SPEECH OF ROBERT RODES

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OF

ROBERT RODES

ON THE

BILL *of* RIGHTS

IN THE

Kentucky State Constitutional Convention of 1890

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PREFACE.

No attempt has been made to trace the whole course of Robert Rodes in the Constitutional Convention of 1890. Nor has the regular course been followed which was pursued by him in the delivery of the opening and closing speeches in the debate upon the Bill of Rights. To a certain extent, no distinction has been made between the opening and the closing speech, but rather excerpts from both have been grouped under appropriate heads. The headings and the italics are mine. Such portions have been emphasized as, in my judgment, illustrate the character of the speaker, particularly his reverence for God and for right and for truth; also his lifelong viewpoint that many things were sanctified by time and hallowed by historical associations. One could not have delivered two such speeches unless he had been steeped in the lore of English history and filled with the sense of the glory of the long combat for English liberty.

Most of the objections, which he endeavors to answer, were made by Ex-Governor Proctor Knott, one of the ablest and most eloquent Kentuckians of his day. It might assist in one's appreciation of these speeches to know that Governor Knott objected to much of the phraseology of the Bill of Rights, as reported by the committee of which Robert Rodes was chairman, offering as a substitute therefor a complete Bill of Rights drawn by himself, couched in modern words and phrases. However, the Bill of Rights finally adopted by the Convention was practically that reported from the committee having same in charge.

My motive in this publication needs no explanation save to say that in some measure it gratifies a deep affection for the memory of a Father whose name will ever be held in reverence by his son.

PREAMBLE.

"We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political, and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution."

The first thing demanding the consideration of this body is the preamble. In all preambles heretofore made in the Constitutions of this State and of the United States anything like gratitude expressed to a Supreme Being has been omitted. I suppose it was owing to the reverential feelings of the committee that they thought something of that kind might be gracefully interpolated in the preamble we offer. Professor Bryce, who lately published a work on America, in the second volume somewhere, said about this: That standing in the midst of one of our large cities, and seeing the immense throngs and crowds passing along of various degrees of wealth, poverty and nationalities, one-half of the earth being represented, a ghastly and startling reflection took possession of his mind, and he said to himself, "What if the foundations of this country fall out? In a short time there will be one hundred million of people in this country, extending from the Atlantic to the Pacific, and what if the foundations were to go? And what ARE the foundations?" said he. "*The foundations are a belief in a Supreme Being, in the future before us, and in individual responsibility.* Now, take these away, or take the belief in the Supreme Being away, and what have you left?" I could not but help thinking, when I have heard these venerable gentlemen in this hall uttering prayers and raising petitions in our behalf

in opening our session, "What of all this; what are we?" I reflect that we are not merely one hundred men, but we are the people of Kentucky; we are two millions of people. We are the occupants and owners of forty thousand geographical miles. We are no insignificant quota of the earth's surface. Representing that much, it cannot but be that the Supreme Being looks upon us, and I take it for granted it would be nothing but a grateful appreciation on our part of His kindly providence that we should express some sense of our obligations to Him for the care and protection He has exercised over us.

MEANING OF OUR BILL OF RIGHTS.

I see from the variety and number of amendments offered to this report that some delegates are mistaken as to what a Bill of Rights is, and what it should contain, and I will recur for a moment or two somewhat to the history thereof, and character of the language that ought to go in its composition. What do you call it the Bill of Rights for? What do you put in it; what are its characteristics; what belongs to it? It is set aside in an apartment by itself and made sacred.

Let us come now and look at the last section.

"To guard against transgression of the high powers which we have delegated, WE DECLARE that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution, shall be void." That is to say, it is consecrated. This is no ordinary

part of the Constitution, and if by any misfortune or inadvertence any other part of it comes into conflict with the Bill of Rights, I apprehend there is not a court in the land that would not say that the Bill of Rights is paramount. It is sacred; they are set apart in a room or apartment by themselves, and the mandate is, let no profane hand or foot come near it. In early ages of the world, in the oldest written Constitution known to us, the Jewish Constitution, they had no conception of what we would call the Bill of Rights. There were some scattered propositions, disjecta membra, through the body of the Mosaic laws that showed they had some ideas of what right was; but as a technical collection of laws, embodying their fundamental rights alone, and having other laws corresponding to them and obedient to them, they had no conception whatever; and, indeed, they could not have borne it at that time if they had. The laws of Solon and Lycurgus knew no such thing. The Romans were somewhat wiser, and after Rome was founded several hundred years, it became necessary to protect the people against the encroachments of the rich and powerful. They did not know at first what to do, but in time they found out a remedy. They put up a tribune, and as long as the tribune existed, he was clothed with a veto power adequate to meet all aggressions. *He* was their Bill of Rights, and if I may be allowed to say without violating taste, when a Governor vetoes some fifty or sixty bills passed during one session of the Legislature, and is supported by that body, he is a shield and a tribune for the people. He maintains their rights, and for the time being is

pro-re-nata the Bill of Rights. That illustrates my idea. Now, from what does your Bill of Rights spring? It is now—or was on the 15th of June, 1890—exactly six hundred and seventy-five years old, the oldest written title to your freedom! The oldest written record to your rights inviolable as they are does not go beyond that. On the 15th day of June, 1215, the barons and abbots of England met in a little meadow above London, and there, with swords at their sides, determined to recover what had been attempted to be wrested from them. They got what they demanded. King John gave it, and the curious traveler may go now to one of the museums in London, or in the Tower, and see that old Bill of Rights, tattered and torn, rusty and worn with years. If you ever go there, go and see that title deed to your freedom. But looking at that Magna Charta, there are but two sections in it particularly interesting to one at this time—one is the twenty-ninth section, and the other the twenty-sixth. There is not a Committee in this body which has read this provision in the twenty-ninth chapter, or had occasion to look at that particular clause, that has not felt that he heard the bass drum of centuries sounding in his ears. How does the thirteenth section of our Bill read? The Commonwealth of Kentucky says to all her citizens that the doors of her courts are always open, and any person who has received an injury in his lands, goods, estate, person or reputation, let him enter and he shall have a remedy by due course of law without denial, sale, or delay. That is the language, and that is the proposition, the only important part of Magna

Charta; the residue referring to details which have long since passed out of use and are of no interest to us. And so dear was that title and that charter of freedom to the English people, that in the course of two hundred and seven years, down to the time when Henry the Fifth ascended the throne in 1422, just two hundred and seven years, that charter had been ratified by the kings of England thirty-eight times. How often it has been ratified altogether, I shall have to leave to the scholarly gentlemen I see around me in this Convention, for I do not know, but I think about fifty times.

Well, from that time onward, from 1422 on down to about 1621, the English people passed through many vicissitudes and variety of fortunes contending for that very Magna Charta. After the wars of the Roses, in which the people of England, exhausted and enfeebled, had sunk beneath the kingly power, the great shadow of the Tudor family arose over England, and during that supremacy, there almost seemed a night dark as Egypt to come over her. It may have been thought that Magna Charta was forgotten, their rights gone and trampled under foot, and their freedom extinguished. Naturalists tell us that if you cut off the head of a turtle you will see signs of life for forty-eight hours afterwards; and you may take the heart out of an alligator and see throbbings of life for a week. Not so with Magna Charta. It never died. With that little remnant hanging on, it was and became the germ of freedom, which, in time to come, was going to and destined to multiply and reproduce itself, until we find it here

now in the twenty-eight sections of the Bill of Rights in our Constitution—a lasting monument enduring and to endure forever; and as long as they live, your freedom lives. You may pull this Constitution down, but the throbbings of life in this Bill of Rights will not cease in forty-eight hours or a week. For every one of them may be the parent of the whole, like Cuvier, when he attempted to reproduce some old dead monster which lived years and ages ago; a bone enabled him to do it. Out of that and his brain sprang the monster; and out of Magna Charta, emerging from the time of the Tudors, have sprung all our rights. Learning got abroad; the people began to think; rights began to be asserted.

The people found out that they were not slaves; and then the contest came on in the days of James the First. The people did not at once resort to the sword; they bore their grievances patiently, and to show just one instance of the grievances under which they labored, in 1621 Parliament protested strongly against the innovation of some of their rights by King James. James sent for the Clerk of the House of Commons and directed him to bring him the Journal. The Clerk brought him his Journal, and with his own hand he took the book and tore out that leaf. Now just imagine the Governor of this State so far forgetting himself as to send for the Clerk of this body and tear out a leaf from your Journal. What of it? Why Etna and Stromboli would hardly be a fair indication of the indignation you would feel and express. It was that sort of a contest going on for Magna Charta and rights se-

cured by them; but the people were patient. James died. Charles ascended the throne in 1625. In that Parliament which convened after Charles ascended the throne (after which there were none for eleven years) he needed money. Parliament had the power in their hands, and they framed, under the auspices of Lord Coke and Sir John Elliott, what was called the Petition of Right; and singular as that may seem, that little remnant of Magna Charta, one section and a part of another, became enlarged to form others additional. They claimed and asserted that thereafter no exaction of a loan of money by virtue of the King's prerogative should be made without the authority of Parliament; and any man arrested and put in prison for refusal, if brought out on writ of habeas corpus, should not be remanded to jail; no soldier should be billeted or quartered upon the people without their consent, and in time of peace, no man should be tried by martial law—every one of which you have in your Constitution at the present time. Those men fought for it, and those men won it. Charles signed it; it was called a Petition of Right; but he signed it with a view to disregarding it immediately, which he did; dissolved Parliament and a short time afterwards Sir John Elliott, the master mind who carried it through, was thrown into prison. He stayed there three years and died—*the first martyr to Magna Charta, and your rights and mine*. If any man deserves a monument in the minds of the English or American people, let Sir John Elliott remain there forever.

And then followed the long interval of no Parliament for eleven years. I need not waste your time by showing how Charles unfurled his banner on the 25th of August, 1642, at Nottingham; how the war was fought; how Hampden died, and how Pym died, with harness on; and how Charles was brought to the block; how Cromwell usurped the throne; how Charles II reascended the throne in 1660; and then without stopping, coming down later, in 1679, you have another great achievement in the way of a Bill of Rights. Habeas corpus was then perfected and made mature substantially as we find it now. The only difference was, it was sometimes attempted to be evaded, and Parliament had to guard against that as we have today; and after that time, passing over intermediate events in 1685 James II ascended the throne; on the fifth of November, 1688, William of Orange landed at Tor-bay, and on the 11th of February following there took place the most august event in English history. In the great Hall of Westminster on that day (the 18th, as some authors have it), the large folding doors were thrown open and William and Mary, hand in hand, marched in; the estates of England on either side, rows of Nobles and Lords, gentry and yeomen, with Halifax in the Chair, similar to that occupied by you, sir. He arose and read then what was called the Declaration of Rights. That Declaration of Rights, most of which is embodied in your Bill of Rights now, was solemnly read, solemnly assented to, and in three months after that time was transformed into what they called the *Bill of Rights*, passed by Parliament and enacted into law, and is now a portion of the in-

heritance of the American people. What is that Bill of Rights? Let me give you a few extracts. I have taken the pains to enumerate what it contains:

First. There shall be no dispensing with laws or their execution.

Second. There shall be no ecclesiastical courts made by King's Commission and others of like nature.

Third. There shall be no levy of money by King's prerogative without grant of Parliament.

Fourth. The right of petition shall be held sacred.

Fifth. No standing army shall be kept without consent of Parliament.

Sixth. The right to bear arms in some cases secured.

Seventh. Elections made free.

Eighth. Freedom of debate in Parliament not questioned.

Ninth. Excessive bail should not be required, nor fines exacted, nor cruel and unusual punishments inflicted.

Tenth. Jurors ought to be empaneled and returned according to law; in other words, the jury system was to be maintained.

Eleventh. All grants and promises of fines and forfeitures before conviction were illegal.

Twelfth. Parliaments ought to be held frequently.

Now, you see here what the position of that celebrated Bill of Rights was. All important to you, all important to us now; it is our inheritance. It descended to us, and comes to us in no irregular manner. We are in the regular line of succession, and we hold it as a part of our inheritance. But that Bill of Rights was as remarkable for what it omitted as for what it stated. Like the Petition of Rights, it did not state all which they claimed or wanted. The Petition of Right was confined to four propositions. Those four were not all. Neither are these all. They had in their minds many more, but rather than go to war, they patiently took what they could get. That Declaration of Rights, as Hallam says, "Carried the principle of resistance as far as they could possibly go then."

Now, what did they omit? They said nothing about religious toleration; nothing about the freedom of the press; nothing about natural rights of men; nothing about all power being in the people; nothing about freedom from illegal search and seizure; nothing about no man being twice put in jeopardy of life and limb, though that may have been the law at the time, but so important a statement as that might well have been put in the Bill of Rights, as we have it at the present day. Independence of the Judiciary—nothing said about that, though I may say that in seven or eight years thereafter, in the year 1700, the independence of the Judiciary was declared and ordained, because it was then ordered that the

judges should hold their commission quam die se bene gesserit, and not at the pleasure of the King.

Now, we have gotten down to 1692. From that time on nothing remarkable, for nearly a century, occurred bearing on this subject. Doubtless around the council fires and the hearthstones of the people of England there were many long sighs and many strong desires expressed by the people on all sides that those rights that had been omitted from the Bill of Rights, should be supplied. Scotland had gone through a long and bloody war, and there are many Scotchmen here, perhaps lineal descendants of the men who in that struggle contended for religious liberty, for that contest in Scotland down to the death of Claverhouse, was furious, passionate, and bloody. *The Declaration of Independence in 1776 awoke the sleeping earth. People began to think.* They began to question themselves, and the powers that be also. They knew what their rights were, and resolved to maintain them. The Constitution of Virginia was made in that year. In 1787 our National Convention met and were in session some time. In 1788 the Convention of the States met to pass upon the Federal Constitution. I am not particularly concerned with any of them but the Convention of Virginia. In that Convention the Constitution was resisted ably, courageously, vehemently, by several great men, and Patrick Henry especially, who never shone forth with more lustre or evinced more talent or patriotism than when he opposed that Constitution. Mr. Jefferson, then in France, was writing back asking, "Why don't you make a Bill

of Rights?" And yet they did not do it. They had some four or five propositions in the Constitution, in the fifth section I believe it was, in which they stated some things essential to a Bill of Rights; but they failed to do what Mr. Jefferson directed, showing how much farther that man saw in the future than the rest of his countrymen. Patrick Henry denounced the Constitution wanting in guarantees of human rights and if any gentleman here has read his speeches as I have done, he will be impressed with the fact that no man in England or America ever evinced more courage or far-sightedness than he did in those speeches. And to show that my opinion is correct, Mr. Madison, John Marshall, and other leading members of that Convention, could hardly get that Constitution through in the face of Henry's opposition; and it was under their promise and resulting from it, as I suppose, that the first Congress after the Government was inaugurated, at the very first session, passed eleven amendments to the Constitution, some eight or nine of them embodying the very essence of the opposition maintained by Henry in the Virginia Convention. Congress carried them out, and they are in that way not technically called a Bill of Rights, but equivalent to it. Take it all in all, the Bill of Rights, expressing some fifteen or sixteen propositions, was made secure.

As I said in the first speech I made, the Bill of Rights was not made in a moment. It grew. It was made from time to time—from age to age—and the only value of Magna Charta is not on account of the thirty-seven or thirty-eight chapters, for the

only part useful to us now is the twenty-ninth chapter and part of the twenty-sixth chapter; but they give us some lessons in regard to our rights, and small as the germ originally was, out of that germ has grown the whole large-spreading umbrageous tree as we have it now. We are not, as some gentlemen suppose, trying Magna Charta, nor is that presented for adoption at the present time. A good many things in it we would not adopt or urge; we have no use for them; they don't apply to our age. But there are some principles to which I have alluded that will ever be present to the mind of every man. And so it was with regard to the Petition of Rights. That was a growth from the old Magna Charta; and I think the gentleman from Marion is perhaps mistaken when he says the people did not know anything about their rights. Undoubtedly they did not put it in print or make public speeches about it. It was dangerous to do so. But around their council boards and their hearthstones, at their homes between man and man, I doubt not there were hundreds and thousands of suggestions, not to say grumblings and muttering threats, that the time would come when the people would assert their rights. So, however defective all these ancient charters may have been, they indicate a very important lesson to us. They have grown; they have become enlarged; they are magnified; they now cover a large part of the earth. Formerly it was a small fountain, now it is a large stream; formerly it was a twig; now it is a tree; and in attempting to gather up everything advantageous or useful to us at the present time, it is rather difficult, because the civilization has changed, and

our rights have correspondingly changed. We do not understand them as they did then; but I do know that in 1658, which I believe was the time that John Milton wrote his second defense of the English people, and a few years afterwards when Locke, during the reign of Charles II, penned his work on the Theory of Government, and when he wrote the charter for the government of South Carolina, they understood the theory of government as well as we do now.

Mr. Chairman, I could say more. I could take up the details of this Bill of Rights, and could answer the objections put by various gentlemen to specific portions of it. I could show that we have retained the old Bill of Rights in its main and essential character and characteristics. There is no particular reason why it should not be held the same sacred object still. We have not changed its name or meaning, or vitiated its tone. We have constructed a few sentences. We have turned a few phrases. We have made them perhaps more acceptable to the times. But so far as our rights and our title to our indefeasible inheritance are concerned, they remain the same now that they have been for the last two hundred years, stronger because we have added beams and girders to the building. This Bill of Rights has grown from the germ of fifteenth of June, 1215, now to a magnificent tree. Now it is a banyan tree. It covers much space. *There is no finality in politics. We are always improving.* Doubtless in years to come we will have more to put there, because when an enemy raises his head or makes his

presence known, it is the duty of the people to array themselves against it wherever it is seen. But at present it seems to me we have all in the Bill we ought to have. Some gentlemen seem to misunderstand the functions of a Bill of Rights. Everything legislative does not belong to it. There are many things appropriate under the Legislative head, and under the General Provisions head, and under the Municipality head that do not pertain to this at all. Let them be apportioned to the particular part in the Constitution where they belong. Let the Bill of Rights retain the same sacred, inviolate position it has long assumed; not too numerous in sections, quantity or character. But numerous enough, admitting no guest in the sacred chamber, unless armed with the proper credentials and proper qualifications; and when they do come in that way, let its high name, its high character and commanding voice be heard so long as this world shall stand.

LOVE OF OLD EXPRESSIONS.

"No person shall for the same offense be twice put in jeopardy of his life or limb."

And, in regard to these words, "twice put in jeopardy." It is due the gentleman from Boyd to define what "twice in jeopardy" means. Our courts have passed upon it, but no scientific definition has ever been given; and if any man feels adequate to the task, or if the definition of my friend is deemed adequate by the Convention, I will accept it; but what it exactly means I do not know. I am not prepared to say. I can have an idea, but nothing more than a supposition. Then, as to the word "limb."

I have heard some objection to that; I hold on to it because it is old. I love old things, and believe in old expressions. I wish we had more of them than we have. There are some beautiful things in old Magna Charta, which have passed out of use, which I wish were used again. As long as we can hold that old expression, I say retain it. In former times, when they branded men and cut off their ears, they understood it. Then it meant more than it does now; but at the present time "limb" means liberty for any part of your body. Therefore, I say keep it, retain it, never let the word escape, because it is an expression indicative of what our forefathers had to pass through; such words and similar language are the words and language they used in times and ages long since gone by, when their souls were tried by fire, and they had to rely sometimes upon their swords.

FREEDOM OF THE PRESS.

"Printing presses shall be free. * * * Every person may freely and fully publish, write, and print on any subject, being responsible for the abuse of that liberty. In prosecutions for publishing * * * the truth thereof may be given in evidence." (Note.—These are parts of Sections Eight and Nine of the present Bill of Rights.)

I now call your attention to the eighth section. That involves the question of libel. You will observe, if you will turn to the Constitution of Virginia in 1776, that neither in its constituent parts, nor in the Bill of Rights, does it say one word about the admission of the truth of the matter in evidence. It did not admit it.

Now, you may ask how it happened that that Bill of Rights omitted to say anything about the introduction of the truth in evidence in libel cases. Our Kentucky Constitution, made under the auspices of George Nicholas at Danville, has the clause inserted in it, that in all suits for libel, the truth of the matter should be admitted in evidence, and the law and the facts submitted to a jury as in other causes. How did it happen the Virginia Constitution of 1776 left it out? My answer is, that they hadn't got up to it. They couldn't accomplish it. The English people are a slow people. Rather than go to war, they resolved to be patient. They nursed their rights. They still claimed them, and having had a long contest about it, it was not deemed prudent by them to draw the sword in defense of that matter, or by way of claiming that right. The intervals were long, and the spoliation did not occur often enough to cause much complaint. In the very year that our first Constitution was adopted, in 1792, Mr. Fox introduced his celebrated Bill in the House of Commons with regard to that matter. What did that Bill contain, and what was his object?

Now, you know very well that in the contest about libels, the issue was whether public sentiment should prevail or whether the judges and lawyers should rule; the judges and lawyers generally maintained before that time that the law was supremely for the court, and the facts for the jury; in the estimation of the judges, it was not the jury's province to find any fact except the fact of publication. That was all. The lawyers and judges maintained that was as far as the province

of the jury went. In that state of case, the press was not secure. *If there be any portion of our liberty that we would hold rather than any other, it would be that palladium of our rights, the freedom of the press.* The press is in no danger in this country from a censorship. *License and censorship are the enemies of the press.* When Mr. Fox, in his bill, attempted to reach that, he did it, indirectly and almost clandestinely. Public sentiment was on his side, but the judges were against him, and he thought if he could get the matter before the jury, to let them pass upon the question of guilty or not guilty, the judges could not force them to their verdict, nor control them in their deliverance. That is how the provision that the jury shall be the judges of the law and fact under the direction of the court as in other cases came about. If there is one principle better settled in this country and England than any other, it is that the law is for the court, and the facts for the jury. Why did he not say so? He did all he could. He did his best to reach that mark, but public sentiment was not up to it. He had to yield, make concessions, but he did secure his object indirectly, and that is the inheritance he left us. But that was not right. The way to state it is the way we have stated it here in the eighth section, because it is right. It is nothing else but right, and if it was not right, I would not call it so. If it is wrong, purge it; *but as long as we have judges independent in one sense and dependent in another, elected by the people, but their salaries secured, you can have a safe exposition of the principles of law and the freedom of the people, and the press is amply secured.*

Let it always be maintained that the truth shall be given in evidence, and if it appears that the truth was spoken with good intent, let the man or men go free. Is not that right? Will it not pass muster anywhere? If it is right, stamp it with the seal of your approval; if wrong, blot it out. How can it be said that it is unfavorable to the press? I do not know that anyone says that, but some one suggested it is less favorable than the old law. How? It does not tell the Legislature what they shall do. If the charge be made is true, to that extent it is prima facie evidence that the man was right; if it be made with good intent, he goes free. Suppose he makes a charge which is true, but with bad intent. It goes in mitigation, and the Legislature may make what laws they please; but if it be untrue, with regard to that, and with bad intent, let them suffer. *We need protection as well as the press. They need it and shall have it. It is their bulwark and ours.* But if these principles are true, if the law is as I have stated it, in the hands of the court, and the juries are bound to obey it, give it to them. What does Cooley say upon that subject? "Where, however, the Constitution provides that they shall be judges of the law, 'as in other cases,' or may determine the law and the fact 'under the direction of the court,' we must perhaps conclude that the intention has been simply to put libel cases on the same footing with any other criminal prosecutions, and that the jury will be expected to receive the law from the court." That is what we contend for and nothing else. How can you make a law different in libel from murder? Is libel more important than murder? Is a man's

reputation more important than his life? Are not judges the judges of the law in murder, and do not they expound the law and the jury receive it from them? Why do you lay down the law now as they did 200 years ago, when they were forced of necessity to do it? They contended then that the jury ought to be the triers of the law and the fact. They did it because they were driven of necessity to do it. Mr. Fox cut the knot. He opened it with a key—the key of his dexterity, wisdom, and patriotism—by framing that law as he did. That saved them for awhile. But when our Constitution was formed, they interlined the words, "the truth shall be given in evidence." If Mr. Fox had introduced and obtained the insertion of those little words in his law, what a scene of triumph they would have had! What paeans of victory they would have sung! We have it here, and I defy any gentleman to improve upon it. The words are few, but they are powerful. Mirabeau said words are things. Horne Tooke said that two prepositions and a conjunction nearly ruined him. These are simple words, "the truth shall be admitted in evidence." And if it appear that they were true and uttered with good intent, the man or the defendant, whoever he may be, goes free; and I call upon you to give your verdict, and say whether that is not right. That is the question that is involved in section eight. I will not argue it further. I shall have to leave it to the able vindication of some other gentleman, and I hope I shall have many others in this body.

"Slavery and involuntary servitude in this state are forbidden except as a punishment for crime whereof the party shall have been duly convicted."

You all know that the Constitution of the United States has the same language used in one of its late amendments. The gentleman from Todd County has offered an amendment, in which he proposes to leave out that section altogether. Now, I think, when he comes to look at it correctly, he will perceive that great land mark in one of the most remarkable contests in the history of the world ought not to be left out. The greatest epic known in the annals of the world closed in 1865, and from 1861 to 1865 witnessed the abolition of serfdom in Russia, which was a great step for that monarchy; and when that remarkable epoch closed in this country, it was closed for good, so far as slavery was concerned. How we are going to solve that dark problem yet to arise I cannot tell; but small as a man's hand, as it is, it is certain to come. I apprehend that the gentlemen here have some notions of expediency and reasonable foresight. When you put your Constitution before the State, and the world begins to inquire about it, there will be thousands of voters who, turning their eyes upon this body, will want to know what you did about slavery, and how you are going to work the problem out. How will you face the question? By an expression here and there, all through the Constitution? I do not know, but in my humble judgment you had better put it in as events and the providence of God have ordained it; let it stand as a monument in history.

As I told you before that Bill of Rights has grown from that little germ in Magna Charta—from the Petition of Rights, and the Bill of Rights in 1689 down to our Bill of Rights in Virginia in 1776, and on to the present time; it has grown like the annulations of a tree. It shows itself every few years. Now we mark these annulations, and some of them I have pointed out. The first is the slavery clause. Some gentlemen say no; let us pass it by; no use of naming it. Let it be forgot, as Tom Moore said on one occasion about Robert Emmett:

"Let it sleep in the shade,
Where cold and unhonored its relics are laid."

But I say not; it is the part of prudence, of expediency, of policy, of common sense, to mark the epoch in which you live. As I said before, that epoch through which we have passed is the greatest epoch in history. Slavery has been exterminated. The other States have passed similar laws—the last one of them—and why shall not Kentucky? Shall she solemnly fold her arms and say, "No, I won't say anything about it; let it drop out of the bottom and be passed by, entirely forgotten." You may think, too, that a little policy on this subject is, perhaps, a little degrading. I do not mean in that way. The Apostle Paul thought expediency was a great thing when it did no harm. If you do, I give my word for it, that if your Constitution is objectionable to any serious portion of the people of Kentucky, and you come to a vote, this clause will add from twenty-five to fifty thousand votes against you if you leave it out.

JURY TRIAL.

"The ancient mode of trial shall be held sacred and the right thereof remain inviolate, * * * and in prosecutions by indictment or information he shall have a speedy public trial by an impartial jury of the vicinage." (Note.—These are parts of sections seven and eleven of the Bill of Rights.)

The Committee struck out the word "vicinage" and inserted the word "county." We all know that the words "vicinage" and "county" mean the same thing. I like, as I say, old words, and I dislike to part with them, and I stated before the committee that if anybody could get that word "vicinage" properly wedged in there, I would sustain it; and if any gentleman in the Convention can succeed in getting it in properly, I will vote for it; but it evidently means county. And as I am attached to old principles, old times, and old ancestries, and everything else that is old (I hate to part with things of that kind), I say retain it, if you can consistently with the residue of the sentence, and I would be glad to do so.

But now notice the proviso, which is, that in all cases of trial by jury the General Assembly may authorize the court to cause a jury to be summoned and empaneled to try the case from any adjacent county or counties, or from other counties conveniently near the place of trial, wherever the court may be satisfied that a fair and impartial jury cannot be procured in the county where the trial is had, and make an order to that effect. Provided further, the General Assembly may provide by law for a change of venue in favor of the defendant in such prosecutions.

Some gentlemen here want the provision to extend to the Commonwealth for a change of venue. I leave that to the Convention. I have nothing to say, except that I am opposed to it myself.

But the question now springs up, and it is one that I have to meet, that no proviso is proper in the Bill of Rights. Ought it to go into the Bill of Rights? That is the question. If it be improper to interlard it in the Bill of Rights; if the Bill of Rights is sacred, then be it far from me to assail its sacred character. In the old Ark of the Covenant they carried many things. They had a pot of manna; they had Aaron's rod that blossomed, and they had the oracles of God, the tables of the law; but I imagine those tables of the law, or oracles, were the most precious part of the Ark. If this Bill of Rights is so precious in our sight, the question remains, and I state it strongly, what ought we to introduce into its consecrated apartments? Nothing profane or foreign. Let it be a collation of proverbs, a code of maxims, of strong, fundamental truths, admitting nothing foreign to its character that would lessen the power of it. If that be the case, the question comes up, ought that proviso go in? The only reason we have for its going in, is because of its immediate connection with the provision of the Bill of Rights that a man shall have a trial in his county. We still retain the right of a trial in his vicinage or county. But then the question arises, how is that vicinage to be maintained and asserted? The old word is enlarged. Our disc has grown, and in the lapse of years the light comes clear upon us. The last part of this section grows out of the first part of it. It is in juxtaposition with

what goes before. It belongs to it; it is cognate to it, and so close a relationship does it bear to the preceding portion that we would be doing wrong to separate it from that part and transfer it to the division of subjects usually termed "General Provisions," or to the "Legislative Department." Let it remain as it is. The Chair mentioned yesterday that he did not like the word "provided." I do not like it myself in a Bill of Rights. You can strike it out if you desire. The word "but" will look just as well. It will read then: "But in cases of trial by jury, the General Assembly may authorize the court to cause a jury to be summoned and empaneled to try the case, from any adjacent county or counties," etc. I recall the only time when I was a member of the Legislature, and that was when I was quite a young man—in 1853-4. The question in regard to a Criminal Code of Practice was before the Legislature. Madison C. Johnson, of Lexington, was the Chairman. You all know him by reputation and character. He introduced the Code of Practice and carried it through, and in section 194 of that code, 195 of Bullitt's Code, and 194 of Carroll's Code, that very provision is inserted. I understand—I do not know whether I am right or not—that the question growing out of the constitutionality of that provision has never been settled by the Court of Appeals. It has been acted upon by the courts down in my part of the State. Frequently men have been sent to the penitentiary under the law. If it be the law, a constitutional test of it has not yet been made. If it be doubtful, it ought to go into the Constitution, where it cannot be doubted. We know sometimes

there cannot be a trial in a county on account of prejudice; there is no impartial jury there, and a man may not go unwhipped of justice by reason of a defect of this sort. How easy it is for you to say that vicinage shall be county. Look at the geographical connection of certain counties. Breckinridge, Hardin and Grayson Counties unite at the same point, and I am told that a man at one time attempted to evade the liquor laws there by having his house on wheels. Which is the man's vicinage there? His neighborhood? I put it to you, Delegates of the Convention, lawyers and sensible men, ought not this provision go in here, immediately after that statement, as a part of the Bill of Rights, explanatory of it, enlarging the meaning of the word "vicinage" when it relates directly to the subject and is cognate to it? If it be so, keep it there. Do not transfer it; do not relegate it to another part of the Constitution, where a man will have to look twice to find it. I do not think it derogates from the sacred character of the Bill of Rights to keep it where it is. If it does not, let it stand; and I hope to have the valuable aid of some legal gentlemen on this floor, who will come to my assistance, or rather the Committee's assistance, in maintaining that construction and holding the language firmly where it is.

Again the gentleman says: "The ancient mode of trial by jury." What is the ancient mode of trial by jury? He says, "It was to gather a jury up from the neighborhood—men who knew all about the transaction—and let them be both witnesses and jury combined." Is that what you mean? No,

it doesn't mean any such thing. What do we mean by the word "ancient?" Now, we know that when the Virginians came to Kentucky here a hundred years ago, or less than a hundred years ago, everybody, when they referred to Virginia, called it "the old country." So we speak of trial by jury as the ancient mode. How far does that go? How far does the word "ancient" apply? When we separated from England in 1776, our laws were brought down to that time, and we have been using the laws of England, so far as they are applicable, since that time; and when the gentleman says, "The ancient mode of trial by jury," he goes back a little too far. What was the ancient mode of trial by jury in 1776? Pretty much as we have it now. The system is the same. Within my recollection our jury system has been changed in this State. I recollect, when a boy, of hearing it charged that one man, Cassius M. Clay, of Madison County, a member of the Legislature in 1835 or 1836, "had changed the jury law." What was the change he made? The old method of summoning a jury was for the sheriff to summon a juryman anywhere he could pick him up. At that session of the Legislature, whatever term it was, they passed a law requiring the sheriff to have a panel of twenty-four jurymen, and that was the origin and beginning of that system in this State. It didn't always exist; nevertheless the ancient mode of trial by jury was the same. Judge Mansfield, a hundred years ago, when he held court in London, had a system of his own, and it is said that he trained the best set of jurors ever known, composed of merchants and men that he picked up around the city.

He got about fifty men whom he kept there in his court, trained them, and they made the very best of jurymen, because he kept them there regularly, and trained them under his eye. So that when the gentleman uses the word "ancient," and says that it is unmeaning, or that it is improper, I meet him right at the threshold and say that it is not improper at all. We have a system with us as it has existed a long time, the right to have twelve men to try a cause. But the last part of the second section of this bill qualifies it, "subject to such changes as may be made by this Constitution." Now, when my friend from Lexington comes to make his report upon legal procedure and the "laws of the land," or the Chairman of the Committee on Circuit Courts, they all may have something to say on this subject. I am not prepared to say what it is. It is not necessary for me to say what it is; it may qualify this system somewhat; nevertheless, the system remains; the right of trial by jury will remain; no man's life, liberty or property can be taken from him, in cases fit for a jury, without the intervention of a jury. The right is thus still preserved.

ABSOLUTE POWER AND THE RIGHT OF PROPERTY.

"Absolute and arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority.

"The right of property is before and higher than any constitutional sanction; and the right of an owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever."

(Note.—The first sentence quoted above is section two of the present Bill of Rights, and was in substance section two of the Bill of Rights of the Constitution of 1849. The latter sentence quoted above is not in the present Bill of Rights, but was section three of the Bill of Rights of the Constitution of 1849. Both sections were intended, in the Constitution of 1849, to protect slavery. No doubt this in part explains the objection of Mr. Rodes to both of them.

Section two, declaring absolute power existed nowhere in a republic, was the only section of the present Bill of Rights incorporated therein over the objection of Mr. Rodes.)

And right here, perhaps, I ought to notice an indication upon the part of some gentleman to again introduce section two of the present Constitution, which has been eliminated by this committee, and that says: "No absolute arbitrary power over the lives, liberty and property of freemen exists anywhere in a republic—not even in the largest majority." I object to the introduction of that section; and nobody pretends to ask that section three shall be introduced. That was known as the Garrett Davis clause. This section two has more plausibility in it, but I imagine it ought not to be introduced; and why? My suggestion amounts to nothing unless I can give a reason. My reason is, in plain terms, this: That our government is a republic, and that a republic means nothing more than saying we shall not introduce nor live in a monarchy. Sir George McKenzie, the great Scotch advocate, in 1684, wrote a book on royal rights, in which he maintained that monarchy is necessarily absolute. That being so, the contrary is also true, that a republic is never absolute. The very things we at-

tempt to inculcate and establish by this Constitution (and there is scarcely a section in it wherein we do not touch upon the inalienable, inherent and indefeasible rights of man) are utterly opposed to, and inconsistent with, the idea of arbitrary power, and when you talk about absolute or arbitrary power existing in a republic, it looks like a solecism, and by the terms of the words themselves it is beyond supposition misleading and inadmissable.

What would be meant by saying a "republican despotism?" We cannot for a moment concede the propriety in using the language or terms of those two sections, in making a statement regarding the necessary safeguard to our liberties, or in stating our fears as to the points and sources from whence assaults and dangers may come. The proposition, with all deference to the gentlemen who make it, is not true. In the last convention, in 1849, when this proposition was up, notwithstanding the immense excitement and agitation produced by the most momentous question of the age—the abolition of slavery—and these two sections (two and three) were drawn to secure its existence and make its tenure permanent, the vote, on adopting section two, was 55 for and 34 against it. The opposition was headed by James Guthrie and Ben Hardin and others, the strongest and ablest men in the convention, and of the day. It is a question of disputation, and in the Bill of Rights, as far as possible, there should be no disputation. Its propositions ought to be clear as light, and as a basis on which to stand as strong as a rock, because, if we build on the truth, we are founded on a rock.

These questions are not new. In the forepart of the seventeenth century Sir Robert Filmer published a dissertation on government, in which he advocated what was called the Patriarchal Theory—deducting all power from the King alone. After his time—about 1680—the great University of Oxford published its views on the subject, laying down twenty propositions, in which the learned and gowned men of that celebrated institution undertook to teach that the people had no power; that none emanated from the people, and that there was no contract between the people and the sovereign. They did not adopt Filmer's theory, but held to abject submission to the monarch. They shamefully asserted such propositions, but no punishment they ever received was equal to the shame of their publication. What became of them? The revolution of 1690 paid no special attention to them, but in 1709 the odious character of such publications had grown so great—emanating from a body so learned and standing so high—that the House of Lords, without the aid of the Commons, publicly ordered those propositions to be burned, and they were burned, and we have had no knowledge of them since.

Let them go, and let all this discussion, abstract and metaphysical, pass away. We have no need of them. There is no arbitrary power claimed or asserted here in this bill. There never can be. Whenever we come to that, we have revolution. Whenever you pass beyond that line you encounter revolution, and your talk about arbitrary power will be as futile as it was in 1849, when, looking at

the dark shadow creeping over the country and trying to avoid it, and to stem the tide of events and drive that dark gulf back, they failed to do it; events took their course in spite of them, and they will take them now.

* * * * *

That brings up another section: "The right of acquiring and protecting property." Now, I know that Prudhon, a Frenchman, said that all property was theft. That was a theory, and there are a great many more theories about the rights of property being discussed now, than we imagine. That idea of the right of property growing out of that section of Genesis has something to do with the second or third section of the present Constitution. I maintain that these two sections in the Constitution of 1849—the second and third, which we have eliminated by this report—are untrue. They don't state true political propositions. Nothing but the extreme agitation of the slavery question at that time could have ever gotten them in there. They were denied on the floor of this very hall by such men as Ben Hardin, James Guthrie, Charles A. Wickliffe, Robt. N. Wickliffe, and Richard D. Gholson. I didn't see the name of John H. McHenry; but there were fifty-five who voted for it, and thirty-four, headed by just such men as that, cast their votes against it; and James Guthrie, Charles Wickliffe, Hardin, and a number of superior men in the Kentucky Convention who opposed it, said it wasn't true; they denied it, and, as I said, nothing but the agitation of this question allowed it to go in. Its advocates avowed, on the floor of the Convention, as the debates will

show, that they inserted it there hoping that it would be a bulwark and a protection to slavery; and when the slavery question drops out, the question itself drops out. Who maintains now that a man has the right to go on land, like the Emperor of Spain did when he sent a vessel to America, and say, "I claim all America, because I have touched the Island of Cuba. It all belongs to me." Who can say that? That is not the true theory at all. There is a difference between movable or personal property and real estate. That is perfectly true in the sense in which we use "property" in the report of this committee. We say constitutions are designed to protect the rights of the people, and that these inalienable rights are before and anterior to all these things, and among them is the right to acquire and possess property, not unlimited property? Not in the highest degree. It is true in one sense. If a man has his movables around him, in his possession, he can hold them. That is a right anterior to all constitutions. Somewhere Carlyle says, "There is no use talking about matters of this kind when constitutions never would have been possible but for the preservation of that anterior right. But what is that anterior right? It is that movables belong to the man who has them in possession, but as to real property how? Here is the distinction. Real property only belongs to you so far as you cultivate it. *Whenever a man has land in his possession and cultivates it, he is then entitled to the fruits of it, and so much as he occupies; but the rest and residue are conventional, made by government by agreement among yourselves.* And where do your titles emanate from

here? From the State of Kentucky. What do you keep a land-office for? Why did Virginia have one? They are the sources, the great store-houses from which come your titles to land, showing that a man cannot occupy land and say, like Robinson Crusoe, "I own all I survey." Neither are those second and third sections true in that sense, and they ought to be both left out. I earnestly hope that gentlemen who are maintaining so ardently and persistently and eloquently their desire that the old Bill of Rights shall stand will let those two propositions be eliminated. We have in this Bill of Rights, outside of the old Bill of Rights (the Bills of Rights of the Constitutions of 1792 and 1799) all that is necessary; we have your indefeasible, your inalienable rights; those that cannot be transferred; that no government can interfere with. That is enough. When you have an inalienable right, what more can you get? When you say that government cannot interfere with it, what more do you want? Why go on and express that matter as though there was something behind to make it stronger than it actually is, and, in doing so, assert a proposition that cannot be maintained?

LOTTERIES.

(Note.—The section prohibiting lotteries was stricken from the Bill of Rights by the Convention, but placed elsewhere in the Constitution.)

Now, one word with regard to lotteries. It has been suggested that that ought to go in the Constitution, but not here. Why not here? What do you put in your Bill of Rights? You put in your

Bill of Rights guards against great and flagrant wrongs—something that will secure important and essential rights. Is there anything more important to you or to this country than this question of lotteries? You heard some gentleman arguing about it, and saying it is a very small thing; it is only a species of gambling. It is a great deal more than that. It was hardly one hundred years ago when, I believe, Jonathan Edwards, one of the greatest of Americans, and the head of a great family in the church, authorized something of that kind. It was done here in the town of Frankfort to build up a public school. It has been done by many good men, with moral standing of a very high order, to assist them in some way in raising funds for certain purposes. But, gentlemen, they only nursed the hydra; they did not know the dragon that was growing up before them, but they found it out; and now what is the state of case? At this moment Louisiana is in almost the throes of death with regard to this matter. It is a question of life and death with her. With such men as Governor Nichols and Dr. Palmer contending with all their might and power, personally and morally, against it, nearly two-thirds, if not two-thirds, of the Louisiana Legislature, and a large part of the people of the State, are actually lending themselves to fastening upon the people of Louisiana a monster.

I said it was a death struggle. They have attempted there to suborn, I might say, the State of Louisiana by giving her $1,250,000 a year for lottery privileges; and what will be the effect if that lottery

corporation gets its arms around Louisiana? It may be a very tender embrace; it certainly is a very golden one; but if she is not hugged to death by it, we will be disappointed. The idea of a whole State being demoralized by such a power in such a way, exercising such a sway, controlling such masses of people, demoralizing and corrupting them to the extent that that corruption will do there, and not appal this generation, is something I cannot conceive of. What hideous enemy could rear its head in the community with more impunity than that? And yet they are not abashed. Their brazen front still exhibits itself before the world. And it will take nothing but the supreme public sentiment and controlling constitutional power of the people of this land to suppress them. How much advance will it take for that lottery company to gain a foothold here in Kentucky? I have as much faith in the common intelligence and soberness of the people as most men; but I apprehend danger. They came very near buying out Dakota, as the public prints say. Public sentiment was a little in advance there, and they anticipated it and checked it. It is doubtful whether it will be checked down here.

We have in fable and history fair illustrations of this. Every great moral wrong is typified by a serpent. From the days of Adam and Eve down to the present time, they are all symbolized that way. Hercules had to destroy the hydra at the command of his King; Apollo had to kill the Python; Perseus had to kill Medusa. He had to use various ways to do it; and all of these put into one—all of them ag-

gregated into one—are not equal to this hideous, corrupting monster that is now about to seize the throat of a sister State and strangle her to death; and yet we hesitate to defend ourselves by a constitutional provision!

PERPETUITIES.

"No perpetuities of estate shall be allowed, except for charitable purposes, and the General Assembly shall pass all proper laws in regard to the same."

(Note.—This section was not incorporated by the Convention in the Bill of Rights, no doubt because it was already the law of the land, and not considered as important as was done by the speaker.)

Upon the subject of perpetuities of estate I think there ought to be something of that kind in this Constitution. We have had nothing of the kind heretofore. The genius and the policy of American institutions have been against perpetuities. We recognize no such thing here. An estate cannot be limited for a longer period than a life or lives in being, and ten months and twenty-one years thereafter. That is the law, but it is not in your Constitution. Your State Legislature may change it. The very possibility of a change augurs evil. The thing was attempted in England. Mr. Thelluson attempted some Utopian project of that kind, but the law cut him off. He attempted in this manner to accumulate a fortune at some ominous distance in the future, adding interest to interest, giving it to some possible heir. You may have men to do so in this land. It has been well settled in this country that in every third generation personal estate is dissipated. There is no fear of it as to that; but

with land it may be different, and the history of the world shows that perpetuities are not dangerous except so far as land is concerned. And now the Legislature of the State may pass such a law. There is nothing against it here. Other States have done it, why shall not Kentucky have it? Suppose some of your rich men, your millionaires, I need not mention names, but A, B, or C, should attempt it? They are attempting it now in a certain way. They try to keep it in their possession. They attempt to perpetuate landed title in themselves and heirs, and may get a Legislature to do it. I hate to suggest the idea that they might possibly induce a Legislature to do such a thing for themselves. They should not be allowed to have the power to do it; but if they should get such a law, there is nothing on your statute books to prevent it. Virginia had it at one time, but repealed it. Now to prevent it forever, and to make that system in perfect harmony with American institutions, and with the residue of your institutions, such a law should be put in your Constitution. It will do no harm, simply keep you abreast of the age, and every man who reads the Constitution will see that it is in harmony with the genius of our institutions

How such a clause as that ever came to be left out of our Constitution I do not know. It is not in a great many other constitutions. If there is any characteristic difference between the civil institutions of this country and England, or Europe, if there be any distinction at all, the question in regard to perpetuities must be one. It is one strong, well-marked,

well-defined. Perpetuities belong to the aristocratic system, to the nobility system of the feudal ages handed down to the present time. Without perpetuities, aristocracy collapses; take them out, and a gulf swallows up the entire system. In this country we have no institutions based on aristocracy or a feudal tenure; but it occurs to me that a section forbidding them ought to be in our Constitution, because they cannot well co-exist with a republican institution. They are utterly hostile to American institutions. They did exist for a while in the State of Virginia. I am not aware that they existed anywhere else. The tide of public events, republican ideas being so diffused, soon blotted it out; but the time may come when the Legislature of Kentucky may wish to institute some such scheme, or enact again some such law. Let it be forever put on record that none shall exist.

EXCLUSIVE PRIVILEGES.

We confessed, when we reported that to the Convention, that we were at a loss to know exactly what language ought to be used to express the proper solution of the question, but we have been unable to do so; and I judge from the great differences of opinion on the floor of this body, that they are equally at sea with regard to it. I got the gentleman from Boyle last night, and asked him to try his skill on this question to see what he could do. He is known to be one of the best lawyers in this body, and I will read you an effort that he has made to see if he could not adjust the proper language in this section so as to meet the conflicting views.

"That all freemen, when they form a social compact, are equal, and that no man or set of men are entitled to exclusive, separate emoluments or privileges from the community, but in consideration of public services, and every grant of such emolument or privilege may be repealed, amended, or altered by the General Assembly." (Note.—This practically constitutes section three of the present Bill of Rights. The gentleman from Boyle was Mr. R. P. Jacobs, of Danville, Kentucky.)

I suggested to the committee a while ago, that by transferring the latter part of section eighteen to the latter part of section two they might, to some extent, obviate the difficulties in this case. But how does the matter stand? Look at the surroundings. What is the law bearing on it? Section two was designed to prevent men from enjoying exclusive privileges or emoluments from the public, except in consideration of public services. Section eighteen was intended to be a re-statement of the law of 1856, to guard against special privileges being given to certain men, that were not revocable. What is the law bearing on all that subject at the present time? In the United States Reports 101, page 815, in a case that went from the State of Mississippi, the United States Supreme Court has said that no State can barter away its right as a police power to take care of the morals or the health of its people. No governmental power can be transferred or parted with, and that an attempt to grant a lottery privilege was perfectly null and void for that reason. How is it in this State? As I understand it, the Court of Appeals

has lately made a declaration in regard to section two of this report, and section one of the present Constitution. They say that any attempt to grant immunity, privilege, or emolument to a man now for public services of any kind is not good, and cannot be held good, unless it is exclusive, and that is the whole of it. The law of 1856 supplies the hiatus there, and that law is that no special grant or privilege shall be given to any man that shall not be revocable. See how you are hedged in? There is the law, as announced by the Supreme Court of the United States, on the one side, guarding your rights; here is the law of the State of Kentucky, just published by the Supreme Court of the State, guarding them on the other, and here is the law of 1856 upon the other. What else have you to do? Very little else, you say. Still there is something to do. One gentleman offered an amendment this morning to strike out "public services." You cut it out entirely, and no emolument, privilege or immunity can at any time be given for any consideration. In the first speech I had the honor to address to this body a week or two ago, I stated then that it was but fair, reasonable and right that a certain amount of discretion should be left in the Legislature to operate upon this particular article. There might arise an occasion, as emphasized by the distinguished gentleman from Madison. You might have some literary man, some mathematician, some Whitney, whom you would delight to honor, not in the service of the State, some man of whom you might feel proud, that would shed a lustre upon your name, but according to the idea and plan suggested by some gentleman here, the Legislature of the

State of Kentucky is paralyzed. They have no power, are inhibited from doing anything for such men, or from bestowing upon them any honor of this kind. There ought to be some kind of privilege. I know there are gentlemen who are sensitive on the subject, who say we don't want anything of that kind; but I say that while there is a discretion and a loophole in this language, still it is so perfectly secure and guarded on all sides by the different decisions I have alluded to, and by the laws, that no great danger may be apprehended. The gentleman from Marion made it a part of his most pathetic address. He elaborated it over and over again in regard to the gross outrages the people had suffered in this State from a perversion of that law. Green and Barren River seemed to be the theme and the text of a large part of his discourse. Look at Green and Barren Rivers! The gentleman seemed to have in his mind, when he cast his eyes up, great and growing and flourishing communities, which had been dwarfed to a very great degree by reason of this law. I beg leave to say to the gentleman that no such appalling calamity has happened. The people of Butler County have grumbled about it as much as anybody else. What do they complain of? They complain, as they had a right to complain, that one company monopolized a public right; that they charged and exacted tolls allowed by the State. The people want more free competition, and that was about all. That river is the finest canal in the world. I say that upon the authority of one of the greatest pioneers in that line in the State of Kentucky, James Rumsey Skiles, the grandson of that Rumsey who was a com-

petitor of Fulton for the honor of initiating steam power in this land upon rivers. He died in London when he was just about to make a speech on this question—dropped dead—a man of genius, and wherever you see the Rumsey name, it illustrates occasionally that genius. I live at the head-waters of that slack water. We need it. It is of inestimable value to us; but while it lasted in the hands of this monopoly we enjoyed it; we derived great benefits from it. We might have paid more occasionally than we ought to. They sold out the lease the company had for it, by the consent of the State of Kentucky, to the general government. The general government has command of that river, and I apprehend the delegate from Butler and others down there would not change it if they could. If the general government will only be half as beneficent to that line of navigation as they are to the Kentucky River here, we can indeed have the prosperity contemplated by the gentleman from Marion. We can have such a state of navigation, almost perfectly free, in which they can transport such articles as they have, and use that river for the accommodation of the public to a degree greatly beyond anything we have had hitherto. Now, what have you to complain of? A gross outrage while it lasted, but we have passed that now. At last we have landed safely; at last you have reached the port and have got just where you wanted to be. Would the people of Butler, or any county along that line, change that now if they could? I doubt it. If the general government takes charge of it, as we imagine they will; if they make it perfectly free; if they transport, or

allow to be transported, at a reasonable charge, all that we want to have transported over or on those rivers, what more can we ask? And after a few years that result has been reached. Yet because that didn't happen in a day; because some evils or some controversies have arisen; because there have been litigation, complaints, grumbling and growling on the subject, the gentleman pronounces it a very great outrage. Suppose it is for a short time. It is like these outrages in Louisville, but the courts have settled them. They have come to a termination. It is not like the controversies of olden times. In 1730, I believe, before Lord Raymond in London, they argued a question solemnly before the twelve judges for three days, whether a plea of nil debit was good in an action of debt on a deed. For one hundred years after the statute of Uses was passed they were at a loss—even Lord Bacon and Coke—how lands were held, whether by legal or equitable tenure. So I say you are in a hurry. We travel too fast. The velocity of this age is too great. You expect things too soon. Let the courts settle these questions. They will settle them in time. If you ever expect to reach those halcyon days when there will not be trouble and litigation growing out of the misconstructions of acts of the Legislature, you will reach an age I do not expect this side of the millenium. The time has not come yet. But now that I have presented this picture to you, do you anticipate or see any great evils before you? I think we have removed the danger. We have certainly done it on two or three sides of the question. There is a possibility it may be misused in the future; but look at it

again; and I look at the gentlemen sitting before me, who I know watch these interests with peculiar vigilance; and when you come to the legislative department, and the legislative committee brings in their report and takes from the Legislature fifty or sixty of the seventy-five rights they have, and limits them to a few—fifteen or twenty—have you not got the matter locked up and the key in your pocket? I say you have it reasonable enough; not altogether; are masters of the situation. Why not then vote for this or the amendment suggested by the delegate from Boyle, or anything else, I care not, provided you get it solved properly? You have it in process of settlement, and I think I can see the end of your labor.

LIFE AND LIBERTY.

"The right of enjoying and defending their lives and liberties."

Now as to part of that section, some gentlemen, especially the gentleman from Covington, has inquired with great emphasis, and laid great stress upon it, "Where did you get it? Where did you find find it? You did not find it in the Bill of Rights." Intimating, of course, that it either emanated from our own brains, or we had no sufficient authority for it. My reply to that is, we are not called upon to quote what we get. We gather it from proper sources and authorities and report it to the committee, and let the committee judge.

But why ask such a question? The question now for consideration is, is this right? Is it true? Have we not a right to report it if it be right, whether we got it from any source or not? It is said that Pythag-

oras invented the letter "y," and added the twenty-sixth letter to the twenty-five before known. He had the right to do it, and doubtless some gentleman who was inclined to question and find fault might have said, "What right had you to introduce the letter 'Y?' We have 'V' and 'U,' 'V' and 'W,' we can get along with them." He might have replied, "I have given you a very useful vehicle for the communication of your thoughts and ideas," and so the committee have done here.

But I can soothe the gentleman's disquietude upon that subject, and show you my authority; and the first authority that I quote from is the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

I read also from the Constitution of the State of Illinois, made in 1848: "That all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty"—which is the language we use there, I believe—"and of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

I read from the Constitution of Massachusetts and the Bill of Rights made in 1780, when the war of

independence was going on, "All men are born free and equal, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties," just the language we have used there.

The gentleman asked with much pathetic emphasis, indeed, "Where did you get it?" Here is where we got it, partly. Here is our authority, over one hundred years old, and quoted in other constitutions, words and terms and language, and used by reputable men, schooled in the law, and as patriotic perhaps, as we could find in the land. But that is not all. I go further. In the Constitution of Virginia, in 1850, you have this language: "All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety," just the language we have used. And in the Virginia Bill of Rights, in 1776, we find this: "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." And Vermont's is to a similar effect, using almost the same language.

I have given you authority and the sources from which we derive this language and the statement of

these rights. I show you that they are as high and as venerable and as old as any other rights that we have in the land. They are suggested to us, and are accepted by us.

ANSWERS TO OBJECTIONS TO THE USE OF CERTAIN PHRASES, SUCH AS

(A) "Free government."
(B) "Born free and equal."
(C) "Power inherent in the people."
(D) "Elections free and equal."
(E) "Open courts."
(F) "No man or set of men are entitled, etc."

"*All Free Governments Are Founded on Their Authority.*"

He first takes objection to the report of the Committee on Bill of Rights, and says that we have used terms there that ought not to have been used; that the terms have become obsolete or unmeaning, and the first expression to which he calls attention is that the word or term, "free government" is to him not a proper expression. He says he does not understand what free government means, that it seems to be a solecism. As I understand it, "free government" is used in contrast or antithesis to the term despotic. We speak of a despotism, and we say the Czar of Russia is a despot because he has all the power in his hands. We say we are free and have a free government because we are the opposite of that. "Free" is the opposite of slave. If we are not slaves, then we are freemen.

What is freedom? Who is the freest being in the world? The freest being that we have any conception of is God. Why is He free? He has all power; His will is law; He makes all laws; then He is free; His will is right. *We are therefore freemen just in proportion as we are right. We are not freemen because we are licensed to do as we please, we are freemen because we are licensed to do what is right according to law.* Although we had certain inalienable rights, yet when we entered into government, the social compact, we did not become slaves thereby, because it was voluntarily done, freely done, nor to authorize license or compound with license, but because it was right, and we, in doing so, could enact such laws that all freemen might enjoy the rights they have. Consequently, government in the highest, best and most paramount sense is designed to be protective. Of course, there is some restraint. Idiots are restrained. There may be persons who violate the laws, and it is necessary to check them, but the true ingredient in all free governments is protection. It may be said that I have no authority for this, but I have. In the Constitution of Virginia, adopted in 1776, section twelve, it says: "The freedom of the press is one of the greatest bulwarks of liberty, and can never be restrained but by despotic governments."

George Mason, it is said, wrote that, and he wrote it with the full understanding of the meaning of the word; and if he used the word "despotism" there, and despotism is the antithesis of freedom, why can't we use it here and say free government,

when we mean to express something opposite to despotism?

"*All men by nature free and equal.*"

But again the gentleman says that the words "free and equal" are a phrase that ought not to be used in a Bill of Rights of this kind, where we ought to be very precise in the use of our terms. He says that it is a "hoary platitude." If the word "free," or "freedom," has attached to it the meaning I have used, certainly the word "equal," when used in the sense we apply to it in the Bill of Rights, is not improper. What is the meaning of it? When they wrote this Bill of Rights, or when you write any Bill of Rights, what are you speaking about? What would be your caption? What (to imitate the newspapers) would be the large, immense heading in Roman capital letters? The subject matter of which you treat? It would be "*political rights.*" You are then talking about politics. You are not speaking of law, medicine, theology, mathematics, science, or anything of that sort. You are speaking of political rights, and when you use this term, "All men are free and equal," what do you mean? Why, the gentleman wants to reduce us to a proposition that we are weighing them in a scale of avoirdupois, or that we are testing their moral or intellectual strength or physical proportions. Not so at all. The gentleman ought to see at once that that argument will not carry him out, and that it is not exactly legitimate. We are speaking not of other matters, but of political rights. Then, is not our proposition true? "All men are born free and equal"—that is, born

free, with equal political rights. The gentleman himself admits that we may have political rights in certain things; but he says we were not born so; that they attached themselves to us. The particular point at which they attach he doesn't say. Then I think I can adduce some authority to show that the term is otherwise used properly. If you will look in the Acts of the Apostles, I believe the twenty-second chapter and the twenty-eighth verse, you will see that Paul says, in speaking to the Roman centurion (he told him he was a Roman), "How did you get to be a Roman?" "I had to buy that, and it cost me a large price." Paul replied emphatically, "*I was born free.*" Those are the words. If he was born free, of course it will be unfair for me to say that he meant freedom in the sense we mean; but it shows that he was born free in the sense in which the Romans used the term, and that, indicated freedom in the fullest extent. The Romans had their freedom as a birthright. The slaves did not. He spoke of it as being born in him—his father gave it to him. He got it by inheritance. If he was born free in that sense, how is it possible to say we are not born free in this country, when it is recognized everywhere that every citizen of this land is free? The Romans conferred it upon their citizens, and they were born free. Sometimes the right was purchased, but we are here free without purchase, without cost, and without price. But it looks to me like that is dealing in small matters. Now, there can be such a way of reasoning in argument as to indicate too much particularity. I, too, like precision, and have the strictest regard for truth. I dislike equivo-

cation or dissimulation in any form whatever; I do not like double-dealing nor *double-entendre;* yet there is a point beyond which a man doesn't ordinarily go, even in stating the truth. Doctor Johnson, over a hundred years ago, as Boswell relates somewhere in his life, when some man was showing great particularity about his language, said it was exactly like a man who said all the apples out of his orchard were gone when there were three or four left. The gentleman is arguing with us about words with a good deal of tenacity, and has much to say of the improper use of the term "free government." Give us a reasonable allowance and a fair latitude in an ordinary speech; give us a little margin for understanding in what case it is right to speak of "free government." We are talking about political rights, and when we use this term, we don't mean to condescend to the utmost particularity or truthfulness; but without dissimulation or without uttering anything in the least untrue, we say men are politically free and equal. But, then, in addition to that, the gentleman himself has used it a thousand times, perhaps. You are in the habit of saying in this country that the States are sovereign. Sovereign States! It has been uttered by fifty men in this Convention upon the stump—the sovereign State of Kentucky. Is that true or not? Of course, these gentlemen don't mean to utter an untruth by any means. They do tell the truth—it is perfectly true in the sense they use the term; they don't mean to use the term as being absolutely accurate or true, but in the sense that the man used it about the apple orchard. The States are sovereign in the sense that they have no

superior; every State in the Union is on an equality· they are all subject to one power; they are equal among themselves; brothers among themselves; they have co-extensive powers, and no one can presume to say to another: "I am your superior," and in that sense they are sovereign. But hyperbolical expression is sometimes permissible. If you go into very great particularity, as the gentleman seems to be inclined to do about this, how often will you find yourself involved in a dilemma? Go to Scripture again, St. John's gospel, in which he speaks of the Saviour on one occasion uttering truths from day to day to such an extent—I can't recollect the exact language—that if all the things he related were then put together, if he could reduce them to writing, the whole world could not hold the books. Now, we know what his meaning was, yet we know if we follow out the argument of the gentleman, that this would not be literally true. That is a rhetorical hyperbole, which it is presumably right to use, and it is used as such; therefore we say here that in the sense in which these terms are used, "equal and free," it is legitimate, it is true and right, and it is old; and it may be a "hoary platitude," but it is a true platitude, and one I imagine this Convention will never surrender for any other more modern term, or garb or language, in however elegant or tasteful or accurate modern literature it may be put.

"*All power is inherent in the people.*"

But the gentleman, not satisfied with these criticisms, has gone on and denied another proposition. He has denied that all power is inherent in the people.

He admits just afterward that it is very true that the people have certain political rights that attach to them, just as he did before, but he denies the proposition that power is inherent in the people. Now, what is the meaning of the word "inherent?" Inherent means something that is in you, that adheres to you, that is vested in you. We have a proposition in the Declaration of Independence which amounts to this; the gentleman has copied it into his substitute somewhere, that all governments derive their just power from the consent of the governed. Well, if they get their consent from the governed, then where did the governed get their consent? Where did they get their right or power? Who gave it to them? We say it is inherent. It is inherent in one sense, but it is given in another. I acknowledge that is not the origin of it, because, as I will show, it is derived from a higher power than that; but it is inherent in us, given us like a great many other laws pertaining to our being.

In the Virginia Bill of Rights, it says: "All power is vested in consequence of law derived from the people." This was the Constitution of 1850, which had such men as Henry A. Wise in it, and other men who, if there were any men in the land who were sticklers for the sovereign rights of the States and the powers belonging to them, they were the men. But then, again there is a higher authority than that. In the first chapter of Genesis, in the twenty-eighth verse (they come in very appropriately, these verses), we have this authority, "And God blessed them, and said be fruitful and multiply and replenish

the earth," and then added the important words just after that, "replenish the earth, *and subdue it.*" There is your charter, your power and authority. I might add another authority to that. I have a recollection while a boy, when the Oregon controversy was going on over that large territory of Oregon, that John Quincy Adams, certainly one of the greatest oracles the country ever had, a man of vast learning and great mind, sent up to the Clerk's table the Bible, and requested the Clerk to read that verse, and, says he: "Upon that verse we base our right."

What right had the Indians to the State of Kentucky? They didn't live here; they made it their hunting ground. They didn't occupy it. They didn't cultivate it. That clause in Genesis came from Moses, and I believe it was inspired, and that Moses said what God told him to say—I think it was impossible for him to have told a lie, and he says God did tell him that very thing, and so it is handed down. No earthly charter is higher, no words truer, and the earth is now marching on, fulfilling that great command: "Go forth; I give you my blessing." He says, "multiply and replenish the earth; be fertile, and subdue the earth. I give you possession; dominion over the birds of the air, the fish of the sea, the beasts of the field—everything. You are lords and masters."

"*All elections shall be free and equal*"—

which, he says, is not right. It is not true in one sense. In one sense it is not properly stated. Now, why? They ought to be free, he admits, but then he goes on in his substitute to say that they ought

to be free from any interference from the civil or military power; but if this word "equal" is a word tantamount to that, and expresses it all, what more do you want? In making a scientific book for any subject, a man who can in one word express an idea, has the advantage over the man who takes a half a dozen words to say the same thing. A maxim or apothegm, or a truth of any kind, is more valuable, according to the shortness and preciseness of the term in which it is expressed. If you go to mathematics, you have to define what figure is various. It won't do to write an essay about it; you should have them in short, crisp, concise terms; and if you do, you have the advantage. The gentleman proposes to go on and define that word "equal" as meaning free from the interference of the civil or military authorities. That is unnecessary. The word "felony" conveys an idea itself. As soon as it is mentioned, it suggests all it means. It carries the definition with it. The word "murder" is one of the same kind, and it ought to be, and I wish wherever you can find such a word that it be retained. I notice, and have noticed, that our courts sometimes use the word "forgery," have gone so far as to say that "forgery" is not sufficient in an indictment, but you must state the facts. I thought that it was sufficient to say "forgery." The word "forgery," ex vi termini, means a certain thing. It means you have signed the name, or counterfeited the writing of another without his consent. In law, therefore, whenever you have got a word of any kind that will express by its shortness, its compactness, and the fruitfulness of its suggestions, a full definition, I

contend it ought to be allowed to stay, with nothing further added to it. This is one of those terms: "All elections shall be free and equal." How equal? Why equal? It is a term that has become more used of later days than ever. It was used in the fourteenth amendment to the Constitution of the United States, which expresses it, "the equal protection of the law"—no equal otherwise. No man shall interfere—no civilian, no military man. *When you go to an election at your polling-booth, you go freely, you go equally; no one has a superiority; no one can say, "stand back"; no one can say, "take my vote before yours"; no one can say, "my vote counts two, while yours only counts one."* It is equal in every sense, so what is the use of changing it? I think I have satisfied you, gentlemen, upon that.

*"All courts shall be open * * * and right and justice administered without sale, denial, or delay."*

Again, the gentleman seems dissatisfied with that portion of the twenty-ninth section of Magna Charta which has been translated somewhat into our laws here. By section nineteen of our report we use those old words, than which there are no stronger, better or more powerful words in the English language. We say: "All courts shall be open, and that right and justice shall be administered without sale, denial or delay." And the gentleman pronouncing those words, put my friend here from Caldwell, like a great Colossus, with one foot on one hill and another on another, proclaiming with clarion voice to the land that all courts are open; come, ye people, wherever you are, come into the court, where right and justice

shall be administered without sale, denial or delay. And then my friend's penchant for humor gets the better of him, and he attempts to make it appear, by the use of such language, in such a way as to only excite ridicule. Some man says, he imagines there will be no more sales of land upon court days, and someone who has brought suit says you let him deny what I have said. Now, I put the language of this committee side by side with the substitute he proposes. Put the language in juxtaposition. I look at the old language of Magna Charta; that is not exactly the same as this, but about the same. John said to them (and it was all they could get—they wanted more, but they couldn't get it; they were willing to wait, and they did wait), "We will not defer them; we will not deny them justice, and we will sell to none." That was what John said. *We have translated it, "Without sale, denial, or delay," and I must confess there is such harmony, beauty, strength, and power in that language that the Anglo-Saxon language even seems to tremble whenever you assert them; and to give up such language as that looks to me like tearing some dear affection from your heart.* This language has come to be embodied in our ideas, and it is so mixed up with our knowledge of law and our assertion of right and our love of liberty, that you cannot dissever them or tear them apart; and I say let them stand there as long as time shall last, because you can't get any better.

"No man or set of men are entitled to separate or exclusive public privileges."

And now I approach the last of his criticisms; that is upon the section which says, "No man or set of men are entitled to separate, exclusive public emoluments or privileges from the community, but in consideration of public services." Now, as a commentary upon that, you may turn to the Constitution of Vermont. Recollect that Kentucky was the first State admitted to the Union—the first of June, 1792. Vermont came in second. She came in in 1793, and when she came in, they doubtless had this very constitution or Bill of Rights before them, and if she didn't copy from it, she looked on it with eyes closely akin to the manner in which we are looking at it now. Article seven of the Bill of Rights of Vermont reads this way; it shows that there is an ellipsis in this language we have used here. Nevertheless, the language is perfectly plain and perfectly right. It is not right, perhaps, according to some men, but may be according to others. Now, what does Vermont say? "That government is or ought to be instituted for the common benefit, protection and security of the people, nation, or community, and not for the particular emolument or advantage of 'any single man, family, or set of men who are a part only of that community.'" * * * That language is used in the Bill of Rights of Vermont. You see that the ellipsis is filled up, and that the apparent disconnection of the words is explained. But the gentleman says it is ungrammatical. Now, a great many words have been used by great writers, and a great many men have criticized them. We have had men who could or would criticize Homer. We can all criticize, but we can't make their works. And the idea of

modern critics setting themselves up as standards of authorities of that description! One of the Emperors of Germany, at the Council of Constance, about 1415, had used the word "it" in place of "he" or "him"—I don't recollect how that was. Anyhow, a question arose about the manner in which it was used, and one of the Council suggested to him to use the neuter for the masculine. His reply was to him, in substance—I can't give you all he said—but he replied: "Hush up, sir! No more talk on that subject! *I am super grammaticam!*" And he was ever afterwards called "Super Grammaticam." Now, the gentleman criticizes that language: "No man or set of men *are* entitled." That language was used in 1776 by Virginia in her Bill of Rights, and it has been used in our three constitutions heretofore. It was used by Vermont in the way I have shown you, by supplying the ellipsis. Now we have got it at the present time, and the gentleman says it is not grammatical. I don't know that it might not be parsed by some gentlemen exactly that way; but it strikes me that the criticism is "*super grammaticam.*" The gentleman from Anderson has taken occasion to explain how that was. He said that this was used as a noun of multitude, and therefore it would be a proper substantive for the verb "are." You can make it out that way. It is a phrase by itself, "No man or set of men." Vermont uses the word "family." "No man, family, or set of men who are." So it is we use this in that way by a liberal, fair construction of the terms, not too precise or particular. Now, all these things were made one hundred years ago, and yet I never heard of Lindley Murray, who

lived in that time, and who wrote a grammar on the English language, criticizing that language. I never saw any mention of this, and surely records so transcendent as these would have attracted the attention of so learned a man.

CRITICISMS OF KNOTT SUBSTITUTE.

I have a few words to say in return, to call the attention of the Convention, by way of review, to some things he suggested. He said something about my friend from Caldwell indulging in an illustration drawn from the heavens, and the gentleman from Marion shows that he is an astronomer, a classical scholar, a learned man, and that he knows something about the heavens himself. In the last part of his speech made last week, or the week before, he closes in this way: "I have only sought to give them a new and more appropriate setting in the coronet we are fashioning for the queenly brow of the Commonwealth. Every gem is there, and my fervent prayer is that their associated radiance, like the lambent glory of the stars, may guide the footsteps of her children along the paths of peace." * * * Now, who introduced the word "stars" first, who drew his illustration from the stars? Why, clearly the gentleman from Marion, because he preceded my friend from Caldwell, and when he talks about the constellations, showing that he is well acquainted with Taurus, Gemini, Leo, Cancer, and all the other constellations, it was no particular harm for my friend from Caldwell, when he needed an illustration, to say that these seven principles were like the sweet Pleiades. "You cannot loose the bands of Orion; you cannot bind the

sweet influences of the Pleiades." Certainly a very appropriate expression, and one following in the line of what the gentleman from Marion had first said.

But I wish to take issue with my friend from Marion on that proposition. He said: "Every gem is there, and my fervent prayer is that their associated radiance, like the lambent glory of the stars may guide the footsteps of her children along the paths of peace, etc." Now, I am very much mistaken, or the gentleman is, with regard to those gems. Those gems, according to my understanding of it, are not there, and it is with you to say whether I can prove that statement or not. In subdivision three of section three of the substitute, he says this: "That in all prosecutions for crime the accused shall have the right to be heard by himself and counsel; to be informed of the nature and cause of the accusation against him; to have the witnesses against him examined in his presence in open court; to have compulsory process for securing the testimony of witnesses in his defense, and to have a fair trial by an impartial jury according to the law of the land, and shall in no case be compelled to testify against himself." Now I put it to this Convention to know whether they ever mean to adopt any such substitute as that. The section of the old Bill of Rights says every man shall be tried by an impartial jury of the vicinage. The gentleman has deliberately, as I understand it, eliminated those words, and has put it in the power of the Legislature of Kentucky to say that a man can be tried other than in his own county or in its immediate vicinity. I will not be

over-scrupulous about the use of the word "vicinage." Vicinage may, for the purpose of this argument, mean county or adjoining county. It certainly means some contiguous county. There is no question about that; but the gentleman from Marion expunges that idea, and says all he wants is an impartial jury. And then you can recollect the emphatic attitude and tone of voice when describing how many murderers and felons went unwhipped of justice, and he painted a scene dramatically true; but nevertheless he takes away one of the provisions of our chartered rights; he extracts one of the gems from the coronet. I think I can make that good by simply calling your attention to it. Is it not gone, and are you going to submit to it? Can I not appeal to every man in this Convention, and ask them to lay their hands upon their hearts and say whether they will admit, even for a moment, that that old law—*the old birthright—the old Charter of Rights—shall be expunged and eliminated forever from this record, and left to the capricious will of the Legislature to say where a man shall be tried?* I know that the gentleman from Lexington had something to say on that subject, and I expect he will concur with me about it, and will not disagree about the word "vicinage," because our code of practice explains that term "vicinage" and allows a jury to be drawn from another county when a fair and impartial jury could not be obtained in the county; but the word "vicinage" never was changed. They left it as it was, although drawn from adjacent counties, wherever they could not obtain a fair jury in the county where the trial should have been had. Yet the gentleman from

Marion not only goes far beyond that, but he puts it in the power of the Legislature, by a simple enactment of their own, to place it beyond the reach of man, if they say so, to obtain anything like a trial, partial or impartial, by a jury of the vicinage; and I have but to show it for you to condemn the proposition.

That is not all. There is another "gem," one of equally as high importance, if not greater, which the gentleman has expunged by his substitute. In section twenty-one of the committee's report they have this to say, quoted from the old Bill of Rights: "No standing army shall, in time of peace, be maintained without the consent of the General Assembly; and the military shall in all cases and at all times be in strict subordination to the civil power; nor shall any soldier in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner prescribed by law." The gentleman has left out altogether the first clause, saying that no standing army shall in time of peace be maintained without the consent of the General Assembly, and if I understand the gentleman's remarks, he contended there was no necessity for it; no danger; that the Governor had no such power. I meet the gentleman just at the threshold with regard to that, and say there is danger. Because there is no danger now is no evidence that danger will never come. Says the poet:

"Dangers are always here; this is a scene of combat, not of rest;
Man's is laborious happiness at best;
This side of death his dangers never cease;
His joys are joys of conquest, not of peace."

It has been said that "eternal vigilance is the price of liberty"; and, although the danger does not rear its head, although the dragon does not show himself now, can we say such a thing will never come? Can it be possible that we shut our eyes to the danger because it is not imminent? It may in some future come. You say the Governor has no such power; but the Governor has immense power. Any man has power. Position gives power. Knowledge gives power. Wealth gives power. All three together give immense power. I can understand very readily that a single individual without position—he may have nothing but wealth—can acquire power here which would be dangerous to exercise. You take a man like Rockefeller, or some other man whose fortune is greater than ever Croesus imagined, whose check for a million dollars would not be unusual. There are in California men now who can buy up four counties here in Kentucky, buy every foot of land, and can put hundreds and thousands of men under obligations to them. But now put such a man in position as Governor of the State of Kentucky. The Legislature may take from him the power to handle the militia; but if he has wealth, if he is one of those with whom fifty or a hundred thousand dollars are not more than five or ten dollars would be to you, is it not the easiest thing in the world to build an arsenal and employ a thousand men and keep them under arms? Fifty thousand dollars a year would do it. Can he do it? If you object, he can say, "I am a freeman; these men I employ; I arm them; they don't violate your law; they carry no concealed weapon; that property belongs to me;

I own it." Increase that power to a thousand or ten thousand men. There are men who are able to keep that kind of a standing army, and you know the influence that ten thousand organized well-drilled men would have; they can almost control the State of Kentucky. Send the disciplined band through the State. You are not organized, you are not drilled, you are not armed, you have not the power. What immense power could the Governor or any other man, whether a private citizen or occupying public station, exercise, provided you put him in that position and give him great wealth, and yet the gentleman has expunged that part of the Bill of Rights by his substitute. He proposes to leave that out altogether without any protecting clause whatever. Why, sir, it was the cause of the contest between Charles and the Parliament of 1641, when the celebrated wars commenced in England, whether he should have a standing army or not. It was a point of extreme sensibility in 1689, when the Bill of Rights was passed, and they went further than that, and said no soldiery shall be quartered on the people. Why manifest so much tenderness on that subject? Because they knew, and we now know, that organized men with arms in their hands, drilled and equipped, paid, I don't care by whom, can be the means not only of effective, but of tremendously dangerous influence whenever brought to bear upon any given object.

Cato lived nearly a hundred years before Julius Caesar prophesied the downfall of the Romans by going into the fish market one day, and seeing the

immense price which some rich man gave for a fish. "What!" said he, "how can that man afford to pay that big price for that fish?" He argued this way; that a man who can afford to pay such a price as that for a fish can hire a band of men, bribe voters, and can bring in hired ruffians and jingoes, and control the country; and he predicted the downfall of Rome just from that one single circumstance. However small it is, it is a fruitful lesson for us. It was the germ of the downfall of Rome, for from all that accumulation of wealth and power and strength, with hired soldiery around them, grew the formation of the Praetorian guards, through whom came the downfall of Rome. Such were the germs. Wise men, thoughtful men, scholars, statesmen, like all men ought to be who make constitutions, ought to know that these things cannot be treated in this gingerly style. You must understand the possibilities of such things. The very possibility of such a thing is enough to excite a man who has the welfare of the country at heart. Now, haven't I established it that those two gems are taken from the coronet? Have I not established it that he has not left the old Bill of Rights as he said he had left it? Its former radiance may be dimmed, and it may not guide the footsteps of her children along the paths of peace and security, prosperity and happiness. It may be the very opposite of peace and security. I would put it in the hands of no man, and allow no man to keep a standing army in a time of peace.

I could say a great many things, but I find that my strength is about exhausted. The gentleman, in

his section, has used language by reason of which I have a right to apply the argumentum ad hominem to him. I will read the section to show how his argument applied to himself: "That all men are endowed by their Creator with equal rights to life, liberty, property, and the pursuit of happiness; that in the social compact they engage to hold and enjoy those rights." Who has engaged to do that? He has already said that every man had those political rights to life, liberty, and property—infants, idiots, and the whole accumulated mass of men; yet he says now that they engage to hold it. But do they engage to do it at all? You said they are incompetent to do it, and they could not do it. Now, I turn your argument upon yourself and say, if you are disposed to be critical about the language we have used in this Bill of Rights, we can use the very same criticism to the respective sections to which he has called your attention. I am not using that now to find any particular fault with it, but I am showing you that the very fault and blame that he attaches to the sections reported by the committee we can attach to his. And again, he says, "That for the purpose of prescribing and enforcing such laws governments are instituted among men, deriving their just power from the consent of the governed," showing that he recognizes, therefore, the inherent principle that we have contended for.

The gentleman says: "The right of the people to keep and bear arms for their own defense shall never be infringed, except that the Legislature shall have power to enact such reasonable laws as shall

be necessary to prevent the carrying of concealed deadly weapons."

The committee have stated in their report that citizens have the right to keep and bear arms for their own defense, their families, and for the vindication of the State. I am not using the exact language, but that is the idea. Some gentlemen object to the use of the words, "their families and the State," and they ask, "Why use the word 'families?'" Has a man not a right to defend his family? I beg leave to call your attention to the fact that there have been judges in the history of the world who laid stress upon particular words, and did not hesitate to construe words or to misconstrue them as they deemed proper. Scroggs, when he sat on the bench in the days of Charles Second, decided at one time in the law of libel, that any publication reflecting upon the government was itself a breach of the peace. And now the gentlemen has left out "*their families and in defense of he State.*" I can imagine very well that a man might have a family, and yet they be not of his own kindred. A man's family sometimes embraces those who are in no wise related to him, but who are living in his household and under his protection. This language enables a man to defend even them. According to the old Bill of Rights, which perhaps they did not contemplate at the time, they left an open clause, which might be, by some such man as Scroggs, violated with impunity. I quoted the instance of Scroggs to show that language may be stretched; to show that sometimes a man may be technically right when he is intrinsically

wrong. I know the object of this is to give every man the right to bear arms in defense of himself, his family and country. That may be true, subject to the right of the Legislature to forbid the carrying of concealed weapons. Then he has the right to carry arms at any time except as prevented by the Legislature under the power given. "Armed for the defense of himself" is one thing; "for his family" is another; because it may embrace some person not of his own kin. A man has a right to defend his child; he has a right to defend his father or his son. That is a common law principle, and this principle we have carried out in this Bill of Rights, simply enlarges and extends it. I apprehend there is nothing wrong about that; and I think that the narrow meaning to be gathered from the use of the few words the gentleman has given here will not meet the approbation or concurrence of this Convention.

Section eight of the substitute is as follows: "That the right of the people to peaceably assemble to consult together for their common good or other lawful purpose, or to petition the government for redress of grievances, shall never be infringed or denied; nor shall the freedom of speech or of the press ever be abridged or impaired; but every person may freely and fully express his sentiments and opinions upon all subjects whatsoever, being responsible, nevertheless, for any violation of the public peace and for any unlawful injury to the rights of any other person of which he may be guilty in abuse of that liberty." I called the attention of the committee to the use of that language, "He may fully express his

sentiments upon all subjects whatsoever, *being responsible, nevertheless, for any violation of the public peace.*" We have heard the gentlemen descant at length, and very elaborately, upon the dangers of misconstruction. They have asked, "Why not use plain language?" They have asked, "Why interpolate language there that may occasion the possibility of various constructions, and subject the courts to any amount of trouble to find out the meaning of those who made it?" And now I will ask you if anyone can tell me what may be finally the determination judicially of that language, "express fully his sentiments and opinions upon all subjects whatsoever, being responsible, nevertheless, for any violation of the public peace and for any unlawful injury to the rights of any other person of which he may be guilty in abuse of that liberty." "*Guilty of a violation of the public peace!*" How far? Immediate or consequential—belonging immediately to it, or growing out of it? If so, to what interminable length, and how far do you go back to reach it, must be left to judicial construction, about which it is impossible for any man to tell. Omniscience can only tell exactly how fertile just that language may become for interminable litigation in this State. I, therefore, simply say that that ought to be expunged, or rather, the substitute ought not to be adopted.

There was a Dutch philosopher by the name of Klopstock, I believe, who wrote voluminously, and some of his pupils went over from France or England, at one time, to inquire of him the meaning of certain phrases he used in one of his books. He looked at

the matter in Dutch fashion, and, after looking at it some time, he raised his head and said he did not know himself; but he said, furthermore, "I do not know that you could spend your time better than by employing the rest of your days in an effort to find out what is the meaning of it." That is just exactly the case here. You may consider it as you please now; but you may, and others may, spend much time, and it may be after you are dead and gone before the full meaning of that ever will be understood.

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In section two—I pass over some, for I will not be able to notice them all—he says: "First, that no power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage by those entitled to vote at any election authorized by law." Now the criticism of my friend from Caldwell (Mr. Allen) was, that however great an offense a man may commit on the day of an election, if he is proceeding to an election, this clause, as reported by the gentleman from Marion, *would preclude the idea of that man's being arrested on that day.* Doesn't it look very much that way? Is it not a fair and candid and impartial exposition of the language, such as he has used, that no power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage of those entitled to vote at the election? If a man is going to vote, no power, no civil power, no officer, no constable, no sheriff shall ever interfere to prevent it, and no military authority. "Prevent" means to cut off, to keep him away. The Bill of

Rights, being the paramount law of the land, any other law is in subordination to it; any other part of the Constitution may be regarded, and doubtless will be regarded, as in theory of law as subordinate to this Bill of Rights; and yet you have stated here, and stated it distinctly, "That no power shall ever * * * prevent," etc. I know the gentleman from Marion says that is not the meaning; but the gentleman's meaning may not be taken when judges come to act upon it. They will take their own conclusions, and say: "We find the language here; and there is a plain, simple construction to it, and we are not bound to bend our will to anybody else's; and we will give it this plain, simple construction, and that is, that no hand shall prevent him." You have a right now to arrest felons on a day of election, or anybody else, for a breach of the peace, and it does not interfere with any law. But you cannot interfere, according to this substitute, to "prevent" him from going to an election.

But the gentleman pushes his doctrine further, and says: "You shall not pass any retrospective law." That is the first time in the history of this State any such language has been used in our Constitution. We have had the right by the law of the land and the Constitution of the United States and the State of Kentucky heretofore to pass retrospective laws. It may become necessary, some evil legislation having been passed, or the rights of somebody impaired, to cure that legislation. Having that right, the Legislature has rarely ever misused the right; and now the gentleman proposes to take it

away without an act of justification. I protest against the interpolation of any such idea.

"No armed persons or bodies of men shall be brought into this state for the preservation of the peace or the suppression of domestic violence, except upon the application of the General Assembly, or of the Governor when the Assembly may not be in session." (Note. This section, however, did not become a part of the Constitution.)

The gentleman from Scott County (Mr. Askew) with a good deal of emphasis, inquired the other day, "Where did you get that? What do you want by that? What vote do you want to get by it?" That is the substance of his demand. I assure you, and I tell him now, candidly, calmly, if he will reflect a moment, he will see that brought in connection with the idea I have just mentioned of a standing army; there is immediate close relation between the two. If a standing army is forbidden—and it ought to be forbidden for the reasons that I have suggested, for the reasons that history tells us have obtained hitherto in the history of the English race—how much more important is it now when we see, though small the reptile may be, it may grow. I saw an account not long ago of a lady having two little leopard kittens. How gentle and tame they were! How they purred! She treated them like cats. How soothing they were! But there came a time, and the day came very suddenly at that; it came in a moment, when the vicious, inherent nature of the animal manifested itself; when it had received muscles and strength, when it tasted blood; then the eyes began to kindle, and nature began to show itself. They had to put those leopards away; and however small and soothing these things may

appear to be now, it is the part of wise men to remember that these germs may hereafter grow, in time they may become very dangerous enemies of the peace. I have seen throughout the country elsewhere that there are armed bands of detectives invited into some States to assist nominally what they call the officers of the peace. Some officer of the peace, with some man of affluence at his back, desires to reach a certain purpose. He has difficulties about it. These men are trained. They are skillful, and he summons them to his aid. How many come we don't know. It may be fifty or one hundred. The number is not essential. The principle is the thing. You may summon one thousand as well as one hundred. When the population of this country reaches one hundred or two millions, it becomes more difficult to trace out and detect the eccentricities of crime throughout the land, and when persons attempt to evade the law, it may become, they may say, necessary to invite some of these armed bands from abroad. Some States in this Union will not allow armed bands to pass through the State unless with the consent of the Legislature or Governor. Now, I do not think there is any such law in the State of Kentucky; and if they are so sensitive about that in some places, why not be sensitive about it here? There is a possibility these men have been invited in some States to come in and assist the local authorities to arrest offenders. The object of this is to put an effectual quietus upon such efforts. Keep it back. As my friend from Marion said: "Procul, Procul, este profani." Stand off. Do not come near our citadel or our temple or

threshold. We can manage ourselves; and allow me to say upon that subject that a fair amount of self-respect requires us to say to others, we can attend to our own affairs. Please keep away. Kentuckians are not wanting in courage, nor in dignity, nor self-respect. We are competent to manage our own affairs; and this section simply says to them, you shall not bring any armed bands here without the authority of the Governor, acting under the authority of the Legislature. I know you will approve of that. Your pride, your dignity, your sense of self-respect, will teach you that as that danger has been imminent in some places, it may be brought upon you. You do not know what will take place in twenty-five years; for things are occurring around you so fast, and the iniquity of men is such, that no limit can be put upon them, and unless you, like wise men, guard against the danger in advance, it will some day or another raise its hydra head upon you when you least expect it.