the minority and the majority, would have an equal chance of stern and impartial justice? And for what, but to protect those who have not the power to protect themselves, is a Republican Constitution ever made? History tells a warning tale on this momentous subject, and yet tells not—because the historian cannot know—the one hundreth part of the corruptions, the prostitutions, and the oppressions springing from the organization of such a Judiciary as that proposed by the late Convention. But it does record, in burning characters, the humiliating fact that, even in our gallant sister State, Mississippi, Judges have closed their courts to avoid giving judgments —Sheriffs have resigned to prevent execution —and that, more than once, "Lynch" law has reigned supreme and unrebuked.

With a prophetic forecast, as well as historic truth, Thomas Jefferson, in his notes on Virginia, denounced such a servile Judiciary as the supple instrument of faction and of anarchy, and said, in reference to it—"*An elective Despotism is not the Government we fought for.*" And echo should reverberate through the whole valley of the Mississippi, "*Such an elective Despotism is not the Government we fought for.*"

On this subject James Madison and his colleagues in the work of consolidating our national liberties, have recorded, for our safety, the following instructions:

"In a Monarchy it (an independent Judiciary) is an excellent barrier to the despotism of the prince; in a Republic it is a no less excellent barrier to the encroachments and oppressions of the Representative body; and it is the best expedient that can be devised, in any Government, to secure a steady, upright and impartial administration of the laws."

"The complete independence of the Courts of Justice is peculiarly essential in a limited Constitution. By a limited Constitution, we mean one which contains specified exceptions to the Legislative authority. Such, for instance, as that it shall pass no bill of attainder or *ex post facto* laws, or the like; limitations can be preserved in practice in no other way than through the medium of Courts of Justice, whose duty it must be to declare all acts, contrary to the manifest tenor of the Constitution, void. Without this all the reservations of particular rights or privileges would amount to nothing." "The independence of the Judiciary is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures sometimes disseminate among the people themselves." "The benefits of the moderation of integrity of the Judiciary have already been felt in more States than one." "Considerate men, of every description, ought to prize whatever will beget this temper in the Courts; as no man can be sure that he may not be to-morrow the victim of a spirit of injustice by which he may be a gainer to-day —and every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence

and to introduce, in its stead, universal distrust."

These are the wise lessons of our fathers, and their truth is stamped by the experience of all ages.

And, is it not as important to confidence, security, and justice, in a Republic, that Judges should not be subservient to a dominant party, as it can ever be that, in a monarchy, they should not be the tools of an arbitrary king? Is it not even more important? Are not the influence and power of an overwhelming majority of the people in a democracy more difficult to withstand than those of one man under any form of Government? The one, if a monster, is one-armed—the other might be a Briærian giant with a hundred strong arms.

The absolute supremacy of an unchecked majority of the people of any State is the most insecure and intolerable of all Governments. The grand object, therefore, of every American Constitution has been to secure the weak against the strong, the poor against the rich, minorities against unjust majorities, each citizen against oppression by all, and the State itself against factious combinations to undermine its foundations. A Government of reason, and not of passion—of truth and not of error—of virtue and not of vice—of just laws and not of unjust men—is the first hope of every Republican, and the ultimate aim of every well organized Republic. And all history, as well as right reason, proves that there can be no security to any individual right without organic limitations on the will of an ephemeral majority. Hence an unlimited Democracy is an obsolete form of Government; and hence also every American Constitution professes, as its leading object, to guard Liberty, Property and Equality, against the arbitrary power of shifting majorities, or rather of the Legislature, which is the creature of the ruling popular majority. And this they all propose to effect, in the only efficient modes, by imposing fundamental limitations on Legislative power, and by providing a distinct department for upholding those salutary restrictions. Without such a body of Magistracy all constitutional limitations on the inherent power of majorities would be but cobwebs, and the Constitution itself, which should be above all, would not, when its protection would be most needed, operate at all, as "the supreme law." Without such a tribunal a dominant majority might enforce every unconstitutional act which ignorance or passion might induce the Legislature to pass; and then, for all the great ends of its creation, the Constitution would be powerless—dead. It would be a useless body without a soul—a mere mechanism without inherent motive power, or capacity of self-preservation. It would be all theory, and no practice. It would still speak; but its speech would be mechanical—the cuckoo note of the dominant party—and when its protection should be invoked, it would be as dumb and as nerveless as a statue. That Constitution which does not provide effectual means for maintaining inviolate its theoretic limitations on the will of the majority, is not, in any true or available sense, a fundamental and supreme law. It is not, therefore, in the American sense, a Constitution. This our Fathers have told us, and, as their best legacy, Washington, Madison, Jefferson, and the most enlightened of their patriotic contemporaries have warned us never to forget that great political truth established by universal history and consecrated by the immortal work of their illustrious and eventful day.

The new scheme proposed by the Convention, in contempt of all the lessons of experience and of the solemn warning of our Patriarchs of the purest and brightest age of Liberty, would organize a Judiciary in such a manner as to make it subservient to the very power which the security of all our guarantied rights requires that it should often resist and control. Instead of making the Constitution supreme over all parties, as every organic system, to be a good one, must do, it instals the transient majority as practically the supreme power over all that concerns the Commonwealth and every citizen of it. In the act of its creation therefore, it commits suicide by the infusion, into its viens, of an insidious and slow, but sure poison.

Wherever a similar system has been tried, the laws have been unstable, justice capricious, judicial decisions but little respected, the weak oppressed, and the Constitution paralyzed. Even in Ohio, where the State Judges are dependent, as they would be here under the new form, on the breath of a ruling majority, no Kentuckian can feel any assurance of justice in regard to his fugitive slaves unless he appeals to a judge of the general government who may have a judgment of his own and firmness enough to utter and maintain it in defiance of the clamor of the multitude. And though many there may say that the elective, periodical, re-eligible judiciary works well, you may find that they are holders or expectants of office or belong to the majority and would therefore, good or bad, praise the machine that works to their own hands. But inquire of a disinterested, quiet citizen, and he will tell you it is a curse—that it often does crying injustice to obnoxious or uninfluential persons which the world knows not of—and that it never stays the popular arm of power, when uplifted to strike down the Constitution.

If such a Judiciary be, on principle, right in Kentucky, it would be equally right in every other State; and if right in all the States of the Union, it must be right also in the United States. Then let Kentucky once adopt the new Constitution, and, by her example, invite her sister States and the General Government to adopt a similar judicial system, and soon, the national majority being opposed to slavery, abolitionists and free-soilers may reign supreme through the instrumentality of a dependent servile judiciary—the last constitutional arbiter of the supreme law of the Union. And then there will be neither union

nor peace, nor security to slave property. Against such a judiciary the minority of slave States would protest. For the like reason the wise and the just ought to protest against such a judiciary in any State, and, above all, in Kentucky. A late number of the National Intelligencer solemnly warns the people of Maryland (who are about to amend their Constitution) against the curse of an elective, periodical, re-eligible judiciary.

This is but an illustration of a fundamental principle of the American Whig party. And it is equally a principle of all organized, limited, conservative Democracy. Let either a Whig or a Democrat, honest and enlightened, deny it, if, in his conscience, he can.

In the proposed re-organization of the Executive too, the Convention disrobes the Governor of almost all authority, except that of drawing a sinecure salary, and issuing pardons and remissions of fines. And, as this will be his chief patronage, he may find it his interest to make a freer use than ever heretofore of the pestilent prerogative of remission. He will still be held responsible for the execution of the law, and yet his subalterns are not, in any way, responsible to him. The keeper of the public money, the Attorney General, the subordinate Attorneys for the Commonwealth, the Sheriffs and the Constables, are all to be elected;—and Sheriffs, though agents of the Treasury, are to be elected, not by any organ of the State, but by small fractions of it. This mode of appointing Sheriffs was fully tried in Kentucky from 1792 to 1799; and tradition testifies that it proved an intolerable nuisance to the treasury, as well as to private justice; and the first Constitution was, in that respect, therefore, amended by that which many desire now to change back to it. But this is comparatively a matter of slight concern, and is certainly not "progressive."

The advocates of the Convention claimed for the people some enlargement of their privileges, and the Convention, in its published address, professes to have made a great extension of them. But this is not so. The new Constitution gives the people only one new privilege—that of universal election—which will be of no practical utility; and it takes from them many valuable rights and privileges they now enjoy. Whilst it amuses the unreflecting with the semblance of a greatly augmented electoral power, it provides for so many and such frequent elections, and of so many officers, high and low, at the same time, as to prevent the pure, careful, and prudent exercise of the franchise, throw all nominations and elections virtually into the hands of a few busy and selfish managers—degrade the practical government into a trafficking and corrupting oligarchy--and, finally, produce among the industrious and working classes, a paralyzing indifference about voting, and thus operate so as to concentrate the elective power on a class that will make a trade of elections. Is this privilege a boon to be struggled for by wise men? But, as a compensation for this bubble, the Convention would deprive the people of valuable rights they have hitherto enjoyed. Although it is a cherished and time honored maxim of republicanism, that frequent elections of legislative agents is essential to liberty, by securing proper responsibility, and a faithful representation of the constituent will; yet the new Constitution withholds from the electors the right to vote for members of the House of Representatives of the State oftener than once in two years; and thus, instead of repressing excessive legislation by circumscribing the legislative sphere, and limiting the duration of the Legislature, it takes from the people the privilege of making laws every year, and leaves the officers of government themselves unguarded by the Grand Inquest of the State for a period of two years. It also requires the counties, and such a city as Louisville, to be subdivided into several election precincts, which will greatly increase the public burthen; and it arbitrarily denies to every citizen the right to vote out of his own precinct, or even in it, unless he shall have resided there 60 days immediately preceding the day when he offers to vote. This restriction will frequently disfranchise some of our best citizens, and always a portion of the poor and laboring class, who have not the means of providing abiding homes, or do not feel it their interest to do so. Will any such free white men vote thus to tie their own hands and lock their own mouths?

The new Constitution also apportions representation in such a manner as to deprive many counties of their equal share of representative power, and to give to other portions, and especially the commercial and rapidly growing cities, an unjust preponderance over the populous agricultural districts of the country. This fact is indisputable. It also perpetuates the existing high taxation, and even requires an increase; and yet it locks the door of the treasury against the people themselves, and forbids the extension or completion of works of internal improvement, however necessary to the public welfare any such improvements may become. Can not the people be trusted with their own money? Shall they have no power to regulate their own taxes, or to direct any appropriation of the proceeds? The new Constitution says not. Such fetters on the popular right of taxation and disbursement, led to the American Revolution; and they will never be long endured by any people who know how to be free.

In providing for electing four Appellate Judges by districts, the Convention curtails and perverts the elective privilege; for, according to this mode of election, no citizen will have a right to vote for or against more than one of the four judges, who are to decide finally on his constitution and his dearest rights. And the most important office under the Constitution--that of "Chief Justice of Kentucky"--which should be conferred on the most distinguished jurist as the prize of merit, is to be gambled for, and won by the lucky adventurer who happens to draw the *shortest straw!*

But, to cap the inverted climax of popular privileges, the Convention, as already suggested, has sealed up *its* Constitution and marked it "*immutable*," except by revolution or a convulsive agitation for many years. This renounces the Declaration of Independence, which proclaims that all just Government being made by and for the people, "they have at all times an inalienable and indefeasible right to alter, reform, or abolish their Government, in such manner as they think proper." And, though fundamental stability requires some prudent limitation on the time and manner of reform, still it should not be more than enough to insure calm, rational and thorough consideration by the constituent body. The existing constitution is much the strongest in the union against the power of change, but its cords are doubled and twisted by the new. Under the new Constitution, but few would have the patience or the courage to attempt reform in the mode prescribed; and, if it should ever be attempted, there must be an all-absorbing agitation for a long period, beyond which many could not hope to live.

Such are some of the samples of the enlargement of popular privileges by the Convention, and also of its professed concessions, to the people of more immediate control over their Government and its administration! Do any or all of the provisions, which have been thus noticed, increase the rights or the real powers of the people? Do they not, as far as they may operate, put handcuffs on the people, and stifle their free and independent voice? And, with all this privation, the Convention offers a Constitution which must fail to secure the ostensible objects of it—*stability—security—justice*—a Constitution under which, except as to amendment, the ship of State will float, rudderless and anchorless, on the tide of popular sentiment, to the imminent hazard of all the powerless on board. It contains a few new provisions which we approve. But they are slight, and most of them might have been effected by legislation. The County Courts might have been sufficiently re-organized by act of assembly, and in a manner much better and cheaper than that fixed by the Convention. Legislative Divorces are constructively prohibited by the existing Constitution; and an express inhibition is not, therefore, of any great advantage. The tenure of office by the Judges of the Circuit Courts might be reduced by legislation, because these are legislative courts, and therefore may be limited periodically by legislative acts. And the provisions as to duelling are inconsistent, and some of them impracticable; for, while one provision authorizes the Governor to remit the penalty, another, nevertheless, requires that the duellist, when he takes an official oath, shall swear that he had been guiltless ever since the adoption of the Constitution! And this is only one of the many vexatious incongruities which characterize the crude heterogeneous form proposed for our adoption. The truth is said to be that, although the Convention sat eighty-three days, it signed its Constitution *in crude scraps* without engrossment.

We have no disposition to speak disrespectfully of the Convention. We regret that it chose to re-assemble in June, for a *nominal* purpose—we regret that, by its own mandate, it took from the treasury $2,300 for its pay beyond that *fixed by the law under which it assembled*, or by any other law—we regret that it did not allow more time for sober revision by the people, and a more suitable occasion for a full and satisfactory decision at the polls by a majority of the freemen of Kentucky, instead of a minority that may now happen to decide the future destiny of us all. And we regret, more than all, that, after so much agitation, and so much expenditure of public money, it did not offer us a better Constitution—one that we could safely and conscientiously adopt. It might, had it been so disposed, have amended the old Constitution in two weeks, in such a manner as to have given satisfaction to nineteen-twentieths of the freemen of Kentucky. But many of the members of the Convention were elected under the influence of passions unpropitious to the formation of such a Constitution as wisdom would approve or patriotism would adopt. By their works, however, they should be tried. *Let the tree be judged by its fruit.*

The Constitution proposed is in many of its features, essentially undemocratic—more so, altogether than any yet adopted in the United States. It speaks for the people, but will act against them; and is, in many important respects, very far from such as they desired and had a right to expect.—Then it may be hoped that the Democratic party will not vote for it on any such paltry ground as the fact that a small majority of the Convention claimed to be of that party. The sacrifice would be too great for the empty bubble of a doubtful party triumph. We hope therefore that allegiance to country and duty to posterity will prevent the immolation. And, as the new Constitution is not at all like that proposed in the call of a Convention, a decent respect for common sense and consistency would authorise the expectation that most of those even who united in that call, will vote against the ratification of that which may be felt as a fraud on them as well as on others. We are well satisfied that many of the original movers of a Convention and voters for it, will vote against its Constitution—and among these is John L. Helm, the writer of the platform and the prime mover and leading champion of "reform." And how an old-court Whig can vote for that Constitution is a vexatious problem, of which we can neither anticipate nor attempt a satisfactory solution. We believe that, if it be adopted, the worst constitution in the Union will be planted on the ruins of one of the best. And we do apprehend also that it will not be a Constitution for the unaspiring quiet people, but a machine for hungry lawyers, office-seekers, and demagogues to play upon. We feel sure that it would not work as its disinterested advocates desire and expect.

Nor do we doubt, if adopted, that a majority of the people will soon become tired of it and desire a change that will then be almost hopeless.

Let no man vote for it under the delusion that it closes the door on emancipation. The Convention, not only left that door as open as it found it, but has pointed out a way to enter it if there should ever be a majority anxious to do so. Although all the members of the Convention seemed to concur on the subject of slavery, still they discussed that topic nearly every day during their long session.—They elaborately discussed also a proposition, which they ought to have adopted, to prohibit specific taxation, and in full view of the consequences, and especially as to slavery, they rejected it. Now, therefore, under their constitution and without any violation of it, a bare majority of the voters of Kentucky, desiring emancipation, may, indirectly and finally effect it by accumulating taxes on slave property—or may consummate their object of gradually emancipating all *post nati* on the condition of paying the assessed value of them; and by another law for raising, by a tax on slaves, the amount required to pay that value. All this would be authorized by the proposed constitution.

Nor should any considerate man vote for the new constitution for any vain purpose of repose. He need not fear that a worse will ever be adopted; and he ought to see that the old one may be improved much more easily than the new—and that moreover, as there will now be no difficulty in understanding what amendments the people want, there can be no injurious agitation in the future consideration and adoption of them, as there certainly will be, immediately and unceasingly, as to the new if that be now, adopted as it is.

For the foregoing reasons, and many others which the occasion will not allow us even to suggest, we are decidedly opposed to the adoption of the new constitution, and have resolved to try faithfully to defeat it. But, whatever it may be, we feel that there is danger of its adoption. As presented by the convention for trial, it may be adopted by a minority vote. And thus less than half of the voters of Kentucky may impose on all of them, against the will of most of them, a headlong, sweeping experiment of Government, which, all of them united could not change in reasonable time without revolution. But there is danger that even a majority may vote for it; because at least 30,000 cherish hopes of getting some office under it—because many may erroneously feel that, as they voted for the convention, a vote against its constitution, however bad or unexpected, would be inconsistent—because a large number of those opposed to it, apprehending that it will prevail, may fail to vote—and, because, a still larger number, anxious to float with the popular current, and thinking, from the great vote given for a convention, that its work will be approved, will, therefore, for self-security or aggrandizement, enlist under its banner and shout for its triumph.

But we believe that a decided majority of the people are, in heart and in head, opposed to it—and that, by united, firm, and faithful efforts, it may be rejected. We are resolved, as far as we can, to make those efforts. If the new constitution be imposed on our country, the reproaches of posterity shall not burn our skirts. We have done well under the old constitution. No people have ever done better. No constitution ever maintained its authority more uniformly or supremely. Yet it might be improved, and we would be pleased to improve it. But the new constitution will be no improvement. It is liable to objections immeasurably greater than any which have been or can be made to the old one. The issue is, not whether we shall take the old or the new: The question is whether we shall now exchange the old for the new—whether we will adopt the new form as our constitution which we may never be able to alter peacefully, or, by rejecting it, stand by the old constitution which, so far as experience may have proved it defective, may be much more easily and satisfactorily amended, especially after its long and severe trial which will have clearly developed the deliberate public judgment as to all the reforms desired. Shall we now, because we may see some blemishes in it, despise the legacy of our Fathers? Shall we, recklessly and ungratefully throw away the old constitution, under which we have so long been happy, prosperous, and secure, and embark our property, liberty and religion on an "experiment" which has failed wherever it has been tried? Shall we thus, Esau-like, sell our birth-right for a mess of potage? Would this be wise? Would it be Kentucky-like? Wisdom would hold fast to the good we have until we are sure of something better. If we take the new constitution we may go so far down the hill as never to be able to remount the eminence we now stand on. But if we stand still until the cloud now hovering over us shall have passed by, we shall, at least, be as free and safe as always hitherto. And then we can, calmly and prudently, reform our constitution whenever we desire reform, without destroying (as the new form would,) its power to afford effectual security to all, without which there never was, nor ever can be, such a blessing, among men, as "Constitutional Liberty."

SKETCH OF THE COURT OF APPEALS.

From Collins' History of Kentucky, to which it was contributed by Mr. Robertson.

THE Constitution of Kentucky—like that of the United States, and those, also of all the States of the Anglo-American Union—distributes, among three departments of organic sovereignty, all the political powers which it recognizes and establishes. And to effectuate, in practice, the theoretic equilibrium and security contemplated by this fundamental partition of civil authority, it not only declares that the legislature shall exercise no other power than that which is legislative—the Judiciary no other than that which is judicial—nor the Executive any other than such as shall be executive in its nature; but it also, to a conservative extent, secures the relative independence of each of these depositories of power. If courts were permitted to legislate, or the legislature were suffered not only to prescribe the rule of right but to decide on the constitutional validity of its own acts, or adjudicate on private rights, no citizen could enjoy political security against the ignorance, the passions or the tyranny of a dominant party: And if judges were dependent for their offices on the will of a mere legislative majority, their timidity and subservience might often add judicial sanction to unconstitutional enactments, and thereby, instead of guarding the constitution as honest and fearless sentinels, they would help the popular majority to become supreme, and to rule capriciously, in defiance of all the fundamental prohibitions and guaranties of the people's organic law. As the legislature derives its being and authority from the constitution, which is necessarily supreme and inviolable, no legislative act prohibited by any of its provisions, can be *law;* and, consequently, as it is the province of the Judiciary to declare and administer the law in every case, it must be the duty, as well as privilege, of every court to disregard every legislative violation of the constitution, as a nullity, and thus maintain the practical supremacy and inviolabilty of the fundamental law. But the will to do so, whenever proper, is as necessary as the power; and, therefore, the constitution of Kentucky provides that the judges of the Court of Appeals, and also of inferior courts, shall be entitled to hold their offices during good behavior; and, moreover, provides that no judge shall be subject to removal otherwise than by impeachment, on the trial of which there can be no conviction without the concurrence of two-thirds of the Senate—or by the address of both branches of the legislature, two-thirds of each branch concurring therein.

The first constitution of Kentucky, which commenced its operation on the 1st of June, 1792, also prohibited the legislature from reducing a judge's salary during his continuance in office. But the present constitution, adopted in 1799, contains no such prohibition. It is not difficult to perceive which of these constitutions is most consistent with the avowed theory of both as to judicial independence; for, certainly, there can be no sufficient assurance of judicial independence, when the salary of every judge depends on the will of a legislative majority of the law-making department.

But to secure a permanent tribunal for adjudication on the constitutionality of legislative acts, the existing constitution of Kentucky, like its predecessor in this respect, ordained and established "A Supreme Court," and vested it with ultimate jurisdiction. Section one and two of the 4th article reads as follows:

"SEC. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one Supreme Court, which shall be styled the Court of Appeals, and in such inferior courts as the General Assembly may, from time to time, erect and establish.

"SEC. 2. The Court of Appeals, except in cases otherwise provided for in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law."

As long as these fundamental provisions shall continue to be authoritative, there must be in Kentucky a judicial tribunal with appellate jurisdiction "co-extensive with the State," and co-ordinate with the legislative and executive departments. And this tribunal being established by the constitution, the legislature can neither abolish it nor divest it of appellate jurisdiction. The theoretic co-ordinacy of the organic representatives of the three functions of all political sovereignty, requires that the judicial organ, of the last resort, shall be as permanent and inviolable as the constitution itself. The great end of the constitution of Kentucky, and of every good constitution, is to prescribe salutary limits to the inherent power of numerical majorities. Were the political omnipotence of every such majority either reasonable or safe, no constitutional

limitations on legislative will would be necessary or proper. But the whole tenor of the Kentucky constitution implies that liberty, justice and security, (the ends of all just government,) require many such fundamental restrictions: And not only to prescribe such as were deemed proper, but more especially to secure their efficacy, was the ultimate object of the people in adopting a constitution: And, to assure the integrity and practical supremacy of these restrictions, they determined that, as long as their constitution should last, there should be a tribunal, the judges of which should be entitled to hold their offices as long as the tribunal itself should exist and they should behave well and continue competent, in the judgment of as many as one-third of each branch of the legislature on an address, or of one-third of the Senate on an impeachment: And, to prevent evasion, they have provided that, whilst an incumbent judge of the Appellate Court may be removed from his office by a concurrent vote of two-thirds, neither the appellate tribunal, nor the office itself, shall be subject to legislative abolition.

There is a radical difference in the stability of the supreme and inferior courts. The first is constitutional—the last are only statutory. As the constitution itself establishes the Court of Appeals, this tribunal can be abolished by a change of the constitution alone. It would be certainly incompatible with the genius of the constitution to abolish the circuit courts, merely to get clear of the incumbent judges: Yet, as the power to abolish exists, the motive of the abolition cannot judicially affect the validity of the act. And, as the organization of inferior courts is deferred, by the constitution, to legislative experience and discretion; and as, moreover, a new system of such courts may often be usefully substituted for one found to be ineligible, the legislature ought not to be restrained from certain amelioration, by a fear of shaking the stability of the judiciary. The constitutional inviolability of the Court of Appeals, which may rectify the errors of the inferior tribunals, may sufficiently assure judicial independence and rectitude.

The fundamental immutability of the Court of Appeals, and the value of the durable tenure by which the judges hold their offices, have been impressively illustrated in the history and results of "the relief system," and resulting "old and new court," which agitated Kentucky almost to convulsion for several years—the most pregnant and memorable in the annals of the State. That system of legislative "relief," as it was miscalled, was initiated in 1817–18, by retrospective prolongations of replevins of judgments and decrees—and it was matured, in 1820, by the establishment of the Bank of the Commonwealth, without either capital or the guaranty of state credit, and by subsidiary enactments extending replevins to two years in all cases in which the creditor should fail to endorse on his execution his consent to take, at its nominal value, local bank paper greatly depreciated. The object of the legislature, in establishing such a bank, and in enacting such co-operative statutes as those just alluded to, was to enable debtors to pay their debts in much less than their value, by virtually compelling creditors to accept much less, or incur hazards of indefinite and vexatious delays.

The constitutionality of the Bank of the Commonwealth, though generally doubted, was sustained by many judicial recognitions by the Court of Appeals of Kentucky, and finally by an express decision in which the then judges (Robertson, Chief-Justice, and Underwood and Nicholas, Judges) without expressing their own opinions, deferred to those incidental recognitions by their predecessors, and also to the opinion of the Supreme Court of the United States, in the case of Craig vs. Missouri, in which that court defined a "bill of credit," prohibited by the national constitution, to be a bill issued, as currency, by a State and on the *credit* of the State. The notes of the Bank of the Commonwealth, though issued by and in the name of the State of Kentucky, were not issued on the credit of the State, but expressly on the exclusive credit of a nominal capital dedicated by the charter—and this known fact produced the rapid depreciation of those notes; and, consequently, the same Supreme Court of the United States, affirmed the said decision of the Appellate Court of Kentucky, as it was compelled to do by its own authority, in Craig vs. Missouri, unless it had overruled so much of that decision as declared that it was an indispensable characteristic of a prohibited "bill of credit," that it should be issued on the credit of the State. There is much reason for doubting the correctness of these decisions by the national judiciary—and, if they be maintained, there is good cause for apprehending that the beneficent policy of the interdiction of State bills of credit may be entirely frustrated, and the constitutional prohibition altogether paralyzed or eluded.

When the validity of the statutes retrospectively extending replevins was brought before the Court of Appeals, the three judges then constituting that court, (Messrs. Boyle, chief justice, and Owsley and Mills, judges,) delivered separate opinions, all concurring in the conclusion that those statutes, so far as they retro-acted on contracts depending for their effect on the law of Kentucky, were inconsistent with that clause in the federal constitution, which prohibits the legislatures of the several states in the union from passing any act "impairing the obligation of contracts," and also, of course, with the similar provision in the constitution of Kentucky, inhibiting any such enactment by the legislature of this State. A more grave and eventful question could not have been presented to the court of umpirage. It subjected to a severe, but decisive ordeal, the personal integrity, firmness and intelligence

of the judges, and the value of that degree of judicial independence and stability contemplated by the constitution. The question involved was new and vexed; and a majority of the people of the State had approved, and were, as they seemed to think, vitally interested in maintaining their constitutional power to enact such remedial statutes.

Under this accumulated burthen of responsibility, however, the court, being of the opinion that the acts impaired the obligation of contracts made in Kentucky antedecedently to their date, honestly and firmly so decided, without hesitation or dissent. The court argued, 1st. That every valid contract had two kinds of obligation—the one moral, the other legal or civil; that the fundamental interdicts applied to the legal obligation only, because, as moral obligations are as immutable as the laws of God, and depend on the consciences of men, and therefore cannot be impaired by human legislation or power, consequently, it would be ridiculously absurd to suppose that the constitution intended to interdict that which, without any interdiction, could not be done. 2nd. That as moral obligation results from the sanctions of natural law, so civil obligation arises from the sanctions of human law; that, wherever the laws of society will not uphold nor enforce a contract, that contract possesses no civil obligation, which, whether moral or civil, is the chain, tie, or ligature which binds, coerces, persuades, or obliges the obligor; that all civil obligation, therefore, springs from and is regulated by the punitory or remedial power of human law; that the destruction or withdrawal of all such power, must annihilate all merely civil obligation; that, consequently, that which impairs such power must, to the same extent, impair such obligation; and, that, whatever renders the remedial agency of the law less certain, effectual, or valuable, impairs it; and, also, necessarily impairs, therefore, the obligation which it creates. 3d. That the civil obligation of a contract depends on the law of the place when and where it is made; and that any subsequent legislation that essentially impairs the legal remedy for maintaining or enforcing that contract, must consequently, so far, impair its legal obligation. 4th. That, if a retro-active extension of replevin from three months to two years would not impair the obligation of a contract made under the shorter replevin law, the like prolongation to one hundred years would not impair the obligation; and, if this would not, the abrogation of all legal remedy could not. 5th. That it is impossible that legislation can destroy or impair the legal obligation of contracts, otherwise than by operating on the legal remedies for enforcing them; and, that consequently, any legislation retro-actively and essentially deteriorating legal remedy, as certainly and essentially impairs the legal obligation of all contracts on which it so retro-acts: And, finally, therefore, that the retrospective extension of replevin in Kentucky, was unconstitutional and void.

Unanswerable and conclusive as this mere skeleton of the court's argument may be, yet the decision excited a great outcry against the judges. Their authority to disregard a legislative act as unconstitutional was, by many, denied, and they were denounced as "usurpers —tyrants—kings." At the succeeding session of the legislature, in the fall of 1823, a long, verbose, and empty preamble and resolutions, for addressing them out of office, were reported by John Rowan, to which the judges responded fully and most effectually. But after an able and boisterous debate, the preamble and resolutions were adopted by a majority of less than two-thirds. The judges—determined to stand or fall by the constitution—refused to abdicate. At the next session of the legislature, in 1824, there then being a still larger majority against the judges and their decision—but not quite two-thirds—the dominant party, now become furious and reckless, passed an act, mis-entitled "an act to reorganize the Court of Appeals;" the object and effect of which, if sustained, were to abolish the "old" constitutional "court," and substitute a "new" legislative "court."

The "new court" (consisting of William T. Barry, chief-justice, and James Haggin, John Trimble, and Rezin H. Davidge, judges,) took unauthorzied possession of the papers and records in the office of the Court of Appeals, appointed Francis P. Blair clerk, and attempted to do business and decide some causes, their opinions on which, were published by Thomas B. Monroe, in a small duo-decimo volume, which has never been regarded or read as authority. The judges of the constitutional Court of Appeals were thus deprived, without their consent, of the means of discharging official duties properly; and, the people not knowing whether the "old" or the "new court" was the constitutional tribunal of revision, some appealed to one, and some to the other. In this perplexing crisis of judicial anarchy, the only authoritative arbiter was the ultimate sovereign—the freemen of the State at the polls. To that final and only tribunal, therefore, both parties appealed; and no period, in the history of Kentucky, was ever more pregnant, or marked with more excitement or able and pervading discussion, than that which immediately preceded the annual elections in the year 1825. The portentous agony resulted in the election, to the House of Representatives, of a decisive majority in favor of the "old court," and against the constitutionality of the "new court." But only one-third of the senators having passed the ordeal of that election, a small "new court" majority still remained in the Senate; and, disregarding the submission of the question to the votes of the people, that little majority refused to repeal the "reorganizing act," or acknowledge the existence of the "old court."

This unexpected and perilous contumacy, brought the antagonistic parties to the brink of a bloody revolution. For months the Commonwealth was trembling on the crater of a heaving volcano. But the considerate prudence of the "old court party" prevented an eruption, by forbearing to resort to force to restore to the "old court," its papers and records, which the minority guarded, in Blair's custody, by military means—and, also, by appealing, once more, to the constituent body, in a priuted manifesto prepared by George Robertson, signed by the members constituting the majority of the popular branch of the legislature, and exposing the incidents of the controversy and the conduct of the defeated party. The result of this last appeal was a majority in the Senate, and an augmented majority in the House of Represetatives in favor of repealing as unconstitutional, the "act to reorganize the Court of Appeals." That act was accordingly repealed in the session of 1826–7, by "an act to remove the unconstitutional obstructions which have been thrown in the way of the Court of Appeals," passed by both houses the 30th December, 1826—the Governor's objections notwithstanding. The "new court" vanished, and the "old court," redeemed and reinstated, proceeded, without further question or obstruetion, in the discharge of its accustomed duties.

As soon as a *quietus* had been given to this agitating controversy, John Boyle, who had adhered to the helm throughout the storm in hope of saving the constitution, resigned the chief-justiceship of Kentucky, and George M. Bibb, a distinguished champion of the "relief" and "new court" parties was, by a relief governor and Senate, appointed his successor. Owsley and Mills retained their seats on the appellate bench until the fall of 1828, when they also resigned, and, being re-nominated by Gov. Metcalfe, who had just succeeded Gov. Desha, they were rejected by a relief senate, and George Robertson and Joseph R. Underwood (both "anti-relief" and "old court") were appointed to succeed them. Then Bibb forthwith resigned, and there being no chief-justice until near the close of 1829, these two judges constituted the court, and, during that year, declared null and void all the acts and decisions of the "new court," and disposed of about one thousand cases on the docket of the Court of Appeals. In December, 1829, Robertson was appointed chief-justice, and thus, once more, "the old court" was complete, homogeneous and peaceful, and the most important question that could engage the councils or agitate the passions of a state, was settled finally, and settled right.

This memorable contest between the constitution and the passions of a popular majority—between the judicial and the legislative departments—proves the efficacy of Kentucky's constitutional structure, and illustrates the reason and the importance of that system of judicial independeuce which it guaranties. It demonstrates that, if the appellate judges had been dependent on a bare majority of the people or their representatives, the constitution would have been paralyzed, justice dethroned, and property subjected to rapine, by tumultuous passions and numerical power. And its incidents and results not only commend to the gratitude of the living and unborn, the proscribed judges and the efficient compatriots who dedicated their time and talents for years to the rescue of the constitution, but also, impressively illustrate the object and efficacy of the fundamental limitations on the will of the majority—that is, the ultimate prevalence of reason over passion—of truth over error—which, in popular governments, is the sure offspring only of time and sober deliberation, which it is the object of constitutional checks to ensure.

As first and now organized, the Court of Appeals consisted of three judges, one of whom is commissioned the "Chief Justice of Kentucky." In the year 1801, the number was increased to four, and Thomas Todd (who had been clerk of that court, and in the year 1807 was appointed a judge of the Supreme Court of the United States) was the first who was fourth judge. In the year 1813, the number was prospectively reduced to three; and, all the incumbents having immediately resigned, two of them (Boyle and Logan) were instantly re-commissioned, and Robert Trimble, who was commissioned by Gov. Shelby, having declined to accept, Owsley, who had been one of the four judges who had resigned, was afterwards also re-commissioned; and ever since that time, the court has consisted of three judges only.

All the judges have received equal salaries. At first the salary of each judge was $666,66. In the year 1806, it was raised to $1000; in the year 1815, to $1500; in the year 1837, to $2000; and in the year 1843, it was reduced to $1500. During the prevalence of the paper of the Bank of the Commonwealth, the salaries were paid in that currency, which was so much depreciated as, for some time, to reduce the value of each salary to about 750.

The following is a chronological catalogue of the names of all who have been judges of the Appellate Court of Kentucky:

CHIEF JUTICCES.

Harry Innis,	commissioned	June 18, 1792.
George Muter,	"	Dec. 7, 1792.
Thomas Todd,	"	Dec. 13, 1806.
Felix Grundy,	"	April 11, 1807.
Ninian Edwards,	"	Jan. 5, 1808.
Geo. M. Bibb,	"	May 30, 1809.
John Boyle,	"	M'ch 20, 1810.
Geo. M. Bibb,*	"	Jan. 5, 1827.
Geo. Robertson,	"	Dec. 16, 1829.
E. M. Ewing,	"	April 7, 1843.
Thos. A. Marshall,	"	June 1, 1847.

*Resigned Dec. 23, 1828.

JUDGES.

Benj. Sebastian,	commissioned	June 28, 1792.
Caleb Wallace,	"	June 28, 1792.
Thomas Todd,	"	Dec. 19, 1801.
Felix Grundy,	"	Dec. 10, 1806.
Ninian Edwards,	"	Dec. 13, 1806.
Robert Trimble,	"	April 13, 1807.
William Logan,*	"	Jan. 11, 1808.
Geo. M. Bibb,	"	Jan. 31, 1808.
John Boyle,	"	April 1, 1809.
William Logan,	"	Jan. 20, 1810.
James Clark,	"	March 29, 1810.
William Owsley,	"	April 8, 1810.
John Rowan,	"	Jan. 14, 1819.
Benjamin Mills,	"	Feb. 16, 1820.
Geo. Robertson,	"	Dec. 24, 1828.
Jos. R. Underwood,	"	Dec. 24, 1828.
Richard A Buckner,	"	Dec. 21, 1829.
Samuel S. Nicholas,	"	Dec. 23, 1831.
Ephriam M. Ewing,	"	March 5, 1835.
Thos. A. Marshall,	"	March 18, 1835.
Daniel Breck,	"	April 7, 1843.
James Simpson,	"	June 7, 1847.

*Resigned January 30, 1808.

Of the chief-justices, Muter, Boyle, and Robertson were in commission, collectively, about 41 years—Muter for about 11, Boyle 16, and Robertson nearly 14 years; and of all the justices of the court, Logan, Mills, and Owsley held their stations longest.

In the year 1803, Muter, very poor and rather superannuated, was induced to resign by the promise of an annuity of $300, which, being guarantied by an act of the legislature in good faith, was complained of as an odious and unconstitutional "provision," and was taken away by a repealing act of the next year.

Under the first constitution of 1792, the appellate judges were required to state in their opinions such facts and authorities as should be necessary to expose the principle of each decision. But no mode of reporting the decision was provided by legislative enactment until 1815, when the governor was authorized to appoint a reporter. Previously to that time, James Hughes, an eminent "land lawyer," had, at his own expense, published a volume of the decisions of the old District Court of Kentucky, rendered in suits for land—commencing in 1785 and ending in 1801; Achilles Sneed, clerk of the Court of Appeals, had, in 1805, under the authority of that court, published a small volume of miscellaneous opinions, copied from the court's order book; and Martin D. Hardin, a distinguished lawyer, had, in 1810, published a volume of the decisions from 1805 to 1808, at the instance of the court in execution of a legislative injunction of 1807, requiring the judges to select a reporter. Geo. M. Bibb was the first reporter appointed by the Governor. His reports, in four volumes, include opinions from 1808 to 1817. Alexander K. Marshall, Wm. Littell, Thomas B. Monroe, John J. Marshall, James G. Dana, and Benj. Monroe were, successively, appointed, and reported afterwards. The reports of the first, are in three volumes—of the second, in six—of the third, in seven—of the fourth, in seven—of the fifth, in nine—and the last, who is yet the reporter, has published seven volumes. Consequently, there are now forty-six volumes of the reported decisions of the Court of Appeals of Kentucky. Of these reports, Hardin's, Bibb's, and Dana's are most accurate—Littell's Thomas B. Monroe's and Ben. Monroe's next. Those of both the Marshall's are signally incorrect and deficient in execution. Dana's in execution and in the character of the cases, are generally deemed the best. Of the decisions in Dana, it has been reported of Judge Story that he said they were the best in the Union—and of Chancellor Kent, that he knew no state decisions superior to them. And that eminent jurist, in the last edition of his Commentaries, has made frequent reference to opinions of chief-justice Robertson, and has commended them in flattering terms.

The comprehensive jurisdiction of the court imposes upon it duties peculiarly onerous. An act of the Assembly of 1796, confers on this Appellate Court jurisdiction of appeals or writs of error, "in cases in which the inferior courts have jurisdiction." A writ of error may be issued to reverse a judgment or decree for one cent; but, by an act of 1796, no appeal can be prosecuted to reverse a judgment or decree, unless it relate to a franchise or freehold, or (if it do not) unless the amount of it, "exclusive of costs," be at leat $100. But in cases of decretal divorces, and in fines for riots and routs, the legislature has denied to the court any revising jurisdiction. Still, although it has no original jurisdiction excepting only in the trial of clerks, and although it has no criminal jurisdiction in any case of felony, the average number of its annual decisions has, for many years, been about five hundred. The court is required to hold two terms in each year—one commencing the first Monday in May, the other the first Monday in September; and no term is allowed to be less than forty-eight juridical days. By a rule of court, any party may appear either by himself or his counsel, and in person or by brief. And a majority of the cases are decided without oral argument.

A statute of 1816 enacted, that "all reports of cases decided in England since the 4th of July, 1776, should not be read in court or cited by the court." The object of this strange enactment was to interdict the use of any British decision since the declaration of American Independence. The statute, however, literally imports, not that no such decision shall be read, but that "all" shall not be. And this self-destructive phraseology harmonises with the purpose of the act—that is, to smother the light of science and stop the growth of jurisprudence. But for many years, the Court of Appeals inflexibly enforced the statute—not in its letter, but in its aim. In the reports, how-

ever, of J. J. Marshall, and Dana, and Ben. Monroe, copious references are made (without regard to this interdict) to post-revolutionary cases and treatises in England, and now that statute may be considered dead.

The Appellate court of Kentucky has generally been able, and always firm, pure, and faithful. It has been illustrated by some names that would adorn any bench of justice or age of jurisprudence. And it might have been oftener filled by such jurists, had not a suicidal parsimony withheld from the judges an adequate compensation for the talents, learning, labor and responsibility which the best interests of the commonwealth demand for the judicial service, in a court appointed to guard the rights and the liberties of the people, and to settle conclusively the laws of the commonwealth.

ADDRESS

Address delivered by Mr. Robertson in the Chapel of Morrison College, on the 22nd of February, 1852, at the request of the pupils of the Law Department of Transylvania University.

Kentucky could not, this day, perform a service more grateful or more useful than to commemorate, in a becoming manner, the double anniversary of the birth of the noblest of illustrious Americans, and of a battle which shed a bright halo of glory around the column of her own fame. The advent on earth of that wonderful man may be as eventful to the temporal, as that of the crucified Messiah will be to the eternal welfare of mankind. And, in the magic fight of Buenna Vista, Kentuckians stood, Kentuckian-like, side by side with gallant sons of other States, and, as a forlorn hope, against mighty odds, gloriously triumphed on that bloody and hard-fought field. We should honor the survivors of that devoted band and never cease to cherish the memories of those who, sealing with their blood their own and their country's glory, fell, to rise no more until the judgment day.

But the times make it more appropriate to this occasion to consider the life of the benefactor born than the history of that great victory won.

A good man lives, not for the present chiefly, but for the future—not for himself only, but also for his country and his race. Such a man, pre-eminently, was GEORGE WASHINGTON. His was a model life. Full-orbed and spotless, its light may be as benificent to the moral, as that of a cloudless sun is to the physical world. It was his lot to be born, to live, and to die in a country and at a time signally interesting and eventful to mankind —a country which seems to have been reserved by Providence as the fittest theatre of moral development and social progress—and a transition period when the condition of the old world supplied the fruitful seeds of civil and religious liberty for transplantation, growth, and fructification, on the virgin soil and congenial clime of the new. And, on that arena, and at that crisis, it was his fortune so to act his part in the momentous drama of his day as to embalm his name in the human heart as long as it shall beat with a virtuous or grateful emotion. Washington dead is, to the present and the future, worth even more than Washington living. Though one hundred and twenty years have elapsed from his birth and more than half a century from his death, his virtues are more fragrant and his name more hallowed now, than when he left the troubled scenes of earth. Such, always, is the slow-ripening fruit of rare merit—the posthumous destiny of God-like deeds.

Unheeded while he lived, Socrates, was doomed to the hemlock for teaching the ennobling doctrines of God's unity, and man's immortality, in defiance of the polytheism and carnality of an idolatrous generation. Galileo was a martyr to his premature intimation of the fact, then deemed by the Hierarchy contrary to the Bible, that the earth revolves around the sun. Copernicus was dead long before his theory of the solar system was acknowledged. Bacon tasted none of the fruits of his *novum organum*, and died in disgrace before his inductive philosophy obtained useful circulation. Columbus fell a victim of persecution without even the consolation of a prophetic glimpse of the glorious destiny of the American world or of his own deathless renown as its discoverer and the first Pioneer of its civilization. And Washington, too—though more fortunate in his life, and more honored at his death—had, while he lived, to encounter, like all human benefactors, envy, calumny, and blind party spirit; and took leave of his country, unconscious that, in less than half a century, it would be the most happy and hopeful under the sky, or that his own statue would be the central figure in the pantheon of men. But, though the declining sun of his earthly pilgrimage was partially obscured by envious clouds, the serener star of his fame, rising higher and higher, and growing in its ascent larger and more effulgent, has now reached its meridian and beams with a matchless ray in the centre of a constellation that will never fade away.

The light that pours from that refulgent orb —unlike the lurid glare of Mars, or the meteor blaze of the victorious chieftain, or the deceptive phosphorescence of the demagogue—is chaste and parental like that of vestal fire gleaming on the altar of virgin purity; and will ever safely guide the virtuous citizen and statesman in the pathway of private, as well as of public life. This distinguished destiny was the offspring—not of furtune, nor of war, nor of what men call genius, but of right principles and unceasing allegiance to them—of constant devotion to duty in all the walks of life, and of an unreserved dedication of head and heart to virtue, to country, and to God.

As a man, Washington was modest, self-denying and upright—as a citizen, he was just, prudent, and patriotic—as a commander of armies, he was cautious, skilful, and firm—as

a civil magistrate, he was wise, conscientious and self-sacrificing—exhibiting in all his life, public and private, in peace and in war, in Church and in State, virtues and graces rarely, if ever, combined in any other human character, and worthy of imitation by all men in all conditions and in all times. He seems to have been born for his country, and his age; and the country and the age seem to have been prepared by Providence for just such a man. Without his aid our country's independence might not have been achieved or blessed—without his counsels the Constitution of the United States might not, and probably would not, have been adopted—and without his gurdian care and the magic influence of his name that hopeful offspring of "the times that tried men's souls," might and almost certainly would, have been strangled in the cradle of its existence.

His administration of the Executive Department during the first eight years after the inauguration of the General Government was an admirable illustration of the *beau-ideal* of a constitutional President. He carefully studied his duty and sincerely endeavored to discharge it for the public good alone. No personal or party consideration controlled his official conduct. In appointing to important office he consulted superior fitness only—*detur digniori*, was his maxim; and disregarding the importunities of vulgar suppliants for place, and giving but little heed to subscription papers or other procured documents of recommendation, he always selected those he deemed best qualified for the stations to which he called them. He considered his patronage as a sacred trust confided to him, and to be exercised by him, not for his own gratification, but for his country's welfare; and he never presumed to pervert it from its constitutional design or stooped to prostitute it to any selfish purpose or ambitious aim. By his stoical firmness and comprehensive patriotism he illustrated the true principles of the National Constitution, nourished and saved it in its perilous youth, raised it to robust manhood, and, by his non-intervention heroism in 1793, rescued his country from the vortex of the French Revolution, and set his seal to the only safe international policy of Republics.

But, though, in his moral and intellectual character, he combined the cardinal elements of a good and great man—though his life happily exemplified the personal and civic virtues crowned with the graces of a pure religion—though, as commander-in-chief of our Revolutionary Army, his Fabian prudence and extraordinary self devotion earned for him a diadem of honor eclipsing any that ever sparkled on the head of an Alexander or a Napoleon, and though the unanimous voice of his countrymen spontaneously called him to the first of civil stations—yet all these titles to grateful remembrance, rare and distinguished as they were, would not consecrate, as it is consecrated, his birth-day to religious observance and patriotic commemoration. It was his presiding influence in laying the foundations of our Union; his agency in consolidating its peerless superstructure—and, above all, the wisdom and benevolence of his Farewell Address, which have contributed most to chrystalize his fame and to entwine around it an amaranthine wreath of chaste and sun-light glory.

To contemplate such a character and review the life of such a man must be cheering and eminently useful. For that patriotic purpose chiefly, we have all come here to-day. We have not come to indulge in idle praises of the Father of his Country; his memory needs not our eulogy. Our purpose is nobler and more substantial far; it is to learn his principles and pledge our allegiance to them—to recite his counsels and resolve to follow them. And if every citizen of the United States would do this in the proper spirit and faithfully profit by it as he ought, this Union would be impregnable—Justice would be sure—Liberty would be safe—Virtue would be encouraged—Talents would be rewarded—our Country would be peaceful, happy, and truly great—and our institutions would soon be rightly understood and commended to all civilized nations.

At a crisis so pregnant and novel as the present, the occasion of our assembling could not be more appropriately or usefully improved than by considering our organic institutions, and the precepts of him who was their chief architect. But time will circumscribe our present contemplations to a very general notice of the Constitution of the United States as it came from the hands, and was illustrated by the admininistration and the farewell address of Washington.

The people of the thirteen North American Colonies, long trained to actual freedom and social equality, felt it to be their duty to resist the pretension of England to govern them "in all cases whatsoever," without allowing them the benefit of representation in the British Parliament; and, for concerting united opposition, they constitated the first "Continental Congress," which met in Philadelphia, Sept. 5th, 1774, with unlimited discretion to take care of "the common welfare;" and the constituent political bodies then, for the first time, assumed the title of "the United States." That initial union, without any formal compact, was not only voluntary as to its power and duration, but purely federal. During the revolutionary war, which soon succeeded, "articles of confederation" were adopted by the States, each for itself, in its political capacity, and each, by express stipulation, retaining absolute sovereignty. That league of independent sovereigns, with no common umpire and without any other Government than the separate Governments of the States, each acting for itself alone, left the Union dependent on the will of each local sovereignty without any inherent power or principle of life. The common council was merely advisory. Its sphere

of authority was quite cirumscribed, and confined to what was "expressly delegated." It had no power to uphold even that. Its acts were addressed to States, and in no sense to persons; and were, of course, not laws, but recommendations merely, which might be observed or disregarded at the pleasure of all or any of the confederate States. That confederation had not one element or faculty of a common Government—to the existence of which the right to enact laws for the whole people and the self-sustaining power to enforce them against every citizen, are indispensable.

Wise and conservative men soon saw that the maintenance of Union and of the liberties which could not be assured without it would require a radical re-organization—substituting a union of the people for that of States—a Government for a league—a National Government for a confederate compact between independent sovereignties uncontrollable by any political power above them. Washington urged the absolute necessity of some such change in the principle of the Union, and many of his compatriots concurred with him.

As early as 1781, Pelatiah Webster, in an able pamphlet, demonstrated the insufficiency of the articles of confederation, and suggested a Continental Convention for improving the instrument of Union. In 1782, Alexander Hamilton urged the same thing, with objects rather more explicit. In 1784, Noah Webster, in one of his miscellaneous publications, proposed the adoption of "a new system of government, which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect." So far as we know, this was the first proposition for a supreme national government—a constitution of national sovereignty instead of a league among sovereigns. But often afterwards many illustrious citizens urged the same thing. In April 1787, James Madison, in a letter to Edmond Randolph said: "I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less attainable than it would be inexpedient. Let it be tried then whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local authorities, so far as they can be subordinately useful. Let the National Government be armed with positive and complete authority in all cases where uniform measures are necessary, as in trade, &c., &c." This was, probably, the first recorded proposal of a Constitution of a General Government, national and supreme as to all national interests, and federal also with local supremacy in the States to the extent of concerns exclusively affecting each State seperately and alone.

That the constitution, as adopted, established a General Government, supreme in its authority and national in its operation on the people of the United States, may be demonstrated by a consideration of the avowed objects of its adoption, of the history of its ratification in each State, of its provisions, and of its practical operation ever since it was announced as "the supreme law of the land." Such a Government could not be established without delegating to it portions of the independent sovereignty of the States as previously confederated. The people of the States alone had the authority to make that transfer, and thus modify and subordinate their State sovereignty. And they did it—those of each State for themselves—just as they established their local Government. The people of every State in the Union are individually parties to the constitution. It binds each and all—is addressed to each and all—and is a law over each and all of them. The prominent objection urged in each State Convention against the adoption of it was that it constructed a National Government which would operate supremely over every person within the limits of the Union, "any thing in any State Constitution to the contrary notwithstanding." And that objection was met, not by a denial of the allegation, but by arguments to prove that such a Government was indispensably necessary for the Union of the States, the security of the people, and the maintenance of national honor abroad and of peace and justice at home.

A political constitution is organic law. The chief difference between a human and political constitution is, that the first organizes and constitutes animal life, and the last organizes and constitutes political sovereignty. Each therefore, is for the same reason called a constitution, and is necessarily supreme, fundamental and inviolable. Such consequently must be the true character of the "constitution" of the United States—so labelled on its front. It also constructs a complete machinery of National Government and elaborately organizes National power. It was intended, therefore, to be law, fundamental and paramount: and to remove all doubt, the people, when they adopted it, stereotyped on its face that it "shall be the supreme law of the land." As such a law it has always operated since the first inauguration of Washington; and as such a law it will continue to operate as long as the Union shall last or the principles of Washington shall be generally respected.

The people, in adopting it, expressly surrendered many of the highest attributes of State sovereignty—such as the power to coin money, declare war, regulate commerce, establish post offices, impair the obligation of contracts, pass *ex post facto* acts, emit bills of credit, &c.; and delegated the most useful of these and other powers to the general Government. The Union could not be preserved without a national government vested with supreme

powers co-extensive with all the interests and objects common to the people of the United States as one presiding nation, for all international purposes abroad, and for such at home as concern domestic peace, harmony and justice:—as to all those ends, all the people of all the States are but one and the same family—all should be represented, and the voice of a majority, consistent with the charter of association, should prevail over that of a minority—the interest of the whole must be preferred to that of a fraction—the whole must govern each and every part.

No other theory can be consistent with the Declaration of Independence, the representative principle, or the self-preserving power of the Union. No State, which does not desire to destroy the Union, should arrogate or wish to exercise exclusive power over the rights or interests of the people of other States—common interests should be regulated and controlled by common councils—and all such interests as belong to the people of a single State should be regulated by that State alone.

Such was the purpose and such is the true theory of the constitution. It delegates all national power to the General Government, and leaves all local power with the individual States—which, for national ends, constitute but one nation, and, for local purposes, a confederation of States. The powers granted to the common government are necessarily supreme and plenary, except so far as expressly limited by the constitution. This may be illustrated by the power to regulate foreign commerce. The States transferred to the General Government all their pre-existent power over that entire subject: and any attempt made by a State to interfere with it, in any way, would be an act of usurpation and consequently void. Congress must therefore have as much power over external commerce as each of the States had when politically independent, except so far the constitution requires uniformity of regulation. Each Independent State, before the adoption of the constitution, had as much authority over its foreign commerce as any sovereign nation on earth could possess. Every independent sovereignty may regulate its commerce according to its own will, and so as to protect its own capital, encourage its own products, foster its own industry, and promote its own manufactures. This universal, conservative, and necessary power must, beyond doubt or question, have been delegated to the General Government by the people of the States, who severally possessed it until they surrendered it by adopting the National Constitution, and retained to themselves no portion of it. This, too, is Washingtonian doctrine. One of the first acts of Congress to which he affixed his approving signature recognised, on its face, this principle of protection. And if this be not constitutional, then, by adopting the constitution of the Union, the people annihilated the power to protect themselves against the selfish policy and legislation of foreign governments. But no sane man can read the constitution dispassionately and deny that this vital power still exists among us as elsewhere, and that it belongs to our General Government, to which it has been confided by the people as a great trust for their own common welfare.

The powers expressly granted by the constitution carry with them all appropriate means for effecting their ends—excepting only so far as the constitution prescribes limitations on the means which might be employed. When not so limited any mean is constitutional which relates to the end of an express power, and will tend to effectuate it. When the people granted to the General Government an express power, they, by necessary implication, granted the right to employ any means for fulfilling the end of that power which the charter itself does not withhold, and which they themselves might have employed for the same purpose had they not entrusted the power to other hands. Every mean adapted to the end of an express power is therefore constitutional, unless it be prohibited by the constitution, or be inconsistent with its genius or design. Any one of many various means may tend to the effectuation of an express power—which of them shall be applied is a question of policy, not of power. Policy changes with the times, but, as long as the constitution shall continue unaltered, every power which ever existed under it must continue to exist. And, of the various means relating to the end of an express power, no one can be unconstitutional merely because another may be considered more expedient—for then power would depend on policy, and would be equally fluctuating and always questionable, instead of being, as it must be, fixed and uniform—and then, too, there would be no implied power to do any thing except that which is most expedient; and moreover, that might be constitutional one day which was unconstitutional the day before, or might be so the day after. If the charter of the first National Bank approved by Washington, was constitutional, the second signed by Madison, was not unconstitutional—nor, if the first was unconstitutional, could the last be constitutional, even though the times might have made it more useful and expedient than the first. The only test of the validity of either of them was whether, as a fiscal agent, it operated as a means for effecting the ends of the express powers over the currency, or over the safe keeping and transmission of the public monies. If it did so operate, it was constitutional, even though some more popular means to the same ends might have been selected—and if it did not so operate, it was unconstitutional, however acceptable or beneficial it may have been. Whether it was, altogether, the best mean, might have been doubted—but whether it was a mean adapted to any of the ends of express powers, none could consistently deny; and, therefore, if there was no implied power to organise and establish it, the same process of construction which would lead to that conclusion, must inevitably result in the denial of all implied powers. So Washington thought—and so

thought also the most of those who made the constitution of the United States.

Whatever the General Government has the right to do, it must have the power to do; and whatever it has the power to ordain, it must have the means of making effectual. And unless it have the ultimate authority to decide on its own power, it is not a Government, but a mere confederation. Without that power, there is no sovereign power. That power does exist somewhere in this Union. It cannot belong to the separate States consistently with the ends or the provisions of the constitution. In a contest between the whole and any of its parts, the latter must yield to the former, which ceases to be a government whenever it surrenders its power to govern in the last resort. While, therefore, the States have reserved all local sovereignty, the General Government must have the right to decide as to its own powers in every collision between it and any State of the Union. Apprehending collisions between the general and local governments as to their respective powers, and wisely foreseeing that that of the Union should in all such cases, control, the people virtually so declared, and carefully provided a tribunal —representing all and responsible to all for final and peaceful decision, and explicitly gave to that august national forum appellate jurisdiction over every judicial controversy in in which the Federal Constitution shall ever be involved. The great object of that wise precaution was to uphold the Union, maintain the uniformity and supremacy of its charter, and rebuke and prevent nullification by State Courts, State Legislatures, or State Conventions.

The charter of our Union also proscribes, as unconstitutional and revolutionary, the newborn heresy of "secession." The Union can be constitutionally dissolved, altered, or maimed only in the mode prescribed in its charter. The citizens of the States, being all parties to it, and having declared in it that it shall be the supreme law for each and all—every citizen owes to it, and to all its constituted authorities, a paramount allegiance—and no one citizen, nor any association of citizens of one or of more States, can remain within the chartered limits of the Union without being subject, at all times and under all circumstances, to its supreme authority as long as the charter shall remain unchanged. If nullification or secession shall ever succeed, the General Government will, so far, if not altogether, be upset—an act of revolution destructive of the vitality of the Union, which is not merely a mechanical combination of independent parts, but is rather a chemical and vital cohesion of homogeneous elements of one entire political body, with different organs and distinct members, all co-operating for the preservation of the whole—which is equally necessary for the health of each constituent part.

This fundamental truth is beautifully symbolised by the motto borne aloft by the American Eagle on the star-spangled banner of the Union—"*E Pluribus Unum*"—one government out of many, one head over all. And the importance of maintaining the Union and all its essential rights and powers is forcibly expressed by the national motto of Kentucky's escutcheon—"United we stand—divided we fall."

This was the organic principle of the Constitution framed by the Federal Convention of 1787, over which Washington presided.

No rational man can, consistently, deny that the Constitution of the United States is a fundamental and supreme *law* organizing all the people who are parties to it into one independent nation, possessing but one national mind, and vested with paramount authority over all concerns involving the integrity of the Union established by it, or in which the citizens of more States than one may have a common interest. Nor can there be a rational doubt that the Government constituted by it, like every other independent sovereignty, has the political power to uphold and enforce it according to the national will expressed by its organs as constituted for that purpose.

But this, as well as any other Government, may sometimes err and go beyond the sphere prescribed by its charter—and then its unconstitutional acts are void. But the guaranties against any such aberration are even stronger and more assuring than those of any State in the Union against usurpation by any of its local authorities; and the constitutional remedies for relief are precisely the same as those provided as the only legal ones in every well organized Government.

Whenever the constitutionality of a legislative act of a State is questioned, every citizen has a political right to oppose it on his civil responsibilities to the official judgment of the constitutional majority expressed as provided by all the people of the State in their organic law; but, whenever that judgment shall have been authoritatively pronounced, resistance is no longer legal, but may be treason, and, if successful, would be revolutionary. This will not be denied by any American Statesman. Why is it not equally true in reference to the Government of the Union? It must be, or there is no such Government; for it is an axiomatic truth that no nation can be sovereign or exercise the powers of Government unless it have the political right to decide ultimately on its own sovereignty. That right is given by the people to the Government they established by the Constitution of the United States—and without it there could be no practical Government of the Union—and the national Constitution would possess no inherent vitality or power as a supreme law, for all and over all.

That the constitution is not a *league*, but a LAW—that it established a Government and

not a confederation—and that the Government it instituted is supreme within its sphere—was all conceded by the oracle of a modern party called nullifiers. But this concession was, itself, nullified or neutralized by the suicidal assumption that each State Government is, as to the General Government, a "*co-ordinate*" sovereign; and has, therefore, a *constitutional* right to maintain, by force, its own decision against that of the United States on the Constitutionality of every act of the Government of all the people of all the States. This assumption is a virtual denial of the supremacy of the Constitution of the United States—for surely that cannot be a supreme law which those, who made it and for whom it was made, have not the exclusive right, finally, to interpret and enforce. And, consequently, if the Constitution of the United States be law, and if the Union can be maintained by a common Government, the people of that Union, as the constituents of that Government, must necessarily have the right to uphold and enforce their own political authority, according to their own organic judgment, against the conflicting opinion of any minor portion of them—whoever and wherever they may be.

When it is admitted, as it is and must be, that the Constitution established a Government which has a right, within its prescribed sphere, to operate supremely—that is, above all other power, popular or political—over every citizen of every State—it is a palpable sophism to say that any citizen or a majority of the citizens of a State have, nevertheless, a *constitutional* right, in the last resort, to decide that the General Government had transcended its sphere—and thus to overrule an opposing decision by that Government itself, or by all the other citizens of the United States. Such a Constitution cannot be a supreme law—and would not establish a Government over all the people of the Union—but would, in effect, be only a league between sovereign States. It would be absurd to say that the Constitution is supreme over all the people of all the States, and that yet a majority of the people of any one State, even the smallest, have a right to exercise, whenever they may choose to do so, supremacy over that supreme law. But this is the ludicrous position assumed by those who contend that each State possesses sovereignty co-ordinate with that of all the States united under one Supreme Government, adopted by the citizens of all for the protection and control of every citizen of each and all. If the sovereignty of one State in the Union, and that of the Government of all the people of the Union are co-equal, then the conclusion is plain and inevitable that no provision in the Constitution of the United States, nor any one law enacted by Congress, can be "the Supreme Law of the Land"—any provision in any State Constitution or State Law to the contrary notwithstanding.

The stumbling block of the party who claim co-ordinate supremacy for the individual States is the assumption that the General Government has, in a given case, gone beyond its sphere and usurped State power.

Admit that it has done so, and that, therefore, its act is void. Still it is not a Government, and its Constitution cannot be the Supreme Law if, instead of itself or its entire constituency, the people of any one of the States have the right to decide for themselves, finally and authoritatively, that the act is unconstitutional. But suppose that the act is, in fact, Constitutional—then it is entitled to be the Supreme Law in every State in the Union. Yet it could not so operate, if any one of the States should, *erroneously*, decide otherwise and thereby nullify the constitutional act—even though that decision might conflict with that of the whole Union besides. The Constitution has not left the Union in any such helpless or hopeless condition. It has not only proclaimed its own supremacy, but has provided means for upholding it against all local opposition. And these alone make, or could make it the Supreme Law. As such, Washington signed it—and as such his administration made it effectual and illustrious. And all the people should remember this whenever they assemble to commemorate the birth of the greatest of the founders of their National Temple of Civil and Religious Liberty.

These essential principles of the American "*Imperium in imperio*," in the normal state of our complex system, are conclusively settled by authority, consecrated by our history, and illustrated by the acts and the counsels of him whose memory we this day celebrate.

Time will not allow us, on the present occasion, to indulge in further contemplations on this copious and interesting theme. We have only looked at the vital principle of our political organization.

Such, then, in outline, is the political fabric reared under the auspices of Washington.—Preserve it as he left it, and all will be safe—safe to us, safe to our posterity, and as hopeful, as safe to all mankind for ages to come. How to preserve and transmit it unimpaired, he has taught us in his patriarchal address to his countrymen. Without this last and crowning act, his work on earth would have been unfinished. But, true to his trust, aware of the proneness of all popular government to degeneracy and ruin, and anxious that ours, the best ever established, should have a fair trial, he fulfilled his mission by bequeathing to his country his oracular counsels—and then, committing all that he had done to the virtue of the people, he left it and them to live or perish under the protection of Providence, the guidance of his own name, and the light of his principles and example. That paternal legacy is, to American politics, what the Decalogue is to universal morals. It is as

true as Revelation, though it may lack its inspiration. May it ever be familliar to our thoughts and hallowed in our affections. It declares the national origin and operation of the General Government, the supremacy of its authority, and the coerciveness of its power—urges the countless value of the Union it was intended to cement—warns against the wickedness of proscriptive party spirit—the danger of local prejudices, and the suicidal folly of sectionalism—denounces, as treason, every factious effort to dissolve the Union, or resist, by force, the will of the nation endorsed by the authority of the tribunal appointed by all as the final arbiter of the constitutional rights of each and all—recommends the faithful observance of neutrality in the local concerns of other nations—the cultivation of peace and friendly intercourse with all as equals, the protection of our own industry, the physical improvement of our own country, and the moral improvement of our own people—inculcates the indispensable necessity of the prevalence of the Christian principle and spirit—of tolerance for difference of opinion or of faith in politics and religion—of a pure and magnanimous patriotism, and an habitual veneration for the fundamenlal law as the palladium of our Union and liberty—and finally rebukes a spirit of conquest or of propagandism as inconsistent with the genius and proper destiny of a model republic—which should never, like Mahomet, propagate its principles by the sword, but should rather, like the great prototype of Christian Republicans, commend them to mankind by peacefully illustrating their wisdom and benificence at home.

The Washington doctrines of the Constitution and precepts of the Valedictory Address constitute the true orthodox creed of American politics. Every citizen, who approves and will uphold them, is of the only party which can ever stand among us on principles conservative and immutable—and that is—*the Washington party.*

Personal parties—factious parties—all political parties—organized for the aggrandizement of men, or animated by any other desire than that of promoting the welfare and securing the liberty and peaceful glory of our country, will be spurious and must be ephemeral. And if it be the destiny of America to be a permanent theatre of human amelioration, or the fate of her free institutions long to survive and prosper, the statesmen of the Washington school will overcome and keep down all selfish associations and unprincipled politicians

If the gloomy day shall come when, that party shall go down, and its principles shall be discarded and neglected, then let the degenerate race of recreant paricides tear from our national calender the name of Washington and desecrate his birth-day to the servile worship of some meretricious idol, or consign its glorious memory to oblivion. But, if man deserve democratic freedom and be capable of upholding it, that disastrous day will never come—or, like a pestilential cloud, will soon pass away, and, by its transient gloom and desolation, will prove, for ages to follow, the wanton folly of renouncing the principles or disregarding the precepts of him who was "first in war, first in peace, and first in the hearts of his countrymen." As long as his constitutional principles prevail, and his paternal precepts are observed, occasional eruptions on the skin of the robust body of our American Liberty will be as harmless to our institutions as the volcanic belchings of smoke from Ætna or Vesuvius are to the stability of the earth. The former, like the latter, may indeed be useful in throwing out and wasting fiery elements which, without these safety valves, might produce ultimate convulsion.

Only let Washington's principles and precepts be properly regarded, and then it will be as impossible for attempts at nullification and secession, or any other factious and unconstitutional movement to dissolve this Union, as it would be for puny man to disturb the harmony of the solar system.

In our brief history we have had examples of local agitations threatening the peace and integrity of the Union The "whiskey insurrection" in 1794 defied and strove to subvert the authority of the General Government to levy excise duties for sustaining its own credit. But Washington was at the helm, and by firmly displaying the physical power of the constitution, he rescued it from degradation, and put down the treason.

During the war with England, in December, 1814, a convention of delegates from some of the New England States assembled at Hartford, Conn., and published a manifesto, pronouncing unconstitutional and unjust, some of the acts of the General Government, and asserting the right of the States, in a case "of a deliberate, dangerous and palpable infraction of the constitution affecting the sovereignty of the States, and the liberties of the people, beyond the reach of the judicial tribunals or too pressing to admit of the delay incident to their forms, to be their own judges and execute their own decisions."—Reprehensible as that orgauized and apparently factious movement was, it did not go to the length of modern nullification. It virtually acknowledged the duty of submission to the judicial authority of the United States as to all constitutional questions, over which the National constitution gives to the Supreme Court of the Union final jurisdiction. Even that proceeding, however, subjected to odium and political ostracism, the prominent actors in that memorable convention ; and no portion of the people were more generally and more perseveringly proscriptive of them than those of the South.

Yet in November, 1832, South Carolina—the land of the Pinkneys, the Rutledges, and the Marions of the Revolution—went to the perilous extremity, in a time of profound peace and general prosperity, of denouncing, by a State ordinance, the Tariff for protection, as unconstitutional and oppressive, and of de-

claring that she had a right to resist, and would resist it by force. Andrew Jackson, then in the seat of Washington, issued an admirable proclamation denouncing "nullification" and "secession" as unconstitutional and revolutionary, and warning the recreant State that, if necessary for maintaining the Union and the supremacy of its laws, he would resort to the national sword, and, at all hazards, quell the seditious rebellion. That bold step led to capitulation and virtual submission—the Government adhering to the principle of protection, and South Carolina retreating from her rash and indefensible position.

Unchastened by that eventful precedent, a large portion of the politicians of that restless State, have been, more recently, agitating the Union on the subject of domestic slavery—and malcontents in the South have been lately concerting measures ostensibly for secession from the Union, which they recklessly assert to be a constitutional right. Many of these men think that it is the duty of Congress to force slavery into certain Territories whether the freemen thereof will it or not. While their antipodes—fanatical abolitionists and free-soilers—have been urging Congress to forbid slavery in those territories, even though the citizens, who ought to decide all such questions for themselves, may desire its introduction among them. Thus we have had the humiliating spectacle of secession denounced South unless Congress will do a violent thing, and of secession apprehended North unless Congress will do an opposite thing equally violent and inconsistent with American Independence, the spirit of the constitution, and the compromises which brought it into being and have hitherto preserved its healthful existence.

How much more reasonable, prudent, and just, is the intermediate doctrine that every separate community of freemen should be permitted to regulate their own domestic relations? This, until lately, was the favorite doctrine of the whole South. It ought also to be the doctrine of the North. It concedes to the citizens of territories only what those of every State, North as well as South, may lawfully do for themselves. The translation of slaves from a State to a territory will not, any more than their migration from State to State, increase the aggregate number otherwise than by improving their condition, which true philanthropy would desire; preventing their dispersion only aggravates the evils of slavery and increases the wretchedness of slaves, which benevolence and policy both forbid. And surely the voluntary admission or interdiction of slavery by a territory would not be a national act for which Congress or any State could feel responsible. The only prudent mode of treating the delicate subject of slavery in the United States is for Congress and the people of the States where it does not exist to let it alone. It must run its own course to its natural destiny. Foreign intermeddling with it will only prolong its existence, aggravate its evils, and disturb the harmony of the Union.

The late Compromise act of Congress adjusts this distracting warfare of sections on the proper basis of non-interference with the domestic institutions of States or Territories, and of a prompt and faithful observance of the constitutional injunction to surrender fugitive slaves just as fugitive freemen are required to be surrendered.

If that healing act shall fail to restore harmony, and if abolitionism, secession, or nullification should again disturb the peace, prudence might recommend a resort, in a proper case, to the expedient of Washington, for testing the strength of the constitution and trying whether Union is stronger than faction. Should this experiment prove ineffectual, the result would show that the work of our Fathers is a failure. But should it, as we believe it would, succeed, the practical illustration of the power of the constitution to preserve itself would be useful for ages.

In the exuberance of our national blessings let us not forget that we owe not only gratitude to Providence for bestowing and to our fathers for transmitting the sources of them, but the duty also of preserving and handing them down to our children improved and augmented, and extending them, by our sympathy and the light of our example, to all people who may be prepared to obtain of and to enjoy them. But it is not fit that a Republic should cherish or encourage a crusading spirit. Let us never presume to judge between parties in any foreign country, or to make the cause of either our cause. Other nations have as much right to decide between our Government and any opposing portion of our people—black or white, bond or free—and to espouse the cause of the weaker or insurgent party. Though the balance of power and hereditary absolutism are the dynastic principles of European policy, and non-intervention and the right of every nation to regulate its own affairs are leading American doctrines, yet, even if these cisatlantic principles of international law should be violated by Kings in the old world, it would be neither our duty nor our interest to oppose, by force, improper intervention on another continent. Nor would the cause of liberty be promoted by any such course. When the people of Europe shall be prepared for popular institutions autocratic interference will be powerless, and the dynasties will all fall: before that propitious season, revolution, as in France, might be premature and barren of permanent good. Let us hold up a good example as a beacon-light; and, if we please, we might signify to crowned heads that interference by any of them in the domestic affairs of other people will be disapproved by our Government, and that its disapprobation will be manifested by all peaceful measures that may be prudent and befitting. But let us be careful to go no further unless in self-defence or for legitimate retaliation for wrongs done to us.

Kossuth may be an unalloyed patriot. We hope he is. He has, by some of our fellow citizens, been styled "the great advocate and

defender of Liberal principles." This we could not admit, however well we might think of his talents or his aims. What his ultimate principles are or how conservative, time and chance alone can decide. Nor do we know what he or his country would do or be if liberated from a foreign yoke. We would be glad to see all men, everywhere, as free and as blessed as ourselves. But we ought to know that few are qualified for the achievement or enjoyment of those great and peculiar privileges of popular liberty and equality. Government is relative—and that is the best for any people which is the most suitable to their grade in the scale of intelligence and virtue. And we know not that Hungary is better prepared for democratic self-government, than France, Ireland, England, Scotland, Poland, Germany or Italy. But we may confidently assert that a people, properly prepared for free institutions, will, in the congenial season, have them either in form or in substance. Let all who feel it, prudently manifest sympathy for the Magyar race, and let our social hospitality be extended to their exiled leader—our Government may, if it please, offer him an asylum under the flag of our Union; but let us not offer assistance to their cause under the bloody banner of intermeddling war. The best we could now do for him and his doomed country would be to convince them by our own conduct and condition at home, that peace, liberty, justice, and progress are the fruits of such institutions as ours administered on the platform of Washington's principles, precepts, and example.

Fellow-countrymen—are those principles ours? will we observe those precepts? do we admire that example?

Ladies—though you have no political, you exercise much moral power. If you do not utter, you help to form public opinion. As citizens you have, in your sphere, rights to preserve and duties to perform: and mothers in a republic are missionaries of order and truth. The characters of their children, moulded under their plastic tutelage, will make them either a blessing or a curse to their country.

Then, mothers of America, hold up before your nurseling sons the life of Washington: teach them his principles—impress on their infant hearts the excellence of his parting address to his countrymen—and point them to the light of his beautiful example. This may be the best you can do for them, next to teaching them the word of God.

Young gentlemen of Transylvania Law Department—at whose request this address is delivered—having come here to study jurisprudence, it is peculiarly your duty to become thoroughly imbued with the principles of your country's organic institutions. Do you now understand them as Washington did?—Do consider the National Constitution as he did when he signed it as President of the Federal Convention, and as it was illustrated by him while he was President of the United States? If you do, you are prepared with the best armour for defending, to the uttermost, the integrity and supremacy of the Union he lived to consolidate. Though you may not expect to be Washingtons, each of you should strive to be, and might hope to be, like him, an honest man, and a good citizen. You may adopt his golden motto, "that above ourselves, our country should be dear." And if it shall be your fortune to act important parts in coming scenes, remember that popularity is not renown, and that notoriety is not fame. Impress on your hearts the universal truth that the esteem of wise and honorable men is the constant shadow of sound principles and honest acts. And never forget that the magnet always pointing to the pole star of duty is that—

"One self-approving hour far outweighs
Whole years of stupid starers and loud huzzas."

This conscientious sentiment was the mentor of Washington.

All that was mortal of that rare man has crumbled into dust, and reposes in solemn silence on the banks of the majestic Potomac almost in sight of the Metropolitan city of his own name.

But if, as the wisest men believe, his spirit is still conscious of the affairs of earth, he feels anxious concern for the welfare of the country of his cradle and his grave, and for the success of the free institutions he helped to found. It would not therefore, be either impious or irrational to imagine that, this day, he looks down with emotion on the millions of freemen whose grateful hearts are pouring out offerings to his memory—and would address them in something like the following manner:

"Children of the Pilgrim Fathers, and citizens of the promised land—Listen, once more, to the counsels of a departed friend who devoted his earthly life to the cause of civil and religious liberty, and whose memory, therefore, you this day honor. It was his fortune to be born in America, when a comparative wilderness under the dominion of England. He lived to see his countrymen free and independent, and united in a political brotherhood, as one and the same people. That independence he helped to achieve—that Union he helped to establish. They are indissoluble companions—neither can peacefully or prosperously exist without the other. This historic truth is inscribed on the tombs of all buried republics and confederations of sovereigns. To maintain Liberty and Union, it was indispensable to establish a National Government, vested by the people of the United States with exclusive power over all common concerns abroad, and with supreme authority over all such interests at home as are not confined to the people of a State. Convinced by fearful experience of the necessity of such a Government, the people of the States, then federal, voluntarily surrendered the requisite portions of their independent sovereignty, and transferred all that mass of power to a comprehensive National Government, constructed

by the Constitution of the United States, which they alone could have authoritatively established. With less power than what was thus granted, and without inherent and paramount authority to uphold and enforce it, the harmony, justice, or even existence of the Union could not have been long maintained. No power was delegated to the General Government except what the guardian of the Union should possess for preserving peace and promoting "the common welfare" of the people and of the States. To reclaim any essential portion of that national power, or to object to the full exercise of it, might frustrate the desirable ends for which it was entrusted to the constituted organs of all the citizens of the United States. And to deny the ultimate right of the representatives of the whole Union to decide authoritatively on the delegated powers of the whole, would involve the absurdity of claiming its inferiority and subjection to each of its integral parts, the practical subordination of which was the purpose of the Constitution, and is required by its declared and necessary supremacy. Without such right the General Government would not be sovereign—for authority to decide on its powers is the distinguishing element of all true and legitimate sovereignty. The depository of the national powers expressly granted has the implied, as well as the declared, right to employ the requisite means for fulfilling the great trust. And the charter should be so construed, and its powers so exercised as to fulfil, as far as may be, the beneficent objects of the grant. Submission to the acts and decisions of the General Government, or relief from them only in a mode prescribed by the compact of the Union, is the civic obligation of every citizen, and of all associations of citizens. *This is the object of all Constitutional Government; and none could long exist under any other theory or practice.*

It was my fortune to be an actor in framing and adopting the Federal Constitution—called a Constitution, because it was made by the freemen of the United States as *their* fundamental *law*, for "*consolidating*" *their* Union, and overruling all opposition, from individuals or States, to their aggregate power and will—and called also *Federal*, because the *people*, in their federal capacity made it, and because, in the same capacity they were still permitted to act as subordinate sovereignties over their own *local* concerns. The great object was to substitute a presiding Government over the people of all the States in lieu of a confederation of sovereign States, and to endow that Government with all power necessary for maintaining, against all opposition, its own authority. Thus universally understood, I approved and signed it as President of the Federal Convention, and, with the same understanding, it was ratified by the people of the States. Such an absurdity as a concurrent sovereignty in the States was not then thought of as being consistent with the spirit, the object, the provisions, or the supremacy of your great National theater.

Like the *Mosaic* Economy—according to which, each of the Twelve Tribes exercised local Government under the supervision and ultimate control, as to all national interests, of the National Government, just as families, and hundreds and thousands, exercised subordinate sovereignty in each tribe—each State in your Union possesses a local sovereignty for regulating its own separate interests, and each county and incorporated city of every State exercises, subordinately, a more circumscribed sovereignty—the Government of the Union being the ultimate sovereign, as to every national interest or concern. If in every conflict between the Government of an integral portion of the Union, and the Government of the whole Union, as to their respective spheres of constitutional authority—the former should have concurrent and co-equal sovereign power, any one State might stop the wheels of the General Government, and annul or paralyse any of its delegated powers. This we never intended—and we all thought we had made a Constitution and established a Government which would forever prevent a State from again overruling the United States in any of their acts held to be Constitutional by the Authorities provided by their Constitution for that purpose. This is the vital principle of the Federal Constitution—without it your Union would have no power to preserve its own existence—with it, that Union—the wisest, best cemented, and most hopeful the world ever saw—may last as long as the memory of the Patriots who achieved your Independence, and of the Statesmen who, by adopting its *magna charta*, did their best to establish your liberties on the *Rock of Ages*. My valedictory address contains my opinions as to the nature and value of your political Union. *I re-endorse it.*

Representing the people and responsible to them, like the State Governments, there is not as much danger of usurpation by the General as by a State Government—because the former is not so near the affections and felt interests of its constituency, and is subject to more checks. The tendency of your political system is centrifugal, rather than centripetal. There is no danger of too much centralization, unless it should arise from a corrupt abuse of Executive patronage—it will never result from Legislative or Judicial encroachment on State rights. But should it ever approach, resort to no other than peaceful and constitutional remedies, unless you shall be well satisfied that revolution will be better for you and the cause of liberty, than submission. You have never hitherto had cause for that last resort of oppressed man—and there is but little ground for apprehending that you ever will have sufficient cause for breaking up a Union which you could never again re-establish on as good foundations. Its destruction would be an

act of madness. The map of North America —with its rivers, its lakes, its mountains, its seas, its climates, and its soils—points to Union. Its population—of common origin, common language, common faith, common history, common name, and common glory—invites to Union; the blessings it has conferred, and the history of all confederations demonstrate the value of the principle of your Union; and the memories of the past, the enjoyments of the present, and the hopes of the future, consecrate that Union as cemented with the blood and constructed by the wisdom of your revolutionary fathers. Under its auspices you have grown and prospered beyond example—your will rules from the Northern Lakes to the Gulf of Mexico, and from the Atlantic to the Pacific Ocean—every citizen is a sovereign in his sphere, and every freeman is as free and secure as he could be under any good government—your progress and improvement are the wonder of the age, and you are already the light of the civilized world. Be grateful for those unequalled blessings, and cling to your Union as the ark of their and your safety. Let him who is not content with it remember the illustrative fable of the members of the human body, complaining of the stomach as monopolizing and rapacious, and on that delusive egotism, proposing to destroy the source of their nourishment and health.

Forcible resistance to the authorities of the Constitution is not a political right—successful resistance by force would therefore be revolution—and unless the result should be an aggregate blessing, it would be treason to your Constitution—treason to the genius of liberty —treason to the memory of your predecessors —treason to the hopes of your posterity, and treason to all mankind.

Whoever shall attempt such manifold and sacriligious treason, would deserve eternal infamy.

But go on as hitherto, and there will be no danger. Cherish your own boundless resources of matter and mind. Improve your country—encourage fraternity and intelligence by arteries of circulation throughout your land—educate all your children—cultivate their bodies, their minds, and their morals—indoctrinate them in the benign principles of a rational and charitable christianity —acquaint them early with the true principles and history of your institutions—attend to your own concerns—abstain from officious interference with those of other nations—elect your best and ablest men to all places of public trust—never become parasites or placemen, or sycophants of rich men—countenance virtue, and frown on vice, in whatever habiliments they may be clad—uphold the law as the shield of the weak and the sanctuary of the innocent—love your country and your kind—and steadfastly maintain your blessed Union and all its vital powers and functions—and then the close of this century will exhibit to the admiration of good men and angels, and to the terror of bad men and demons, one hundred millions of freemen, of the Caucasian race, on the continent of North America, far ahead of all other people in privileges and enjoyments, and blessed with institutions more rational, laws more just, and a country more beautiful than any on which the sun will then shine—then "*American*" will be the most honored of national names—Liberty the most cherished of earthly possessions—and all things may be ready for the dawn of millennial light and peace; and then, too—though last, not least—American principles and the English language Americanised will be understood and admired, if not adopted, wherever christianity has a temple, science a monument, or Liberty an altar on the footstool of God."

Fellow-citizens of the United States, if we of this generation will follow these counsels, this patriotic vision will become historic truth. But, if we discard the principles or neglect the precepts of the tutelar genius of our country, we must expect that the doom of all fallen republics will, at no distant day, become our unhappy destiny. Shall this doleful tale ever be told of the countrymen of Washington, of Franklin, of Hamilton, of Jefferson, of Madison, of John Marshall, of Webster, of Clay? Shall they, by their apostacy from the faith of their fathers, verify the predictions of the foes of self-government, and, by their degeneracy and recreance, blast the best, and perhaps the last, hope of the friends of equal right? Shall *they*, unmindful of their own dignity and of the history of ages past, yield themselves up to selfish demagogues—surrender the glorious name of American—cast lots for the vestments of Washington—crucify his name, and scatter his ashes to the senseless winds? Forbid it reason—forbid it liberty—forbid it our household gods—forbid it heaven. No—this must not, cannot be our ignoble fate. The age, with its cheering tokens, points to a far nobler future. Under a benignant Providence, we have cause to hope, that our course will continue onward and upward until man shall reach his ultimate state of sublunary dignity.

Then let us live in the trust that the all-wise Creator of our race—who guided the pilgrim band from the old to the new world, and has, thus far, signalized their adopted country with peculiar blessings—will still guide us in the pathway of duty and bless the great mission of liberty and light to this *Land of Promise*

PRELECTION,

The following judicial opinion on important Constitutional questions; and the following Briefs in the Supreme Court of the United States, and petition for a re-hearing in the Appellate Court of Kentucky, contain matter deemed useful and rather peculiar; and are therefore herein re-published for more general circulation.

M. W. DICKEY, *against* The Maysville, Washington, Paris and Lexington Turnpike Road Company.

[Messrs. Robinson and Johnson for appellant: Mr. Owsley for appellee.]

FROM THE CIRCUIT COURT OF MASON COUNTY.

Chief-Justice Robertson Delivered the Opinion of the Court.

THE only question presented for consideration in this case, is whether Milus W. Dickey, as the contractor for carrying the United States' Mail from Maysville to Lexington, in this State, has the right, in execution of his engagement, to transport the mail in stage coaches on the turnpike road between those *termini*, without paying, to the use of the Turnpike Company, the rate of tollage exacted by it, under the authority of its charter, from other persons for the transit of their horses and carriages.

All national power should belong exclusively to the general or national government. And, as nothing can be more national than the regular and certain diffusion of intelligence among the people of the United States through the medium of the public mail, therefore, the power "to establish post offices and post roads" is expressly delegated by the federal constitution to the Congress of the United States; and that power being necessarily exclusive, plenary, and supreme, no State can constitutionally do, or authorise to be done, any act which may frustrate, counteract, or impair, the proper and effectual exercise of it by national authority. From these axiomatic truths it follows, as a plain corollary, that the general government has the unquestionable right to transport the national mail whenever and wherever the National Congress, in the constitutional exercise of its delegated powers shall have prescribed. But full, and exclusive, and sovereign, as this power must be admitted to be, it is not unlimited. It cannot appropriate private property to public use without either the consent of the owner, or the payment of a just compensation for the property or for the use of it. If the general government may constitutionally use a private way, or establish a post road through the lands, or a post office in the house of a private person, any person whose property shall be thus taken or used for public benefit, may lawfully demand a just compensation for the property, or for the use of it; the federal constitution expressly secures it to him by interdicting the appropriation of private property to public use, without the owner's consent, or just compensation.

Having been constructed by an association of individuals incorporated into a private body politic by an act of the Kentucky Legislature, which gave the corporation the right to charge tolls according to a prescribed scale, in consideration of the appropriation of its own funds to the construction of the road for the public benefit—the turnpike road from Maysville to Lexington should be deemed private property, so far as the value of the franchise and the right to preseve it, as conferred by the charter in the nature of a contract, may be concerned. And therefore, the public—whether it be Kentucky or the United States—can have no constitutional right to use the road without contributing, to its reparation and preservation, either a just compensation for the use, or the rate of tollage prescribed by the corporation under the sanction of its charter. By authorizing the company to exact a fixed compensation for the use of the road, the charter interfered with or impaired the power to carry the mail wherever Congress should elect to carry it, no more nor otherwise than it obstructed or impaired the right of every freeman to travel on any public way he might choose thus to use.

Had Congress designated this road as the mail route from Maysville to Lexington, the right to use it as such would have been subject to the condition of paying either a just compensation, or the toll which every citizen is required to pay; for the road would still have been the property of the corporation, and the burthen of repairing it, when dilapidated by the horses and coaches of the mail contractor, would have devolved on the stockholders. There is no restriction, as to locality, on the the federal power to establish post offices and post roads. But the right to use private properey for a mail route, as for any other national purpose, being qualified by the constitutional condition that a just compensation be made for the use unless the owner shall voluntarily waive it, the power to establish post offices and post roads wherever Congress deem it expedient to establish them, though exclusive and supreme, does not, therefore, imply an authority to take or to use, for that purpose, the land or the house of a citizen, or the railroad or McAdamised road, of associated citi-

zens, without paying to the owner or owners a just compensation.

The turnpike road between Maysville and Lexington is the property of the stockholders, in the same sense in which the railroad between Lexington and Frankfort is the property of the Company whose money constructed it. The only difference is, that the railroad company is not required by its charter to permit any person to use its road otherwise than for transportation in its own vehicles, and the charter of the turnpike company requires it to permit all persons, who may desire to use its road for transportation or travel, to do so, in their own way—on foot, on their own horses, or with their own carriages—by paying a prescribed toll. And can it be doubted that the United States would have no constitutional right to use, as a mail route, the railroad between Lexington and Frankfort, without the consent of its owners, or without paying them for the use a reasonable compensation? He who doubts on that subject, would be chargeable with palpable inconsistency, unless he should also doubt whether his own house might not be taken and used as a post office without his consent and without any compensation; for the power to establish post offices and the power to establish post roads are commensurable, and the one is as sovereign and unlimited as the other, and not in any sense or in any degree, more so.

Can the carrier of the United States mail have a right, either legal or moral, to use the bridge of a private person, or of an incorporated company without paying pontage, or the ferry of a grantee of such franchise without paying ferriage? That he would have no such right is, in our judgment, indisputable. And the denial of such an unjust and anomalous pretension is not at all inconsistent with the proper supremacy of the general government, in the exercise of its necessary power to transport the mail as cheaply, speedily and certainly as possible, and when and where Congress shall have prescribed and had authority to prescribe. The power delegated to the general government over the mail cannot be greater than that which each State once possessed within its own borders; and had the people of the States never delegated any such power to Congress, the State of Kentucky, in all the plenitude of her power, upon that hypothesis, would surely have no right to use the Lexington and Maysville turnpike as a post road without paying a just equivalent to the company; for the constitution of Kentucky, like that of the United States, provides that private property shall not be taken for public use without "just compensation" to the owner, or without his consent; and moreover, no State can, consistently with the federal constitution, pass any legislative act impairing the obligation of a contract; and not only is turnpike stock private property, but the charter of the company is a contract, entitling the stockholders, for a valuable consideration, to prescribed tolls, of which the legislature could not deprive them without impairing the obligation of a solemn contract, and violating the plighted faith of Kentucky. There can, we think, be no doubt that the State had a perfect right to make such a contract, and, having made it, is certainly under a clear moral and political obligation to observe it scrupulously and in good faith.

But, if the Lexington and Maysville turnpike should be deemed in all respects a State road, and if the power to establish post roads should be understood as giving to Congress authority to designate and use, as a post road, any highway in a State, without the consent of the State, nevertheless, such a power could not be understood as implying a right to use State roads upon any terms, or in any manner the general government may choose to prescribe, or on better terms than those on which the people of the States themselves are permitted to use them in a similar manner. It certainly does not impose on any State the duty either moral or political, of making or of repairing roads for post roads, but leaves them in the full possession of all the discretion they would otherwise have had to make such State roads, and to keep them in such repair as their own convenience and judgment alone may suggest. The people of the several States are under no constitutional obligation to make or repair roads for the use of the general government; nor can they be required to apply their own money or labor even to the keeping open of any one of their roads which shall have been designated as a post route; for, though a State highway once legally designated or established as a post route may continue *de jure* a post road as long as the act of Congress by which it was so designated or established shall remain unrepealed, yet certainly the State will not, therefore, be bound to continue it, but may discontinue it as a State road; and consequently, if, after any such discontinuance of any such State road, the general government choose still to use it as a post road, Congress must keep it open and in suitable condition, by the application of national means. The people of a single State are not exclusively interested in the transportation of the national mails within and through their own Commonwealth; the people of all the States are benefitted by the proper and effectual transportation of intelligence through each State. And hence the interest being thus common, and the power therefore national, the burthen, and the responsibility also, should be, and undoubtedly are, equally national, in each and every State. The right to judge, and the responsibility of judging, as to what roads and kind of roads the United States shall have for post roads, having been devolved on Congress, a State can neither exercise any controlling authority in that respect, nor be held responsible for any deficiency in any of

the facilities necessary or proper for the most effectual transportation of the mails.

A right of way, upon terms equal and common to all, is, in our opinion, the utmost privilege that can be implied by an authority to designate State roads as post routes.

If one State should, at a great expense, construct and preserve excellent roads, for the use of which it should exact a prescribed and reasonable toll sufficient for reparation, or even for indemnity for the cost, the people of other States, not choosing to provide such roads for themselves, would have no right to require or expect that the public mails, in which they are all interested as a national concern, should be transported, in carriages or otherwise, upon those costly and superior roads, without any contribution from the national purse for such national use, and for the wear and deterioration necessarily resulting from it.

If Congress, representing the interests and wills of the people of all the States, shall fail or refuse to make any appropriation for constructing or repairing, or for aiding the construction or reparation, of good roads in a State, the general government would, as it seems to us, have no pretence for claiming, for the federal public, any exclusive privileges in using such roads as post routes, or any exemption from the burthen common to every individual of the local public, whose labor and money alone made and must preserve them. It appears to us, that permission to the general government to use State roads as the State and its own citizens use them, and on the same terms, should be considered a boon rather than a burthen—a valuable privilege rather than an unjust or unauthorized exaction.

A State road is, we think, private property, as contra-distinguished from federal property, by the federal constitution. It belongs to the people of the State, was made by them, must be repaired and preserved by their labor and money, and is subject exclusively to their jurisdiction and control. Then, according to the constitution of the United States, can the general government possess a paramount authority to use and dilapidate such a road, and thus impose on the people of the State an accumulated burthen without their consent, and without making any compensation for the appropriation of their local property to international use? We can perceive no plausible ground for an affirmative answer.

But the learned counsel for Dickey has argued that, if the power be conceded to a State to tax the general government for transporting the mail on a State road, the right to designate and use State roads as post roads might be altogether frustrated by a perverse and captious State. Could the power to exact compensation or toll from the general government for using State roads for post roads, imply an illimitable right of exaction which might be so abused as to amount to a prohibition of the use, and had the power over post roads been given to Congress for the purpose of designating the mail routes, and for no other purpose than that of designation and use, we would acknowledge that the argument would be not less conclusive than it may, on a superficial view of it, seem to be plausible.

But we do not admit, either that a federal power to designate and use State roads for post roads and a State power to exact a just compensation or toll for the use are necessarily conflicting powers; or that the Lexington and Maysville turnpike has ever been designated as a post road; or that the power to establish post roads was given merely for enabling Congress to designate and use State roads as mail routes; or that a denial of the right to use State roads without the consent of the State, or without just compensation, would destroy or essentially impair the national comprehensive and supreme power "to establish post roads."

The national power to use the land of a citizen or a State for an armory or fortification, is undoubted and irrestible. The constitutional obligation to pay the owner a just equivalent, if it be demanded, is equally undoubted and inevitable. Yet, nevertheless, there is no conflict of power or of right, and the supremacy of the general government is unquestioned and unimpaired. And the acknowledgment of a right in a State or a private corporation or a citizen to exact a toll from the general government, for the use of a road as a post road, does not imply that the right is unlimited. If the general government have no right to use a State road or private road without the consent of the State or owner, then the power to exact toll for using it would undoubtedly be illimitable; and nevertheless, if exercised so as to prevent the use, the general government would surely have no just cause to complain that any of its powers or rights had been denied. But, if the general government have a right, without the consent of a State, to use a State road as a post road, the fact that such a right exists, prescribes a clear and indisputable boundary to the power of taxing for the use; and that is "a just compensation"—the right to exact which cannot be inconsistent with the proper exercise of any power, or enjoyment of any right, which can be constitutionally claimed by the national government.

If, as in this case, the tax or toll be uniform and universal, the very fact that it is so, is the most satisfactory proof that it does not exceed a just compensation: *first*—because it has been fixed by a public and general law operating on all alike; and, *secondly*—because it would be unreasonable to presume that a State, when fixing a general rate of tollage for the use of a road constructed and preserved only for public use, would ever attempt to exact a rate so exorbitant as to defeat the object of prescribing it: that is profit, or indemnity, to the people of

the State, to be secured only by the general use of it. And there is no complaint that the toll exacted in this case exceeds a just compensation.

Moreover, as before suggested, we understand the power to use State roads as post roads, to be only a right of common way; that is, an authority to use such roads as the people themselves use them, and on the same terms—neither better nor worse. And, on this construction, there can be no semblance of plausibility in an argument founded on possible abuse of State power.

But, unless we are altogether mistaken, the Maysville and Lexington turnpike has never been even designated by Congress as a post road. The act of Congress directing the mail to be carried between Lexington and Maysville, designated no particular road or route; and it was, moreover, passed prior to the construction of the turnpike, which is far from being identical in locality with the old road which it supplanted. If, then, any road from Maysville had ever been designated as a post road, it was the old and sometimes impassable road which had been discontinued since the completion of the new and far better road of the turnpike company. But in this, as in most other instances since the adoption of the federal constitution, Congress has not exercised its power "to establish post roads;" but has chosen to depend on the self-interest and comity of the government and people of Kentucky, and the discretion of the mail contractor, who may carry the mail on the turnpike, or not, just as he may prefer and be permitted.

If, then, Mr. Dickey be unwilling to pay for using the turnpike road, he may, without any violation of the law, or breach of his contract, adopt some other and cheaper road, provided he shall carry the mail in the time required, and with safety. But if he will use a road never established as a post road, he certainly can have no right to claim any exclusive privileges, or to refuse to comply with the condition on which alone every other person is permitted to use the same road; and surely the general government—having neither contributed to the construction or reparation of the turnpike road, nor established it as a post road, nor claimed the right to use it without paying the prescribed toll, nor even stipulated for securing such use of it to the mail contractor—could have no pretence for complaining that the exaction of toll from the contractor, is a defiance of its supremacy, or an impairment of its rights. But that government has not complained, nor will it, as we are bound to presume. The Postmaster General, as we presume, made the contract with Dickey, with the understanding by both parties, that if, as was doubtless expected, he should carry the mail on the turnpike, he would have to pay the customary toll, for which he expected to be indemnified by the facilities afforded by such a road, and by the price allowed to him by the contract; and there is, therefore, no pretence for insisting that the exaction of tolls conflicts with any power of the general government, or for withholding from the owners of the road that compensation for which the contractor has been indemnified, either by his contract, or by the road itself.

But the simple power "to establish post offices," necessarily including (as it does and has always been understood as doing) plenary authority to superintend the transportation of the national mails, would, itself and alone, give an implied right of way over State roads as they shall be found to exist, and *cum onere*. The power to establish post offices was given by the articles of confederation to the confederate Congress. And, though that body was expressly interdicted from exercising any other power than such as had been expressly delegated, nevertheless it had, invariably and without question or complaint anywhere, superintended and regulated the transportation of the entire mails of the States, and used, for that purpose, the roads of the States as the people used them, and no other roads, nor on other or better terms.

But the confederate Congress had no power to make or repair post roads, or to use any other road than such as the States choose to keep open and to use.

The want of such comprehensive and elective power was, as we presume, felt to be injurious and sometimes subversive of the great end of giving to the organ of the national will exclusive control over the national mail: not because mail contractors had to use State roads just as other persons used them, but because some State roads were not altogether suitable ways for the transportation of the mail with proper celerity and certainty, and because sometimes there might be no road where the national interest might require one for the most effectual diffusion of intelligence through the mails, and because, also, a State might obstruct or derange the mails by the discontinuance of a road which had been used as a mail route; and, therefore, when the federal constitution was adopted—and which was intended to give to a common government all national powers necessary for all national objects—the people gave to the national Congress the supplemental and important power to establish post roads, as well as post offices. As this new specific power was not necessary for giving authority to use State roads, it should not be understood as conferring any other right in the designation and use of such roads as post roads, than that which existed before, and would still have continued to exist, without doubt under the constitution, had it given no other power as to post roads than the pre-existent power "to establish post offices," which included necessarily the right to designate and use State roads as post roads. As to mere designation and use, the only dif-

ference is, that, as the power to establish a post road imports authority to fix permanently and retain, Congress may have power to keep open and use a road once designated as a post road, even though it shall be obstructed or discontinued by the State. If the power to establish post roads includes the power to designate and use State roads, the right of *use*, which it may imply, cannot—with the exception just stated—be essentially different from that implied by the power to establish post offices and carry the mails. And so far the two powers over post offices and post roads are identical; but the latter is, in other important respects, more comprehensive and efficient than the former; for we are clearly of the opinion that both the objects contemplated by the grant of the new power to establish post roads and the plain constructive import of the grant itself, as made in the constitution, show that this comprehensive and express power was given, not for authorizing the mere designation and use of State roads as post roads, but for enabling the general government to make, repair and keep open such roads in every State, as might, under any circumstances, be necessary for the most effectual and satisfactory fulfillment of the great national trust of transporting the national mails safely, certainly, speedily and punctually, without any necessary dependence on the policy, or will, or purse of any one of the States; and these were, in our opinion, the only ends for which that express power was given. And therefore, if Dickey should be considered as having from the general government a *charte blanche*, entitling him to all the privileges in the use of any road he may prefer between Lexington and Maysville, which Congress could have conferred on him by designating such road as the post route, and if we are mistaken in the opinion that the turnpike is not, in all respects, a State road—still, nevertheless, we would be of the opinion that the exaction of toll in this case is neither unauthorized nor in any degree subversive of the supreme power of Congress "to establish post offices and post roads."

There are those who doubt whether, in giving to Congress the power to establish post roads, the people of the States intended to surrender to the general government, as a matof right, the use of any and every State road upon any other terms than each State, for itself, might think fit to prescribe. The principle ground of this opinion is a belief that the only motive for giving to Congress the power to establish post roads, as well as post offices, was an apprehension that, without some such independent national power, a failure by any one State to provide roads in every respect suitable for post roads, or a refusal at any time, to permit the mail carriers to use any one of the roads of any one State on reasonable terms, might injuriously obstruct the transportation of the national mail, and tend to frustrate the only end for securing which the entire control of post offices and post roads was surrendered by the States to the general government.

And hence it is argued that one chief object of giving the power to establish post roads, implied an admission of an antecedent power in a State to prescribe its own terms for the use by the general government, of a State road, and that, therefore, the power to establish post roads does not include the right to designate and use State roads without the consent of the State but is an ultimate and more transcendental authority to make and repair national roads for post roads whenever the unfitness or unreasonableness of State policy may render such a course expedient.

But we shall not discuss that question; for, conceding, as we do, that the power to establish post roads includes the right to use State roads upon common and reasonable terms, we are also satisfied that it is much more efficient and comprehensive, and was given only for purposes very different from any such end as that of authorizing Congress to use State roads on its own terms.

We will, therefore, submit some general suggestions as to the character and extent of this high power.

Whether we consider the popular use of the word "*establish*," or the definition of it by the most approved lexicographers, or the admitted import of it in the preamble and in the fourth clause of the eighth section of the federal constitution, it must be understood to mean, not merely to designate, but to create, erect, build, prepare, fix permanently. Thus, to establish a character, to establish oneself in business, to establish a school, or manufactory, or government—all common and appropriate phrases—is not to assume or adopt some pre-existing character, or business, or school, or manufactory, or government. To establish in each of those uses of the phrase, clearly expresses the idea of creating, preparing, founding, or building up. In the same sense, too, it is used and understood in the Bible; thus it is said, "The Lord by wisdom hath founded the earth; by understanding hath he established (prepared) the heavens." *Proverbs*, iii., 19.

Just so, also, is it used and understood in the federal constitution. Thus we find in the preamble these words, "*establish justice;*" "establish this constitution;" and in the fourth clause of the eight article, power given to Congress, "to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States."

Thus we might present almost endless illustrations of the fact, that the popular and philological, sacred and profane, oracular and political import of "establish," is not to designate, but to found, prepare, make, institute and confirm.

It appears to us, therefore, that "to establish post offices and post roads" means *ex vi termini*, not only the designation and adoption of an existing house and road for a post office and post road, but also, more comprehensively, the renting or building of a house, and the construction and the reparation of a road, and the appropriation of money for any of those na-

tional purposes, whenever any of them shall be deemed useful. And the unquestionable fact that "to establish" imports to make or create in every other place where it is used in the constitution and especially in the fourth clause of the eighth section, tends persuasively, if not conclusively, to prove that the same words, used, without any qualification, directly afterwards in another clause of the same constitution, were understood in the same sense in which they were employed in the antecedent clause, as well as in the preamble. We can perceive no ground for discrimination. The subject matter of two clauses is not of a nature so essentially different as to authorize a more comprehensive interpretation of the power in the one clause, and a more restrictive construction of it in the other; and the object was the same in both: that is, to place the United States above dependence on any one of the States, so far as naturalization, and bankruptcy, and post offices, and post roads, might be concerned, as national objects.

A post office cannot be established without a house, and a postmaster, and the adoption of rules for regulating the office and the transmission of the mail; and therefore, all of these are necessarily constituent elements of the comprehensive power "to establish post offices." And consequently, if Congress deem the buying or building of a house for a post office, expedient, it may and should buy or build one; and the power to do so could not be questioned; because having supreme authority "to establish post offices," Congress must, of course, possess all subsidiary power "necessary and proper" for effectuating that authority; and therefore—a house being indispensable to the existence of a post office—whether a house shall be rented, or bought, or built, is a question altogether of expediency, and not, in any degree, or in any case, a question of power.

So, too, as roads, and good roads, are indispensable to the effectual establishment of post roads, the supreme power "to establish post roads" necessarily includes the power to make, repair and preserve such roads as may be suitable for the most speedy, certain and effectual transportations of the mails, in coaches or otherwise, as may be best for fulfilling the ends of the very important national power "to establish post offices and post roads." And consequently, whether Congress shall, in a special instance, construct a post road, or appropriate money for constructing one, or whether it shall adopt a road already made under the State authority, and use it as it is, and as the people of the State use it; or whether, after making a road or adopting an existing road, Congress shall repair and improve it, or contribute to those objects when the national interests require the reparation and improvement of it, or shall depend entirely on the will and judgment, purse and labor of the State, or of any portion of the people of the State—are all questions of expediency merely, and, in our judgment, neither of them can ever be a question of constitutional right.

If it be the interest of the United States to carry the mail in stage coaches, directly from one point to another, between which there is an interjacent wilderness, without any road or a sufficient road, cannot Congress open a road? If it cannot, then it has not power "to establish post offices and post roads" wherever the public interest requires, or in the manner most advantageous.

If, after a State road shall have been adopted as a post road for the transportation of the mail in coaches, it shall have been rendered unfit for such use, in consequence chiefly of dilapidations effected by transporting the mail upon it, cannot Congress repair the damage it had done? Or, if the State fail or refuse to keep the road in a suitable condition for such public use, may not, ought not, must not, the general government preserve it, so as to be able to use it advantageously as a post road? Or if, on an important post route, where the mail is carried in coaches, a bridge should be necessary to the safety and proper celerity and certainty of transportation, and the State fail or refuse to make any bridge, may not, should not, Congress have one made, and appropriate the money required for constructing and preserving it? A negative answer to either of these questions would necessarily imply that Congress cannot "establish post roads" in the only true and effectual sense; for, "to establish a post road," in the most restricted sense, is to designate, keep and preserve such roads for post roads as the public good shall require.

If, after a State road shall have been adopted or established as a post road, the State discontinue it as a State road, will it not still be a post road as long as the law establishing it as such shall remain unrepealed? If not, then a State can control the general government in the establishment of post roads, and by the occlusion of a road constitutionally established as a post road, may destroy it, and in effect, repeal the law by which it was established. This cannot be; for if Congress had power to establish the road as a post road, it must have the power to keep it open and use it; because the law by which it was established, must be the supreme law of the land, and should operate as such until it shall have been revoked by Congress. Then, in the event of a discontinuance of the road by the State, may not the United States still continue it as a post road? And, in the event of an actual occlusion by the State, has Congress no power to re-open it, and keep it open and fit for use as a post road?

These questions are, we think, too plain for grave debate or serious doubt.

But, if Congress can thus reconstruct or repair a road for a post road, its power to make one *de novo* cannot be consistently doubted.

Then it must, as we think, be admitted that there may be cases in which Congress has the constitutional authority to repair, reconstruct, and even make, roads for post roads.

But if the power exist in any case, it must exist in every case in which a post road is necessary or is established.

Power and the expediency of exercising it, are obviously distinct and essentially independent things. The inexpediency of an act of Congress does not prove that it is unconstitutional; nor can its expediency prove its constitutionality. A declaration of war against England might, at this time, or possibly at any time, be unjust and impolitic; but the constitutional authority of Congress to declare war, now or at any one time, against England or any other nation, whether with or without sufficient cause, is express and undoubted. It might, and doubtless would, be essentially inexpedient for Congress to abolish slavery in the District of Columbia: but, having full and exclusive legislative authority over that district, it may nevertheless be true that Congress has power to enact that there shall be no slavery there.

It might even now, in the opinion of many persons, and possibly may, at some future day, in the judgment of a majority of the people of the United States and of Congress, be expedient to abolish slavery in all the States. But, nevertheless, no rational mind could doubt that Congress has no power to legislate on that subject.

It may be inexpedient to establish a post office at a particular place, but the power to establish one at any place in the United States, is unquestionable. So, too, where there is a good State road, sufficient for every proper purpose as a post road, Congress would doubtles consider it more expedient to adopt such a road than to make a new one; and, if the State should choose to keep the road in good and suitable condition, without claiming any contribution from the United States, or exacting any compensation for the use of it as a post road, an appropriation of money by the general government, for aiding the preservation of the road, however just it would be, might be deemed by Congress unnecessary and inexpedient. But the power to make or repair the road should not, therefore, be denied or questioned.

All the powers over post offices and post roads which the States ever possessed, have been wisely transferred, as one indivisible national power, to the general government, which now possesses, of course, all the authority, in that respect, which all the people of all the States, either aggregately or in seperate State sovereignties, could possess and delegate. And under the plenary power to establish post roads, Congress must, therefore, have as much right to make and repair roads as the States ever had, for the purpose of having suitable post roads. The consent of a State is not indispensable; for, if the constitution give the power, it exists without the concurrence of any State; and if the constitution did not delegate the power to Congress, the consent of a State, or of all the States, could not give it without an amendment of that national charter, from which alone Congress derives or can derive legislative authority.

And, if the power to make or repair post roads, be not express, but be only implied, the question whether it exist in a given case, does not depend on that of the expediency or inexpediency of exercising it. An implied power, in the proper political sense, is a right to use a suitable mean for effectuating the end of some express power. And consequently, the question whether a power, not expressly given, is implied, does not depend, either on the expediency of exercising it, or the usefulness of the end to be accomplished by exercising it; but depends altogether on whether the thing done or to be done be necessary and proper as a mean for effecting the end of any power expressly given to the general government. Thus, if a National Bank be a suitable agent for carrying into complete effect any one power expressly delegated to the general goverment, and if, as a mean for that purpose, it would have an obvious relation to the end of any such power, and be adapted to the fulfillment of that end, Congress undoubtedly has the implied or incidental power to establish such an institution. But if, when established, it would have no relation, as a mean to such an end, Congress could have no power to establish it—however expedient or salutary it might be admitted to be in its influence on the enterprize and business of the people of the United States.

Wherefore, we conclude that, as it must be admitted that, in some cases which might occur, Congress has express power to make and repair post roads, the question whether it should make or repair any or every post road, is one of policy and not of power; and that, therefore, it has express power to make and repair post roads, whenever it shall deem such a course useful and proper.

If the power to establish post roads should even be restricted to the designation and continuance of roads, the power to remove obstructions, re-open the roads when closed, and repair them when repairs are necessary, so as to secure a proper and advantageous use of them as post roads, as long as Congress shall choose to continue them as such, cannot, as we think, and have before suggested, be doubted by any considerate and dispassionate mind. And the power to keep, as a post road, any road once established as such, and re-open and repair it, is but the power to make a post road.

But if the powers we have been considering, be not such as should be deemed express, we are clearly of the opinion that they are all implied.

No person, so far as we know or believe, now denies the existence of implied powers in the general government. The federal constitution itself shows that such powers were contemplated by those who adopted it; for it expressly declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution" the powers expressly delegated to the government of the United States; and the first amendment adopted by the people necessarily

concedes the existence of implied powers; because it interdicts acts of congressional legislation for which there was no express grant of power, and which, therefore, must have been considered as having been authorized by incidental or resulting powers.

But, without either of these concessions of implied powers, such powers would have existed to as great an extent precisely as they do now exist; for it is a self-evident truth, that an express and unqualified power to do a thing, necessarily implies the power to use all the necessary and proper means for doing it effectually; that is, such means as will effect the end of the express grant, and are neither inconsistent with the object of the grant, nor have been prohibited. The constitution only designates certain general ends, and expressly confers only certain comprehensive powers. Subsidiary powers are implied and could not have been enumerated. All powers necessary and proper for executing the enumerated powers, or for fulfilling the duties imposed by the constitution, are implied, and exist as certainly as if they had been expressly given—excepting so far only as they shall have been prohibited.

Between the strict constructionist and the latitudinarian, there is no dispute as to the general fact that implied powers exist. The only difference of opinion among rational men, is that which exists respecting the true test for ascertaining when a power is implied, and that also, which must ever exist concerning the extent of implied powers. All admit that there is implied power to adopt any mean that is "necessary and proper" for effecting the end of any express power. But enlightened men disagree as to what is "necessary and proper," and also as to the kind or degree of necessity which must exist before power will be implied.

But if power to adopt a particular mean for attaining the end of some express power, should not be implied unless that mean be indispensable—that is, unless the express power cannot otherwise be executed—then it is demonstrable that there can be no implied power; for it is evident that suitable or effectual means for executing every express grant of power, are various, and of almost infinite modifications; and, therefore, no single mean can be deemed indispensable, because the power may be executed by some other mean. But, although no one mean alone can be deemed indispensable, yet, as no end can be accomplished without some means, all the means which are adapted to an end, and will effectuate it, are necessary, and each is equally, and in the same sense, necessary. And therefore, if any one of them be constitutional, any other of them must be equally so, unless it be prohibited by the constitution, or be subversive of some fundamental principle, and therefore would not be "proper" as well as necessary. And, of course, in choosing between "proper" means, thus equally necessary in the political sense, the question is one of expediency only, and not of power. This is illustrated by practical proofs abundantly furnished in the history of national legislation, every year since the commencement of the federal government.

Then, as a road can neither be made nor preserved fit for use, without labor or money, and generally both—can it be doubted that, in fully and effectually executing the express trust of establishing post roads, Congress may have the implied power to appropriate money to construct, or help to construct, and to repair, or aid in repairing, a post road? or to pay a just compensation for using and impairing a road made and repaired by State authority and State means alone? This should certainly not be doubted by any, except such persons as could deny that the power "to establish post offices and post roads" embraces the power to superintend and regulate the mail, and to do, also, whatever may be "necessary and proper" for securing the transportation of it, as distributively, cheaply, speedily, and safely, as the public interest may require. It cannot, surely, be seriously doubted by any person who admits that, under the power "to establish post offices and post roads," the general government may appoint postmasters, make contracts for carrying the mail, on horses, or in coaches, or in steamboats, require the citizen to pay postage, and punish him, "even unto death," for obstructing or robbing the mail.

By the comprehensive power "to establish post offices and post roads," the people who adopted the federal constitution intended to give to the national Congress all the power necessary for controlling the entire mail establishment of the Union, in such a manner as most certainly to effectuate the end for which the general power was delegated; and that was, the prompt, punctual, and certain distribution of intelligence, without any of the inconveniences, obstructions or delays, that might be apprehended from discordant and inefficient State regulations, or from any dependence on State authority or State will. And therefore, as the general, and not any State government, is responsible for the faithful and satisfactory execution of this important trust, and must, of course, possess, not only the exclusive right to decide as to the best modes of fulfilling it, but supreme power to provide and enforce the requisite means for attaining the general end, it must have the authority to judge whether the roads in any State are suitable or sufficient for proper post roads; and if, in its judgment, there be, anywhere, any deficiency of road facility, it must have the implied power to supply the deficiency, either by construction, re-construction, or reparation, as it shall consider most expedient.

A State cannot claim the right to decide whether she has all the roads which the general government needs for transporting the mails; nor whether all her roads are in a suitable condition for post roads; nor can the

general government be required to depend altogether on any State for the reparation or preservation of post roads; for, in those respects, the States, having retained no power, can claim the right to exercise none.

The prevailing practice of the general government has been to adopt State roads as it finds them; to use them as the people of the State use them; and to leave to them, not only the whole burthen of making and repairing all roads, but the discretion to decide how and when such as have been established as post roads shall be repaired, improved, altered, and changed. This may he expedient in many, perhaps most, instances. But it is often unjust to the several States, and may be essentially prejudicial to the interests of the United States. When a road is dilapidated by the use made of it by the general government, it would be right for that government to repair the injury it had done; power to do such justice cannot surely be denied; and when a post road is not kept, by State authority and State means, in such a condition as the interest of the United States requires that it should be kept, for the most effectual transportation of the mail, the general government should, with its own means, improve and preserve it as it should be improved and preserved.

Every post road is a national road. So far as it is a post road, it is as national as the Chesapeake Bay, or the Mississippi river; because, so far as it is such a road, the people of all the States have an interest in it; and therefore, to that extent, it is undoubtedly a United States road, and may, of course, be repaired and improved by the United States.

By the articles of confederation, as before suggested, the confederate Congress had express and exclusive power "to establish post offices;" but, as it possessed no implied power, it had no authority to "establish post roads." Nevertheless the confederation appointed postmasters, established post offices, superintended and directed the entire mail of all the States, and used, without queston or complaint, the State roads, just as they have been generally used since the adoption of the federal constitution. But, notwithstanding this practical interpretation of the power "to establish post offices," the Federal Convention, and the people who ratified the constitution proposed by it, felt that the power "to establish post offices" was not sufficiently ample; and therefore, they added the auxiliary power, also, "to establish post roads." This historic fact alone tends directly and persuasively to show that the power "to establish post roads" was intended to include more than an authority merely to designate post routes; for otherwise —as that authority had been possessed and exercised under the isolated power "to establish post offices"—there was no motive for superadding the express power to establish "post roads."

We cannot, therefore, resist the conclusion that the power to establish post roads is some-t thing more than the power "to establish pos offices;" that the former is, as to post roads, as plenary and supreme as the latter can be as to post offices; that both together were understood and intended to embrace everything necessary and proper for regulating and transporting the mails of the United States in such a manner as the national Congress should deem best, and choose to provide for and prescribe; that consequently, Congress must have at least implied power to make, improve, and repair post roads, whenever and wherever it shall consider such a course necessary and proper; and, *a fortiori*, the implied or rather the resulting power to appropriate money to any of those national purposes.

Congress has not, for obvious reasons, established the habit of either making or repairing, or of appropriating money to make or repair, post roads; neither has it established the habit of even designating the roads on which the mail shall be carried. But the general practice is no proof as to the constitutional power of Congress in the one case more than in the other. Notwithstanding the habitual failure to designate post roads, the power to do so is unquestioned; and notwithstanding the habitual forbearance to make or repair, or appropriate money to make or repair, post roads, the power to do each and all of these things is, as we with equal confidence believe, clearly implied, if not expressed. And we have no doubt that many losses, disappointments and vexations have occurred in the mail department and to the people in consequence of the failure by congress to provide such post roads, and improve and repair them in such a manner as the nature and object of the trust confided to it by the constitution authorized and required; and we have as little doubt that the making of a good post road in a State, or appropriation of money to make or improve, or aid in making or improving, a post road, by the general government could never be injurious to the State.

Congress has not adopted the practice of building and keeping federal prisons and court houses in the several States, because the liberal comity of the States has sufficiently supplied the general goverment with the use of those necessary appendages to the national judiciary. But who can doubt the power of Congress to build and to keep a federal court house and jail in every State in the Union?

The power to appropriate the money of the United States to the purpose of meeting any of the demands of the general government, or of executing fully and most effectually, any trust confided to it, cannot be doubted. Indeed, it might be admitted that every government, as an artificial person, may, like a natural person, have an inherent or resulting power to dispose of its own money in any way not prohibited by the organic law of its being, nor

inconsistent with the end of its creation. And surely there is no such limitation, express or implied, upon the power to appropriate the money of the United States, as could prevent the application of it judiciously to the purpose of facilitating the proper and expeditious transporsations of the national mails.

Can any rational and consistent man, who claims for the general government the harsh and ultra power to use *ad libitum* the roads of a State, without either compensation to, or consent by, the State, deny or doubt that Congress has power to appropriate money to make, or to repair, or to pay for the use of, public roads in a State, used or to be used as post roads? We cannot believe that any such suicidal inconsistency will ever be exhibited by many national statesmen or jurists.

But the power to pay for the use of a State road necessarily implies power to appropriate money to repair, or even make, post roads.

Had either of the States been alone interested in the mails within their respective borders, the power to establish post offices and post roads would never have been given to the Congress of the United States. But, the mail being international, all power over it and over all means necessary and proper for making it most effectual, was therefore transferred to the councils of all the States united into one common government for purposes common to all. And, all power over the mail, and over post roads, has been thus surrendered to the general government, and as all the people of all the States have an interest in the execution of that power in each State, there can, in our opinion, be no semblance of eitheir justice or authority for a pretension by the national government to a constitutional right, either to require a State to make or repair post roads with its own labor or money, without any assistance or retribution from the other States; or, in every instance, to defer to the several States the discretion of having good or bad post roads, as their parsimony or liberality, poverty or caprice, may happen to prevail, and thus virtually to surrender to them individually this important national trust.

It may be generally best for the general government to avail itself of the use of State roads in such condition as the State may be pleased to keep them, and upon such terms as they shall choose to prescribe. So, too, and more obviously and generally, it may be best for the general government to use, in the like manner, the jails and court houses of the several States. But the power, in each class of cases, to execute the national trusts, independently of State provision or State consent, is equally unquestionable; and, in case of post roads, the occasional exercise of that power would doubtless be, not only just, but greatly advantageous. Where there shall not be, in every respect, a suitable post road, it is, in our opinion, the duty of the general government to employ all the means which shall be necessary and proper for securing such a road as the public interest demands. But if it will not do so, or when it chooses to repose on State authority, and rely on State expenditure, it must use roads as it finds them, and cannot claim privileges to which the people of the States are not themselves entitled; and if a uniform and general toll be exacted, Congress cannot complain that its authority had been resisted, or in any degree, impaired.

We therefore conclude, *first*—that the power to establish post roads was given for the purpose of enabling the general government to make, and repair, and keep open, and improve, post roads, whenever the exercise of any such independent, national power shall be deemed proper for effectuating the satisfactory transportations of the mails; *second*—that it was not given for the purpose of authorizing Congress to adopt and use State roads as post roads, without any compensation, if any should be just, and should be demanded; *third*—that, so far as the designation and use of any State road as a post route, may be concerned, the power to establish post roads cannot import more than the precedent power to establish post offices, and transport the mails—excepting only, that the one implies only a right of use, upon just and common terms, as long only as a State shall choose to continue a road as a State road, and the other may imply a right in Congress, not only to enjoy a like use, but to continue, as a post route, a road once adopted or designated or established as a post road, even after it shall have been discontinued as a State road; *fourth*—that, unless Congress shall elect to exert its right of eminent domain, and buy a State road, or make one, or help to make or repair it, the constitution gives no authority to use it as a post road, without the consent of the State or owner, or without making a just compensation for the use; and, *fifth*—that therefore, even if the Lexington and Maysville turnpike should be deemed a public State road in all respects, and if Dickey, as mail contractor, has a right to transport the mail on any public road he may prefer or choose to adopt between Lexington and Maysville, he cannot do so, nor had Congress power to authorize him to do so, without paying for the use, if demanded, a just compensation, and that is—*prima facie* at least—what other persons are required to pay for a similar use of it.

After refusing, as it did, by the President's *veto*, to contribute any thing to the construction of the Maysville and Lexington turnpike, the general government could not, with any semblance of consistency, justice, or grace, claim the right to use and impair it, by carrying the mail upon it, in coaches, without paying to those who did make it with thier own private means, as much for the use and dilapidation of it as they have a legal right to exact and do receive, without objection, from

all others who enjoy the use of it, by travelling upon it in carriages.

Wherefore, as, in every view we have taken of this case, no power of the general government has been either exercised, or resisted, or defied—it is clearly our opinion that Dickey, as mail contractor, can, as a matter of right, use the Lexington and Maysville turnpike road only as others have a right to use it; and that, therefore, he may be, justly and constitutionally, compelled to pay the prescribed toll for such use as he shall elect to make of it for his own advantage and convenience.

It is therefore considered, that the judgment of the Circuit Court against the appellant be affirmed.

SUPREME COURT, U. S.

RUSSELL
vs.
SOUTHARD

Appellant's Brief.

Gilbert C. Russell, once a Colonel in the army of the United States, bought from Dr. John Floyd, of Virginia, a tract of land near the city of Louisville, Kentucky for the consideration of $12,960; and on the 22nd of May, 1826, Floyd and his wife conveyed to Russell the legal title to the land described as containing 216 acres—See bill, p. 5, of printed Record; Floyd's deed, p. 12, and deposition of R. Smith, p. 248.

As it was not then convenient for Russell to reside on the land thus bought, he placed on it J. W. Wing, as his agent and manager. On revisiting Louisville in September, 1827, from his residence in Alabama, Russell ascertained that Wing had incurred debts which could not then be paid otherwise than by borrowing money or selling the farm:—and his desire to raise, in one mode or the other, a fund sufficient for paying those debts, being made known he was offered $10,000 for his land in real estate in Huntsville, Alabama—See the deposition of C. Talbot, p. 186. But, unwilling to accede to that offer for a purchase, Russell, thus unexpectly pressed for money far from home, made an arrangement with James Southard, of Louisville, whereby he obtained from Southard an advance of $2,000, (the sum he needed,) and also took an equitable assignment of two claims of doubtful value then in litigation—one on Dr. Johnson for $1,270 94, and the other on S. M. Brown for $1,558 87½; each of which Southard carefully assigned to him without recourse, and exacted from him an acknowledgment of the receipt of $4,929 81, in "coin" of the United States. Russell's interpretation of this arrangement was, that it was a loan to be secured by a mortgage on the land he had purchased from Floyd; which he considered as effectuated by a conveyance signed by him on the 24th of September, 1827, purporting to be absolute on its face—See p. 14–15, and by a separate defeasance signed both by Russell and Southard, of the same date—See p. 172.

By a writing simultaneously executed by Russell, he covenanted to procure his wife's relinquishment of dower within four months from that date; and covenanted that, in the event of a failure to do so, he would pay to Southard $,3,000, "as liquidated damages for that failure"—See p. 14.

On a subsequent visit to Louisville, in Oct., 1830, Russell having discovered that the aggregate sum, to-wit: $4,829 82½, acknowledged to have been received from Southard, was $100 more than the amount actually or or nominally advanced; and, finding himself disabled by misfortune from then repaying the money he had received, demanded of Southard $100 so as to make the sum nominally received equal to that for which he conveyed the land. Southard, after much diplomacy, finally paid him $100, and took from him on the 6th of October, 1830, a writing acknowledging the payment, for the purpose avowed by Russell, and, "in full for all demands."

James Southard took possession of the land immediately after the date of the written memorials of the contract, and retained the possession until his death in the year 1840, when, by his will, his interest passed to his brother, Daniel R. Southard, who was present at the execution of the conveyance by Russell to his testator, had owned one of the claims assigned to Russell, and drew the defeasance, as he avers in his answer; Wordan Pope, a lawyer, having, at the instance of James Southard, drawn the absolute deed, and probably the defeasance also, which was copied by D. R. Southard.

On the 23d of September, 1847, Russell, as a citizen of the State of Alabama, filed a bill in chancery against D. R. Southard and others, as citizens of Kentucky, in the circuit court of the United States for Kentucky, alledging, among other things, that the contract between J. Southard and himself was not a sale, but only a mortgage for securing the repayment of a loan; that the advance of the consideration recited in the written memorials was a loan; that the defeasance showed by its terms, that the absolute conveyance was intended to operate only as a mortgage; that D. R. Southard had fraudulently procured and still withheld from him the document of defeasance; that his (Russell's) embarrassments had prevented a redemption; that both J. & D. R. Southard had, ever since they had fraudulently obtained the receipt and the possession of the defeasance, persisted in the false and fraudulent pretence that the contract was a conditional sale and not a mortgage, &c. &c., and, after propounding to the defendant, Southard, various interrogatories, concluding

with a prayer for a decree for redemption on equitable terms.

On the 7th of February, 1848, Southard filed a long and elaborate answer, in which he denied that the contract was, as alleged, a mortgage to secure a loan, insisting that it was an absolute sale, and averred that the defeasance was not "contempleted" by the original contract, was not executed until some days after the date of the conveyance, and was altogether gratuitous ! and that his testator had, on the 6th of October, 1830, for the consideration of the sum of $100 then paid to Russell, finally concluded all controversy concerning the original contract; and lastly, pleaded the lapse of time.

On the final hearing, the circuit court dismissed the bill; and Russell has appealed to this court for a revision and reversal of the decree.

For reversing the decree, the counsel for the appellant will endeavor to maintain the following propositions :

1st. That the contract, as made and exhibited, was a mortgage ;

2d. That Russell has not, by any act he has done, parted with his equity of redemption ; and

3d. That his title to relief is not barred by time.

And, for establishing these positions in their numerical order, the appellant's counsel respectfully submit, to the consideration of the court, the following programme of argument as their Brief:

1. The considerations conducing to show a mortgage are of two distinct classes :—1st. Intrinsic. 2d. Extrinsic.

1st. Intrinsic Evidence.

The defeasance was not, as pretended by D. R. Southard, purely voluntary ; 1st. Because, if, as its date and recitals import, it was executed simultaneously with the conveyance, they are integral and essential constituents of one entire contract; 2d. If the defeasance was not formally executed until a day or days after the execution of the conveyance, it was, nevertheless, prepared and signed in fulfilment of the understanding of the parties in making their original contract, and a refusal to execute it would have been a reckless fraud, against the meditated effect of which there might have been relief; Maxwell vs. Montacute, Prechy 526—Walker vs. Walker, 2. Atkins 99.

This appears clearly from the deposition of Dr. Johnson, (see his answer p. 210 question 3rd) which is fortified by the bungling and incredible answer of D. R. Southard—and is made indisputable by the strong and almost conclusive improbability that such a man as J. Southard would voluntarily have given such a defeasance, after an absolute purchase in good faith, of such a tract of land, for a price so glaringly inadequate.

Then starting, as we think we have a right to do, with the postulate, that the conveyance and the defeasance are parts of one indivisible contract, just as if the defeasance had been inserted in the conveyance, we insist that, on the face of these documents alone, the law construes them as constituting a memorial of a contract of a loan by Southard, and of mortgage by Russell.

1. When an absolute conveyance is coupled with a defeasance, the law inclines to construe the contract as a mortgage, rather than a conditional sale or a defeasable purchase—this is the dictum of every treatise on the equitable doctrine of mortgages—*Sparsim*—see also Bloodgood vs. Zigly 2 Caine's cases —124 Longuet vs. Scaven 1. viz sr. 406—Newcomb vs. Bonham 1st. Vernon 7—Manlove, vs. Bale & Bruton 2nd. Ib. 83. Chapman's ad'r vs. Turne 1 call 244. Robertson vs. Campbell 2nd. Ib. 353. Ross vs. Norvell 1. Washington 14—King vs. Newman 2. Munf'd 40. Thompson vs. Davenport 1. Washington 125. Robert's ad'r vs. Cox 1. Rand—121. Pennington vs. Hanby et al 4 Munf'd 140. Wilson vs. Carven 4. Haywood 93.—Haltier vs. Elinaud 2 Dess—571. Wharf vs. Howell 5. Binney 499. Dey vs. Duncomb 2. Johnson's chy R. 189. Blaney vs. Bearce vs. Grant R. 132. Harrison vs. Trustees of Philip's Academy 12 Mass. R. 457. Erskine vs. Townsend 2 Ib 475. Taylor vs. Weld 5 Ib 100. Carey vs. Rawson 8 Ib 159 Brown vs. Bement 8th. Johnson R. 150. Patterson vs. Clark 15. Ib. 205. Skinner vs. Miller 5. Litt R. 86—Heytle vs. Logan 1. A. K. Marshall p. 629. Edrington vs. Harper 3. I I. M. 354—Morris vs. Nixon 1. Howard—Livingston vs. Story 9th and 11 Peters.

Some of these cases expressly, and most of them virtually decide that a writing or writings, importing an absolute sale with a power of defeasance—nothing else appearing—imply a mortgage—whatever may be the form or terms of the contract ; and that, in all such cases, the burthen of proof aliunde devolves on the party claiming a conditional or defeasable purchase. Coote, in this treatise on mortgages, 16th Vol. Law Lib. p. 13, considering the authorities as to the recognition and validity of defeasable purchases confused and doubtful, notices the case of Floyer vs. Livingston 1. Pr. Wms. 268—and that of Miller vs. Lees 2. Atkins 494, sometimes cited in support of such contracts, and not only shows that Ld. Hardwicke confined such constructive sale to a rent charge, and repudiated it as to the fee in the land itself, but intimated that these two cases were decided on lapse of time and other peculiar circumstances, and not on the simple fact of an absolute conveyance and an accompanying defeasance.

If the general principle of construction, for establishing which most of the foregoing cases are cited, should be overruled or disregarded —as Deeds cannot be contradicted or explained by oral testimony, without proof of fraud, mistake, or illegality,—rapacious money lenders might, and often would, impose on necessitous borrowers defeasable purchases from which they could never extricate their property by proof or by a precise compliance with the prescribed terms. The principle, for which

we contend, seems to us therefore to be as just and reasonable, as it is authoritative.

The fact that there is in this case no express promise by Russell to pay the $4,929 81½ to Southard, is not sufficient *per se* to overrule the *prima facie* implication of a mortgage. A contract, we admit, cannot be a mortgage, as to one of the parties and not as to the other. There must be mutuality in the right of one to redeem, and of the other to foreclose and make his debt.

But it is not necessary to the existence of a mortgage that the reciprocal rights of the parties shall be coextensive—or that they should run *quatuor pedibus*. It is sufficient that each party may enforce the contract as a mortgage. This the mortgagee may do, although there is neither an express, nor a collateral undertaking by the mortgagor to pay the debt to secure which the mortgage was made.

This is shewn by many of the cases already cited—see also Wilcox's heirs vs. Morris 1. Murphy 117—Conway's Ex's vs. Alexander 7. Cranch 218—Hart vs. Burton 7. J. J. Marshall 322—also Howell vs. Rice 1 Pr. Wim's 290—King vs. King 3, Ib. 361—Powell on mortgages p. 16—where in a note Mr. Coventry says—"a Bond and Covenant are said to be of no use if the estate be ample."

Considering, as the court will, the conveyance and defeasance as one entire document, the contract should be interpreted precisely as it would have been had both documents been incorporated in the usual style, beginning with an absolute conveyance and concluding with a condition which might entitle the conveyor to a re-conveyance. And, thus considered, the entire memorial of the contract imports that Southard had advanced to Russell a consideration estimated at $4,929 81½ —for which the latter had conveyed to the former a certain tract of land—the parties intending thereby that the one might use the money, and the other enjoy the land for four months, and that, on payment of the money with interest, within that time, the land should be re-conveyed. Is not this, in its constructive effect, a mortgage? Notwithstanding the elaborate effort of the Southards, and their Lawyers to give it the semblance of an absolute sale, and a conditional repurchase, does it not, in its substance import that the land was conveyed to secure the payment of the consideration advanced?

Does it not amount, after all the ingenious elaboration of disguises, to a loan on one side and a collateral security on the other?

It is settled by many of the foregoing authorities that, whatever may be the form or the words of a conveyance, it will be construed a mortgage if designed or given as a security, or for the purpose of coercing or securing a payment. The form is not essential—the intent is the vital spirit which fixes the character of the thing. Calling a contract a conditional sale does not make it so. Extraordinary efforts to give it that complexion are even evidence tending, and sometimes strongly, to shew that it was intended, by the other party, as a mortgage. In this case such efforts appear on the face of the papers. Look at the superfluous repetitions, and redundant adjectives—such as "absolutely conveyed"—"this agreement shall be at an end and null and void"—"this agreement of resale, is conditional and without a valuable consideration!"—"and entirely dependent &c.,"—"and this agreement is to be valid and obligatory only, upon the said James Southard, upon the punctual payment, &c."

What motive prompted all this superfluity and tautology? It was neither necessary nor useful, for any other purpose than to disguise or distort the real contract, as intended and understood by Russell. It is like inserting in a contract the declaration—"this is bona fide, no fraud, is intended;" and which is, itself a significant badge of fraud, indicating that the party was thinking of fraud, and trying to conceal it; and, in this case, Southard's were thinking of a mortgage and trying to elude it.

The provision, in the defeasance, for the relinquishment of Dower, should not have any effect on the construction of the contract. Such relinquishment was as proper in the case of mortgage, as in that of a sale—and had been amply secured by the covenant already noticed with its liquidated damages.

Then stripped of all artifice and studied drapery, what is the contract, properly considered in its own nakedness? Is it not an entire agreement to convey land, on the advance of a certain sum, and to re-convey the same land on the return of that sum with accruing interest within a prescribed time? And, according to reason, as well as the citations already made, is not such an agreement *prima facie* to be deemed a mortgage for securing the repayment of the money advanced? If the land, as is the fact, was worth more than the money, there was no motive for taking a bond or express promise to pay it—and such an undertaking, was doubtless, not exacted by Southard, because it was unnecessary, and if made, would have been a strong badge of a mortgage. The omission of it may be evidence of a fraudulent design, but cannot operate as decisive proof of a bona fide sale, instead of a mortgage. This is proved by many of the cases herein before cited.

It is difficult to make such an entire contract for a conveyance and a conditional reconveyance, as will or ought to be construed a sale, and not a security, (see especially Longuet vs. Scaven, *Supra.*) And, when there is nothing else but an absolute conveyance in form, on the advance of money, and a covenant to reconvey on no other condition than the payment of the same sum with interest, we doubt whether there is any adjudged case, now entitled to respectful consideration, in which it has been decided that the contract was not intended as a security. Such we consider the modern and more rational doctrine—as most of the foregoing authorities conduce to shew—and as Coote intimates, when he says:—(20th L. Lib'y p. 17)—"the circumstance of an agreement to reconvey,

although entered into at the time of the conveyance, is not sufficient to convert the transaction into a mortgage, if there be evidence to rebut the presumption,"—which imports that the fact, that the conveyance and the agreement to reconvey on the sole condition of restitution of the consideration were made at the same time, and were therefore constituent elements of one entire contract, will create the presumption, *prima facie*, that the transaction was intended as mere security, or a mortgage —and that consequently a court should decide that the contract was a mortgage, unless the party opposing that construction should rebut that presumption. An additional reason for that presumption, having already suggested one, is that a conveyance, for a certain sum, and a defeasance on condition of paying it back, import a loan—and if the consideration be a loan, no mere form of contract can make the conveyance a conditional sale. The "evidence," to rebut the presumption of a mortgage, must therefore be such as to shew that the consideration of the conveyance was not a loan; nothing else will be sufficient. Thus, in the case of Barrell vs. Sabine 1. Vernon 269—the grounds on which the court decided that the contract was not a mortgage, were first that there was proof that the original agreement, which was some time afterwards consummated by a conveyance, was for a sale, for a stipulated price; and that therefore the consideration was not advanced as a loan— and secondly that the price, on the payment of which Barrell covenanted to reconvey, considerably exceeded the sum he had paid and the interest thereon.

That case therefore, even if still recognized as right, is no authority against our position. And thus also it was decided by the court of Appeals of Kentucky, that a covenant by a purchaser under execution to convey the property so bought to the original owner, on the payment of the purchase money and interest, is not a mortgage—because these facts, alone, show that there was no loan. But in Yoder vs. Strandford 7, Monroe 480—the same court decided that "a fair purchaser at Sheriff's Sale, under a contract with the defendant that he may redeem, holds as in mortgage"—and the reason is that the money was advanced on a contract which contained a stipulation for a reconveyance on the payment of the same sum with interest. Nor can we doubt that in Conway's Ex'r vs. Alexander, Supra, the court would have construed the transaction between the parties a mortgage, had not the party resisting that construction shown that the consideration was not a loan, but was paid on an executory sale of land covenanted to be conveyed to him, and also proved other facts corroborating that deduction and shewing that a redemption would be inevitable. In the case of Heytel vs. Logan—supra—it appeared that Logan refused to loan money to Heytel—but consented for 3000 cash to be then paid to purchase from him Town Lots, worth in like payment something less than $4000, probably about $3800—that, thereupon, Heytel made an absolute conveyance to Logan, who, at the same time paid him $3000 in money, and gave him a written privilege to repurchase the property within eleven months, by paying $3000. There was no extraneous proof. Nevertheless the court of Appeals of Kentucky, on the face of these papers alone, decided that the contract was a constructive loan and mortgage, in the absence of any extrinsic evidence to the contrary. The reason of that decision seems to have been—that, as the property conveyed was worth more than the amount advanced by Logan, and was therefore an indubitable security for it as a loan, and as the reconveyance was to be made on the payment of that sum and about 15 per cent interest thereon, it was altogether probable that the form of a sale and conditional repurchase was given to the contract, as a contrivance to evade the law against usury —and that, on such facts, public policy, the integrity of the law, and the safety of necessitous borrowers of money, required that the contract should be construed a mortgage to secure a loan.

Whereupon we conclude that, as the land was conveyed by Russell on an agreement which bound Southard to reconvey it on the payment, within four months, of the amount he had advanced, with legal interest, thereon, the *prima facie* presumption is that the contract was a mortgage—*res ipsa loquitur*. And we think we are also authorised to conclude that Southard, on whom the proof devolved, has failed to shew that his advance was not a loan. On the contrary there are considerations derived from the writings, which fortify the first ground just considered. The few cases in which the courts of Kentucky have recognised conditional sales, were decided on peculiar grounds, perfectly consistent with the principles for which we are contending.

2. "Defeasance" is inscribed on the head of the collateral document, as the name the parties themselves gave it. And does not this import that the parties intended to defeat or hold void the conveyance in the event of the prescribed restitution of the amount advanced and its interest? And if they intended this, is not their contract a mortgage? Did not Russell so understand it?

3. The fact that Russell took more than half of the consideration in debts of remote and uncertain availability, and agreed, as a condition of reconveyance to pay the nominal amount and interest on it, before he could hope to collect, if he ever could collect these debts or either of them, shews that he was unwilling to sell absolutely his land for anything like what he received from Southard, and tends also, strongly to shew that Southard's object was to convert those debts into money without the trouble, risk, or expense of the pending suits. All this implies a purpose indirectly to borrow and lend at exorbitant interest, and which purpose it was important to the usurer to conceal. By making his doubtful claims and his $2000 produce him, within four months, their nominal amount in cash and

interest and the rent of such a tract of land, he speculated largely on the necessities of Russell. This sacrifice, Russell's condition may have compelled him to encounter, and his conduct, as exhibited on the face of the contract, indicates that he intended nothing else, or more than to loose the usury, to secure which may be presumed to have been Southard's chief and controlling object.

4. Russell's covenant to procure his wife's relinquishment, being an integral portion of the contract of conveyance, may be properly considered in connexion with it, and as a provision in it. It was allowable, and might have been prudent for a mortgagee to require a relinquishment of dower by the mortgagor's wife. But why did Southard exact a covenant to pay, as liquidated damages, which could not be resisted or reduced, and prescribe an amount, $3,000, nearly equal to the value of all he had advanced or was ever to advance on the land? Had he been an absolute purchaser in good faith, and had it been his only object, as in that case it would probably have been, to secure his title against the contingent incumbrance of dower, he would not have required, nor would Russell have given, any such monstrous covenant. But, if Russell's understanding was, that he was only borrowing and giving a mortgage as security, he had no strong motive of interest to induce him to refuse to execute such a covenant, because he knew that he could avoid it by redemption, whenever he might redeem. And the only consistent motive imputable to Southard is, that he wished to add another disguise to the transaction, forge another chain for binding down Russell, and, by holding up the $3,000 *in terroram*, to increase his chances of keeping the land for what he had advanced, or possibly for less than half of it, by recovering the $3,000.

For the reasons suggested in the foregoing outline, we submit to the court whether the contract should not be deemed a mortgage without the aid of the extraneous facts. Can the artful effort of the Southards and their lawyer, to give the "defeasance" the name of a "conditional sale," change the essential quality and legal effect of the thing? Every mortgage literally purports to be a conditional sale. Can the false and fraudulent allegation in the "defeasance," that it was voluntary and without consideration transmute the conveyance into an absolute sale in good faith? On the contrary, does not this false and bungling artifice rather expose a fraudulent design to hide the truth by clothing the transaction with a delusive dress?

We consider the principle controlling the cases in 2d Vernon, 15th Johnson, and 1 A. K. M., and in many others, supra, as decisive of the question involved in our first position.

The extraordinary character of the written memorials tends to fortify, rather than repel, the presumption of a security arising from the fact that the conveyance was defeasable on the return of the money advanced.

II. Should the court not concur in the foregoing conclusion, we suggest the following considerations to show that a mortgage is established by Extrinsic facts.

Whatever may be the opinion of this court as to the general admissibility of oral to explain or contradict written evidence, all the members of it will concur in the competency of such testimony whenever there is proof of mistake or fraud in the execution of a writing, or of illegality in the consideration or object of the contract of which it purports to be a memorial. To cite authorities to prove this position, would be as superfluous as citations for certifying the doctrine that a purchaser, with notice of a trust, must take the legal title under a trust implied, *in invitum*.

In this case, not only usury, but both mistake and fraud also may be inferred from the facts in the record. If the parties, by their oral agreement, intended a loan, as we expect to show, there was usury, because not only were the two claims taken at par not worth so much, but Southard reserved six per cent. the legal rate of interest, on the whole nominal amount of the advance, and the rent of the farm also. There must, also, have been both fraud and mistake in the execution of the documents: Russell avers that the defeasance, by its terms, shewed a mortgage; which is a virtual allegation that if its terms manifest a conditional sale, he did not understand it and signed the writings under a mistake; and such should be presumed to be the fact if he thought he was borrowing; and the other party, on that hypothesis, was guilty of fraud. If, as we think they do, the allegations of the bill amount to a charge of usury, fraud, or mistake, a more formal and direct imputation of all or either of them is not necessary.

Then, if the court should construe the contract, on the face of the documents, to be a conditional sale, and not a mortgage, we submit the following extraneous considerations for shewing that the advance was made as a loan; that the loan was illegal; that the memorials were procured by fraud or mistake, or both, though either usury, fraud or mistake will be enough; and consequently, that the real contract was a mortgage, and no sale.

1. Russell had, only about sixteen months before the date of his conveyance, bought the farm for the purpose, as may be presumed, of making it his ultimate residence, and had paid for it in cash nearly three times as much as the nominal sum advanced to him by Southard. It is not probable, therefore, that he desired, so soon, to sell on any other condition, or for any other purpose than to pay the debt incurred by Wing in managing the farm one year; nor even then, for that purpose, if he could conveniently procure the money by a loan. James Southard was a citizen and merchant of Louisville; and was, probably, a lender of money at usurious interest—See Heinshaw's dep'n, 233; Farquar's, 244. And men of that cast prefer loaning their money at high interest to buying and cultivating farms. Besides, Russell got only $2,000 in money, or in means either entirely or immediately available, and which could have served

scarcely any other purpose than that of paying the farm debts—certainly not that of an advantageous investment. This comparatively small sum he could have borrowed without doubt or difficulty, almost any where, by mortgaging his land as a security.

2. D. R. Southard's answer is discredited by reckless averments and studied evasions. 1. Such averments, p. 169; defeasance never "contemplated or intended before or at the time of the sale and conveyance!" Page 158 "After this transaction (the conveyance) was fully completed, and on the following day, or the day after that, the complainant expressed to said James that he thought that he had sold the farm for a small price, and urgently solicited leave to repurchase it!" P. 161. "The price given by him (J. S.) was about the fair value of the property!" (although the same respondent afterwards insured the dwelling alone at $7,000!) P. 158, "The instrument (defeasance) was dated the day the deed and bond were in order that the bond might not be forfeited whilst the complainant should have the faculty of repurchasing the land!" Page 160, (referring to the $100 paid in 1830) he says, his brother "was under no moral or equitable obligation to pay it!" P. 163, alluding to the two claims assigned to Russell, D. R. Southard says, "Nor was either of them regarded as desperate or doubtful!" (Then why was J. Southard so careful in providing expressly that Russell took both claims "without recourse, in any event whatever, to the said J. Southard or his assignee D. R. Southard, and (was) to take all risk of collection on himself, and make the best of said claims he can (could!)'

3. Evasions.—Compare answer 2, p. 162, with question 2, p. 10: in question 4, p. 10, respondent is required to state whether the conveyance was not in a form the complainant did not expect: his only answer to that is, that "complainant did not intimate any objection or disappointment." Nevertheless, there is no denial that respondent knew or had reason to believe that the form was not such as complainant had "expected." In question 5, p. 10, being asked if he doubted, at the date of the contract, the repayment within the time prescribed, he says, in effect, that, if rumor had been true, and if he had believed that rumor, he would not have doubted! Is not this strangely evasive, and is it not a tacit admission that he did not doubt the payment? And, then, can the court believe that such men would, without consideration, as a mere "gratuity," as D. R. Southard avers, have given the defeasance after having, in good faith, acquired the absolute title to land worth three times the amount to be repaid? In question 6, p. 11, the respondent is asked what he had told others he would have taken for the claims assigned to complainant had he not "made the lucky hit of finding me (complainant) pressed for money;" answer 6, p. 262, "*non mi recordo*" as to part, silence as to "the lucky hit"—thus virtually admitting that the claims were considered doubtful as to value or availability. In answer to the 8th interrogatory, p. 11, he says, p 163, he has no recollection as to the lawyers, and is silent again as to others, thus admitting that he had been advised by 'other acquaintances" that, if he could get the "defeasance, which had not been recorded, his title would be complete." Why was he so advised, and why was he anxious to get it in, if there was no mortgage?

The answer is discredited, moreover, by the character of D. R. Southard. See the depositions of Kellar, p 224; of Chambers, 225; of Turner, 226; of Ferguson, ib.; of Meriwether, 227; of Harrison, ib.; of Stilwell, 228; of Shaw, ib.; of Pope, 233; of Stewart, 238. And such an answer by such a man affords strong intrinsic evidence that the contract was, in fact, intended as a mere security for the amount advanced.

4. There is as much proof as such a fact is susceptible of, that Russell has ever understood his contract with Southard to be a mortgage. 1st. His Bill: 2d. His claiming a right to redeem, in the year 1830, when he could have had no pretence to such a right had he understood the contract as a conditional sale; And 3d. Col. Woolley's deposition, p. 247.

And there is evidence also, that Southard was conscious that it was Russell's intention only to borrow and secure the debt. 1. His repeated and almost incessant, and rather triumphant, conversations with Lovering on the the nice distinction between a conditional sale and a mortgage, the difficulty of writing a contract of a conditional sale in such terms as to escape the construction of a mortgage, and the skill of Worden Pope in that art, p. 205. He seems to have enjoyed an omnipresent sort of self-gratulation at the escape he then thought he had made from a mortgage through the ambidexterity of the eulogized lawyer.—Whence this peculiar self-complacency and loquacity, on that particular *hobby*, unless he thought he had defrauded Russell out of his land by palming on his necessities, confidence and credulity, a sale in lieu of a loan? 2. The equivokes, falsehoods and evasions already noticed in the answer of D. R. Southard. 3. The facts proved by Dr. Wood; that Southard told him that he had "advanced between $4,000 and $5,000 upon that place, but in case he owned the place, it would cost him $10,000;" and that he also told him, or said in his presence, that if a bill pending in the legislature for extending the city limits should become a law, "he would make $10,000 by it, for the farm he got from Russel cost him $10,000, and the passage of the bill would raise its value to $20,000, and, if he had it disincumbered, he would not take $20,000 for it." The abortive effort to discredit Dr. Wood's testimony should not effect its credibility, which is well established by the concurrent testimony of the following persons who have known him long and intimately: Keasy, p. 239; Hall 241;

Gregory, 241; Elliot, 242; Farquer, 244.—The fact that some persons say he was once intemperate, and sometimes, in conversation, talked recklessly and extravagantly, is insufficient to destroy or materially affect his credibility on oath, when testifying disinterestedly to facts intrinsically probable and which are not only not contradicted by any other witness, but are corroborated by other circumstances and proofs in the case. When all the facts are analyzed he is entitled to credence. He told the truth.

5. Dr. Johnson, who attested the defeasance and heard the conversation of the parties at that time concerning its objects, testifies (p. 210) that "My (his) understanding of the contract was both from Southard and Russell; and my distinct impression is, that Russell was to pay the money in four months and take back his farm." This cannot, by any allowable interpretation of the language, be reconciled with the idea of an absolute sale on the condition merely of a privilege to repurchase; considering the question he was answering, the object of the querist, and the position of the witness, his response imports a mortgage clearly and inevitably. And, as he was selected by the parties as a witness of their contract, his evidence alone ought to be conclusive. If the defeasance does not, as written, authorize the construction of a security instead of a sale, then there could scarcely be a doubt that Russell's signature was induced by mistake, and also by fraud if Southard intended that it should operate as evidence of a conditional sale. This testimony is fortified by the fact that it harmonises with the understanding of acquaintances of Southard and of some of his family, as shewn by the depositions of Doup, Longest and Hawes. Doup says, "About the year 1828, Bob Turner, a friend and crony, as I considered him, of James Southard, told me that Southard had loaned Russell $5,000, for which he took a mortgage on the land."—p, 262. Longest proves that Burks was desirous to buy the farm, but was deterred by the belief that Russell had a right to redeem it.—p. 203-4. And Hawes says that, about the year 1839, "he heard some one say, that Southard held said farm in mortgage; that Russell was in difficulty, and when he got through with his difficulties, he would sue for it and recover it. Afterwards, I asked Southard's son about it, and he told me so too." Now, though the fact that a person who wished to purchase the land from Southard, another who was a crony of J. Southard, and another who was his son, or the son of the defandant Daniel, understood the contract to be a mortgage, would be incompetent *per se* to prove a mortgage—it is nevertheless A FACT proved, and, as such, is admissible and significant as a circumstance corroborating other and more direct facts. It would be rather strange that those persons alluded to in those three depositions, and doubtless other persons, should have understood the contract to have been intended as a mortgage, unless it had been so designed or understood by the parties, or one of them.

6. If, as D. R. Southard avers, (and as may be true from a fact stated in Thruston's deposition and the fact that Dr. Johnson, who attested the defeasance, was not present at the execution of the conveyance,) the defeasance was not executed until a day or days after the conveyance—this circumstance alone is pregnant with evidence of a mortgage. It is abundantly proved, that J. Southard was a sharp trader, and signally tenacious of any advantage he had obtained by a bargain.—See Harrison, p. 227; Turner, p. 225; Kellar, p. 224; Baker, p. 222; Marders, p. 220, &c., &c. If then, for the paltry consideration he had advanced, he had fairly bought the farm, and had obtained an indefeasable conveyance of the title without any understanding that he was to hold it in trust as a security, could it be believed that he would, afterwards, voluntarily, and without any consideration, give to his vendor an obligation to re-convey on no other condition than the restitution of what he had paid him? And, if Russell had negotiated and understood that he had, by his conveyance, consummated an irrevocable sale, why did he so suddenly change and request a new contract giving him the privilege of repurchasing? Why did he not think of this and provide for it before he had delivered the deed? The only rational answers to these questions imply, with a certianty almost indisputable, that Southard obtained the conveyance on trust, and was contriving to evade any written evidence of it; that therefore, Russell, apprehending fraud, demanded a memorial of defeasance, and that, when thus freshly and importunately pursued, Southard was bound to surrender a surreptitious advantage; and that, still contemplating the same fraudulent purpose, he had such a writing prepared as, in the judgment of his lawyer, would import a resale only, and on terms which he thought Russell could never fulfill. And this deduction is fortified by D. R. Southard's reckless efforts to show that there was no consideration for the defeasance; for why, we reiterate, was it deemed by him so material to falsify as to the consideration unless he knew that Russell desired the defeasance as evidence of a mortgage, and so expected it to operate? For, if the parties intended it only as reserving a conditional right of repurchase, a valuable consideration or no consideration for it was not material after the prescribed time for payment had elapsed, and Southard's title had become indefeasable. Whatever Russell might have thought of the terms of the defeasance, as it was all he could then get he was bound to take it. Southard, by obtaining a conveyance absolute on its face, had placed Russell *in vinculis*, which left him no alternative but to take the memorial of defeasance

as offered to him or have none at all. All this D. R. Southard knew, and therefore he has subjected himself to the imputation of perjury or stultification in his elaborate and suicidal effort to make the defeasance 'gratuitous!'

7. The last extraneous fact we shall here notice is the glaring inadequacy of the consideration, which we consider, in itself alone, conclusive.

That the farm was, at the date of Russell's conveyance, worth at least three times as much as the value of what he received from Southard is, we think, sufficiently established. All that he received could not have been worth more than $4229.81—and was probably of much less value, perhaps not equal to $4000—the claims assigned, amounting nominally to $3829.81, were not of that value; if they had been, they would not have been assigned in the manner they were—as a mere "chance," without recourse on either of the Southards. We have no means of knowing either, whether they were founded on legal and binding considerations, or whether the securities were then deemed sufficient and availing—and we do know that Russell incurred the trouble, expense, and hazards of protracted litigations for enforcing them, and did not finally succeed, to the whole extent, until the fall of the year 1830.

And that the farm was worth more than $12,000, probably at least $15,000, in September 1827—is inferrible 1st., from the Depositions of Talbot, page 199—of Doup, page 201—of Wood, p. 214—of Berkinmyer, page 235—of Richardson, page 236—Howard, page 237—Marders p. 220—whose estimates vibrate between about $9,000 and $31,000—2d. From the price offered by Talbot p. 199—he considered a purchase a speculation at $10,000 in cash.—3d. From its quality, proximity to Louisville, and the cost and condition of the improvements—the house alone costing $12,000 and being insured at $7,000—see Stuart's deposition p. 239—4th. From the fact that J. Southard said (to make a case) that the farm had cost him $10,000, and, at another time, that if he ever owned it, the cost would be $10,000—and from the fact that, only about 16 months before Russell's conveyance, he paid nearly $14,000 for the farm, and land was improving in price in September, 1827, when he conveyed the land to Southard—see deposition of Howard p. 238. On these facts we may safely assume the minimum value of the 'advance' by Southard.

Would Russell have sold for such a price? "Inadequacy of price"—"the conduct of the parties"—"the necessities of the party conveying"—are admissible and important, on the question of a mortgage or conditional sale. But gross inadequacy is the most decisive. Oldham vs. Hally 2. J. J. Marshall 115—Erdrington vs. Harper supra—Wilcoxe's Heirs vs. Morris 1. Murph. 117—2. Call supra—1. Pow. on mortgages—5-6-&c. Conways's Ex'r vs —Alexander—supra:—in the last case the Supreme Court said that gross inadequacy was very cogent evidence of a mortgage; and 3 of the then 7 members of this court, said it would, *per se*, be irresistable." How can it be resisted when, as in the case now before this court, it is aided by other considerations so various and persuasive as these noticed in the foregoing view, which we here close as to the 1st. position—that the contract was for security and not sale?

II. The only act which could be tortured into a relinquishment of the equity of redemption is the receipt procured from Russell on the 6th. of October, 1830. But that is entitled to no such effect, for three reasons:

1st. It was neither intended nor should be construed as a release of the equity of redemption. The nominal amount of the claims assigned to Russell, was $2829.81½; which added to $2000 advanced by Southard, made the entire aggregate of the consideration $4829.-81½ only. But through inadvertance, the parties had erroneously estimated the assigned claims at $2929.81½, and therefore the conveyance recited the latter amount as the consideration—Russell believed that he was getting, and Southard (if guilty of no fraud) supposed that he was advancing $4929.81½; and consequently the defeasance required the repayment by Russell of $4929.81½ cents as indispensable to his right to a reconveyance. Then, as Russell had not, even nominally, received more than $4828.81½ cents, he had an indisputable right either to demand the payment of $100 with interest, or the privilege of redeeming on the repayment of $4829.81½ instead of $4929.81½ as erroneously stipulated. Southard—most recklessly and fraudulently—denied both his right to the $100 and his equity of redemption. Moreover, he was not then able to redeem, and was distressed for money—see Southard's an'r page. 164—and the dep'n of Johnson p. 212, and of Woolly, page 246—and of Thruston.

Under these circumstances the utmost he could expect at the time, was the payment of the $100—and which sum alone, and without any interest, after much impudent and evasive trifling by the Southards, was finally paid to him. It was this transaction, and this only, which the receipt of October 6th, 1830, was intended to acknowledge and certify; and, though fraudulently designed by the Southards, it expressly recites that the sum received ($100) made "the two debts of Brown, and Johnson, with the $2000, amount to the sum of $2929.81½"—the precise consideration acknowledged in Russell's conveyance and required by the defeasance to be repaid by him. It is undeniable that the $100 were paid and received for no other purpose than that thus shewn, and just quoted. And therefore, the cunning conclusion of the receipt, that "this is in full of all demands upon J. Southard," should be interpreted by the court as intended and understood by Russell, only

to acquit Southard of all pecuniary demands, or rather of all such demands on account of the consideration agreed to be advanced, or as advanced by Southard. It was manifestly not intended or understood by him, as releasing his equity of redemption—nor can it, as we respectfully insist, be consistently so construed by the court.

2. Had the receipt been intended as a release of the equity of redemption, it is ineffectual for want of any consideration. It is perfectly ridiculous to pretend, as D. R. Southard does in his answer, that the mistake in the computation was that of Wordon Pope, and that the parties themselves did not estimate the claims on Brown and Johnson at any precise amount. Russell must, as a matter of course, be presumed to have understood that he was receiving, and Southard must be presumed to have understood that he was advancing a certain and ascertained sum. Both of them must have estimated, at some fixed amount, the aggregate of the assigned demands; and must also have concurred in the same amount. And the conveyance and the defeasance show what that conventional amount was. Besides, as the defeasance required Russell to pay $4929.81½ cents before he could redeem; and as the sum he had received could not exceed $4829.81½, Southard still owed him $100. The conclusion is, therefore, inevitable that the payment of $100 in October, 1840, was received in satisfaction of a debt, and was no consideration for a release of the equity of redemption. And there is no pretence that there was any other consideration.

3. But had the $100 been a new and an actual consideration, and had Russell, on the receipt of it, agreed to relinquish his equity of redemption, not only was the consideration insufficient, but the agreement was extorted by duress and fraud. Although a mortgagee may purchase the equity of redemption, he can never do so availably and irrevocably, unless he can show that he did it fairly and for a full and commensurable consideration. A contract by a mortgagee for purchasing from the mortgagor his equity of redemption—like similar purchases by others, maintaining a relation of trust or dominion as to the vendor—is constructively fraudulent; that is—as the best means of preventing fraud, for the perpetration of which there may be peculiar temptations and facilities in all such cases—the law will assume fraud until the contrary shall be made manifest by the purchaser. And it is well settled that, before a mortgagee will be permitted to bar the equity of redemption by an alleged purchase of it from the mortgagor, he must prove that the contract was unquestionably fair, and upon an adequate consideration. "The mortgagee may become the purchaser of the equity of redemption if he does not make use of his incumbrance to influence the mortgagor to part with the estate for less than its real value. If, however, the mortgagee does purchase the equity of redemption, he should always pay a valuable, indeed an adequate consideration for it."—Powell on Mort. 122, n. N. This is the true doctrine, recognized by a multitude of concurrent and unopposed authorities. Its application to the facts of this case is unanswerably decisive. Besides, the relinquishment, if intended to be made by Russell, was void for duress and fraud. Was he not peculiarly in the power of Southard? Was not that power fraudulently exerted? Did not Southard "make use of his incumbrance (and a most foul use) to influence the mortgagor to part with his estate for less than its value," even for nothing? But, although a surrender of the document of defeasance was fraudulently coerced, the foregoing facts conduce to show that Russell did not understand that he thereby released his equity of redemption. And this deduction is fortified by the fact that, within one or two years after the date of the receipt, he came to Louisville to look "after his rights there"—and then undoubtedly claimed a right to redeem—Woolley's deposition, 247.

The conclusion seems to be irresistable that, by the arrangement of October, 1830, Russell made no intentional or binding relinquishment of his equity of redemption. But the conduct of the Southards in procuring the possession of the document of defeasance and writing the receipt of October 6th, 1830, and the extraordinary character and sinister purpose of D. R. Southard's answer to those matters, reflect a flood of new light on the original contract, and afford conclusive proof of the usury and fraud imputed to J. Southard and his brother and coadjutor, D. R. Southard, the appellee. And here too, we find a retro-active auxiliary to the extraneous considerations urged in another place to show that the original contract was a mortgage.

III. No statute of limitations, *proprio vigore*, applies to suits in equity. But as "equity follows the law"—in its spirit and reason—and as it is proper that there should be some fixed and uniform period for limiting bills in chancery as well as common law actions, courts of equity have voluntarily adopted the statute of limitations in all cases of concurrent jurisdiction to operate as a statutory bar, excepting only that, in cases of fraud and mistake, time is computed from the discovery only or from the time when, by reasonable diligence, it ought to have been made. Cases of exclusive jurisdiction in equity are of two classes—the first class embracing all cases in which, if remediable by an action, the statute of limitations would operate as a bar; and the second class, comprehending all those cases in which the remedy at law, if there had been any, would not come within the operation of any statutory limitation. The first class may be illustrated by an equitable right to land by an entry or

warrant only, without a grant, or consummated only by a junior patent, the legal title to the same land having been previously granted to an adversary claimant. In that case, the remedy against the elder and the more perfect title will be exclusively in a court of equity. But with that exception, the case would be altogether analogous to an action of ejectment for the same land between the same parties; and, consequently, if the defendant had been in continued possession twenty years, the statute of limitation might bar the bill in chancery precisely as it might have barred an ejectment, had that been the proper remedy instead of the suit in equity. In such a case the statute would operate by analogy. But in the second class of cases of exclusive jurisdiction in equity, which may be illustrated by trusts, there may be no such analogy. The possession of the Trustee will not be presumed to have been adverse to the right of the beneficial owner; and until it had been tortious or adverse in fact, and had so continued for twenty years, a legal remedy, if any such had been maintainable, would not have been barred by the lapse of time. Of course, under the same circumstances, time would not bar the suit in equity. But, even in that case, lapse of time, though not a peremptory statutory bar, might be *prima facie* a presumptive bar. Feeling that, for stability and uniformity, legal presumptions arising from mere lapse of time should depend on some fixed period, and deeming twenty years most fitting, because the legislative department had selected that period as proper for barring rights of entry, and also because, within about that time, loss of documents and death of witnesses might be reasonably presumed—Judges and Jurists, wherever the common law prevails, have finally adopted the lapse of twenty years (nothing else appearing to counteract it) as the period of legal presumption from mere time. And this presumption applies equally to every judicial forum and to all forms of suit. Thus, after a bond had been due 20 years, the law will presume payment, unless some other fact inconsistent with that presumption shall be proved; and consequently thus also, if a mortgagor had continued in possession twenty years after the day of forfeiture, the law would presume that he had paid the debt punctually, and that his possession had been in his own right as absolute owner, and therefore adverse to the claim of the mortgagee—and, for the like reason, if the mortgagee had been in possession twenty years after the debt became due, there would be a resulting presumption of law, that the equity of redemption had been released. But, in such cases, as the bar would be merely presumptive, it might be defeated by proof of a recognition of the subsistence of the debt or of the mortgage, express or implied, at any time within the twenty years; for not one day short of full twenty years, uncorroborated by any other and fortifying circumstance, will be sufficient to raise the legal presumption from mere lapse of time. These doctrines we consider too well settled by reason and modern authorites to require either elaboration or citation of adjudged cases for ensuring the recognition of their soundness by this court.

This case belongs to the last class of cases exclusively cognizable in a court of equity; and therefore is not affected by any statutory bar. We insist also, that it is not concluded by any presumptive bar. Southard's possession could not be presumed adverse or of any other than the amicable character of that of a faithful mortgagee, before the 6th of October, 1830, from which time we might perhaps infer that his possession was in fact wrongfully in his own usurped claim of absolute owner. Only about 17 years had elapsed between that time and the commencement of this suit. And, even from the end of four months succeeding the date of the defeasance, until the institution of the suit, 20 years had not elapsed.

Then it is manifest that the equity of redemption is not lost or defeated by mere lapse of time.

Nor is there any auxiliary fact which, when combined with the running of time, would be sufficient to create a rational presumption, or presumption, in fact that the equity of redemption had been either abandoned, relinquished, or overruled by supervening and preponderating equities in Southard.

There is enough in the record to shew, as already suggested, that the fraudulent and oppressive transaction of October, 1830, was not intended by Russell at that time, nor understood by him since as a relinquishment of his right to redeem. And Southard does not pretend that it was ever released by any subsequent act. He even denies that it ever existed. And moreover, some facts before alluded to, indicate a recognition of a subsisting mortgage, since the year 1830, and oral assertions of a right to redeem by Russell since that memorable year. We can perceive no fact cooperating with lapse of time to establish a presumptive Bar. And the mere lapse of 17 years, or even 19 years and 8 months, is unquestionably insufficient. Besides, so far as it might operate *per se*, (though, in that way ineffectual) as one fact tending to the inference of release, it is rebutted by the destitute and helpless condition of the mortgagor. A victim of the avarice and fraud of the Southards, he has been unable to redeem by payment—and has been lulled by the hope that, when they should become gorged with the profits of the farm, they would finally yield it up to him on equitable terms, without a suit, which he, a destitute stranger, had neither the courage, nor means to prosecute against such fearful odds, until 1847, when, all hope of voluntary justice expired and he began to apprehend that longer delay might arm his adversary with a legal weapon of successful resistance.

Nor are there any countervailing equities. D. R. Southard is a volunteer; He had also full notice of the facts, and counselled and cooperated, throughout, with J. Southard. He participated in every act of fraud and is responsible as one of the guilty actors. There

is no danger that a redemption now will result in any injustice to him. He has made no valuable improvements in faith of ownership. He could complain of no loss by any wrongful act or deceptive omission by Russell. And, if any unreasonable disappointment or loss should result to him from a decretal redemption, his long occupancy of the farm and enjoyment of the profits, would alone afford ample means for his indemnity, if he should be entitld to retribution. Such enormous fraud and oppression, as he and his testator inflicted on an unfortunate and distressed fellow citizen, should not be consecrated by the lapse of seventeen years. They cannot be thus legalized by Kentucky Justice or American Jurisprudence. The right to redeem has not been relinquished, forfeited or lost. This we think, we have a right to conclude with confidence.

The extent of the relief which would be proper, in the event of a reversal of the decree of the circuit court, may be worthy of some supplemental notice.

1. Southard should be charged with the reasonable profits of the farm, subject to a credit for amelioration, if any. He may be entitled to $4,829.81½, with six per cent. interest thereon, from the date of the contract. And we presume to suggest that he may be liable for $7,000, for which he insured the house, if he received that sum under his policy; or for whatever he did receive, if he received any thing. But, as the facts necessary for a final adjustment of this matter have not been effectually litigated, we would suggest the propriety of submitting it to ulterior investigation on the return of the case, if it shall be remanded for a final decree for relief.

2. The lein claimed by the heirs of Burks ought to be disregarded. It is but the renewal of a mortgage taken by himself as an additional security for the price of lots sold by him, and on which also he reserved a lien. That lien on lots should be presumed to be sufficient; and moreover, Burks had notice, actual or constructive, of Russell's pre-existing equity—see deposition of Longest, 204.

3. Nor can Tompkins be entitled to the protection claimed by him as a *bona fide* purchaser without notice. Southard himself says, as to that matter, only that he had conveyed to Tompkins. He does not intimate that he sold to him for a valuable consideration. Tompkins says that he bought 31 acres for $3,500, and had paid $1,500 of that price. If all that be true, the actual price was about $112 an acre for land proved to be worth $250. Tompkins is the son-in-law of D. R. Southard. It is quite likely that the conveyance was an advancement. But were it a sale, Tompkins' position and relationship towards Southard might imply notice of Russell's equity. But, however all this may be, Tompkins, having paid only a portion of the consideration, is not in the legal sense, a "purchaser," without notice. Both the conveyance of the legal title and the payment of the consideration are necessary to constitute such a purchaser.—Hardingham vs. Nichols, 3 Atk., 304; Sugdon on Venders, 302; Frost vs. Beckham, 1 Johnson's Ch'y. n. 288; Lewis vs. Palmer, 7, ib. 65; 2d vol. Mad. Ch'y. 255; 2d vol. Story's Equity, Sec. 1502. So far as Tompkins had not paid before the commencement of this suit, (being a *bona fide* buyer in fact,) he would hold the legal title under an implied trust for Russell. And should he, so far as he had previously paid, be entitled to protection *pro tanto*, there would be no difficulty in securing to him a just measure of indemnity. We desire nothing but justice either as to the redemption or the extent and manner of it.

We hope for the rescue of our long suffering client at last, though late, by the decree of this court. And reposing on this trust, we here conclude, without further amplification, adding only that, whatever may be the ultimate decision, we have a right to expect that it will, in all respects, harmonise with the *Lex loci contractus*—which is the modern code of Equitable Jurisprudence as recognised and established in Kentucky.

SUPREME COURT U. S.

SOUTHARD
vs.
RUSSELL

Appellee's Brief.

This Court having, at its last term, in the case of Russell vs. Southard and others, decided that a conveyance of land near Louisvills, Ky., by Russell to Southard, was a mortgage, and that the mortgagor might redeem on terms prescribed in the opinion, Southard petitioned for a re-hearing—and his petition being overruled, the Circuit Court, in obedience to the mandate, entered a decree for redemption, and continued the case for further preparation as to some of the defendants. Whereupon Southard filed in that Court a bill of Review, praying for a review, or a change of the decree for redemption, on the allegation that, since the date of the original decree by the Circuit Court, he had made the following discoveries:

1. That the attorney (Stewart) who brought Russell's suit "illegally, fraudulently, and corruptly obtained, by direct bribery, the testimony and deposition of Peter Wood, a material witness in the case, and upon faith in whose statements the Supreme Court was induced to render its decision."

2. That the contract under which Stewart brought the suit was champartous, entitling Stewart to one-half of the land in the event of success.

3. That "just before the sale of the farm to James Southard, it was offered by Russell to George Hancock and the late Mrs. Caroline Preston for the price of $5,000, and he was urgent with each of them to buy at that price."

4. That shortly previous to the sale to J. Southard, the farm was advertised and offered for sale by Russell at auction, and not sold for want of bidders—*though your orator* has "*some imperfect recollection of such having been the fact.*"

5. That Talbot had sold, for only about $4,000, property in Huntsville, which, at the estimate of $10,000, he testified, in the original suit, he had offered Russell for the land afterwards conveyed to Southard.

6. That James C. Johnson, a witness in the original case, "will prove that the Supreme Court has entirely misconceived or misconstrued what he *intended* to say in his deposition, as will appear by his affidavit filed herewith."

7. That "he has found among the papers of J. Southard what purports to be a written extract from a letter from G. C. Russell to J. W. Wing, dated Alexandria, 19th December, 1827, which is filed herewith. This extract is entirely in the hand writing of W. O. Payne, who died long before the institution of this suit, and certified over his signature to be truly executed, on the 16th January, 1828."

8. That he "has seen what purports to be an official extract from the schedule of estate surrendered by Russell, under oath, when he took the benefit of the insolvent act of Alabama, one item of which is a debt against John Floyd for $8,000. This together with the extract of the letter from Russell to Winn, induces the belief that the sale from Floyd to Russell was coupled with some sort of contract between them, which authorized Russell to look to Floyd for whatever difference there might be between the price obtained on a resale of the farm, and that which he paid Floyd therefor."

Such is the anatomy of the Bill of Review, which, with the leave of the Circuit Court, Southard filed. Russell, in his answer to that bill, denies that the allegations are sufficient for maintaining a Bill of Review—denies champarty, and shows that, by his contract with Stewart the latter was to have a contingent fee of one-half of the value of the land redeemed—alleges that there was no specific agreement as to the amount of the fee until after the suit was brought—that there was no understanding or purpose that Stewart should have any interest in the land until after this Court decided the case, when, at the instance of Henry Clay, one of his counsel here, he conveyed to Stewart half the land for securing his own fee, and the fees also of Mr. Clay and of several others of his counsel in this Court and in the Court below—denies, that any corrupt influence was exercised in procuring Dr. Peter Wood's testimony—avers that his testimony was strictly and wholly true—states that, when he visited Kentucky in the Fall of 1827, his manager, Wing, presented to him a list of debts to a large amount, incurred by his (R.'s) agent, among which was a debt to Wood and another to Dr. Smith—that when he brought his suit, he gave Stewart a memorandum of witnesses, of whom Wood was one, and, being informed by Stewart that Wood and Smith claimed payment of their said debts, and that he had presented to him by

Wood a bill for medical services and borrowed money, authenticated by Wing's endorsement, he authorized Stewart to give a note for it, which he afterwards understood Stewart had done, for $280—and denies that there was any other motive or consideration for that note than a desire to satisfy an honest debt—denies that the decree of the Court would have been otherwise than it was without Wood's testimony—insists that, as Southard had, in the original case, endeavored to impeach Wood, and had, in his petition for a re-hearing in this Court, said that he had always suspected that he had been suborned, he had been negligent in not showing sooner the fact of the existence of the note to him for $280—and avers that this matter is no cause for a Bill of Review—denies that he ever offered the land to Hancock or to Mrs. Preston for $5,000—denies that he saw Hancock during the year 1827—says that, instead of offering to buy his land, Mrs. Preston proposed to borrow from him $5,000—denies that there was any such understanding with Floyd as charged in the bill—avers that he could, any day, have sold the land for much more than $5,000—that J. D. Breckinridge informed him that he could get $9,000 for it, but he was unwilling to take that sum for an absolute conveyance—denies that any specific property in Huntsville was offered by Talbot, and avers that the offer was $10,000 in property of that value—denies the materiality of Johnson's explanation of his deposition, or his right to construe it for this Court, or Southard's right now to bring that explanation in—denies the genuineness of the extract from a letter to Wing, argues to prove that it is false, and avers that the spurious paper has been lately and fraudulently altered, by erasing 'redeem,' and inserting 're-purchase'—denies that any of the various grounds specified in the bill are sufficient to justify a review—insists that all of them were involved in the issues previously litigated—avers that, in not presenting them in proper time, Southard was guilty of gross negligence—and concludes by averring that, from the beginning of this litigation, Southard had been guilty of the most unscrupulous frauds and foul play, and appeals to the record to prove it—and finally denies all fraud and every allegation not directly answered, and prays a dismission of the bill and an enforcement of his decree.

The Circuit Court dismissed the bill—and Southard has appealed.

In arguing the case, we will first briefly consider the law which must govern the decision of it. As Southard's Bill of Review does not question the correctness of the opinion of this Court on the original record, but relies altogether on an alleged discovery of evidence since the date of the first decree in the Circuit Court—an inquiry into the correctness of the decision sought to be reviewed would be superfluous and impertinent.

Though a decree may be set aside for fraud in obtaining it, the proper proceeding in such a case is, not by a Bill of Review, but by an original bill in the nature of a Bill of Review.

A Bill of Review and a bill for a new trial of an action depend on the same principles, and are governed by analagous rules of practice; and neither of them, as we insist, can be maintained on the extraneous ground of a discovery of new testimony, unless the complaining party had been vigilant in the preparation of the original suit, and could not, by proper diligence, have made the discovery in time to make it available on the trial—nor unless the discovered testimony will prove a *fact* which, had it been proved before or on the hearing of the original case, would have produced an essentially different judgment or decree—nor unless the new evidence be either documentary or, if oral, shall establish a fact not before in issue for want of knowledge of the existence of the fact or of the proof of it. This is the long and well settled doctrine in Kentucky, (See Respass, &c., vs. McClanahan, Hardin, 347; Forbes vs. Shackleford, 1 Littell, 35; Taney vs. Downer, 5th, Ib. 10; Findley vs. Nancy, 3 Mon. 403; Hendrix's heirs vs. Clay, 2 A. K. Marshall, 465; Respass &c., vs. McClanahan, Ib. 379; Daniel vs. Daniel, 2 J. J. Marshall, 52; Hunt vs. Boyer, 1 Ib., 487; Brewer vs. Bowman, 3 Ib., 493; Ewing vs. Price, Ib. 522.) This doctrine is as rational every where as it is authoritative in Kentucky; and we think that it is generally recognised and maintained wherever the equitable jurisprudence of England prevails. It is co-existent with the ordinances of Chancellor Bacon, of which that one applying to Bills of Review on extraneous ground has been, from the year of its promulgation, interpreted as requiring either new matter not before litigated, or recorded or written evidence decisive of a fact involved in the former issue, and of the existence of which memorial the complaining party was, without his own fault or negligence, ignorant, until it was too late to use it to prevent the decree sought to be reviewed. (See Hinds' Practice, 58; Gilbert's For Rom. 186; Story's Equity Pleading, 433-4, N. 3 Taylor vs. Sharp, P. Wm's 371; Norris vs. Le Neve, Atk., 33-4, 2 Maddox, Ch'y, 537; Partridge vs. Usborne, 4th Russell, 195; Wiser vs. Blackly, 2 Johnson's Ch'y Rep's, 491; Livingston vs. Hubs, 3 Ib., 126.)

Discovery of additional witnesses, or of cumulative or explanatory evidence "by the swearing of witnesses," has never been adjudged a sufficient ground for a Bill of Review, or for a new trial of an action. The rule applied by most of the foregoing authorities, and virtually recognised in all of them, is dictated by obvious considerations of policy, security, and justice. A relaxation of it so as to allow a new trial or review, on the alleged discovery of corroborative or explanatory testimony of witnesses, would open the door to fraud, subornation, and perjury, and would not only encourage negligence, but would lead to vexatious uncertainty and delay in litigation.

As to the discovery of new "matter," or of

written evidence, the law is also prudently stringent in requiring that such matter or evidence shall clearly make the case conclusive in favor of the party seeking to use it; and, moreover, that the Court shall be well satisfied that the non-discovery of it opportunely was not the result of a neglect of proper inquiry or reasonable diligence. Young vs. Keighly, 16th Ve. p. 352; 2 & 3 Johnson, Supra; Findly vs. Nancy, Supra, and some of the other cases cited.

Nor will a review or new trial be granted for the purpose of impeaching a witness. Barret vs. Belshe, 4 Bibb, 349; Bun vs. Hoyt, 3 Johnson, 255; Duryee vs. Dennison, 5th, Ib., 250; Huish vs. Sheldon, Sayre, 27; Ford vs. Tilly, 2 Salk. 653; Turner vs. Peart, 1 Term R. 717; White vs. Fussel, 1 Vessey & Beame, 151.

We respectfully submit the question, whether the principles recognised and the rules established by the foregoing citations, and many other concurrent authorities, do not clearly and conclusively sustain the decree dismissing Southard's Bill of Review, and which he now seeks to reverse? We suggest *in limine* that the bill should not be construed as intending to impeach the original decree as having been obtained by fraud. The only distinct allegation in it on that subject is, that Stewart (one of Russell's attornies) fraudulently bribed Dr. Wood to give his deposition. There is no allegation that Wood's testimony was false, or that, without his testimony, Russell would not have succeeded in this Court. Nor does the Bill anywhere intimate what portion of Wood's evidence was false, or in what respect. And, could the bill be understood as sufficiently impeaching the decree for fraud in obtaining it, an original bill, and not a Bill of Review, was the proper remedy. If, therefore, it be Southard's purpose both to impeach the decree for fraud, and also, on the discovery of new testimony, to open it for review, we submit the question whether those incongruous objects can be united availably in a Bill of Review.

But we cannot admit that either the allegation of false swearing or of the perjury of a witness is ground for a bill impeaching a judgment or decree for fraud: nor have we seen a case in which it was ever adjudged that the subornation of false testimony by the successful party was such fraud in the judgment or decree as would lay the foundation for an original bill for setting it aside. Although it might be gravely questioned on principle, yet it it has been said that, while a Bill of Review or for a new trial will not be maintained on an allegation that the decree or judgment was obtained by false swearing of a material witness, yet a subsequent conviction of the witness for the imputed perjury may be ground for a review or new trial. But whenever alleged perjury is the ground for relief, legal conviction and conclusive proof of it by the record are, at the same time required as indispensable. And this is dictated by the same policy which forbids new trials or reviews for impeaching witnesses by other witnesses—Respass vs. McClanahan, and Brewer vs. Bowman, Supra. Whilst, therefore, we doubt whether, on well established principle or policy, even a conviction of purjury is, *per se* sufficient cause for a new trial or review, we cannot doubt that imputed perjury without conviction is not sufficient in any case.

Simply obtaining a decree on a groundless claim and on false allegations, and even false proof by a party knowing that his claim is unjust and that his allegation and proof are untrue, has never been adjudged to be a fraud on the other party, for which he could be relieved from the decree by a Bill of Review, or an original bill impeaching it for fraud. Bell vs. Tucker, 4 B. Mon., 652; Brunk vs, Means, 11th Ib., 219.

If procuring a decree by false allegatians, known by the party making them to be untrue, and also availing himself of false testimony, knowing that it was not true, be not, in judgment of law, such a fraud on the other party as to subject the decree to nullification or even review, why should the fact that the same party, who knowingly alleged the falsehood, induced the false witness to prove it, make a case of remediable fraud?

But, if, in all this, we are mistaken, we insist, as already suggested, that there is, in this case, neither proof nor allegation that Dr. Wood's testimony was either totally or partially false; although Southard, as proved by the depositions of Jos. C. Baird, (p. 168,) and of R. F. Baird, (p. 156-7,) and of E. Clark (p. 145-6,) and of Deering, (p. 155-6,) and of W. J. Clarke, (p. 259-60-61,) made elaborate and sinister efforts to seduce Wood, and fraudulently extract from him something inconsistent with the truth of his deposition, his failure was so signal as to reflect corroborative credit on Wood's testimony. In the original case, Southard made a desperate effort to impeach Wood's testimony. In that he failed. This Court, in its opinion, said that he should be deemed credible, and moreover said that his statements were intrinsically probable, and were also corroborated by other facts in the record. The assault now made upon him, and on the attorney of Russell, is but a renewed effort to impeach testimony that was accredited and considered by this Court in its original decision.

Could this forlorn hope succeed, the only effect of the success would be to deprive Russell of Wood's testimony. The setting aside of the decree would not follow as a necessary or even a probable consequence. If there be enough still remaining to sustain that decree, it will stand. And that there will be enough, we feel perfectly satisfied. The gross inadequacy of consideration—the defeasance and its accompanying circumstances—the peculiar and extraordinary means employed to disguise the true character of the contract—the condition and objects of Russell—the character, business and conduct of the Southards—the allegations, evasions, inconsistencies, and falsehoods of the answer of D. R. Southard—Jonhson's testimony, proving, as this Court

said, a mortgage—these and other considerations, independently of Wood's testimony, are amply sufficient to sustain the former opinion of this Court, as shown by that opinion itself, and by abundant citations of recognised principles and adjudged cases in our former brief.

Then the allegations as to Wood and Stewart, had they been sufficiently explicit to impute subornation and perjury, and had they been also proved, would not have amounted to vitiating and available fraud in obtaining the original decree, which could not be annulled or changed on that ground by an original bill impeaching it for fraud. This matter consequently is, in effect, only an impeachment of the credibility of a witness; and which, had it been possible, would have been ostensibly effected by the swearing, and perhaps perjury, of other witnesses, and by corruption and foul combination. But though means extraordinary and discreditable have been employed to destroy Wood's credibility, the only circumstance which could, in any degree, tend to throw the slightest shade on the truth of his testimony is the fact that, about the time he gave his deposition, Mr. Stewart executed his note to him for $280. Is it proved, or can this Court judicially presume that the consideration was corrupt? or can the Court presume that Wood was bribed by that note to fabricate false testimony? Would not this be not only uncharitable, but unreasonable and unjust, in the absence even of any explanatory circumstance? But Russell, in answering the charge of bribery, peremptorily denies its truth, and affirms that his manager (Winn) had, among other liabilities incurred by him in managing the farm, presented him with an account due Dr. Wood for medical services, and also for a small sum loaned to him by Wood: that, never having been able to pay that debt, he directed Stewart to adjust it by note before he should require Wood to testify to the facts which he had learned that he could prove by him; and also to adjust a demand which Dr. Smith held against him for a large amount; and that Stewart accordingly executed the note for $280 to Wood, but did not settle Smith's debt because that was in litigation. Now Southard having made Russell a witness, and there being no inconsistency or improbability in his response, it should not be gratuitously assumed to be false. It is moreover not only uncontradicted, but intrinsically probable. The medical account for $120, with legal interest for about 21 years, would, together with less than $10 loaned, amount, at the date of the note, to $280. Dr. Smith proves that Stewart did speak to him about settling his debt. This is corroborative of the answer. And though Smith did not know that Wood had rendered professional services to Russell's numerous slaves while under Winn's charge, he himself having been generally their regular physician, yet it is quite probable nevertheless that he did, as Winn informed Russell, and as the latter seems to have believed and acknowledged. But, as before suggested, if Russell owed Wood nothing, Stewart's note to him, even if given to induce him to testify, would not prove that he testified falsely or in what respect. It has been not very unusual, as in the Gardiner case, to pay witnesses a bonus for subjecting themselves to the inconvenience and responsibility of proving the truth. In its worst aspect, the utmost effect of this matter would be to impair Wood's credibility, which cannot be done by a Bill of Review.

Our view of this matter, therefore, is: 1. That an original bill could not set aside the decree for the alleged subornation of a witness. 2. That the same cause would be insufficient to maintain a Bill of Review, unless the witness had been convicted of perjury, and that it may be doubted whether even conviction would make a sufficient cause. 3. That the bill in this case does not allege that Dr. Wood's testimony was false, nor intimate in what respect; and that, therefore, on this point it is radically defective and wholly insufficient. 4. That there is no proof that his testimony was untrue in any particular, but that, on the contrary, its perfect purity and truth, in every essential matter, are strongly fortified by the constancy and emphasis with which, drunk or sober, in defiance of corrupt combinations and strong temptations to seduce him into renunciation of some portion of it, or into some purchased or inadvertent declaration or admission inconsistent with it, he has adhered to and reiterated the truth of it at all times and under all circumstances. 5. That, without Wood's testimony, the decree was proper, and would have been just what it is. 6. That the object of the Bill of Review is to impeach Wood's credibility, which cannot now be allowed, and if allowable, has been entirely frustrated, and would be unavailing to Southard had he succeeded in his purpose.

"The credit of witnesses is not to be impeached after hearing and decree. Such applications for an examination to the credit of a witness are always regarded with great jealousy, and they are to be made before the hearing." (White vs. Fussell, 1 V. & B., 151.) There would be no end of suits if the indulgence asked for in this case were permitted." Livingston vs. Hubbs, 3 Johnson's Champarty Rep's, 127.

The other grounds relied on for opening the decree are not entitled to, and therefore shall not receive, as much consideration as that of the alleged bribery of Wood. But each of them will be briefly noticed.

1. *Champarty.* This will, we presume, be abandoned. It is clearly unavailable for three reasons: 1. According to common law a champartous contract between Russell and his attorney (Stewart) could not be pleaded by Southard in bar of Russell's equity of redemption. A Kentucky statute of 1824 provides that any contract for carrying on a suit, for land, in the adverse possession of another, in consideration of "part or profit thereof," shall be unlawful, and shall subject to forfeiture, for the benefit of such occupant, the claims of the contracting parties to the land.

Under this enactment, had the contract between Russell and Stewart been prohibited by it, Southard might have pleaded the champarty in bar of Russell's bill. But the contract was not prohibited by that statute. It was not a contract for "part or profit" of the land. Stewart had no lien on, nor any interest in, the land. His fee was to be paid in money, and for enforcing it, he must have proceeded *in personam* against Russell. Half the value of the land was referred to only as a measure of the contingent fee. Besides, as the statute is severely penal, its operation should not, by construction, be extended beyond the plain import of its words. And the Appellate Court of Kentucky has invariably construed it as not embracing or infecting with illegality such a contract as that between Russell and Stewart. See Wilhite vs. Roberts, 4, Dana, 173; Blackerby vs. Holton, *et al*, 5 Ib., 523.

2. The statute does not apply because Southard's possession, as adjudged by this Court, was that of mortgagee, and was therefore not adverse. Castleman vs. Combs, et al T. Mon. 376; Bailey vs. Dickens, 5 B. Mon.,179; Gregory's heirs vs. Ford, et al. Ib., 472.

3. Had the contract been champertous, still equity would not, on Russell's application, disturb it after it had been executed—*in pari delicto potier est conditio defendentis*. Nor, on well established principles, will a Bill of Review be permitted for the purpose of enforcing a forfeiture in favor of Southard.

II. The alleged discovery of Hancock's testimony, and of Oldham's as to Talbot's Alabama property, and of a mistake, either by this Court or by the witness himself, as to Dr. Johnson's testimony, are all plainly insufficient. These three distinct allegations are all in the same category. Each alike depends on the question whether a discovery, after decree, of new witnesses concerning matters previously litigated and adjudged between the same parties is good ground for a Bill of Review; for what was the value of the land conveyed by Russell to Southard, and whether this conveyance was a conditional sale or mortgage, were the principal questions involved in the original suit, and the testimony of Hancock and Oldham applies only to the first, and that of Johnson is merely explanatory of his former deposition as to the last of these litigated matters. The foregoing citations conclusively show that no such cumulative evidence by witnesses is sufficient for upholding a Bill of Review. "No witnesses which were or might have been examined to any matter on the Bill of Review, unless it be to some matter happening subsequent, which was not before in record or writing, not known before. Where matter of fact was particularly in issue before the former hearing, though you have no proof of that matter, upon that you shall never have a Bill of Review." Hindes' Pra., 50; 2 Freeman, 31; 1 Harrison's Ch'y, 141. "This Court, after the most careful research, cannot find one case reported in which a Bill of Review has been allowed on the discovery of new witnesses to prove a fact which had before been in issue; although there are many where Bills of Review have been sustained on the discovery of records and other writing relating to the title which was generally put in issue. The distinction is very material. Written evidence cannot be easily corrupted—and if it had been discovered before the former hearing, the presumption is strong that it would have been produced to prevent further litigation and expense. New witnesses, it is granted, may also be discovered without subornation, but they may easily be procured by it, and the danger of admitting them renders it highly impolitic." "If, then, whenever a new witness or witnesses can, honestly or by subornation, be found whose testimony may probably change a decree in chancery or an award, a Bill of Review is received, when will there be an end of litigation? And particularly will it not render our contests for land almost literally endless? What stability or certainty can there be in the tenure of property? The dangers and mischief to society are too great to be endured." Respass vs. McClanahan, &c., Hardin, Supra. "The rule is well settled that, to sustain a bill for a review or new trial at law, the evidence, if it applies to points formerly in issue, must be of such a permanent nature and unerring character as to preponderate greatly or have a decisive influence upon the evidence which is to be overturned by it." Finley vs. Nancy, Supra. "The nature of newly discovered evidence must be different from that of the mere accumulation of witnesses to a litigated "fact." Livingston vs. Hubbs, Supra. Such is the familiar doctrine to be found in the books *sparsim*, and without authoritative deviation or question since the days of Chancellor Bacon. It concludes the case as to the discoveries we are now considering. Besides they, when scrutinised, amount to nothing which, if admitted, could effect the decree.

Hancock's memory is indistinct and uncertain—see his affidavit and his two depositions—all vague and materially varying as to facts and dates. Moreover, he was not in Kentucky between the first of July, 1827, and the date of the conveyance from Russell to Southard. See the deposition of Woolley, p. 194, and of Gen. Jessup, p. 191. The same depositions prove that Russell was not in Kentucky during that year, until after the 8th of July. Consequently, if Russell made an offer to sell to Hancock, it was since, and probably more than a year since he conveyed to Southard; and, therefore, if he ever proposed such a sale, it was of the equity of redemption, which was in fact worth more than $5,000. The fact that there is no proof of the same offer to Mrs. Preston, as alleged, is confirmatory of this view.

III. The fact proved by Oldham, that Talbot sold his Huntsville property for $4,000, would have been entitled to no influence had it been proved before the decree. Talbot proved that he considered Russell's land cheap at $10,000—that, if he had had the money, he would have given that much in cash for it, and that he

offered him "$10,000 *in Huntsville property, houses and lots.*" How much Huntsville property Talbot owned when, in 1827, he made the offer, or how much it was then worth, does not appear; nor does it appear when he sold for $4,000, nor how much he then owned, nor how much he had sold intermediately. Nor is all this very material; for his offer being $10,000 in Huntsville property, Russell, had he acceded to the proposition, would have been entitled to property worth $10,000.

Johnson's explanatory deposition is altogether immaterial. Having said, in his former deposition, that "Russell *was* to pay the money in four months and take back his farm," he now says, that "if this expression implies that Russell was *compelled* to pay the money, it implies more than *I intended;*" and says that his personal recollection is, that Russell had the *power* or the *right* to repay the money in four months and *take back* his farm." *And this impression, he now says, he derives chiefly from the defeasance itself, as his memory "might be treacherous."*

Now does all this amount to any thing substantial? According to all the authorities on the subject, would not the words used in his last deposition, as well as those in his first, be constructed as *prima facie* importing a mortgage? And can his own erroneous construction of them change their legal effect? Did he not write his original deposition, was he not closely examined, and did he not carefully prepare his answers? And does he not tacitly admit that he used and intended to use the words contained in his first deposition? His only explanation now is, not that he did not use or intend to use these precise words, but only that he did not intend that they should be construed as importing what this Court says they legally mean—in other words, though the Court says that they import a mortgage, he says that he does not think they imply that Russell was *bound* to repay the money?

Surely this discovery can be no ground for a Bill of Review: 1st. because there was no mistake in the original deposition; 2d. because the discrepancy between that and the last one is not material; 3d. because the Court, and not the witness, must decide on the legal effect of the facts proved, and the legal construction of the words used; and 4th, because a Bill of Review is never allowed for the purpose of explaining the testimony of a witness. Were it permitted the consequences would be monstrous.

IV. Of the alleged extract of a letter from Russell to Wing, dated December 19th, 1827, there is no proof. It is believed to be spurious and false. The purpose for which it has been fabricated was to show that Russell's conveyance to Southard was not a mortgage. The latter, as exhibited, commences with this sentence: "You may say to Southard that I shall not RE-PURCHASE the estate." If any such letter had ever been received by Wing, redeem, and not re-purchase, was the radical word.—The extract itself, since it was first written, has been altered by obliterating deem, and inserting purchase, so as to make it read re-purchase, instead of redeem. This is conclusively proved by Clark, p. 142; by Smith, p. 143; by Pope, p. 144; and, moreover, why was not the whole letter copied?

This lame and desperate effort, instead of weakening, strengthens the grounds of the decree. If such a letter was ever received by Wing, the fact that the word redeem was in it shows that the parties understood that the contract was a mortgage; and if the whole extract was originally a forgery, the same fact proves that Southard, when he had it prepared, used the proper word, redeem, without knowing that there would be any equity of redemption after forfeiture, and after Russel had agreed to waive it—and to show falsely that he had waived it was doubtless the object of the forgery—but finding, after the decree of this Court, that he was mistaken in that, the word re-purchase was fraudulently subsisted for redeem.

V. The Alabama schedule was known and relied on in the original suit, and could not be useful for the purpose for which it is charged in the Bill of Review.

VI. The failure to sell the land when offered at auction could have no influence—and if it ever could, it comes too late, as it ought to have been known by Southard during the pendency of the suit to redeem.

Having thus presented an outline of the facts of this case and of the principles which should govern the decision of it, we will not amplify by argument to make it more manifest than we presume it already appears to the Court, that there is no plausible ground for reversing the decree dismissing the Bill of Review.

There is no complaint that, in the opinion of this Court sought to be reviewed on alleged discoveries of new proofs, there was any error of law apparent on the face of the decree or of the record. Nor is it pretended by Southard, in his bill, that this Court erred in its construction and application of the facts embodied in the original record. He would not have been allowed to file a Bill of Review on any such allegation had he chosen to make it—Webb vs. Pell, 3d Paige's Ch'y Rep's, 368; Dougherty and wife vs. Morgan's Ex's, 6 Mon., 153.

It would be unforensic and impertinent, therefore to attempt by argument to vindicate that opinion. Were it necessary or proper to do so, we should expect to sustain it, beyond all question, on the grounds on which the Court was pleased to place it, and on others also which the Court viewed as superfluous in a case so plain. The opinion as rendered is even beyond the power of the Court itself, except on some new and extraneous matter or documentary proof, brought before it by the Bill of Review, and of such a material and decisive character as to satisfy the Court that, had it appeared in the original record, the original decree of the Circuit Court would have been affirmed, instead of being, as it was, reversed.

No such matter or proof, as we insist, is presented. On the contrary, the record of the Bill of Review only strengthens the grounds on which this Court decreed a reversal.

1. Wood's veracity has been placed beyond question by the triumphant manner in which it passed, not only unscathed, but emblazoned, through the furnace to which Southard ventured to subject it.

2. Chambers, (page 183-4-5,) a new witness, proves that D. R. Southard is a man of bad character, not to be believed on oath—that James Southard was exacting and overreaching in his contracts, and a usurer—that he traded chiefly on D. R. Southard's capital—that said James boasted of his bargain with Russell—said that the claims he had assigned to Russell without resource were on men of doubtful solvency—that though he said he had bought the land, yet at the same time he said also that Russell had a right, within four months, to "redeem"—and that he was disabled from doing so by the loss of his cotton crop and gin.

3. Bullit, (p. 101,) Speed, (p. 102-3,) Ballard, (108,)—all men of high character, testify that D. R. Southard's character for veracity is bad. These, too, are all new witnesses.

4. Southard's conspiracy to seduce Wood by a combination with Deering and others, his offer of bribes, and, after using Deering, his suicidal attempt to destroy his own tool's character, afford a sample of his false conduct towards Russell, and of the fraudulent manner in which he prepared this and the original case. And in this conduct of this bold, reckless, and persevering litigant, the Court finds an apposite and persuasive illustration of the wisdom of the rules established, as we think, by the authorities we have cited, for regulating Bills of Review.*

GEO. ROBERTSON,
C. S. MOREHEAD,

*The Court affirmed the decree of dismission.

PRELECTION.

A lot of 20 acres of land, in the city of Louisville, having been directed to be sold, by a decretal order, for paying a debt of about $400, which had devolved on the owners, who were all infants—Bainbridge, as thier volunteer friend, made a private contract with John I. Jacob, by which he was to have the whole lot for $800—but, as a sale of more of the ground than would pay the debt would be illegal and void, they agreed also that Jacob should, ostensibly, buy the whole for the debt—which was accordingly done—and the Commissioner having reported that no person would pay the debt for a less quantity, the Court, ignorant of the facts, confirmed the sale. A Bill filed by the Heirs to set aside the sale was dismissed by the Circuit Judge, and the Court of Appeals having affirmed the decree, the following petition was filed for a re-hearing. But it was overruled SUB SILENTIO.

COURT OF APPEALS.

SIMRALL'S *heirs*,
vs.
JACOB'S *heirs*.
} *Petition for re-hearing.*

The opinion delivered by Judge Hise in this case, as the judgment of this court, professes to recite all the material facts "precisely" as the record exhibits them. Instead of doing so it has omitted essential facts on which we relied with more confidence than on everything else. The omitted facts were, we presume, overlooked, and not considered by the court. The facts to which we allude are: 1st. Those conducing to show that, had the land been sold without the intervention of Jacob, one half of it, at the utmost, would have satisfied the decree. 2d. Those conducing to show that Bainbridge would never have permitted more than about half of the land to be sold under the decree; and 3d. Those showing that money enough to satisfy the decree would have been obtained by loan or by the sale of slaves or other property before Bainbridge would have permitted a greater sacrifice than was made by his agreement with Jacob.

The opinion assumes that, if Jacob had not, by his private agreement with Bainbridge, agreed to pay $800 for the whole lot, it could not have been sold for more than the amount of the decree ($457,) and would have been thus sold. The only reason assigned, or which could be imagined for that conclusion, is the fact, that, at the *mock* sale made by the commissioner, Jacob bid the amount of the decree for the entire lot, and no person bid that much for less than the whole! With due respect we may say that this fact, when analyzed, leads to no such conclusion, and that other facts, not stated and probably not considered by the court, make it altogether improbable and unreasonable. If the fact that no person bid against Jacob could authorize the deduction that, had he made no private purchase, still he would have bought the whole lot for the amount of the decree without any competition, this court must have erred exceedingly in not tolerating a like inference from the same facts in Wilson's v. Wilson, &c., 9 B. Monroe.

Bainbringe proves that it was with hesitancy and reluctance that he finally consented to let Jacob have the lot for $800—he certainly would not have taken less. He and Alexander Pope, both wealthy men, had offered to borrow, on their own credit, money to satisfy the decree; and, scarce as money may have been, there could be no doubt that their endorsement could have procured the loan of enough for the exigency. Moreover, Bainbridge proves that Simrall's heirs and administrator had several valuable slaves and other personal estate. The inference from these indisputable facts, all of which seem to have been overlooked by the court, is, that either other property would have been sold to pay the decree, or that Bainbridge and Pope would have procured the amount of it by loan; or that, if a decretal sale had been fairly tried, Bainbridge would not have permitted the whole lot to be sacrificed for $457. That the whole would not have been sold is not only rendered almost certain by some of the foregoing considerations, but is made quite sure by the fact that Jacob gave $800 for the whole, and consequently would certainly have given $457 for something less than the whole of a lot which sold for $6,000 in 1818, and would now sell for $150,000. But Jacob having agreed with Bainbridge to give $800 for the whole, provided it should be formally knocked off to him by the commissioner for the amount of the decree, Bainbridge would, therefore, neither borrow the money, nor raise it by the sale of other property, nor bid against Jacob, nor, if he could prevent it, permit any other person to bid against him. He testifies that, after he had made the final arrangement with Jacob, he considered the land as sold and could not have made or sanctioned any other disposition or sale of it. And he also testifies that, at the commissioner's ostensible sale, Dr. Wilson, with whom he had tried to negotiate a private sale, inquired of him whether he had effected any such sale, and he replied that it was all arranged with Jacob, and that, thereupon, Wilson left the ground. This fact probably prevented others, as well as Wilson, from bidding, as it should be presumed to have been known to others, especially all who were present at the sale and whom Bainbridge would, of course, not allow to bid, because competition would frustrate the arrangement with Jacob. This seems to be all morally certain, but it is neither noticed in the opinion nor could, we apprehend, have been considered by the court. Hence, we feel authorized to say that, without facts and against conclusive facts, the opinion assumes that, had not the arrangement been made with Jacob, the whole of the lot would "probably" have been sold to satisfy the decree. And had none of

the foregoing considerations appeared, not only would there be no sufficient ground for the assumption, but it would be crushed by the tacit admission, by Jacob, of the allegation that, without his interference, half of the lot or less would have satisfied the decree. Under our Code of Practice that allegation should be taken for confessed; and the same consequence would result from the application of the common law principles of equity. An answer must respond to every material allegation explicitly and without evasion. Story's Equity Prac., sec. 852. If the fact charged be within the respondent's personal knowledge, he must answer positively, unless the fact be so ancient as to authorize the presumption that the respondent's memory of it has become dim. Lord Clarendon fixed seven years as a period beyond which the memory should not be required or presumed to go. But beyond that time the answer to an allegation once within the respondent's personal knowledge, though it need not be positive, must state explicitly and fully his "belief." *Ib.* sec. 854-5, and notes.

The same authority shows that, when the fact alledged had never been within the respondent's knowledge, he must respond fully and directly as to his belief concerning it; and that in any of those aspects of the case, silence is taken to be an admission of the fact charged. See 5 Dana, 80; 7 *Ib.* 296; 3 B. Monroe, 13; *Ib.* 185; 4 *Ib.* 488.

In this case it should be presumed that Jacob knew whether, at a fair public sale, unaffected by any private arrangement, less than the entire lot would have satisfied the decree, because he certainly knew whether he himself, would have bid the amount of the decree for a portion of the lot. But, as to that allegation he is dumb—he does not even intimate any opinion or belief. A general denial "of all other allegations," not responded to, would be no response. Story, sec. 852, *supra.* But Jacob did not make even such denial, he only said that he required proof of the allegations he had noticed, "as he does of all the allegations not herein admitted." The fact that half or less of the lot would have sold for the amount of the decree should consequently be taken as admitted by the answer of Jacob. But the court does not appear to have noticed even this important, and as we think, decisive matter!

On a full and careful consideration of the foregoing facts, we cannot think that this court would have said or could now say that it was probable that, if Jacob had not made the arrangement he did, the whole lot would have been sold for not more, and perhaps less, than the amount of the decree—nor can we believe that the court could fail to conclude that either no part of the lot would have been sold, or that half or less of it would have satisfied the decree, had not Jacob intervened with his secret, and hard, and unlawful arrangement.

But the indefensible assumption we have been combatting seems to be the pivot on which the judgment of affirmance turns; consequently we have reason to hope that a reconsideration of the case will plant a very different fulcrum on which no other than an essentially different judgment can rest.

The court virtually concedes, as every enlightened tribunal must concede, that the commissioner's sale was void, and that, consequently, Jacob acquired and held the lot in trust for the original owners, who were infants, and never did anything to estop them to assert their equity or omitted to do anything necessary for maintaining it.

Then unless, as assumed in the opinion, the purchase by Jacob was, in fact, beneficial rather than injurious to the infants, on what possible or imaginable ground shall they be denied the privilege of asserting their beneficial right and of obtaining, at last, the enjoyment of it.

It cannot be on the ground that the proof is insufficient to show that Jacob gave more than the amount of the decree for the lot; because Bainbridge's testimony to that effect is not only unimpeached and uncontradicted, but is intrinsically credible, is fortified by the cotemporaneous letters and accounts found among the papers of Mrs. Simrall, and is made conclusive by the character of Jacob's answer not denying the allegation, but professing non-recollection of a fact which he could not forget, and had recited to another witness just before this suit was instituted.

Nor on the ground that the sale, as made, was ever ratified by Simrall's heirs; because they knew nothing about the contract, were incompetent to bind themselves, and neither did nor omitted to do any act whereby ratification or estoppel, express or implied, could be tortured by the court. Nor on the ground that the heirs received and enjoyed the excess of price over the amount of the decree; because it was not appropriated, as Bainbridge desired and advised, to the improvement and preservation of their estate, but was paid to and consumed by their mother in fractions during two years after the date of the sale; and not only is there no proof that the expenditure was to their use, but there is no reason for presuming that it was, and especially as there is not even an allegation or intimation in the record that it was. Besides, the fact, if relied on, ought to have been litigated and might have been established, and even then should not deprive them of their land sold without their knowledge or consent; because if, during infancy, they had consumed the proceeds, they did not know it, and a lien on their land for the amount would be the utmost equitable consequence as against them, unless, since the period of their infancy, there had been some act of implied ratification, for presuming

which there is no pretence, as the facts show, as far as such a negative is susceptible of being demonstrated, that they did not know, until just before the bringing of this suit, either that Jacob had bought the lot for $800, or even that it had been their property, or sold as such. Jacob's answer would alone be sufficient for their purpose: by not responding to the allegation of ignorance and non-discovery he admits it, as decided in the analagous case of Wilson v. Wilson, &c., 9 B. Monroe. But, in addition to the admission in the pleadings, the facts proved and the intrinsic probabilities resulting ought to be alone conclusive on this point.

Nor, consequently, on the ground of time. There never was a case in which the facts proved more clearly ignorance and non-discovery, and more satisfactory reasons why the discovery, finally made from an accidental clue, was not and could not have been made sooner than it was. Moreover, Jacob will be a gainer, rather than a loser, by the lapse of time, especially if he should be required to surrender only half the spoil, the other half alone making a stupendous speculation.—There can be no possible doubt, as this court's opinion seems to admit, that Jacob illegally bought the whole lot for $800, without the authority of the infant owners, and without their consent or knowledge; consequently they, and not he, might complain of time and its consequences.

Nor on the ground that the commissioner was not apprised of the private arrangement between Jacob and Bainbridge as the volunteer friend of the infants. It is altogetner probable that the commissioner knew that such an arrangement had been made, and that Jacob, who could not attain his object unless the commissioner should sell the whole lot for the amount of the decree, communicated to him the fact that he had agreed, in that event, to pay $800. But it is perfectly immaterial whether the commissioner had knowledge of the agreement or not, the sale was equally illegal and void in either aspect of that fact, and can derive no actual validity either from the commissioner's report of his official acts or from the approval of the court, which was a matter of course without any knowledge of the hidden fact which made an apparently legal sale illegal and void.

Nor on the ground that actual fraud is not established. Many circumstances conduce to show such fraud on the part of Jacob; but, not needing any such resource, we will not dwell on that matter. The undoubted facts show that the sale, as reported, was not the true sale, and was made illegal and void by the private arrangement which controlled and produced it. This was certainly, at least, a constructive fraud on the infants, on the law, and on the court; and had there been no constructive fraud, a trust resulted from the illegality of the whole arrangement, if all had been done with the most pure good faith. A sale of more land than was necessary to satisfy the decree was unauthorized and void; the actual sale was of the whole lot, and for exactly the amount of the decree; had not the private and unauthorized sale of the whole lot for no more than the decree required been made, either none of it, or not more than about half of it, would have been sold. Bainbridge had no authority to bind the infants. Jacob knew this, and, while he was more than willing to get the whole lot for $800, he knew also that the only way to effect the object was to agree secretly to give that sum for the whole, refuse to buy less, and secure a surreptitious title by a formal sale by the commissioner to him for the amount of the decree without competition. His illegal arrangement with Bainbridge secured and effected this—there was no rival bid because it would have been unavailing, for, had any person ventured to bid the amount of the decree for less than the whole lot, Bainbridge, considering himself bound to Jacob, would not have permitted a sale of part; and consequently there must either have been no sale or Jacob must have been the purchaser of the whole lot for the amount of the decree as agreed and effectually pre-arranged. It cannot, we think, be possible for the court, on a review of all the facts, to adhere to the suggestion in the opinion that the arrangement between Bainbridge and Jacob was merely hypothetical, and should not be presumed to have influenced the official sale under the decree. Had this been so, why was the private contract made? If, without some such arrangement, Jacob could have bought the whole of the lot for the amount of the decree, why did he agree to pay nearly double that sum? The answer is obvious and inevitable: the private contract was *the* sale, and secured, as was intended and arranged, the mere form of official sale of the whole lot to Jacob for the amount of the decree. How then could it ever be repeated by the court that it is not probable that the contract for the whole lot at $800 had any influence on the sale, and that, if that arrangement had never been made, it is probable that Jacob would have bought the whole for $457, or less. The court did not thus assume or reason in Wilson's heirs v. Wilson, &c., 9 B. Monroe.

Not only was the private sale intended to prevent a public sale of a fraction, but it prevented Bainbridge from borrowing the money or selling other property, and compelled him to sell the whole lot and nominally for only the amount of the decree, without the privilege of bidding against Jacob. The case is, therefore, just such in principle as it would have been, had Jacob bid $800 at the commissioner's sale, and induced a report that he was the highest and only bidder, and became the purchaser of the entire lot for the amount of the decree.

But the court, in its opinion, seems very properly to repudiate every other ground for the affirmance than the assumption that Jacob was fairly the highest and only bidder, and would have bought the entire lot for the amount of the decree or less, had he made no contract with Bainbridge. And if this be untenable, as it appears clearly to us to be, we cannot see how a change of the opinion and a reversal of the decree of the circuit court can be reasonably or consistently avoided. That ground being removed, the case, in its best attitude for Jacob, is one of implied trust resulting to infant heirs from an illegal and void purchase of their land without their knowledge or sanction, and which trust the court, on their application, must enforce unless *they* had done something which renders it inequitable. It is not alleged by Jacob, or intimated by his counsel, that those heirs have done any such thing themselves, or that any other person, who had authority to act for and bind them, has ever done any such thing. Then the case is a plain one on general and well established principles of equity, and which have been recognized by this court in Wilson's heirs v. Wilson, *supra*.

The opinion delivered in that case settles this; and in our judgment both opinions cannot stand as exponents of the law of the land. One of them must be wrong. Though the facts of the two cases may be, in some slight degree, circumstantially different, yet, in principle and everything else essential, they run on all fours together, and are substantially identical excepting only in two particulars, which make this a stronger case for relief than that in 9 B. Monroe. In the case published there may have been actual fraud. But this difference, if existing, would be immaterial, for trust resulting from illegality would be as effectual for relief without, as it would be with the incident of actual fraud; and this is virtually decided in the reported case, which recognizes the doctrine that the trust resulting from an unauthorized private sale of an entire tract of land for a much larger sum than that for which a sale of as much only as should be necessary to pay an adjudged debt was decreed, and a public sale, *pro forma*, of the whole tract for the amount decreed, for the purpose of confirming the private sale, was a sufficient ground for setting aside the sale and restoring the land on equitable terms to the outraged infant owners. See p. 276–8 and 280. In that case, although the commissioner may have known that Hicks, the only bidder at his sale, had made a contract with two of the adult owners of the land for paying a much larger sum than the amount of the decree, and by which contract it was understood and intended that he should buy the whole tract under the decree and for the decretal debt, yet it was neither alledged nor should be presumed that the commissioner did not allow reasonable time for other bids, or in any way, acted unfairly at the sale, or did anything to prevent full and fair competition. And therefore, and because also the commissioner had no interest in the sale, and both he and Hicks (the purchaser) may have understood (as they averred that they did) that the residue of price given by the private contract was, after satisfying the decree, to be applied to the payment of other debts exceeding in amount the real value of the land, and for which it was liable, the court exonerated the commissioner from liability and decreed relief in favor of the infant heirs against Hicks, and on the ground of trust, as the opinion will undeniably show. After deciding that a *bona fide* purchaser from Hicks was not responsible, the court, in that opinion says: "Hicks—whether he be regarded as a fraudulent purchaser or as vender who violated his trust by selling the land, is, in either case, personally liable for the injury which he has done to the complainants. Having received and enjoyed, and sold the very property to which the complainants were entitled, and in violation of their rights, he cannot protect himself against the consequent liability on the ground, however true, that he supposed the land was liable for the debts which he agreed to pay, and that the arrangement by which it was subject to them, though irregular, was not unjust or injurious. It was his duty, as the person acquiring the property, to know that the facts existed to relieve his conduct from the charge of flagrant injustice and injury, and to take care that the price paid by him was so applied as to effect the equity of complainants"—that is to the payment of other debts for which the same land was liable. This proves that trust alone arising from an illegal contract, however honorable, was sufficient.

To show that, without actual fraud, the case was one of resulting trust, the court had previously said in the opinion, "as it is entirely certain that the land was not purchased for the sum of $42, reported by the commissioner, but for a much larger sum admitted by Hicks to have been paid by agreement with Joseph Wilson and others, it is obvious that, while the commissioner's sale for $41 was used as the means of passing the legal title in apparent compliance with the equity of the complainants and their co-heirs, and apparently in extinguishment of it, the real purchase was for a much larger sum, and by private or individual arrangement. The real subject of the private, as well as the public sale, was the equity of all the heirs which was perfect, except for the charge of $41"—page 276. The opinion then puts the illustrative question, whether, if, instead of the private agreement which was made, Hicks had agreed with an opposing bidder to give him the same sum not to bid against him, "he would not hold the land in trust for the owner, except to the extent of the ostensible sum for which it was sold under the decree?" And then adds: "Hicks being apprised of the equity of the

heirs, (that is, to all the land which should not be necessary to pay the decreed debt,) could not, by any agreement with such of them as were present, extinguish the equity of those who were absent merely on the ground that they were co-heirs, and much less on the ground that they were infants. He could not fairly extinguish their equity except by purchasing it from them or their agent, and he could not repell it except by some fair claim against the land, or at least against them personally. If he intended to acquire the interest of the absent heirs by the arrangement with Joseph Wilson, (their brother,) he did not acquire it any further than the acts of Joseph were authorised or ratified by the others." Again, on the next page, the court says: "Under these circumstances we cannot doubt that, if Hicks had retained the land, the complainants would have been entitled to reclaim their respective interests in it subject only to the proportioned burthen of $41."

And finally, on page 380, in disposing of the lapse of time, (15 years,) the court said: "And, as upon the pleadings, it is to be assumed as against him (Hicks,) that complainants had discovered the fact and their rights but a few months before the filing of their bill, and, as in cases remediable in equity alone on the ground of fraud or trust, time does not run as a bar until the facts for constituting the fraud or trust are known or should have been known to the party injured; and, as in this case, it does not appear that there was any circumstance known to the complainants which would have led them to such inquiry as would have put them in possession of the facts which occurred during the infancy of at least six of them—we are of the opinion that neither the statute of limitations nor the lapse of time can operate as a bar to their claim."

It is evident that the leading and decisive principle by which this court was led to adjudge Hicks, as purchaser for the amount of the decree at the commissioner's sale, liable to the infant owners, was that—as he, in fact, by an unauthorized private contract, gave a larger price estimated as the value of the entire tract, and which showed that more was sold by the commissioner than he was authorized to sell or would probably have sold had there been no such private sale, and that, therefore, the infant owners, who were not bound by that private contract, still retained their equitable right—consequently the purchaser thus acquiring the legal title held it by an implied trust, to their use. In applying that principle to the facts of that case, the court only recognized a long and well established doctrine of our equitable jurisprudence. That was undoubtedly the ground of the decision against Hicks and adjudged, as itself alone, a sufficient ground even if actual fraud had been an additional ground. Then, so far as Simrall's heirs claim relief in this case, in what essential feature does it materially differ from the case in 9 B. Monroe? The difference between the amount of the decree and that given by the private contract was greater in the latter than in our case. But that circumstance has no effect on the principle which equally applies to both cases. And in some other respects, as already asserted, our case is stronger against the purchaser than the case reported: 1. In ours a stranger made the private and attended the public sale as a volunteer friend of unconscious infancy; in the other, an adult brother and joint owner made the private sale and attended the public. 2. In the reported case the purchaser was informed and probably believed that the whole amount given by him was to be applied to the payment of debts for which the land was bound, and which, at least, equalled its value, and may, therefore, have believed a sale of the whole tract would be necessary, and that, consequently, the infant owners would be benefited by his private purchase at once of the whole; but in our case Jacob had no such equitable excuse—he knew that a sale of more than half of the lot would not be required, and that nearly half the sum he gave for the whole of it would be paid to the widow, to be used and spent as she might choose. And if, in one case the private contract bound Joseph Wilson and prevented him, as probably others, from bidding at the public sale, in the other case the private sale bound up Bainbridge, and certainly prevented him, and almost as certainly others, from bidding against Jacob at the decretal sale. In the case cited from 9 B. Monroe, the court also decided that it was incumbent on the purchaser, as in every case of constructive fraud, to prove satisfactorily some sufficient ground for barring the resulting equity. Then, to show such repellant ground, the burthen of proof devolved on Jacob. He has furnished no such proof.

Then how can it be said that the principle of the decision in B. Monroe is inapplicable to our case? We have no doubt that the reported decision is right; and if it be, we cannot possibly see how the opposite decision in our case can be right.

And as to the lapse of time also, our case is much stronger than the other against its operation. In the latter there was nothing but infancy, and the constructive admission, by the answer, of the alleged non-discovery. In ours the same reasons are conclusively fortified by the nature of the case and by several additional facts indisputably proved.

Wherefore, as counsel for Simrall's heirs, the undersigned feel constrained to ask the court for a re-argument and thorough reconsideration of this case; and, while they most earnestly desire, they cannot but confidently hope, that their petition will be granted, for the following principal reasons:

1. Because they desire, and the case eminently deserves, a careful investigation and deliberate decision by a full court—only three

of its members participating in the opinion as rendered.

2. Because, for reasons herein suggested and others which would be urged in a re-argugument, they believe, and, with becoming respect, declare that the decision sought to be reviewed is radically wrong, is inconsistent with the principle of a former decision approved by the country, and is founded on deductions not only unsustained by the facts stated in it, but effectually repelled by other facts not stated and probably not noticed by the court; and they, therefore, respectfully suggest that, should the court even adhere to the same judgment, it is due to the parties, to the court, and to the Kentucky bar that the judgment should be accompanied by a statement of all material facts as appearing in the record, and should be made to rest on some other, and more tenable and consistent ground than that on which the late opinion seems to place it.

3. Because, with equal confidence and respect, they believe and declare that these two decisions, so antagonistic in effect, are based upon a perfect parallelism of principle and essential facts, and cannot, therefore, both stand; and that, consequently, the dignity of our jurisprudence and the authority of our adjudged cases would be promoted by such changes of the one now within the power of the court as to make them appear to harmonize on the facts as they really are.

4. A reconsideration and decision by all the Judges will make its final opinion, whatever it shall be, more authoritative, more satisfactory to the unsuccessful party and to the profession, and doubtless far more satisfactory to the court itself.

5. Because—as the most illlustrious old Judges of England commended their decisions and harmonized the law by their prudent habit of disregarding the false pride of prompt and infallible judgment and considering only their judicial duty and reputation, and therefore patiently, and even anxiously, re-hearing new and important causes until they were perfectly satisfied—so this court, by following that safe and wise example in such cases as this, would relieve itself of all unquieting apprehension of judicial error and injustice, and would greatly commend its own decisions, exalt its own character, and ensure that general confidence and respect which the public interests require that a court of the last resort should command and possess. Moreover a reconsideration can do no harm, and may do much good; for, if it shall only confirm the opinion delivered, the result will be more satisfactory and the decision more authoritative; and, if it should lead to any essential change in the opinion, the court would be rescued from the possible imputation of hasty error, and would probably rescue suffering litigants from injustice.

6. Because the decree of the court may be consistently reversed in such manner as to leave Jacob a handsome speculation on his little investment, and, at the same time, secure to Simrall's heirs a very comfortable portion of that patrimony of which, by an illegal act, he has so long deprived them. And surely, in such a case, if the court should be perplexed with doubt, it ought to incline to a decision so harmless to the one party and so beneficent to the other.

ROBERTSON & MOREHEAD.

PRELECTION,

Having been elected three times successively to the House of Representatives of the United States from "the Garrard District," Mr. Robertson resigned the whole of his third term, and made the following Valedictory Address to his constituents through "The LUMINARY," of the 11th May, 1821.

VALEDICTORY ADDRESS.

To the Electors of the Seventh Congressional District of Kentucky:

FELLOW-CITIZENS—I have this day resigned my seat in the Congress of the United States. This I considered proper, after the most grave and deliberate reflections on my duties to you, and to those to whom I am bound by other and more sacred ties; and I hope you will believe that I have not taken this course from motives of interest or convenience, nor without the most respectful attention to your claims on my services, and a becoming sense of gratitude for your kindness and indulgence. If my circumstances and private duties would have permitted me to consult freely my own inclination, I would have remained in your service as long as my conduct should obtain your approbation and your suffrage. No situation under the Federal Constitution could present as many attractions to my taste, my patriotism, or my ambition, as the one which I have now abandoned; and no ordinary consideration could have induced me to relinquish it; but the health and condition of my family—their increasing claims on my care and attention—and circumstances of business and fortune, left me no prudent alternative. I determined, therefore, after some hesitancy, and the most anxious endeavors to ascertain my duty, to retire from a station in which I believed that I could not much longer continue without a violation of the most sacred and paramount duties. And having formed this resolutiou, I considered it my duty to execute it without longer delay, for the purpose of giving you sufficient time to select with full discretion a successor, and without unnecessary inconvenience, at the next annual election of State Representatives. I hope that the time which I have given you will be amply sufficient. I would have given you even more, if I had not felt it my duty to give a respectful consideration to the opinions and solicitations of friends.

When you duly appreciate the motives which, (and which alone) influenced me on this occasion, I have the fullest confidence, from the liberality and indulgence with which you have always considered my conduct, that you will approve my resolution, and acquiesce without censure, in my decision. It is under this hope, and for this purpose that I now, for the last time address you. It is, I assure you, with reluctance and regret, that I leave your service; reluctance produced by a recollection of the strong obligations to serve you, which your repeated acts of favor have imposed on me; and deep regret resulting from the nature of the circumstances constituting the necessity which has controlled my decision. But, among the many embarrassments with which, in coming to this decision, I have been perplexed, I have derived gratification and encouragement from the conviction that, if my services could, at any time, be considered of any value, there is nothing in the present condition of the country that could oppose my retirement now; and that all the circumstances of the time I have selected, are as favorable to it, as any that might ever occur. I am happy on this occasion in being able to congratulate you on the enviable condition of our country in all its great interests and relations. Never did more tranquility, peace and concord pervade the Union than at this moment; and never was there, in any country in my opinion, less necessity for national legislation. I believe that the less we legislate, under existing circumstances, the more we shall consult the substantial and permanent good of the community. If we rely, as becomes us, on our physical and moral capacities for the principal means of happiness and competence—if we encourage industry, economy and public spirit, and by a liberal and diffusive system of education, literary and moral, bring into useful operation the latent energies of the rising generation—if we will adopt and inculcate enlightened, liberal and elevated notions of government, and of the social, religious and political rights and duties—such is the benign genius of our institutions, and such is the happy posture of the affairs that concern our welfare as a nation, that we may reach the proudest destiny with which hope has ever flattered us, without the constant multiplication of laws, or an habitual depenpence on the supposed magic of legislation. All things duly considered, we have very little cause of despondence or complaint, and much of exhiliration and mutual felicitation. Never, (I believe,) could the people of the United States say with more sincerity and truth to the national legislature, "LET US ALONE." The most prominent circumstances, international and domestic, which have for some time agitated our counsels, and menanced the harmony and integrity of the Union, having been satisfactorily arranged during the last session of Congress, the prospect before us for years to come, in the most comprehensive survey, presents, in the great outline of national prosperity an encouraging view, and anthorizes the most animating hopes of the longevity of our institutions, and of the independence and happiness of our people. I am happy, therefore, in believing, that if, under any circumstances, my feeble talents

and the little experience which I may have acquired in national legislation, could be considered by my warmest friends of any advantage to your rights, your interests, or your honor, the auspicious circumstances under which I retire, diminish their utility so much, that whether I remain longer in your service or not, becomes of very little concern, except to myself, especially as you will have no difficulty in finding others willing and able to serve you, who have stronger claims on your confidence and favor than I can have any hope of possessing or deserving to enjoy.

In taking leave of you, I have the satisfaction of a strong assurance that, whilst in your service, I have done my duty. I know I honestly endeavored to do it, by an undeviating adherence to those maxims of public policy and public duty which my own judgment and conscience recommended to me as best adapted to promote the honor of the government and the good of the people; disregarding as far as possible, personal and local considerations. Many could have served you more ably, but none more faithfully. That I have frequently erred is probable, but I flatter myself that my errors were venial; and I am proud in being able to say that I have no recollection of having been reproached either by you, or a disapproving conscience, with any aberration from the principles of political rectitude. or any dereliction of public duty. My public life has been short and humble; it furnishes no incidents to flatter pride or gratify ambition. If in the stormy and difficult times in which it was spent, it has been disinterested, firm and straight-forward, I shall have fulfilled in its results, all my expectations, and have deserved as much commendation as I have ever desired. If, in reviewing it, I see nothing to be vain of, or to extort the applause or admiration of others, I see, what is more grateful to my feelings, that it exhibits nothing of which I am ashamed, or of which on mature reflection I repent. But while I recollect no act of my public life which I would alter, I confess, that I have, more than once, done that which I regretted, and still regret, being compelled to do by convictions of public duty. In other words, my votes have not always been in accaccord with my feelings. Political life, however humble or unambitious, is beset with many difficulties, trials and perplexities; it is the crucible of merit, the ordeal of virtue and energy. He who expects to pass through unhurt and self-satisfied, and wishes to be able, when at his journeys' end, to look back, without shame or remorse, on the various meanderings and multiform incidents of the mazy path which he has followed, must be prepared to do many things incompatible with his individual interests, and repugnant to his personal and local predilections. He must expect to be instructed by the suggestions of an unbiased judgment, frequently to do that which, while his head approves, his heart abjures. He must be prepared too, to smile with unmixed contempt at causeless abuse, and to see his popularity in ruins without emotions of sorrow, surprise or resentment, looking in triumph to its day of resurrection. All who engage in political warfare should be thus shielded, if they wish to avoid ultimate discomfiture and disgrace. A firm and honest man should always be contented under the consciousness, if he fall, of having done his duty. He has also for his encouragement an assurance from the testimony of all experience, that if, in the storms of faction or momentary popular commotion he shall be, for awhile, overwhelmed, and lighter bodies should be permitted, for a moment, to mount the bursting wave, the sunshine of reason and the calm of sober judgment will soon return and find him on a proud eminence high above those ephemeral favorites who could vegetate and flourish only in the beams of popular favor, and Cameleon-like, live by snuffing air—the breath of popular applause. "Popular applause" is gratifying to all good men, but there is danger, if pursued too eagerly, of its becoming an *ignis fatuus* to decoy us into error. No wise man will be insensible to the approbation of his fellow-men, or indifferent about obtaining it; but no honest man will ever attempt to obtain it in any other way than by endeavoring to deserve it. The popularity which is gratifying to an honorable and elevated mind, is not that evanescent capricious thing that must be conciliated by caresses, and purchased by dishonest compliances, but that high and constant sentiment of esteem which follows virtuous actions, and is their best reward, next to the approbation of a sound conscience, which it will, sooner or later, gratify and prosper.

I have been anxious to obtain your approbation, but more so to secure that of my own conscience. The last I know I enjoy—the first I have endeavored to deserve. And I enjoy a sentiment the most gratifying to my feelings, in having good reason to believe that my feeble efforts to do my duty, in your service, while they excite no sensation of remorse in my own bosom, have been crowned with your approbation which is the consummation of my hopes, and the highest achievement which my ambition ever sought or my vanity expected.

The connexion which has hitherto subsisted between us as constituents and representative being now dissolved, I avail myself of this first moment after becoming a private citizen, to tender you, in the plenitude of unmixed gratitude, my warmest acknowledgments for the friendship and good opinion which you have so frequently and so signally manifested towards me. I shall long cherish a grateful recollection of those flattering testimonials. Services which my capacity and situation will permit me to perform, you may at any time command.

Accept my most earnest wishes for your welfare, individually and collectively, and believe me to be, with sentiments of the most profound respect,

Your friend, and your humble servant,

G ROBERTSON.

LANCASTER, 1st May, 1821.