

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

Docket No. 09-2473

THE FREEDOM FROM RELIGION FOUNDATION; PAT DOE, Parent and  
Next Friend of Doechild-1, Doechild-2 and Doechild-3; JAN DOE, Parent and  
Next Friend of Doechild-1, Doechild-2 and Doechild-3

Plaintiffs - Appellants

v.

UNITED STATES; THE STATE OF NEW HAMPSHIRE; MURIEL CYRUS;  
A.C., Minor; J.C., Minor; K.C., Minor; S.C., Minor; E.C., Minor, R.C., Minor;  
A.C., Minor; D.P., Minor; MICHAEL CHOBANIAN; MARGARETHE  
CHOBANIAN; MINH PHAN; SUZU PHAN;  
KNIGHTS OF COLUMBUS

Defendants - Appellees

DRESDEN SCHOOL DISTRICT; HANOVER SCHOOL DISTRICT

Defendants

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United States District Court for the District of New Hampshire

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APPENDIX TO BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE  
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## APPENDIX D.

## MASSACHUSETTS BAY COLONY.

## THE BODY OF LIBERTIES, 1641.\*

## TABLE OF CONTENTS.

## PREAMBLE:

- Liberty*
1. Persons and property inviolable except by law.
  2. Equal justice to all.
  3. The general court alone to impose oaths.
  4. Unavoidable absences not punishable.
  5. Public services required only by law.
  6. Exemptions from public service.
  7. Limit of military service.
  8. Property taken for public use to be paid for.
  9. Monopolies forbidden but patents allowed.
  10. Fines on alienations, heriots, &c., forbidden.
  11. Wills and alienations allowed.
  12. Freedom of speech and action in public meetings permitted.
  13. Property abroad not taxable here.
  14. Conveyances by married women, children, or in-sane persons legalized by the general court.
  15. Fraudulent deeds invalid against just claims.
  16. Free fishing and fowling defined.
  17. Free emigration allowed.

\*As Portsmouth and Dover consented to a union with Massachusetts Bay colony in 1641, and as Hampton was already regarded as a municipal establishment of the Bay colony, Exeter having joined the Union a little later (1643), it will be noted that the adoption and publication of the Body of Liberties, as the first elaborate scheme of statute law made operative by Colonial legislation in New Hampshire as well as Massachusetts Bay, were important steps forward in home rule, very nearly contemporaneous with the accomplishment of the first union of the two colonies. The transcript of the Body of Liberties here presented is based on the manuscript of Elisha Hutchinson. A fac-simile of it is printed in William H. Whitmore's edition of the Colonial Laws of Massachusetts, published by order of the city council of Boston, 1889, pp. 32-41. Opposite each page of the manuscript fac-simile is a line-for-line printed version. This is adopted for reproduction in this connection. The table of contents which precedes and the index which follows the text should also be credited to Mr. Whitmore's compilation. The identification of this as the original text of the Body of Liberties was actually adopted by the general court in 1641, and the demonstration of the fact that the production of that code was largely the work of Rev. Nathaniel Ward, and that the authorship is not assignable to Rev. John Cotton, are among the prominent features of Mr. Whitmore's introduction, which occupies the first twenty-eight pages following the preface of the volume published in 1889. Mr. Whitmore, in turn, acknowledges his indebtedness to Mr. F. C. Gray for important results of researches related

18. Provision made for bail.
19. Assistants punished for misconduct.
20. Judges punished for misconduct.
21. Summons served not over six days before the court, and the cause to be specified therein.
22. False claims to excessive debts or damages punishable.
23. Legal rate of interest fixed at 8 per cent per annum.
24. Contributory negligence a good defence.
25. Technical errors not allowed if the court understand the person and the cause.
26. Unpaid attorneys allowed.
27. Written pleas and answers permitted.
28. Suits may be discontinued before a verdict, and renewed in another court.
29. Trials may be either by the bench or by a jury.
30. Jurors may be challenged.
31. Special verdict allowed, and appeals to the general court.
32. Cattle or goods may be replevined.
33. Imprisonment for debt regulated.
34. Common barrators punished.
35. Distress of perishable goods regulated.
36. Appeals from inferior courts provided.
37. Malicious suits punished.
38. Evidence to be recorded on court rolls.
39. Court may respite executions in all actions.
40. Deeds or promises given under duress are invalid.
41. Persons accused of crime shall be tried at the next court.
42. No one shall be tried twice for the same offence.

to the origin and history of the Body of Liberties. A companion volume to the one issued in 1889 was published by the city council of Boston in 1887, this also being edited by Mr. Whitmore. The earlier volume contains other valuable material constituting the text of important parts of the printed statute law of the Bay Colony promulgated in the period covered by the first union, 1641-1679.

Recourse may be had, of course, for further investigation of the sources of these laws, to the lately printed colony records of Massachusetts Bay for the same period, but the two volumes brought out by Mr. Whitmore more conveniently and satisfactorily exhibit the statute law of the colony which took form in the periodical compilations or revisions of that time, and in the occasional supplements which appeared, than would the more elaborate volumes of the journal records and archives. It should be remembered that it was these compilations and contemporary printed editions of the early laws with which the officers of the government and the principal inhabitants of the colony were most familiar. This suggestion is, of course, equally applicable to the people of the New Hampshire towns which were then regarded as an organic part of the Massachusetts Bay.

The ninety-eight numbered articles, with the section containing the preamble and the one containing the concluding paragraph, constitute the required one hundred. Introduction by Mr. Whitmore, edition of 1889, p. 9.

—A. S. B.

43. Punishment by whipping regulated.
44. Time for executing criminals regulated.
45. Torture forbidden.
46. Barbarous or cruel punishments forbidden.
47. Death inflicted only on the evidence of two or three witnesses, or the equivalent.
48. Public records open to inspection.
49. Jury service regulated.
50. Towns to choose jurymen.
51. Towns to elect associates in inferior courts.
52. Children, strangers, and others to be protected in all suits.
53. Age of discretion fixed at twenty-one.
54. Powers and duties of moderators defined.
55. The fullest liberty allowed in pleas and answers.
56. Town meetings protected from disturbance.
57. Inquests in case of sudden deaths.
58. Church regulations may be enforced by civil courts.
59. Church officers and members amenable to civil law.
60. Church censure inoperative upon civil officers.
61. Silence on conscientious grounds allowable.
62. Qualifications of deputies to the general court.
63. The expenses of certain officials to be a public charge.
64. Court records to be fully kept by the clerk.
65. The Word of God to overrule any custom or prescription.
66. Freemen in each town to manage their prudential affairs.
67. The chief officers to be elected annually by the freemen, and may be discharged for cause at other meetings of the general court.
68. Deputies need not reside in the towns choosing them. The number of deputies to be fixed only from year to year.
69. Consent of a majority required to dissolve or adjourn the general court.
70. Freedom of speech and vote obtained.
71. Casting vote allowed to presiding officers.
72. Reprieves and pardons regulated.
73. Messengers may be sent abroad on public affairs.
74. Selectmen allowed.
75. Protests in all meetings shall be allowed and recorded.
76. Jurors may consult bystanders in open court.
77. Voting not compulsory.

78. Public money to be spent only with the consent of the tax-payers.
  79. Provision for widows in case of intestacy.
  80. Wives not subject to conjugal correction.
  81. Gavelskind regulated.
  82. Daughters as co-partners.
  83. Appeal from parental tyranny.
  84. Protection for orphans.
  85. Itinerary servants protected.
  86. Transfers of indentures of servants.
  87. Servants recompensed for bodily injuries.
  88. Servants to be rewarded.
  89. Christian immigrants welcome.
  90. Shipwrecked vessels to be assisted.
  91. Slavery prohibited.
  92. Cruelty to animals forbidden.
  93. Travelling drovers assisted.
  94. Death penalty for certain crimes.
  95. Relations between church and civil authority defined.
  96. These liberties to have the force of law.
  97. Suits allowed to give effect to these liberties.
  98. Liberties to be revised annually for three years.
- Penalty if the general court in the next three years neglect liberty 98.

#### A COPY OF THE LIBERTIES OF THE MASSACHUSETTS COLONIE IN NEW ENGLAND.

The free fruition of such liberties Immunities and privileges as humane, Civile, and Christianitie call for as due to every man in his place and proportion without impeachment and infringement hath ever bene and ever will be the tranquillitie and Stabilitie of Churches and Commonwealths. And the denial or deprivall thereof, the disturbance if not the ruine of both.

We hold it therefore our dutie and safetie whilst we are about the further establishing of this Government to collect and expresse all such freedoms as for present we foresee may concerne us, and our posteritie after us, And to ratify them with our sollemne consent.

We doe therefore this day religiously and unanimously decree and confirme these following Rites, liberties and privileges concerning our Churches, and Civil State to be respectively impartiallie and inviolably enjoyed and observed throughout our Jurisdiction for ever.

shall perish or suffer damage in such service, the owner shall be sufficiently recompensed.

9. No monopolies shall be granted or allowed amongst us, but of such new Inventions that are profitable to the Countrie, and that for a short time.

10. All our lands and heritages shall be free from all fines and licences upon Alienations, and from all harlots, wardships, Liveries, Primer-seisins, yeare day and wast, Escheates, and forfeitures, upon the deaths of parents or Ancestors, be they naturall, casual or judiciall.

11. All persons which are of the age of 21 yeares, and of right understanding and memories, whether excommunicate or condemned shall have full power and libertie to make there wills and testaments, and other lawfull alienations of their lands and estates.

12. Every man whether Inhabitant or forreiner, free or not free shall have libertie to come to any publique Court, Councel, or Towne meeting, and either by speech or writing to move any lawfull, seasonable, and materiall question, or to present any necessary motion, complaint, petition, Bill or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner.

13. No man shall be rated here for any estate or revenue he hath in England, or in any forreine partes till it be transported hither.

14. Any Conveyance or Alienation of land or other estate what so ever, made by any woman that is married, any childe under age, Ideott or distracted person, shall be good if it be passed and ratified by the consent of a generall Court.

15. All Covenous or fraudulent Alienations or Conveyances of lands, tenements, or any hereditaments, shall be of no validite to defeaite any man from due debts or legacies, or from any just title, claime or possession, of that which is so fraudulently conveyed.

16. Every Inhabitant that is an howse holder shall have free fishing and fowling in any great ponds and Bayes, Coves and Rivers, so farre as the sea ebbs and flows within the precincts of the towne where they dwell, unlesse the free men of the same Towne or the Generall Court have otherwise appropriated them, provided that this shall not be extended to give leave to any man to come upon others propriette without leave.

17. Every man of or within this Jurisdiction shall have free libertie, notwithstanding any Civill power to remove both himselfe, and his familie at their pleasure out of the same, provided there be no legall impediment to the contrarie.

1. No mans life shall be taken away, no mans honour or good name shall be stayned, no mans person shall be arrested, restrained, banished, dismembred, nor any ways punished, no man shall be deprived of his wife or children, no mans goods or estate shall be taken away from him, nor any way damaged under colour of law or Countenance of Authority, unlesse it be by vertue or equitie of some expresse law of the Countrey warranting the same, established by a generall Court and sufficiently published, or in case of the defect of a law in any particuler case by the work of god. And in Capitall cases, or in cases concerning dismembred or banishment, according to that word to be judged by the Generall Court.

2. Every person within this Jurisdiction, whether Inhabitant or forreiner shall enjoy the same justice and law, that is generall for the plantation, which we constitute and execute one towards another without partialitie or delay.

3. No man shall be urged to take any oath or subscribe any articles, covenants or remonstrance, of a publique and Civill nature, but such as the Generall Court hath considered, allowed, and required.

4. No man shall be punished for not appearing at or before any Civill Assembly, Court, Councell, Magistrate, or Office, nor for the omission of any office or service, if he shall be necessarily hindered by any apparent Act or providence of God, which he could neither foresee nor avoid. Provided that this law shall not prejudice any person of his just cost or damage, in any civill action.

5. No man shall be compelled to any publique worke or service unlesse the presse be grounded upon some act of the generall Court, and have reasonable allowance therefore.

6. No man shall be pressed in person to any office, worke, warres or other publique service, that is necessarily and sufficiently exempted by any naturall or personall impediment, as by want of yeares, greatnes of age, defect of minde, fayling of senses, or impotencie of Limbes.

7. No man shall be compelled to goe out of the limits of his plantation upon any offensive warres which this Commonwealth or any of our freinds or confederats shall volentarily undertake. But onely upon such vindictive and defensive warres in our owne behalfe or the behalfe of our freinds and confederats as shall be enterprized by the Councell and consent of a Court generall, or by Authority derived from the same.

8. No mans Cattel or goods of what kinde soever shall be pressed or taken for any publique use or service, unlesse it be by warrant grounded upon some act of the generall Court, nor without such reasonable prices and hire as the ordinarie rates of the Countrie do afford. And if his Cattle or goods

*Rules and Liberties concerning Judicial proceedings.*

18. No mans person shall be restrained or imprisoned by any Authority whatsoever, before the law hath sentenced him thereto, If he can put in sufficient security, baile or mainprise, for his appearance, and good behaviour in the meane time, unless it be in Crimes Capital, and Contempts in open Court, and in such cases where some expresse act of Court doth allow it.

19. If in a general Court any miscarriage shall be amongst the Assistants when they are by themselves that may deserve an Admonition or fine under 20 sh. it shall be examined and sentenced among themselves, If amongst the Deputies when they are by themselves, it shall be examined and sentenced amongst themselves. If it be when the whole Court is together, it shall be judged by the whole Court, and not severally as before.

20. If any which are to sit as Judges in any other Court shall demean themselves offensively in the Court, the rest of the Judges present shall have power to censure him for it, if the cause be of a high nature it shall be presented to and censured at the next superior Court.

21. In all cases where the first summons are not served six dayes before the Court, and the cause briefly specified in the warrant, where appearance is to be made by the partie summoned, it shall be at his libertie whether he will appeare or no, except all cases that are to be handled in Courts suddainly called, upon extraordinary occasions, In all cases where there appeares present and urgent cause Any Assistant or officer appointed shal have power to make out Attachments for the first summons.

22. No man in any suit or action against another shall falsely pretend great debts or damages to vex his Adversary, if it shall appeare any doth so, The Court shall have power to set a reasonable fine on his head.

23. No man shall be adjudged to pay for detaining any debt from any Creditor above eight pounds in the hundred for one yeare. And not above that rate proportionable for all somes what so ever, neither shall this be a colour or countenance to allow any usurie amongst us contrarie to the law of god.

24. In all Trespasses or damages done to any man or men, If it can be proved to be done by the meere default of him or them to whome the trespassse is done, It shall be judged no trespassse, nor any damage given for it.

25. No Summons pleading Judgement, or any kinde of proceeding in Court or course of Justice shall be abated, arrested or reversed upon any kinde of circumstantiall errors

or mistakes, If the person and cause be rightly understood and intended by the Court.

26. Every man that findeth himselfe unfit to plead his owne cause in any Court shall have Libertie to employ any man against whom the Court doth not except, to help him, Provided he give him noe fee or reward for his paines. This shall not exempt the partie him selfe from Answering such questions in person as the Court shall thinke meete to demand of him.

27. If any plantife shall give into any Court a declaration of his cause in writing, The defendant shall also have libertie and time to give in his answer in writing, And so in all further proceedings betwene partie and partie, So it doth not further hinder the dispatch of Justice then the Court shall be willing unto.

28. The plantife in all Actions brought in any Court shall have libertie to withdraw his Action, or to be nonsuited before the Jurie hath given in their verdict, in which case he shall alwaies pay full cost and charges to the defendant, and may afterwards renew his suite at an other Court if he please.

29. In all Actions at law it shall be the libertie of the plantife and defendant by mutual consent to choose whether they will be tried by the Bench or by a Jurie, unless it be where the law upon just reason hath otherwise determined. The like libertie shall be granted to all persons in Criminall cases.

30. It shall be in the libertie both of plantife and defendant, and likewise every delinquent (to be judged by a Jurie) to challenge any of the Jurors. And if his challenge be found just and reasonable by the Bench, or the rest of the Jurie, as the challenger shall choose it shall be allowed him, and tales de circumstantibus impaneled in their room.

31. In all cases where evidence is so obscure or defective that the Jurie cannot clearely and safely give a positive verdict, whether it be a grand or petit Jurie, It shall have libertie to give a non liquit, or a speciall verdict, in which last, that is in a speciall verdict, the Judgement of the cause shall be left to the Court, and all Jurors shall have libertie in matters of fact if they cannot finde the maine issue, yet to finde and present in their verdict so much as they can, If the Bench and Jurors shall so differ at any time about their verdict that either of them cannot proceede with peace of conscience the case shall be referred to the Generall Court, who shall take the question from both and determine it.

32. Every man shall have libertie to replevy his Cattell or goods impounded, distreined, seised, or extended, unless it be upon execution after Judgement, and in payment of fines, Provided he puts in good security to prosecute his replevin,

And to satisfy such demands as his Adversary shall recover against him in Law.

33. No person shall be Arrested, or imprisoned upon execution or judgment for any debt or fine, If the law can find competent means of satisfaction otherwise from his estate, and if not his person may be arrested and imprisoned where he shall be kept at his own charge, not the plaintiff's till satisfaction be made: unless the Court that had cognizance of the cause or some superior Court, shall otherwise provide.

34. If any man shall be proved and judged a common Barrator vexing others with unjust frequent and endless suits, It shall be in the power of Courts both to deale him the benefit of the law, and to punish him for his Barratry.

35. No mans Corne nor hay that is in the field or upon the Cart, nor his garden stuffe, nor any thing subject to present decay, shall be taken in any distresse, unless he that takes it doth presently bestow it where it may not be imbedled nor suffer spoile or decay, or give securitie to satisfy the worth thereof if it comes to any harme.

36. It shall be in the libertie of every man cast condemned or sentenced in any cause in any Inferiour Court, to make their Appeale to the Court of Assistants, provided they tender their appeale and put in securitie to prosecute it before the Court be ended wherein they were condemned, And within six dayes next ensuing put in good securitie before some Assistant to satisfy what his Adversarie shall recover against him; And if the cause be of a Criminall nature, for his good behaviour, and appearance, And everie man shall have libertie to complaine to the Generall Court of any Injustice done him in any Court of Assistants or other.

37. In all cases where it appears to the Court that the plaintiffe hath willingly and wittingly done wronge to the defendant in commencing and prosecuting any action or complaint against him, They shall have power to impose upon him a proportionable fine to the use of the defendant, or accused person, for his false complaint or clamor.

38. Everie man shall have libertie to Record in the publique Rolles of any Court any Testimony given upon oath in the same Court, or before two Assistants, or any deed or evidence legally confirmed there to remaine in perpetuam rel memoriam, that is for perpetuall memoriall or evidence upon occasion.

39. In all actions both reall and personall betweene partie and partie, the Court shall have power to respite execution for a convenient time, when in their prudence they see just cause so to doe.

40. No Conveyance, Deede, or promise whatsoever shall be of valaditie, If it be gotten by Illegal violence, imprisonment,

threatenings, or any kinde of forcible compulsion called Dures. 41. Everie man that is to Answer for any Criminall cause, whether he be in prison or under bayle, his cause shall be heard and determined at the next Court that hath proper Cognizance thereof, And may be done without prejudice of justice.

42. No man shall be twice sentenced by Civill Justice for one and the same Crime, offence, or Trespass.

43. No man shall be beaten with above 40 stripes, nor shall any true gentleman, nor any man equal to a gentleman be punished with whipping, unless his crime be very shameful, and his course of life vicious and profligate.

44. No man condemned to dye shall be put to death within fower dayes next after his condemnation, unless the Court see speciall cause to the contrary, or in case of martiall law, nor shall the body of any man so put to death be unburi'd 12 howers, unlesse it be in case of Anatomie.

45. No man shall be forced by Torture to confesse any Crime against himselfe nor any other unlesse it be in some Capitall case where he is first fullie convicted by cleare and sufficient evidence to be guilty, After which if the cause be of that nature, That it is very apparent there be other conspirators, or confederates with him, Then he may be tortured, yet not with such Tortures as be Barbarous and inhumane.

46. For bodillie punishments we allow amongst us none that are inhumane Barbarous or cruel.

47. No man shall be put to death without the testimony of two or three witnesses or that which is equivalent therunto.

48. Every Inhabitant of the Countie shall have free libertie to search and viewe any Rolles, Records, or Registers of any Court or office except the Council, And to have a transcript or exemplification thereof written examined, and signed by the hand of the officer of the office paying the appointed fees therefore.

49. No free man shall be compelled to serve upon Juries above two Courts in a yeare, except grand Jurie men, who shall hould two Courts together at the least.

50. All Jurors shall be chosen continually by the freemen of the Towne where they dwell.

51. All Associates selected at any time to Assist the Assistants in Inferiour Courts shall be nominated by the Townes belonging to that Court, by orderly agreement amongst themselves.

52. Children, Idiots, Distracted persons, and all that are strangers, or new commers to our plantation, shall have such allowances and dispensations in any Cause whether Criminall or other as religion and reason require.

53. The age of discretion for passing away of lands or such



kinde of hereditaments, or for giving of votes, verdicts or Sentence in any Civill Courts or causes, shall be one and twentie yeares.

54. Whensoever anything is to be put to vote, any sentence to be pronounced, or any other matter to be proposed, or read in any Court or Assembly, If the president or moderator thereof shall refuse to perform it, the Major parte of the members of that Court or Assembly shall have power to appoint any other meete man of them to do it, And if there be just cause to punish him that should and would not.

55. In all suites or Actions in any Court, the plaintiffe shall have libertie to make all the titles and claims to that he sues for be can. And the Defendant shall have libertie to plead all the pleas he can in answer to them, and the Court shall judge according to the entire evidence of all.

56. If any man shall behave himselfe offensively at any Towne meeting, the rest of the freemen then present, shall have power to sentence him for his offence. So be it the mulct or penaltie exceede not twentie shillings.

57. Whensoever any person shall come to any very sudden untimely and unnatural death, Some assistant, or the Constables of that Towne shall forthwith summon a Jury of twelve free men to inquire of the cause and manner of their death, and shall present a true verdict thereof to some neere Assistant, or the next Court to be helde for that Towne upon their oath.

*Liberties more peculiarie concerning the free men.*

58. Civill Authoritie hath power and libertie to see the peace, ordinances and Rules of Christ observed in every church according to his word. so it be done in a Civill and not in an Ecclesiastical way.

59. Civill Authoritie hath power and libertie to deale with any Church member in a way of Civill Justice, notwithstanding any Church relation, office or interest.

60. No church censure shall degrade or depose any man from any Civill dignitie, office, or Authoritie he shall have in the Commonwealth.

61. No Magistrate, Juror, Officer, or other man shall be bound to informe present or reveale any private crim or offence, wherein there is no perill or danger to this plantation or any member thereof, when any necessarie tye of conscience binds him to secrecie groundd upon the word of god, unless it be the case of testimony lawfully required.

62. Any Shire or Towne shall have libertie to choose their Deputies whom and where they please for the Generall Court. So be it they be free men, and have taken there oath of fealtie, and Inhabiting in this Jurisdiction.

63. No Governor, Deputy Governor, Assistant, Associate, or grand Jury man at any Court, nor any Deputy for the Generall Court shall at any time beare his owne charges at any Court, but their necessary expences shall be defrayed either by the Towne or Shire on whose service they are, or by the Country in generall.

64. Everie Action betwene partie and partie, and proceedings against delinquents in Criminal causes shall be briefly and distinctly entered on the Rolles of every Court by the Recorder thereof. That such actions be not afterwards brought againe to the vexation of any man.

65. No custome or prescription shall ever prevale amongst us in any morall cause, our meaning is maintaine anything that can be proved to bee morallie sinfull by the word of god.

66. The Freemen of every Towneship shall have power to make such by laws and constitutions as may concerne the welfare of their Towne, provided they be not of a Criminal, but onely of a prudentiall nature, And that their penalties exceede not 20 sh. for one offence. And that they be not repugnant to the publique laws and orders of the Countie. And if any Inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalties by distresse.

67. It is the constant libertie of the free men of this plantation to choose yearly at the Court of Election out of the freemen all the General officers of this Jurisdiction. If they please to discharge them at the day of Election by way of vote, They may do it without showing cause. But if at any other generall Court, we hould it due justice, that the reasons thereof be alleadged and proved. By General officers we meane, our Governor, Deputy Governor, Assistants, Treasurer, General of our warres. And our Admirall at Sea, and such as are or hereafter may be of the like general nature.

68. It is the libertie of the freemen to choose such deputies for the Generall Court out of themselves, either in their owne Townes or elsewhere as they judge fittest And because we cannot foresee what varietie and weight of occasions may fall into future consideration, And what counsells we may stand in neede of, we decree, That the Deputies (to attend the Generall Court in the behalfe of the Countie) shall not any time be stated or inacted, but from Court to Court, or at the most but for one yeare, that the Countie may have an Annuall libertie to do in that case what is most behoofull for the best welfare thereof.

69. No Generall Court shall be dissolved or adjourned without the consent of the Major partie thereof.

70. All Freemen called to give any advise, vote, verdict, or sentence in any Court, Counsell, or Civill Assembly, shall

have full freedom to doe it according to their true Judgements and Consciences, So it be done orderly and inoffensively for the manner.

71. The Governor shall have a casting voice whensoever an Equi vote shall fall out in the Court of Assistants, or generall assembly, So shall the presedent or moderator have in all Civill Courts or Assemblies.

72. The Governor and Deputy Governor Joyntly consenting or any three Assistants concurring in consent shall have power out of Court to reprieve a condemned malefactor, till the next quarter or generall Court. The generall Court onely shall have power to pardon a condemned malefactor.

73. The Generall Court hath libertie and Authoritie to send out any member of this Comanwealth of what qualitie, condition or office whatsoever into forreine parts about any publique message or Negotiation. Provided the partie sent be acquainted with the affaire he goeth about, and be willing to undertake the service.

74. The freemen of every Towne or Towneship, shall have full power to choose yearly or for lesse time out of themselves a convenient number of fitt men to order the plauding or prudentiall occasions of that Town, according to Instructions given them in writing, Provided nothing be done by them contrary to the publique laws and orders of the Countrie, provided also the number of such select persons be not above nine.

75. It is and shall be the libertie of any member or members of any Court, Councell or Civill Assembly in cases of making or executing any order or law, that properlie concerne religion, or any cause capital, or warres, or Subscription to any publique Articles or Remonstrance, in case they cannot in Judgement and conscience consent to that way the Major vote or suffrage goes, to make their contra Remonstrance or protestation in speech or writing, and upon request to have their dissent recorded in the Rolles of that Court. So it be done Christianlie and respectively for the manner. And their dissent onely be entered without the reasons thereof, for the avoiding of tediousness.

76. Whensoever any Jurie of trials or Jurours are not cleave in their Judgements or consciences concerning any cause wherein they are to give their verdict, They shall have libertie in open Court to advise with any man they thinke fitt to resolve or direct them, before they give in their verdict.

77. In all cases wherein any freeman is to give his vote, be it in point of Election, making constitutions and orders, or passing sentence in any case of Judicature or the like, if he cannot see reason to give it positively one way or an other, he shall have libertie to be silent, and not pressed to a determined vote.

78. The Generall or publique Treasure or any parte thereof shall never be expended but by the appointment of a Generall Court, nor any Shire Treasure, but by the appointment of the freemen thereof, nor any Towne Treasure but by the freemen of that Township.

#### *Liberities of Women.*

79. If any man at his death shall not leave his wife a competent portion of his estate, upon just complaint made to the Generall Court she shall be relieved.

80. Everie married woman shall be free from bodillie correction or stripes by her husband, unless it be in his owne defence upon her assalt. If there be any just cause of correction complaint shall be made to Authoritie assembled in some Court, from which onely she shall receive it.

#### *Liberities of Children.*

81. When parents dye intestate, the Elder sonne shall have a double portion of his whole estate reall and personall, unless the Generall Court upon just cause alleadged shall Judge otherwise.

82. When parents dye intestate haveing noe heires males of their bodies their Daughters shall inherit as copartners, unless the Generall Court upon just reason shall Judge otherwise.

83. If any parents shall wilfullie and unreasonably deny any childe timely or convenient marriage, or shall exercise any unnaturall severitie towards them, such children shall have free libertie to complaine to Authoritie for redresse.

84. No Orphan during their minority which was not committed to tuition or service by the parents in their life time shall afterwards be absolutely disposed of by any kindred, friend, Executor, Township, or Church, nor by themselves without the consent of some Court, wherein two Assistants at least shall be present.

#### *Liberities of Servants.*

85. If any servants shall flee from the Tyranny and crueltie of their masters to the howse of any freeman of the same Towne, they shall be there protected and susteyned till due order be taken for their reliefe. Provided due notice thereof be speedily given to their masters from whom they fled. And the next Assistant or Constable where the partie flying is harboured.

86. No servant shall be put of for above a yeare to any other neither in the life time of their maister nor after their

death by their Executors or Administrators unless it be by consent of Authoritie assembled in some Court or two Assistants.

87. If any man smite out the eye or tooth of his manservant, or maid servant, or otherwise mayne or much disfigure him, unless it be by meere casualtie, he shall let them goe free from his service. And shall have such further recompense as the Court shall allow him.

88. Servants that have served diligentlie and faithfully to the benefit of their maisters seaven yeares, shall not be sent away emptye. And if any have bene unfaithfull, negligent or unprofitable in their service, notwithstanding the good usage of their maisters, they shall not be dismissed till they have made satisfaction according to the Judgement of Authoritie.

#### *Liberties of Forrainers and Strangers.*

89. If any people of other Nations professing the true Christian Religion shall flee to us from the Tyranny or oppression of their persecutors, or from fainyne, warres, or the like necessary and compulsarie cause, They shall be entertained and succoured amongst us, according to that power and prudence god shall give us.

90. If any ships or other vessels, be it friend or enemy, shall suffer shipwrack upon our Coast, there shall be no violence or wrong offered to their persons or goods. But their persons shall be harboured, and relieved, and their goods preserved in safety till Authoritie may be certified thereof, and shall take further order therein.

91. There shall never be any bond slaverye, villinage or Captivitie amongst us unless it be lawfull Captives taken in just warres, and such strangers as willingly selle themselves or are sold to us. And these shall have all the liberties and Christian usages which the law of god established in Israel concerning such persons doeth morally require. This exempts none from servitude who shall be Judged thereto by Authoritie.

#### *Of the Brute Creature.*

92. No man shall exercise any Tyranny or Crueltie towards any brute Creature which are usuallie kept for man's use.

93. If any man shall have occasion to leade or drive Cattel from place to place that is far of, so that they be weary, or hungry, or fall sick, or lambe, It shall be lawful to rest, or refresh them, for a competent time, in any open place that is not Corne, meadow, or inclosed for some peculiar use.

#### 94. *Capital Laws.*

1. If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death.

2. If any man or woeman be a witch, (that is hath or consutleth with a familiar spirit,) They shall be put to death.

3. If any man shall Blaspheme the name of god, the father, Sonne or Holie ghost, with direct, expresse, presumptuous or high handed blasphemie, or shall curse god in the like manner, he shall be put to death.

4. If any person commit any wilfull murder, which is manslaughter, committed upon premeditated mallice, hatred, or Crueltie, not in a mans necessarie and just defence, nor by meere casualtie against his will, he shall be put to death.

5. If any person slayeth an other suddainly in his anger or Crueltie of passion, he shall be put to death.

6. If any person shall slay another through guile, either by poysoning or other such divelish practice, he shall be put to death.

7. If any man or woeman shall lye with any beaste or brute creature by Carnall Copulation, They shall surely be put to death. And the beast shall be slaine and buried and not eaten.

8. If any man lyeth with mankind as he lyeth with a woeman, both of them have committed abomination, they both shall surely be put to death.

9. If any person committeth Adultery with a married or espoused wife, the Adulterer and Adulteresse shall surely be put to death.

10. If any man stealeth a man or mankind, he shall surely be put to death.

11. If any man rise up by false witness, wiltingly and of purpose to take away any mans life, he shall be put to death.

12. If any man shall conspire and attempt any invasion, insurrection, or publique rebellion against our commonwealth, or shall endeavour to surprise any Towne or Townes, fort or forts therein, or shall treacherously and perfidiouslie attempt the alteration and subversion of our frame of politie or Government fundamentallie, he shall be put to death.

#### 95. *A Declaration of the Liberties the Lord Jesus hath given to the Churches.*

1. All the people of god within this Jurisdiction who are not in a church way, and be orthodox in Judgement, and not scandalous in life, shall have full libertie to gather themselves into a Church Establie. Provided they doe it in a Christian way, with due observation of the rules of Christ revealed in his word.

2. Every Church hath full libertie to exercise all the ordinances of god, according to the rules of scripture.

3. Every Church hath free libertie of Election and ordination of all their officers from time to time, provided they be able, pious and orthodox.

4. Every Church hath free libertie of Admission, Recommendation, Dismission, and Expulsion, or depollall of their officers and members, upon due cause, with free exercise of the Discipline and Censures of Christ according to the rules of his word.

5. No Injunctions are to be put upon any Church, Church officers or member in point of Doctrine, worship or Discipline, whether for substance or circumstance besides the Institutions of the Iord.

6. Every Church of Christ hath freedom to celebrate dayes of fasting and prayer, and of thanksgiving according to the word of god.

7. The Elders of Churches have free libertie to meete monthly, quarterly, or otherwise, in convent numbers and places, for conferences and consultations about Christian and Church questions and occasions.

8. All Churches have libertie to deale with any of their members in a church way that are in the hand of Justice. So it be not to retard or hinder the course thereof.

9. Every Church hath libertie to deale with any magistrate, Deputie of Court or other officer what soe ever that is a member in a church way in case of apparent and just offence given in their places, so it be done with due observance and respect.

10. Wee allowe private meetings for edification in religion amongst Christians of all sortes of people. So it be without just offence for number, time, place, and other circumstances.

11. For the preventing and removing of error and offence that may grow and spread in any of the Churches in this Jurisdiction, and for the preserving of truth and peace in the severall churches within themselves, and for the maintenance and exercise of brotherly communion, amongst all the churches in the Countre, It is allowed and ratified, by the Authoritie of this Generall Court as a lawfull libertie of the Churches of Christ. That once in every month of the yeare (when the season will beare it) It shall be lawfull for together, with any other of the bretheren with the consent of the ministers and Elders, of the Churches neere adjoininge the churches to assemble by course in each severall Church one after an other. To the intent after the preaching of the word by such a minister as shall be requested thereto by the Elders of the church where the Assembly is held, The rest of the day may be spent in publique Christian Conference about the discussing and resolvinge of any such doubts and cases of conscience concerning matter of doctrine or worship or government of the church as shall be propounded by any of the Bretheren of that church with leave also to any other Brother to propound his objections or answers for further satisfaction

according to the word of god. Provided that the whole action be guided and moderated by the Elders of the Church where the Assembly is helde, or by such others as they shall appoint. And that no thing be concluded and imposed by way of Authority from one or more Churches upon an other, and onely by way of Brotherly conference and consultations. That the truth may be searched out to the satisfying of every mans conscience in the sight of god according to his worde. And because such an Assembly and the worke theirol can not be duely attended to if other lectures be helde in the same weeke. It is therefore agreed with the consent of the Churches. That in that weeke when such an Assembly is held, All the lectures in all the neighboring Churches for that weeke shall be forborne. That so the publique service of Christ in this more solemne Assembly may be transacted with greater diligence and attention.

96. Howsoever these above specified rites, freedoms, Immunities, Authorities and priviledges, both Civill and Ecclesiastical are expressed onely under the name and title of Liberties, and not in the exact form of Laws or Statutes, yet we do with one consent fullie Authorise, and earnestly intreate all that are and shall be in Authoritie to consider them as laws, and not to faile to indict condigne and proportionable punishments upon every man impartiallie, that shall infringe or violate any of them.

97. Wee likewise give full power and libertie to any person that shall at any time be denied or deprived of any of them, to commence and prosecute their suite, Complaint or action against any man that shall so doe in any Court that hath proper Cognizance or iudicature thereof.

98. Lastly because our dutie and desire is to do nothing suddainlie which fundamentally concerne us, we decree that these rites and liberties, shall be Audably read and deliberately weighed at every Generall Court that shall be held, within three yeares next ensuing, And such of them as shall not be altered or repealed they shall stand so ratified, That no man shall infringe them without due punishment.

And if any Generall Court within these next three yeares shall faile or forget to reade and consider them as abovesaid. The Governor and Deputy Governor for the time being, and every Assistant present at such Courts shall forfeite 20 sh. a man, and everie Deputie 10 sh. a man for each neglect, which shall be paid out of their proper estate, and not by the Countrey or the Townes which choose them, and whosoever there shall arise any question in any Court amongst the Assistants and Associates thereof about the explanation of these Rites and liberties, The Generall Court onely shall have power to interpret them.

## RETURNS OF THE ASSOCIATION TEST,

*Sent out by order of the General Congress, containing the names of Eight Thousand, one hundred and Ninety-nine Persons in New Hampshire, who signed it: By which they solemnly engaged and promised that they would, to the utmost of their power and at the risk of their Lives and Fortunes, with ARMS, oppose the Hostile Proceedings of the British Fleets and Armies, against the United American Colonies.*

*With*

*The NAMES of 773 Persons who refused to sign it.*

[Copied from a MS. volume in Secy's office, labelled "RETURNS OF ASSOCIATION TEST, 1776," and arranged by the late JOHN FARMER, Esq., agreeable to order of the Legislature of New Hampshire, 1837. —Ed.]

*Colony of New Hampshire,*

IN COMMITTEE OF SAFETY,

April 12<sup>th</sup> 1776.

In order to carry the underwritten RESOLVE of the Hon'ble Continental Congress into Execution, you are requested to desire all Males above Twenty one years of age (Lunaticks, Idiots, and Negroes excepted) to sign to the DECLARATION on this Paper; and when so done, to make Return thereof, together with the Name or Names of all who shall refuse to sign the same, to the GENERAL ASSEMBLY or Committee of Safety of this Colony.

M. WEARE, Chairman.

IN CONGRESS, March 14, 1776.

*Resolved*, That it be recommended to the Several Assemblies, Conventions, and Councils, or Committees of Safety of the United Colonies, *immediately* to cause all Persons to be *disarmed*, within their Respective Colonies, who are *notoriously* disaffected to the cause of AMERICA, or who have not associated, and refuse to associate, to defend by ARMS, the United

Colonies, against the Hostile attempts of the British Fleets and Armies.

(Copy)

*Extract from the Minutes.*

CHARLES THOMPSON, Sec<sup>y</sup>.

In Consequence of the above Resolution of the Hon. Continental CONGRESS, and to show our Determination in joining our American Brethren, in defending the Lives, Liberties, and Properties of the inhabitants of the United Colonies :

WE, THE SUBSCRIBERS, DO HEREBY SOLEMNLY ENGAGE, AND PROMISE, THAT WE WILL, TO THE UTMOST OF OUR POWER, AT THE RISQUE OF OUR LIVES AND FORTUNES, WITH ARMS, OPPOSE THE HOSTILE PROCEEDINGS OF THE BRITISH FLEETS AND ARMIES AGAINST THE UNITED AMERICAN COLONIES.

[Remarks on the foregoing by the late John Farmer, Esq.]

The preceding TEXT was the Declaration of Independence by the People of New Hampshire. It was a similar act to that of the Patriots who signed the National Declaration on the 4<sup>th</sup> July 1776. It preceded that event, and seems to have been a sanction or an encouragement to those who contemplated it. It was a bold and hazardous step in subjects thus to resist the authority of one of the most powerful Sovereigns in the world. Had the cause in which these men pledged their Lives and Fortunes failed, "it would have subjected every individual who signed it to the pains and penalties of treason; to a cruel and ignominious death."

It is not to be understood that all who declined signing it were Tories or were disaffected to the American cause; Some of them were Friends, whose principles forbade their signing a pledge to oppose their enemies with ARMS; others, who were really friends to the cause of opposition to the British, had conscientious scruples, and others doubtless were influenced by their timidity. Among those whose conscientious scruples prevented from giving such a pledge was Eleazer Russell, Esq. of Portsmouth, (1) who in a letter to President Weare, Says, "It was, and is, merely to secure the morality of my mind that I was reluctant to put my name to it. Solemnly to bind myself to the performance of what nature and necessity rendered impossible, I started at the thought of. And though my health is mended, so wrecked are my nerves, that I could not do one hours military duty to save my life. The article of shedding blood, in me is not a humor, but a principle—not an evasion but a fact. It was received in early life, and has "grown with my growth, and strengthened with my strength." Not a partiality for British more than Savage blood; for all circumstances considered, I think the latter more innocent than the former."

(1) See the letter of Mr. Russell on a subsequent page.

*Note by the Editor.*

[A copy of the preceding Resolve of the Continental Congress, with the action of the Committee of Safety of New Hampshire thereon, was sent to the Selectmen of each town in the Colony, requiring them to obtain names to the subjoined PLEDGE. The editor does not deem it necessary to repeat and reprint for each town, the whole of the aforesaid action; the PLEDGE only, once inserted, will suffice for all. Neither will these names be repeated in the Index.]

## SIGNERS IN AMHERST.

WE, THE SUBSCRIBERS, DO HEREBY SOLEMNLY ENGAGE, AND PROMISE, THAT WE WILL, TO THE UTMOST OF OUR POWER, AT THE RISQUE OF OUR LIVES AND FORTUNES, WITH ARMS, OPPOSE THE HOSTILE PROCEEDINGS OF THE BRITISH FLEETS AND ARMIES, AGAINST THE UNITED AMERICAN COLONIES.

[The names are always spelled as originally written.]

Nahum Baldwin	Oliver Carlton	Robert Read
Moses Nichols	Hezekiah Lovejoy	Samuel Holt
Wm. Bradford	Enos Bradford	Archelaus Town
Josiah Crosby	Thomas Towne	Daniel Abbot
Peter Woodbury	Daniel Stephens	Joseph Gould
Thomas Burns	James Seeton	Jonathan Sawyer
Robert Means	Benj <sup>m</sup> Hopkins	Samson Crosby
Nathan Jones	Jacob Curtice	Nathaniel Barret
Henry Codman,	Jacob Curtice, jun.	Nathan Hutchinson jun
Peter Robertson	Jon <sup>a</sup> Taylor	John Grimes
Jonathan Smith	Josiah Dodge	Israel Town, jun.
John Burns	Wm. Codman	William Taylor
Stephen Warner	Silas Cummings	Jonathan Lund
Sam <sup>l</sup> Harris	Ananias McAllister	Isaac Wright
David Hildreth	Joseph Steel jun	Benj <sup>a</sup> Kendrick
Eph <sup>m</sup> Booker	Timothy Nichols	Josiah Kidder
Henry Kimball	Benjamin Hopkins	William Peacock
William Low	Eben <sup>r</sup> Hopkins	Joseph Peirce
Sam <sup>l</sup> Stanley	John Burns	David Dunkle
Jonathan Grimes	Benj <sup>a</sup> Hutchinson	John Kendall, junor.
Amos Flint	John Seetoun	Isaac How
William Read	Wm. Wilkins	Jacob Blodgett
Joseph Steel	Francis Lovejoy	Adam Patterson
Wm. Odell	John Cochran	Josiah Sawyer
Joseph Boutel	James Gillmore	George Burns
Timothy Smith	Josiah Sawyer Jn	John Burns, juner
Tho <sup>s</sup> Durell ?	Jon <sup>a</sup> Twiss	Joseph Rollings
Ephraim Hildreth	Richard Hughes	Isaac Holt
Nathan Kendall	John Hartshorn	Joseph Cugin
Benjamin Day	Nathan Jones, jun	John Roby
Reuben Bouttel	Amos Flint, jun	John Twiss
Eben <sup>r</sup> Rea	Samuel Steward	James McKeen
Kendal Boutwell	Nathan Hutchinson	Tho <sup>s</sup> Wakefield, Jun <sup>r</sup> .

and to make report what is to be done thereon, and that Col<sup>o</sup> Nichols, Capt. Blood and Capt. Martin be the Com<sup>tee</sup> of this house for that purpose. [Concurred—Mr. Bartlett, Mr. Ashley, & Mr. Gilman added.]

[P. 224.] Monday, Nov. 10<sup>th</sup>, 1777. P. M.

The chief of this afternoon was spent in qualifying the members of the house agreeable to an act passed in this State on Saturday last.

*Form of Oath and Declaration.*

[State Pap. Vol. VIII. p. 261.]

I, A. B. do solemnly swear, that I do renounce, refuse and abjure, any Allegiance, or Obedience to George the III, King of Great Britain; and that I will to the utmost of my Power, support, maintain and defend the Independance of all the United States of America, as the same was set forth by the Continental Congress, in their Declaration of the 4<sup>th</sup> of July, 1776. And, I do promise, that I will bear Faith and true Allegiance to the State of New Hampshire during my residence therein; and will disclose and make known to some Magistrate acting under said State, all Treasons and Conspiracies, which I shall know to be against the United States, or any one of them, as Independent of the Crown of Great Britain. And these things I do Swear according to the plain and common sense of the words, without any equivocation, or secret reservation whatsoever upon the true Faith of a Christian. So help me GOD.

James Knowles  
Joseph Sias  
Jon<sup>s</sup> Moulton  
John Smith  
Paul Wentworth  
Joseph Badger  
John Wentworth, jun.  
Ebenezer Smith  
Joshua Foss.

State of New Hampshire.

Exeter Nov<sup>r</sup> 10<sup>th</sup>, 1777.

James Knowles, Esq. within named, took & subscribed the within mentioned Oath and Declaration,  
Before me  
NOAH EMERY, Commissioner.

And Nov. 11<sup>th</sup>, 1777, Joseph Sias, member for Lee took & subscribed the within Oath & declaration before me, N. Emery, Commissioner; the same day Jonathan Moulton, Esq<sup>r</sup>. member for Sandwich, Tamworth & Moultonborough, took and subscribed the within oath and Declaration—Before me Noah Emery, Commissioner.

Nov<sup>r</sup>. 13<sup>th</sup>, Joseph Badger, Esq<sup>r</sup>. member for Gilmantown & Barnstead, and John Wentworth, jun. Esq, member for Dover took & sub-



scribed the within oath & Declaration, before me, Noah Emery, Commiss<sup>r</sup>.

Nov<sup>r</sup>. 18<sup>th</sup>, Ebenezer Smith Esq, and on the 19<sup>th</sup> Capt. Joshua Foss, took the within Oath & Declaration & subscribed the same, Coram N. Emery, Com<sup>r</sup>.

[On another Paper Nov. 10, 1777, are the following names.]

Simeon Ladd

Thomas Folsom

Benj<sup>a</sup> Boardman

Tho<sup>r</sup>. Parsons

Benj<sup>a</sup> Hickcox

Tuesday, Nov<sup>r</sup>. 11<sup>th</sup> 1777.

[P. 224.] Voted and Resolved, That all Grand Jurors and Petit Jurors within this State shall, before they proceed to Indict, Present, or try any person or cause in any Court within this State, take and subscribe the oath appointed by a late Law of this State to be taken by all officers civil and military within this State.

The Council and house being joined in a Committee of the whole to consult upon the ways and means of making the proportion & raising, levying & collecting the State tax for the current year 1777 ;—The Hon<sup>bl</sup> Josiah Bartlett Esq<sup>r</sup> in the chair, proceeded to confer & consult upon the matters to them referr'd, and after some time spent thereon came to the following Resolution and Report:

That the same rate for Taxation be used now as was by the late Law of this State excepting wild Lands which shall be taxed at the rate of half one per cent. (1)

Then the Com<sup>tee</sup> dissolved and the Speaker resumed the Chair; and voted, That the Com<sup>tee</sup> fill up the columns accordingly.

Capt. Salmon Stone's pay roll allowed, £438:11:8.

Petition of Ichabod Fisher—referred to a Committee.

Petition of Andrew Aiken referred to a Committee.

[P. 225.] Capt. Titus Salter's pay roll allowed, £138:10:7.

An Act to enable the Congregational & Presbyterian societies in New Market to settle & maintain the Gospel ministry.

Committee appointed to purchase beef and pork.

Capt. Davis Howlett's pay roll for fifty men, allowed £412:6:2.

Capt. Howlett's pay roll for 80 men allowed £291:7:10.

Capt. Howlett's acc<sup>t</sup>. all'd, £5:18:4,—he to give bonds, for his paying the officers & soldiers.

Wednesday, Nov<sup>r</sup>. 12<sup>th</sup>, 1777.

Voted, That Thursday the fourth day of December next be observed and kept as a day of Publick Thanksgiving



ample a Manner as though Said Deeds had never been made or executed any Law usage or Custom to the Contrary in any-wise notwithstanding.

Provided Nevertheless that if Wentworth Cheswell Benjamin Varnum & David Chapman or either of them shall within one Year from the Time of passing this Act exhibit on Account to the Justices of the Inferior-Court of common pleas for the County of Rockingham of the Sums which they or either of them in Reality have advanced or disbursed toward the purchase of Said Lands, which said Justices are hereby empowered to adjust after hearing the parties thereon—The Said Lands shall be held for Satisfaction of the Ballance or Ballances so found to be due to them or either of them any thing in this Act to the contrary thereof Notwithstanding—

[CHAPTER 46.]

*State of  
New Hampshire.* }

AN ACT FOR A GRANT OF LAND EQUAL TO EIGHT MILES SQUARE  
IN THE NORTHERLY AND UNLOCATED TERRITORY WITHIN THIS  
STATE TO THE TRUSTEES OF DARTMOUTH COLLEGE—

[Passed February 5, 1789. Original Acts, vol. II, p. 74; recorded Acts, vol. 5, p. 524. Laws, 1780 ed., p. 512.]

Whereas the advancement of useful knowledge is of importance to the prosperity of this State; and as the Establishment of Dartmouth College has been, and probably will in future time be essentially conducive to that purpose; and whereas this Legislature, agreeably to the spirit of the Constitution; and also their own reflections, conceive that it will be of real advantage to mankind in general, and this State in particular to give their countenance and friendly aid to that useful Seminary.

Therefore be it enacted by the Senate and House of Representatives in General Court convened, that a tract of Land equal in quantity to Eight Miles Square be granted to the Trustees of Dartmouth College, their Successors, and Assigns for the use and benefit of said College forever: And it shall be the duty of the Surveyor General (who shall be hereafter by us appointed) to locate and survey so soon as may be the said tract of Land in one parcel or body in the northerly part of this State, bounded on Connecticut River and Stuart Town, and as nearly in a square of Eight Miles as may be, to the approbation of the said Trustees; provided the said location shall not interfere with any tract of land which has been heretofore granted and chartered by the government of New Hampshire: And the President of the State for the time being is hereby empowered

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and directed to give with advice of Council a Charter of said Land under the seal of this State, when located and surveyed as aforesaid, to the Trustees of Dartmouth College, their Successors and Assigns forever; the same to be always free and exempt from all public taxes.

And be it further enacted, that the President and Council of the State for the time being shall be and they are hereby incorporated with the Trustees of said College So far, as that they shall have a right to act with them as one Board in regard to the expenditures and applications of this grant, and of all others, which have been, or may hereafter be made by New-Hampshire—

[CHAPTER 47.]

*State of  
New Hampshire.* }

AN ACT FOR CARRYING INTO EFFECT AN AGREEMENT BETWEEN  
ENOCH JOHNSON OF THE ONE PART & SAMUEL WHITE ESQR  
& HIS SON SAMUEL WHITE JUNR ON THE OTHER PART—

[Passed February 5, 1789. Original Acts, vol. II, p. 75; recorded Acts, vol. 5, p. 526.]

Whereas Enoch Johnson of Henniker in the County of Hillsborough has petitioned the General Court sitting forth that the said Johnson in the year 1764 hired on loan £465 Hampshire Old tenor equal to dollars at about £6. 15/. each from Samuel White of Haverhill in the Commonwealth of Massachusetts Esq<sup>r</sup> to secure the repayment of which the said Johnson gave the said White a promissory note signed by himself and Ebenezer Noyes & Samuel Webster whom the said Johnson procured as bondsmen to s<sup>d</sup> White—That sometime about the year 1766 the said Johnson delivered to the said White a pair of steers valued at twenty silver dollars in part pay for said Note—That sometime about the year 1768 the said Johnson borrowed from said White six dollars for which the said Johnson gave an obligation to pay said White six pounds of good wool yearly for the interest of said six dollars till paid and to deliver s<sup>d</sup> White six good sheep for the said six dollars which annual interest was duly paid and delivered for a number of years and untill the principal was discharged in manner afores<sup>d</sup>—That the said White frequently demanded from the s<sup>d</sup> Johnson large sums for interest & to delay the payment of said note at different times up to the year 1777 which the said Johnson had not in his power (without great difficulty) to pay and discharge in money was therefor under the destructive necessity of giving his obligations from time to time for cows and calves to be paid &

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are returnable And the said Sheriff shall cause all such precepts as are delivered to him seasonably, to be delivered to the town Clerks to whom they are directed at least twenty five days before the day of the sitting of the Court to which they are returnable And if either of the said Clerks or Sheriffs shall make default herein they shall severally be amerced by the respective Courts where such default shall be made for each and every offence or neglect a sum not exceeding three pounds.

And the respective town Clerks shall be paid by the several towns to which they belong a reasonable sum for the performance of the duties enjoined on them by this Act.—

## [CHAPTER 41.]

*State of  
New Hampshire.* }

## AN ACT FOR REGULATING TOWNS AND THE CHOICE OF TOWN OFFICERS—

[Passed February 8, 1791. Original Acts, vol. 12, p. 64; recorded Acts, vol. 6, p. 192. Laws, 1792 ed., p. 167. One section of this act is repealed by the act of July, 1819. See additional act of December 16, 1796. See Robinson, "History of Taxation in New Hampshire," p. 198.]

Be it enacted by the Senate and House of Representatives in General Court convened that the lines between Towns shall be perambulated and the marks and bounds renewed within two years from the passing of this Act and once every seven years forever after by the Selectmen of each town or by such person or persons as they shall in writing appoint for that purpose, and their proceedings shall be recorded in the respective Town books, And the Selectmen of that Town which hath been longest organized or incorporated shall give notice in writing unto the Selectmen of the Towns adjoining which have not been so long organized or incorporated of the time and place of meeting for such perambulation ten days before hand

And where two towns were incorporated on the same day that which is highest in the valuation or proportion of public taxes shall be considered as the senior town—And if the Selectmen whose duty it is to give such notice shall neglect to notify in the manner and season by this Act required they shall forfeit the sum of five pounds to be recovered by the Selectmen of any junior Town adjoining who are entitled to such notice by action in the Court of Common Pleas one half to the use of the Selectmen who sue for the same, the other half to the use of the Town where the Selectmen suing for the same belong to be commenced in one year after such forfeiture shall have accrued and not afterwards—

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peace, welfare, interest and good order of the inhabitants of such town and to annex penalties to such Laws not exceeding twenty shillings for one offence and to enure to such use as they shall therein direct—Provided such Laws be not repugnant to the Constitution and Laws of this State and provided also that such By-Laws be approved by the Court of General Sessions of the peace in the same County—And the penalty for any breach of such By-Laws shall be recovered before any Justice not interested therein—

And be it further enacted that the Inhabitants of each town in this State qualified to vote as aforesaid at any meeting duly and legally warned and holden in such town may agreeably to the Constitution grant and vote such sum or sums of money as they shall judge necessary for the settlement maintenance and support of the ministry, schools, meeting houses, school houses the maintenance of the poor, for laying out and repairing Highways for building and repairing bridges and for all the necessary charges arising within the said Town to be assessed on the polls and estates in the same town as the Law directs—

And be it further enacted that when there shall be occasion for a town meeting the Selectmen shall make out a Warrant under their hands and seal directed to some Constable in the same Town requiring him to notify the inhabitants of such Town qualified by law to vote in Town affairs to meet at a place in said Town and at a certain Hour therein mentioned, and the said Selectmen shall in such Warrant insert the intent and design of such Meeting and the subject matter of all business matters and things to be considered and acted upon at said meeting—And nothing done at said meeting holden upon or by virtue of said Warrant shall be considered as good and valid in Law unless the subject matter thereof shall have been inserted as aforesaid—

And the Constable shall post up an attested Copy of such Warrant at the meeting house or some public place in said Town fifteen days before the day of holding such meeting or give personal Notice the like number of days before such meeting (unless in cases where other and different notice is by Law prescribed and directed) or otherwise notify and summon the Inhabitants in such way and manner as the Inhabitants shall at any legal meeting agree upon—And the Constable shall return such Warrant at the place and at the hour for holding such meeting with his doings therein to the Town Clerk or in his absence to any of the Selectmen to be acted upon—

And in case ten or more of the freeholders in any town shall signify their desire in writing to the Selectmen to have any matter or thing inserted in a Warrant for calling a meeting the Selectmen are hereby required to insert the same in the next Warrant they shall issue for a meeting, or call a meeting for the

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THE  
CONSTITUTION

OF

NEW-HAMPSHIRE,

APPROVED BY THE PEOPLE, AND ESTABLISHED BY CONVENTION,  
FIFTH OF SEPTEMBER, 1792.\*

PART FIRST.

BILL OF RIGHTS.

ARTICLE I. **A**LL men are born equally free and independent ; therefore all government of right originates from the people, is founded in consent, and instituted for the general good.

II. All men have certain natural, essential and inherent rights—among which are the enjoying and defending life and liberty, acquiring, possessing and protecting property ; and in a word, of seeking and obtaining happiness.

III. When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others ; and without such an equivalent, the surrender is void.

IV. Among the natural rights, some are in their very nature unalienable ; because no equivalent can be given or received for them : of this kind are the *rights of conscience*.

V. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason ; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion : provided he doth not disturb the publick peace, or disturb others in their religious worship.

\*The former Constitution having been approved by the people, was established by Convention 31st October, 1793, and took effect on the first Wednesday of June, 1794.

VI. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, by the institution of the publick worship of the Deity, and of publick instruction in morality and religion; therefore, to promote these important purposes, the people of this state have a right to empower, and do hereby fully empower the legislature, to authorise, from time to time, the several towns, parishes, bodies corporate or religious societies, within this state, to make adequate provision, at their own expense, for the support and maintenance of publick Protestant teachers of piety, religion and morality.

*Provided notwithstanding,* That the several towns, parishes, bodies corporate, or religious societies, shall at all times have the exclusive right of electing their own publick teachers, and of contracting with them for their support and maintenance. And no person of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.

And every denomination of christians, demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain, and be in the same state as if this constitution had not been made.

VII. The people of this state have the sole and exclusive right of governing themselves as a free, sovereign and independent state; and do, and forever hereafter shall exercise and enjoy every power, jurisdiction and right, pertaining thereto, which is not, or may not hereafter be by them expressly delegated to the United States of America in congress assembled.

VIII. All power residing originally in, and being derived from the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them.

IX. No office or place whatsoever in government, shall be hereditary—the abilities and integrity requisite in all, not being transmissible to posterity or relations.

X. Government being instituted for the common benefit, protection and security of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and



publick liberty manifestly endangered, and all other means of redress are ineffectual, the people may and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

XI. All elections ought to be free, and every inhabitant of the state, having the proper qualifications, has equal right to elect and be elected into office.

XII. Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary, or an equivalent. But no part of a man's property shall be taken from him, or applied to publick uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controlable by any other laws than those to which they, or their representative body, have given their consent.

XIII. No person, who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto, provided he will pay an equivalent.

XIV. Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely and without any denial; promptly and without delay, conformably to the laws.

XV. No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally described to him; or be compelled to accuse or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favourable to himself; to meet the witnesses against him, face to face; and to be fully heard in his defence, by himself and counsel. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

XVI. No subject shall be liable to be tried, after an acquittal, for the same crime or offence. Nor shall the legislature make any law that shall subject any person to a capital punishment, (excepting for the government of the army and navy, and the militia in actual service) without trial by jury.

XVII. In criminal prosecutions, the trial of facts, in the vicinity where they happen, is so essential to the security of the life, liberty,

## CONSTITUTION OF

and estate of the citizen, that no crime or offence ought to be tried in any other county than that in which it is committed; except in cases of general insurrection in any particular county, when it shall appear to the judges of the superior court, that an impartial trial cannot be had in the county where the offence may be committed, and upon their report, the legislature shall think proper to direct the trial in the nearest county in which an impartial trial can be obtained.

XVIII. All penalties ought to be proportioned to the nature of the offence. No wise legislature will affix the same punishment to the crimes of theft, forgery and the like, which they do to those of murder and treason; where the same undistinguishing severity is exerted against all offences, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offences: For the same reason a multitude of sanguinary laws is both impolitic and unjust. The true design of all punishments being to reform, not to exterminate mankind.

XIX. Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial, in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued, but in cases, and with the formalities, prescribed by law.

XX. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has been heretofore otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless in cases arising on the high seas and such as relate to mariners' wages, the legislature shall think it necessary hereafter to alter it.

XXI. In order to reap the fullest advantage of the inestimable privilege of the trial by jury, great care ought to be taken, that none but qualified persons should be appointed to serve; and such ought to be\* fully compensated for their travel, time and attendance.

XXII. THE LIBERTY OF THE PRESS is essential to the security of freedom in a state: it ought therefore to be inviolably preserved.

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XXIII. Retrospective laws are highly injurious, oppressive and unjust. No such laws therefore should be made, either for the decision of civil causes, or the punishment of offences.

XXIV. A well regulated militia is the proper, natural and sure defence of a state.

XXV. Standing armies are dangerous to liberty, and ought not to be raised, or kept up without the consent of the legislature.

XXVI. In all cases and at all times, the military ought to be under strict subordination to, and governed by the civil power.

XXVII. No soldier in time of peace, shall be quartered in any house, without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

XXVIII. No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body.

XXIX. The power of suspending the laws, or the execution of them, ought never to be exercised but by the legislature, or by authority derived therefrom, to be exercised in such particular cases only as the legislature shall expressly provide for.

XXX. The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any other court or place whatsoever.

XXXI. The legislature shall assemble for the redress of publick grievances, and for making such laws as the publick good may require.

XXXII. The people have a right in an orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them, and of the grievances they suffer.

XXXIII. No magistrate, or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXXIV. No person can in any case be subjected to law-martial, or to any pains or penalties by virtue of that law, except those em-

ployed in the army or navy, and except the militia in actual service, but by authority of the legislature.

XXXV. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well: subject however to such limitations on account of age, as may be provided by the constitution of the state: and that they should have honorable salaries ascertained and established by standing laws.

XXXVI. Economy being a most essential virtue in all states, especially in a young one; no pension shall be granted, but in consideration of actual services; and such pensions ought to be granted with great caution by the legislature, and never for more than one year at a time.

XXXVII. In the government of this state, the three essential powers thereof, to wit, the legislative, executive and judicial, ought to be kept as separate from, and independent of each other, as the nature of a free government will admit, or as is consistent with that chain of connexion that binds the whole fabric of the constitution in one indissoluble bond of union and amity.

XXXVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought therefore to have a particular regard to all those principles in the choice of their officers and representatives: and they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government.

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## PART SECOND.

### FORM OF GOVERNMENT.

**T**HE people inhabiting the territory formerly called the Province of New-Hampshire, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign and independent body-politic, or state, by the name of the *State of New-Hampshire*.

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## NEW-HAMPSHIRE.

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### GENERAL COURT.

The supreme legislative power, within this state, shall be vested in the senate and house of representatives, each of which shall have a negative on the other.

The senate and house shall assemble every year on the first Wednesday of June, and at such other times as they may judge necessary; and shall dissolve, and be dissolved seven days next preceding the said first Wednesday of June; and shall be stiled *the General Court of New-Hampshire*.

The general court shall forever have full power and authority to erect and constitute judicatories, and courts of record, or other courts, to be holden in the name of the state, for the hearing, trying and determining all manner of crimes, offences, pleas, processes, plaints, actions, causes, matters and things whatsoever, arising or happening within this state, or between or concerning persons inhabiting or residing, or brought within the same; whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

And further, full power and authority are hereby given and granted to the said general court, from time to time to make, ordain and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within this state; such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this state, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and also to impose fines, mulcts, imprisonments and other punishments; and to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the said state; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the governor of this state for the time

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being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of this state, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be in force within the same.

And while the publick charges of government, or any part thereof, shall be assessed on polls and estates in the manner that has heretofore been practised; in order that such assessments may be made with equality, there shall be a valuation of the estates within the state taken anew once in every five years at least, and as much oftener as the general court shall order.

No member of the general court shall take fees, be of counsel, or act as advocate, in any cause before either branch of the legislature; and upon due proof thereof, such member shall forfeit his seat in the legislature.

The doors of the galleries, of each house of the legislature, shall be kept open to all persons who behave decently, except when the welfare of the state, in the opinion of either branch, shall require secrecy.

#### HOUSE OF REPRESENTATIVES.

There shall be, in the legislature of this state, a representation of the people, annually elected and founded upon principles of equality: and in order that such representation may be as equal as circumstances will admit, every town, parish, or place entitled to town privileges, having one hundred and fifty rateable male polls, of twenty-one years of age and upwards, may elect one representative; if four hundred and fifty rateable polls, may elect two representatives; and so proceeding in that proportion, making three hundred such rateable polls the mean increasing number, for every additional representative.

Such towns, parishes, or places, as have less than one hundred and fifty rateable polls, shall be classed by the general court for the purpose of choosing a representative, and seasonably notified thereof. And in every class, formed for the abovementioned purpose, the first annual meeting shall be held in the town, parish, or place, wherein most of the rateable polls reside; and afterwards in that which has the next highest number; and so on annually by rotation, through the several towns, parishes, or places, forming the district.

Whenever any town, parish, or place, entitled to town privileges as aforesaid, shall not have one hundred and fifty rateable polls, and be so situated as to render the classing thereof with any other town, parish, or place, very inconvenient, the general court may, upon application of a majority of the voters in such town, parish, or place,

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The members of the house of representatives shall be chosen annually in the month of March, and shall be the second branch of the legislature.

All persons qualified to vote in the election of senators, shall be entitled to vote within the district where they dwell, in the choice of representatives. Every member of the house of representatives shall be chosen by ballot; and for two years at least, next preceding his election, shall have been an inhabitant of this state; shall have an estate within the district which he may be chosen to represent, of the value of one hundred pounds, one half of which to be a freehold, whereof he is seized in his own right; shall be at the time of his election an inhabitant of the town, parish or place he may be chosen to represent, shall be of the protestant religion, and shall cease to represent such town, parish or place, immediately on his ceasing to be qualified as aforesaid.

The members of both houses of the legislature shall be compensated for their services out of the treasury of the state, by a law made for that purpose; such members attending seasonably, and not departing without license. All intermediate vacancies in the house of representatives, may be filled up from time to time, in the same manner as annual elections are made.

The house of representatives shall be the grand inquest of the state; and all impeachments made by them, shall be heard and tried by the senate.

All money bills shall originate in the house of representatives; but the senate may propose, or concur with amendments, as on other bills.

The house of representatives shall have power to adjourn themselves, but no longer than two days at a time.

A majority of the members of the house of representatives shall be a quorum for doing business; but when less than two thirds of the representatives elected shall be present, the assent of two thirds of those members shall be necessary to render their acts and proceedings valid.

No member of the house of representatives or senate, shall be arrested or held to bail on mean process, during his going to, returning from, or attendance upon the court.

The house of representatives shall choose their own speaker, appoint their own officers, and settle the rules of proceedings in their own house; and shall be judge of the returns, elections and qualifications of its members, as pointed out in this constitution. They shall have authority to punish by imprisonment, every person who shall be guilty of disrespect to the house in its presence, by any disorderly and contemptuous behaviour, or by threatening or ill treating any of its members; or by obstructing its deliberations; every person guilty of a breach of its privileges, in making arrest for debt, or by assaulting any member during his attendance at any session; in assaulting or disturbing any one of its officers in the execution of any order or procedure of the house; in assaulting any witness or other person, ordered to attend, by, and during his attendance upon\* the house; or in rescuing any person arrested by order of the house, knowing them to be such.—The senate, governor and council, shall have the same powers in like cases: provided, that no imprisonment by either, for any offence, exceed ten days.

The journals of the proceedings, and all publick acts of both houses of the legislature, shall be printed and published immediately after every adjournment or prorogation; and upon motion made by any one member, the yeas and nays upon any question shall be entered on the journal: And any member of the senate or house of representatives, shall have a right, on motion made at the time for that purpose, to have his protest or dissent, with the reasons, against any vote, resolve, or bill passed, entered on the journal.

#### SENATE.

The senate shall consist of twelve members, who shall hold their office for one year from the first Wednesday of June next ensuing their election.

And that the state may be equally represented in the senate, the legislature shall, from time to time, divide the state into twelve districts, as nearly equal as may be without dividing towns and unincorporated places; and in making this division, they shall govern themselves by the proportion of direct taxes paid by the said districts, and timely make known to the inhabitants of the state the limits of each district.

The freeholders and other inhabitants of each district, qualified as in this constitution is provided, shall annually give in their votes for a senator, at some meeting holden in the month of March.

The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz. every male inhabitant of each town, and parish with town privileges, and places unincorporated, in this state, of twenty-one years of age and up-

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wards, excepting paupers, and persons excused from paying taxes at their own request, shall have a right at the annual or other meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March, to vote in the town or parish wherein he dwells, for the senator in the district whereof he is a member.

*Provided nevertheless,* That no person shall be capable of being elected a senator, who is not of the *protestant religion*, and seized of a freehold estate in his own right, of the value of two hundred pounds, lying within this state, who is not of the age of thirty years, and who shall not have been an inhabitant of this state for seven years immediately preceding his election, and at the time thereof he shall be an inhabitant of the district for which he shall be chosen.

And every person, qualified as the constitution provides, shall be considered an inhabitant for the purpose of electing and being elected into any office or place within this state, in the town, parish and plantation, where he dwelleth and hath his home.

And the inhabitants of plantations and places unincorporated, qualified as this constitution provides, who are or shall be required to assess taxes upon themselves towards the support of government, or shall be taxed therefor, shall have the same privilege of voting for senators, in the plantations and places wherein they reside, as the inhabitants of the respective towns and parishes aforesaid have. And the meetings of such plantations and places for that purpose shall be holden annually in the month of March, at such places respectively therein as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the select men and town clerks have in their several towns by this constitution.

The meetings for the choice of governor, council, and senators, shall be warned by warrant from the selectmen, and governed by a moderator, who shall in the presence of the selectmen (whose duty it shall be to attend) in open meeting, receive the votes of all the inhabitants of such towns and parishes present, and qualified to vote for senators; and shall, in said meetings, in presence of the said selectmen, and of the town clerk in said meetings, sort and count the said votes, and make a public declaration thereof, with the name of every person voted for, and the number of votes for each person; and the town clerk shall make a fair record of the same at large, in the town book, and shall make out a fair attested copy thereof, to be by him sealed up, and directed to the secretary of the state, with a superscription expressing the purport thereof: And the said town clerk shall cause such attested copy to be delivered to the sheriff of the county in which such town or parish shall lie, thirty days at least before the first Wednesday of June, or to the secretary of the state at

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least twenty days before the said first Wednesday of June : and the sheriff of each county, or his deputy, shall deliver all such certificates, by him received, into the secretary's office, at least twenty days before the first Wednesday of June.

And that there may be a due meeting of senators on the first Wednesday of June annually, the governor, and a majority of the council for the time being, shall as soon as may be, examine the returned copies of such records, and fourteen days before the first Wednesday of June, he shall issue his summons to such persons as appear to be chosen senators, by a majority of votes, to attend and take their seats on that day.

*Provided nevertheless,* That for the first year the said returned copies shall be examined by the president, and a majority of the council then in office ; and the said president shall in like manner notify the persons elected, to attend and take their seats accordingly.

And in case there shall not appear to be a senator elected by a majority of votes, for any district, the deficiency shall be supplied in the following manner, viz. the members of the house of representatives, and such senators as shall be declared elected, shall take the names of the two persons having the highest number of votes in the district, and out of them shall elect, by joint ballot, the senator wanted for such district ; and in this manner all such vacancies shall be filled up in every district of the state, and in like manner all vacancies in the senate, arising by death, removal out of the state, or otherwise, shall be supplied as soon as may be after such vacancies happen.

The senate shall be final judges of the elections, returns and qualifications of their own members, as pointed out in this constitution.

The senate shall have power to adjourn themselves, provided such adjournment do not exceed two days at a time.

*Provided nevertheless,* That whenever they shall sit on the trial of any impeachment, they may adjourn to such time and place as they may think proper, although the legislature be not assembled on such day, or at such place.

The senate shall appoint their president and other officers, and determine their own rules of proceedings : and not less than seven members of the senate shall make a quorum for doing business ; and when less than eight senators shall be present, the assent of five at least, shall be necessary to render their acts and proceedings valid.

The senate shall be a court, with full power and authority to hear, try and determine, all impeachments made by the house of repre-

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representatives against any officer or officers of the state, for bribery, corruption, mal-practice or mal-administration, in office; with full power to issue summons, or compulsory process, for convening witnesses before them: but previous to the trial of any such impeachment, the members of the senate shall respectively be sworn truly and impartially to try and determine the charge in question, according to evidence. And every officer, impeached for bribery, corruption, mal-practice or mal-administration in office, shall be served with an attested copy of the impeachment, and order of senate thereon, with such citation as the senate may direct, setting forth the time and place of their sitting to try the impeachment; which service shall be made by the sheriff, or such other sworn officer as the senate may appoint, at least fourteen days previous to the time of trial; and such citation being duly served and returned, the senate may proceed in the hearing of the impeachment, giving the person impeached (if he shall appear) full liberty of producing witnesses and proofs, and of making his defence, by himself and counsel, and may also, upon his refusing or neglecting to appear, hear the proofs in support of the impeachment, and render judgment thereon, his non-appearance notwithstanding; and such judgments shall have the same force and effect as if the person impeached had appeared and pleaded in the trial. Their judgment however, shall not extend further than removal from office, disqualification to hold or enjoy any place of honour, trust, or profit, under this state; but the party so convicted, shall nevertheless be liable to indictment, trial, judgment and punishment, according to the laws of the land.

Whenever the governor shall be impeached, the chief justice of the supreme judicial court shall, during the trial, preside in the senate, but have no vote therein.

## EXECUTIVE POWER.

### GOVERNOR.

There shall be a supreme executive magistrate, who shall be stiled the Governor of the State of New-Hampshire, and whose title shall be *His Excellency*.

The governor shall be chosen annually in the month of March; and the votes for governor shall be received, sorted, counted, certified, and returned, in the same manner as the votes for senators; and the secretary shall lay the same before the senate and house of representatives, on the first Wednesday of June, to be by them examined, and in case of an election by a majority of votes through the state, the choice shall be by them declared and published.

And the qualifications of electors of the governor shall be the same as those for senators; and if no person shall have a majority of votes, the senate and house of representatives shall by joint ballot elect one

of the two persons having the highest number of votes, who shall be declared governor.

And no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this state for seven years next preceding, and unless he shall be of the age of thirty years, and unless he shall at the same time have an estate of the value of five hundred pounds, one half of which shall consist of a freehold in his own right within this state, and unless he shall be of the protestant religion.

In cases of disagreement between the two houses with regard to the time or place of adjournment or prorogation, the governor, with advice of council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days at any one time, as he may determine the publick good may require, and he shall dissolve the same seven days before the said first Wednesday of June.

And in case of any infectious distemper prevailing in the place where the said court at any time is to convene, or any other cause, whereby dangers may arise to the health or lives of the members from their attendance, the governor may direct the session to be holden at some other the most convenient place within the state.

Every bill which shall have passed both houses of the general court, shall, before it become a law, be presented to the governor; if he approve, he shall sign it, but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it; if after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with such objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons, voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor, within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

Every resolve shall be presented to the governor, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

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All judicial officers, the attorney general, solicitors, all sheriffs, coroners, registers of probate, and all officers of the navy, and general and field officers of the militia, shall be nominated and appointed by the governor and council; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the council agree thereto. The governor and council shall have a negative on each other, both in the nominations and appointments. Every nomination and appointment shall be signed by the governor and council, and every negative shall be also signed by the governor or council, who made the same.

The captains and subalterns in the respective regiments, shall be nominated and recommended by the field officers to the governor, who is to issue their commissions immediately on receipt of such recommendation.

Whenever the chair of the governor shall become vacant, by reason of his death, absence from the state, or otherwise, the president of the senate shall, during such vacancy, have and exercise all the powers and authorities which, by this constitution the governor is vested with, when personally present; but when the president of the senate shall exercise the office of governor, he shall not hold his office in the senate.

The governor, with advise of council, shall have full power and authority in the recess of the general court, to prorogue the same from time to time, not exceeding ninety days in any one recess of said court; and during the sessions of said court, to adjourn or prorogue it to any time the two houses may desire, and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the state should require the same.

The governor of this state for the time being, shall be commander in chief of the army and navy, and all the military forces of the state, by sea and land; and shall have full power by himself, or by any chief commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and for the special defence and safety of this state, to assemble in martial array, and put in warlike posture the inhabitants thereof, and to lead and conduct them, and with them to encounter, repulse, repel, resist and pursue by force of arms, as well by sea as by land, within and without the limits of this state; and also to kill, slay, destroy if necessary, and conquer by all fitting ways, enterprise and means, all and every such person and persons as shall at any time hereafter, in a hostile manner, attempt or enterprize the destruction, invasion, detriment or annoyance of this state; and to use and exercise over the army and navy, and over the militia in actual service, the law martial in time of war, invasion, and also in rebellion, declared by

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the legislature to exist as occasion shall necessarily require : and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering or annoying this state ; and in fine, the governor hereby is entrusted with all other powers incident to the office of captain general and commander in chief and admiral, to be exercised agreeably to the rules and regulations of the constitution and the laws of the land : provided, that the governor shall not at any time hereafter, by virtue of any power by this constitution granted or hereafter to be granted to him by the legislature, transport any of the inhabitants of this state, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court, nor grant commissions for exercising the law martial in any case, without the advice and consent of the council.

The power of pardoning offences, except such as persons may be convicted of before the senate by impeachment of the house, shall be in the governor, by and with the advice of the\* council : but no charter of pardon granted by the governor with advice of council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

No officer duly commissioned to command in the militia shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court-martial, pursuant to the laws of the state for the time being.

The commanding officers of the regiments shall appoint their adjutants and quarter-masters ; the brigadiers, their brigade-majors ; the major-generals, their aids ; the captains and subalterns, their non-commissioned officers.

The division of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper division of the militia of this state, until the same shall be altered by some future law.

No monies shall be issued out of the treasury of this state and disposed of (except such sums as may be appropriated for the redemption of bills of credit, or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, by and with the advice and consent of the council, for the necessary support and defence of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

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All publick boards, the commissary-general, all superintending officers of publick magazines and stores belonging to this state, and all commanding officers of forts and garrisons within the same, shall once in every three months, officially and without requisition, and at other times when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon, with their appendages, and all small arms with their accoutrements, and of all other publick property under their care respectively ; distinguishing the quantity and kind of each, as particularly as may be ; together with the condition of such forts and garrisons : and the commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbour or harbours adjacent.

The governor and council shall be compensated for their services, from time to time, by such grants as the general court shall think reasonable.

Permanent and honourable salaries shall be established by law, for the justices of the superior court.

#### COUNCIL.

There shall be annually elected by ballot five counsellors, for advising the governor in the executive part of government. The freeholders and other inhabitants in each county, qualified to vote for senators, shall some time in the month of March, give in their votes for one counsellor ; which votes shall be received, sorted, counted, certified and returned to the secretary's office, in the same manner as the votes for senators, to be by the secretary laid before the senate and house of representatives on the first Wednesday of June.

And the person having a majority of votes in any county, shall be considered as duly elected a counsellor : but if no person shall have a majority of votes in any county, the senate and house of representatives shall take the names of the two persons who have the highest number of votes in each county, and not elected, and out of those two, shall elect by joint ballot, the counsellor wanted for such county : and the qualifications for counsellors shall be the same as for senators.

If any person thus chosen a counsellor, shall be elected governor or member of either branch of the legislature, and shall accept the trust ; or if any person elected a counsellor, shall refuse to accept the office ; or in case of the death, resignation, or removal of any counsellor out of the state ; the governor may issue a precept for the election of a new counsellor in that county where such vacancy shall happen ; and the choice shall be in the same manner as before directed : and the governor shall have full power and authority to convene the council, from time to time, at his discretion ; and with

them, or the majority of them, may and shall from time to time hold a council for ordering and directing the affairs of the state according to the laws of the land.

The members of the council may be impeached by the house and tried by the senate, for bribery, corruption, mal-practice, or mal-administration.

The resolutions and advice of the council shall be recorded by the secretary in a register, and signed by all the members present agreeing thereto ; and this record may be called for at any time by either house of the legislature ; and any member of the council may enter his opinion contrary to the resolutions of the majority, with the reasons for such opinion.

The legislature may, if the public good shall hereafter require it, divide the state into five districts, as nearly equal as may be, governing themselves by the number of rateable polls, and proportion of publick taxes ; each district to elect a counsellor : and in case of such division, the manner of the choice shall be conformable to the present mode of election in counties.

And whereas the elections appointed to be made by this constitution on the first Wednesday of June annually by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day, until the same be completed ; and the order of the elections shall be as follows : the vacancies in the senate (if any) shall be first filled up : the governor shall then be elected, provided there shall be no choice of him by the people : and afterwards the two houses shall proceed to fill up the vacancy (if any) in the council.

#### SECRETARY, TREASURER, COMMISSARY-GENERAL, &c.

The secretary, treasurer, and commissary-general, shall be chosen by joint ballot of the senators and representatives assembled in one room.

The records of the state shall be kept in the office of the secretary ; and he shall attend the governor and council, the senate and representatives, in person or by deputy, as they may require.

The secretary of the state shall at all times have a deputy, to be by him appointed ; for whose conduct in office he shall be responsible : and in case of the death, removal, or inability, of the secretary ; his deputy shall exercise all the duties of the office of secretary of this state, until another shall be appointed.

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The secretary before he enters upon the business of his office, shall give bond with sufficient sureties, in a reasonable sum, for the use of the state, for the punctual performance of his trust.

#### COUNTY TREASURER, &c.

The county treasurers and registers of deeds, shall be elected by the inhabitants of the several towns, in the several counties in the state, according to the method now practised, and the laws of the state.

*Provided nevertheless,* The legislature shall have authority to alter the manner of certifying the votes and the mode of electing those officers; but not so as to deprive the people of the right they now have of electing them.

And the legislature, on the application of the major part of the inhabitants of any county, shall have authority to divide the same into two districts for registering deeds, if to them it shall appear necessary; each district to elect a register of deeds: and before they enter upon the business of their offices, shall be respectively sworn faithfully to discharge the duties thereof, and shall severally give bond, with sufficient sureties, in a reasonable sum, for the use of the county, for the punctual performance of their respective trusts.

#### JUDICIARY POWER.

The tenure that all commissioned officers shall have by law in their offices, shall be expressed in their respective commissions—all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behaviour, excepting those concerning whom there is a different provision made in this constitution: *Provided nevertheless,* the governor,\* with consent of counsel, may remove them upon the address of both houses of the legislature.

Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the superior court, upon important questions of law and upon solemn occasions.

In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justices of the peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission the same may if necessary be renewed, or another person appointed, as shall most conduce to the well being of the state.

\* This is *president* in the original.

All causes of marriage, divorce and alimony, and all appeals from the respective judges of probate, shall be heard and tried by the superior court until the legislature shall by law make other provision.

The general court are empowered to give to justices of the peace, jurisdiction in civil causes, when the damages demanded shall not exceed *four pounds*, and title of real estate is not concerned; but with right of appeal to either party, to some other court, so that a trial by jury in the last resort may be had.

No person shall hold the office of judge of any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.

No judge of any court or justice of the peace, shall act as attorney, or be of counsel to any party, or originate any civil suit, in matters which shall come, or be brought before him as judge, or justice of the peace.

All matters relating to the probate of wills and granting letters of administration, shall be exercised by the judges of probate, in such manner as the legislature have directed, or may hereafter direct: and the judges of probate shall hold their courts at such place or places, on such fixed days, as the conveniency of the people may require, and the legislature from time to time appoint.

No judge, or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending, or may be brought into any court of probate in the county of which he is judge or register.

#### CLERKS OF COURT.

The judges of the courts (those of probate excepted) shall appoint their respective clerks, to hold their office during pleasure: and no such clerk shall act as an attorney, or be of counsel in any cause in the court of which he is clerk, nor shall he draw any writ originating a civil action.

#### ENCOURAGEMENT OF LITERATURE, &c.

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and publick schools; to encourage private and publick institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufac-

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OATH AND SUBSCRIPTIONS ; EXCLUSION FROM OFFICES ; COMMISSIONS ; WRITS ; CONFIRMATION OF LAWS ; HABEAS CORPUS ; THE ENACTING STILE ; CONTINUANCE OF OFFICERS ; PROVISION FOR A FUTURE REVISION OF THE CONSTITUTION, &c.

Any person chosen governor, counsellor, senator, or representative, military or civil officer, (town officers excepted) accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following declaration, viz.

I, A. B. do solemnly swear, that I will bear faith and true allegiance to the State of New-Hampshire, and will support the constitution thereof. *So help me God.*

I, A. B. do solemnly and sincerely swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as according to the best of my abilities, agreeably to the rules and regulations of this constitution, and the laws of the State of New-Hampshire. *So help me God.*

Any person having taken and subscribed the oath of allegiance, and the same being filed in the secretary's office, he shall not be obliged to take said oath again.

*Provided always,* When any person chosen or appointed as aforesaid, shall be of the denomination called quakers, or shall be scrupulous of swearing, and shall decline taking the said oaths, such person shall take and subscribe them, omitting the word *swear*, and likewise the words *so help me God*, subjoining instead thereof, *this I do under the pains and penalties of perjury.*

And the oaths or affirmations shall be taken and subscribed by the governor, before the president of the senate, in presence of both houses of the legislature, and by the senators and representatives first elected under this constitution, as altered and amended, before the president of the state, and a majority of the council then in office, and forever afterwards before the governor and council for the time being ; and by all other officers, before such persons and in such manner as the legislature shall from time to time appoint.

All commissions shall be in the name of the State of New-Hampshire, signed by the governor and attested by the secretary, or his deputy, and shall have the great seal of the state affixed thereto.

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All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the State of New-Hampshire ; shall be under the seal of the court whence they issue, and bear test of the chief, first, or senior justice of the court ; but when such justice shall be interested, then the writ shall bear test of some other justice of the court to which the same shall be returnable ; and be signed by the clerk of such court.

All indictments, presentments, and informations, shall conclude, *against the peace and dignity of the state.*

The estates of such persons as may destroy their own lives, shall not for that offence be forfeited, but descend or ascend in the same manner as if such persons had died in a natural way ; nor shall any article which shall accidentally occasion the death of any person, be henceforth deemed a deodand, or in any wise forfeited on account of such misfortune.

All the laws which have heretofore been adopted, used and approved, in the province, colony, or State of New-Hampshire, and usually practised on in the courts of law, shall remain and be in full force until altered and repealed by the legislature ; such parts thereof only excepted, as are repugnant to the rights and liberties contained in this constitution : provided that nothing herein contained, when compared with the 23d article in the bill of rights, shall be construed to affect the laws already made respecting the persons, or estates, of absentees.

The privilege and benefit of the habeas corpus, shall be enjoyed in this state, in the most free, easy, cheap, expeditious, and ample manner, and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a time not exceeding three months.

The enacting stile in making and passing acts, statutes, and laws, shall be—*Be it enacted by the senate and house of representatives, in general court convened.*

No governor, or judge of the supreme judicial court shall hold any office or place under the authority of this state, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the office\* of justice of the peace throughout the state ; nor shall they hold any place or office, or receive any pension or salary, from any other state, government, or power whatever.

No person shall be capable of exercising at the same time, more than one of the following offices within this state, viz. judge of pro-

\*In the original offices.

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bate, sheriff, register of deeds ; and never more than two offices of profit, which may be held by appointment of the governor, or governor and council, or senate and house of representatives, or superior or inferior courts ; military offices and offices of justices of the peace excepted.

No person holding the office of judge of any court (except special judges,) secretary, treasurer of the state, attorney-general, commissary-general, military officers receiving pay from the continent or this state (excepting officers of the militia, occasionally called forth on an emergency) register of deeds, sheriff, or officers of the customs, including naval officers, collectors of excise and state and continental taxes, hereafter appointed and not having settled their accounts with the respective officers with whom it is their duty to settle such accounts, members of congress, or any person holding any office under the United States, shall at the same time hold the office of governor, or have a seat in the senate, or house of representatives, or council ; but his being chosen and appointed to, and accepting the same, shall operate as a resignation of their seat in the chair, senate, or house of representatives, or council ; and the place so vacated shall be filled up. No member of the council shall have a seat in the senate or house of representatives.

No person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance, under this government, who in the due course of law has been convicted of bribery or corruption in obtaining an election or appointment.

In all cases where sums of money are mentioned in this constitution, the value thereof shall be computed in silver at six shillings and eight pence per ounce.

To the end that there may be no failure of justice, or danger to the state by the alterations and amendments made in the constitution, the general court is hereby fully authorised and directed to fix the time when the alterations and amendments shall take effect, and make the necessary arrangements accordingly.\*

It shall be the duty of the selectmen and assessors, of the several towns and places in this state, in warning the first annual meetings for the choice of senators, after the expiration of seven years from the adoption of this constitution as amended, to insert expressly in the warrant, this purpose among the others for the meeting, to wit, 'to take the sense of the qualified voters on the subject of a revision of the constitution ; and the meeting being warned accordingly (and not otherwise) the moderator shall take the sense of the qualified voters present, as to the necessity of a revision ; and a return of the number of votes for and against such necessity, shall be made by the clerk, sealed up and directed to the general court, at their then next ses-

\* See act of 14th Dec. 1792.

sion ; and if it shall appear to the general court by such return, that the sense of the people of the state has been taken, and that in the opinion of the majority of the qualified voters in the state, present and voting at said meetings, there is a necessity for a revision of the constitution, it shall be the duty of the general court to call a convention for that purpose, otherwise the general court shall direct the sense of the people to be taken, and then proceed in the manner before mentioned. The delegates to be chosen in the same manner, and proportioned as the representatives to the general court ; provided that no alterations shall be made in this constitution, before the same shall be laid before the towns and unincorporated places, and approved by two thirds of the qualified voters present and voting on the subject.

And the same method of taking the sense of the people, as to a revision of the constitution, and calling a convention for that purpose, shall be observed afterwards, at the expiration of every seven years.

This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land : and printed copies thereof shall be prefixed to the books containing the laws of this state, in all future editions thereof.

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DECISIONS  
OF THE  
SUPERIOR AND SUPREME COURTS  
OF  
NEW HAMPSHIRE,

FROM 1802 TO 1809, AND FROM 1813 TO 1816.

SELECTED FROM THE MANUSCRIPT REPORTS OF THE LATE

JEREMIAH SMITH,

CHIEF JUSTICE OF THOSE COURTS.

WITH EXTRACTS FROM JUDGE SMITH'S MANUSCRIPT  
TREATISE ON PROBATE LAW,

AND FROM HIS OTHER LEGAL MANUSCRIPTS.

BOSTON:  
LITTLE, BROWN, AND COMPANY.

1879.

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