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CONSTITUTION

—OF THE—

STATE OF MONTANA

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION AUGUST 17TH, 1889;
RATIFIED BY THE PEOPLE, OCTOBER 1ST, 1889; STATE
ADMITTED, NOVEMBER 8TH, 1889.

PREAMBLE.

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the twenty-second of February, A. D. 1889, ordain and establish this constitution.

CONSTRUCTION OF LEGISLATIVE ACTS.—An act of the legislature will not be adjudged to be in violation of the constitution, except where plainly repugnant thereto. The act will be presumed to be constitutional until the contrary is clearly and satisfactorily shown: *People ex rel Robertson v. Van Gaskin et al*, 5 Mont. 352.

INTERPRETATION OF CONSTITUTION.—The constitution of a state should be liberally construed to determine the primary purpose of any constitutional enactment: *State ex rel Harrington v. Kenny*, 10 Mont. 410.

The provisions of a constitution will be construed to operate prospectively

only, unless a retrospective intention is clearly expressed: *State ex rel Maddox v. Kenny*, 11 Mont. 553.

Constitutional provisions as well as statutes are construed by the same canons of construction: *Dunn v. City of Great Falls*, 12 Mont. 58.

ACT VOID IN PART.—Where a part of a statute is unconstitutional that fact does not authorize the courts to decide the remainder void, unless the provisions are so connected together in meaning that it cannot be presumed that the legislature would have passed the one without the other: *Dunn v. City of Great Falls*, 12 Mont. 58.

ARTICLE I.

BOUNDARIES.

§ 1. The boundaries of the state of Montana shall be as follows, to wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude, thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington, thence due south along

the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky mountains, thence following the crest of the Rocky mountains northward to its intersection with the Bitter Root mountains; thence northward along the crest of the Bitter Root mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning.

ARTICLE II.

MILITARY RESERVATIONS.

§ 1. Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the state of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

Provided, That there be and is hereby reserved to the state the right to serve all legal process of the state, both civil and criminal, upon persons and property found within any of said reservations in all cases where the United States has not exclusive jurisdiction.

ARTICLE III.

A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA.

§ 1. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only and is instituted solely for the good of the whole.

§ 2. The people of the state have the sole and exclusive right of governing themselves, as a free, sovereign and independent state, and to alter and abolish their constitution and form of government, whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant of the constitution of the United States.

A TREATY is the supreme law of the land; and is binding on the courts as an act of congress: U. S. v. The Peggy, 1 Cranch, 103. Every treaty made by authority of the United States is superior to the constitution and laws of any individual state: Hanenstein v. Lynham, 100 U. S. 482.

§ 3. All persons are born equally free, and have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring,

possessing and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

FREEDOM OF CONSCIENCE in religious matters does not imply freedom to commit crimes against the laws of the land under the influence of religious belief, or the doctrines of the church: U. S. v. Reynolds, 98 U. S. 145.

Religious belief cannot be accepted as a justification for the commission of an act made criminal by the law of the land: Id.

A man cannot excuse his practices which are in violation of the law because of his religious belief. To permit this would be to make the professed doctrines of religious belief superior to the law of the land and in effect to permit every individual to become a law unto himself. Government could exist in name only under such circumstances, Id.

§ 5. All elections shall be free and open, and no power civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

RACE, COLOR OR SERVITUDE.—The fifteenth amendment to the constitution of the United States prevents the state or the United States from discriminating on account of race, color, or previous condition of servitude, and

invests citizens with a new constitutional right which congress may protect by appropriate legislation: U. S. v. Reese, 92 U. S. 214; U. S. v. Cruikshank, 92 Id. 542.

§ 6. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character; and that right and justice shall be administered without sale, denial or delay.

ATTORNEYS FEE.—A statute, allowing the recovery by a plaintiff of a reasonable attorney's fee in an action to foreclose a mechanics lien, is not repugnant to the provisions, that courts of justice shall be open to every person,

and a speedy remedy afforded for every injury of person, property or character, and that right and justice shall be administered without sale, denial or delay: Wortman v. Kleinschmidt et al, 12 Mont. 316.

§ 7. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

HOME.—Mere speaking of a place as a home, without any act showing an intention to return to it, amounts to nothing; but if the acts and language concur and are continued for many years, they

are conclusive: Pennsylvania v. Ravenal, 21 How. 103.

The home of a person occupying it is his domicile. Mitchell v. U. S. 21 Wall. 350.

§ 8. Criminal offenses of which justices courts and municipal and other courts, inferior to the district courts, have jurisdiction, shall, in all courts inferior to the district court, be prosecuted by complaint. All criminal actions in the district court, except those on appeal, shall be prosecuted by information, after examination and commitment, by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment.

A grand jury shall only be drawn and summoned when the district judge shall in his discretion consider it necessary, and shall so order.

INFORMATION.—A conviction on an information without indictment, for murder in the first degree, and sentence of death thereon, are not illegal by virtue of that clause of the fourteenth amendment to the constitution of the United States which prohibits the states from depriving any person of life, liberty or property without due process of law: *Hurtado v. California*, 110 U. S. 516.

The clause of the constitution, relating to informations did not execute itself, and before it could be carried into effect, the exercise of jurisdiction and limitations of procedure, and the rights and pleadings of the state and accused must be defined by the legislative department: *State v. Ah Jim*, 9 Mont. 167; *In re Durbon*, 10 Mont. 147. A conviction in a court of the state for a felony committed in the territory prior to the adoption of the constitution cannot be sustained where the prosecution

was by information, as provided by the constitution and the act of March 2, 1891, relating thereto, as the provision of the federal constitution guaranteeing to the accused the right to be prosecuted through the intervention of a grand jury, was at the time of the commission of the offense the supreme law of the land, and the substitution by the state constitution of prosecution by information, in place of by indictment, not being a matter affecting the procedure, deprived the accused of the substantial right, and gave said act a retrospective operation: *State v. Kingsley*, 10 Mont. 537.

GRAND JURY.—This clause of the constitution executes itself, and in the absence of further legislation, all offenses of the grade of felonies must be inquired into under the provisions of the Criminal Practice Act relative to indictments: *State v. Ah Jim*, 9 Mont. 167.

§ 9. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall work corruption of blood or forfeiture of estate; the estates of persons who may destroy their own lives shall descend or vest as in cases of natural death.

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

EVERY PUBLICATION by writing, printing or pictures, charging upon or imputing to any person that which renders him liable to punishment, or is calculated to make him infamous, odious

or ridiculous, is libelous prima facie and implies malice in the author or publisher: *White v. Nicholls*, 3 How. 266; *Lansing v. Carpenter*, 9 Wis. 340.

§ 11. No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises or immunities shall be passed by the legislative assembly.

EX POST FACTO.—As to what are ex post facto laws consult the notes under section 10 of article 1 of the constitution of the United States.

A statute requiring the treasurer of an incorporated company to retain a certain percentage of the interest accruing on the company's bonds payable outside of the state impairs the obligation of contracts: *Railway Co. v. Pennsylvania*, 15 Wall. 300.

Laws existing when the contract is made, and in the place where it is made and to be performed, enter into and become a part of the contract; and a law enacted subsequently impairing the obligation of the contract as it existed under those laws is repugnant to this provision and void: *Walker v. Whitehead*,

16 Wall. 314. A state constitution which violates this provision is void: *Gunn v. Barry*, 15 Wall. 610.

The substantial rights of a defendant would not be prejudiced by the submission of his case to a grand jury created by that constitution, therefore section 8 of this article is not ex post facto: *State v. Ah Jim*, 9 Mont. 167. See note art. 3, sec. 8: *State v. Kingsley*, 10 Mont. 537.

AN EXEMPTION from taxation granted to a railway company as an inducement to build its road cannot be taken away by subsequent legislative acts: *Humphrey v. Peques*, 16 Wall. 244.

THE MARRIAGE CONTRACT is not within this inhibition: *Rugh v. Ollenheimer*, 6 Or. 231.

§ 12. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

THE WORD "DEBT" does not include a demand founded on a tort or penalty for violating a statute: *U. S. v. Walsh*, Deady 285; *Hanson v. Fowler*, 1 Saw. 497; *Norman v. Manciet*, 1 Id. 484.

AN ABSCONDING DEBTOR is one who is about to leave the state secretly or openly without intention of returning

without fulfilling his obligations to his creditors "behind him unsatisfied." *Norman v. Manciet*, 1 Saw. 484. Imprisonment of debtor in a manner or under circumstances not fully warranted by the constitution cannot be authorized by statute: *Ex parte Grace*, 12 Iowa, 208; 79 Am. Dec. 529.

§ 13. The right of any person to keep or bear arms in defense of his own home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

TO BEAR ARMS.—The provision of the second amendment to the constitution of the United States guaranteeing "the right of the people to keep and bear arms" is a limitation on the power of the United States, and not on that of the state; nevertheless, inasmuch as all citizens capable of bearing arms constitute the reserve military force of the general government, and in view of the general military powers of the United States, the states cannot prohibit the people from keeping and bearing arms so as to deprive the United States of this resource for maintaining the public security: *Presser v. Illinois*, 116 U. S. 252. The rights voluntarily to associate together as a military company or organization or to drill or parade with arms without an act of congress or of the state legislature authorizing the same is not an

attribute of natural citizenship. Military organization and drill are especially under control of government, and cannot be claimed as a right independent of law. Id.

State governments, unless restrained by their own constitutions, may regulate or prohibit associations and meetings of people, except peaceable assemblies to perform the duties or exercise the privileges of citizens of the United States, and may also regulate and control military organizations and drills except such as are organized by the general government: Id. A law prohibiting the carrying of concealed weapons is not in conflict with this provision: *State v. Reid*, 1 Ala. 612; 35 Am. Dec. 44; *State v. Chandler*, 5 L. A. Ann. 489; 52 Am. Dec. 599.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

PRIVATE PROPERTY cannot, in absence of constitutional provision, be taken for private use against the will of the owner, though compensation be provided: *Osborne v. Hart*, 24 Wis. 89; *Witham v. Osburn*, 4 Or. 318.

JUST COMPENSATION being the condition precedent, an act of the legislature providing for taking without pro-

vision for compensation is void: *Conn. River R. Co. v. County Comm'rs*, 127 Mass. 50; 34 Am. Rep. 338; *Sherman v. Milwaukee, etc., R'y*, 40 Wis. 645. And a provision for maintaining action for compensation is not a sufficient provision for compensation: *Newell v. Smith*, 15 Wis. 101.

A statute authorizing the owner of

land to erect and maintain thereon a mill and mill dam upon and across any navigable stream, upon paying to the owners of lands which are thereby caused to be flowed such damages as may be assessed in a judicial proceeding, does not deprive such owners of their property without due process of law: *Heard v. Amoskeag Man Co.*, 113 U. S. 9.

The inhibition found in all the constitutions against the taking of private property for public use without compensation does not protect against damaging it without taking it, and it is to remedy this manifest wrong and injustice that the words "or damaged" are inserted. The effect of this section is to declare that private property shall not be invaded for public use unless the owner receive compensation: *Johnson v. Parkersburg*, 16 W. Va. 402; 37 Am. Rep. 779; *Pekin v. Brereton*, 67 Ill. 477; 16 Am. Rep. 629; *Pekin v. Winkle*, 77 Ill. 56; *Elgin v. Eaton*, 83 Id. 535.

Where a city government changes the grade of a street after an abutting land owner has made his improvements in conformity to a grade previously established, and thus injured the property of such abutting owner, this provision is violated, and an action lies for damages: *Johnson v. Parkersburg*, 16 W. Va. 402; 37 Am. Rep. 779.

It is for the courts to determine whether or not the use for which property is sought to be taken is a public use: *Coster v. Tide Water Co.*, 18 N. J. Eq. 54; *Tyler v. Beacher*, 44 Vt. 648.

Land over which a highway is laid is not taken for public use until the highway is operated by proper authority: *State ex rel James*, 4 Wis. 408.

The constitution contemplates a proceeding in court in all cases of taking private property for public use without consent of the owner. All other methods are excluded. The owner has the right to a trial by jury for ascertaining the compensation to which he is entitled: *Weber v. Santa Clara County*, 59 Cal. 265.

A sum paid into court by a railroad company, on the award of damages made by commissioners as compensation for occupation by such railroad of land sought to be condemned for railroad purposes, is, though the owner has appealed from the award, a just compensation, within the meaning of constitutional article 3, section 14, providing that private property cannot be taken for public use without just compensation, and hence is sufficient to justify an order allowing the railroad company to take possession pending the appeal: *State ex rel Volunteer mining Co. v. McHatton*, 15 Mont.

§ 15. The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution or other beneficial use and the right of way over the lands of others, for all ditches, drains, flumes, canals and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount together with the expenses of the proceeding shall be paid by the person to be benefited.

ROADS TO MINING CLAIM—CONDEMNATION PROCEDURE.—The provisions of the constitution that the necessity for, and the damages occasioned by, the opening of private roads shall first be determined by a jury does not abrogate sections 1495 et seq. of the general laws, granting to the owners of mining claims a right of way across the

claims of others, and providing for the assessment of damages by commissioners, but merely modifies the statute as to the method of determining the damages, leaving the jurisdiction and procedure in other respects unchanged: *State ex rel Coleman et al. v. District Court Third District*, 14 Mont. 476.

§ 16. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

RIGHTS OF THE ACCUSED.—The accused is informed of the "nature and

cause" of the accusation, when he receives the indictment or information

charging the offense according to the common law, and it is sufficient if the acts are stated according to their legal effect: *State v. Kirk*, 10 Or. 505.

The right to meet the witnesses face to face may be waived: *Williams v. State*, 6 Wis. 281; *Miller v. State*, 25 Id. 348.

TO SHOW THE CAUSE OF DEATH, on trial for murder, it is competent to give in evidence dying declarations of deceased made while not in extremis and fully conscious that he could not survive: *State v. Cameron*, 2 Penn. 490; *State v. Dickinson*, 41 Wis. 299; *People v. Sligh*, 48 Mich. 54.

Depositions may be used on trial of criminal action, under stipulation of defendant waiving right to have the witness in court: *People v. Martin*, 52 Mich. 238; *State v. Mc. O. Blennis*, 24 Mo. 402.

Speedy trial is one conducted according to fixed rules, regulations and proceeding of law, free from vexations, capricious, and oppressed delays created by the ministers of justice: *Nixon v. State*, 2 Smedes & M. 497; *Commonwealth v. Carter*, 11 Pick. 277; *Cooley on Constitutional Limitations*, 332; *Ex parte Stanley*, 4 Nev. 113; *U. S. v. Stewart*, 2 Dall. 343.

§ 17. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

§ 18. No person shall be compelled to testify against himself, in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense.

TWICE IN JEOPARDY.—A person who committed an act which is an offense against both the United States and the state in which it is committed commits two offenses, and his acquittal or conviction under the laws of the one cannot be pleaded as a defense to a prosecution by the other. Though one act, it is two offenses: *U. S. v. Barnhart*, 10 Saw. 491.

If the jurisdiction of the state and federal courts be concurrent, the sentence of either court, either of conviction or acquittal, may be pleaded in bar of the prosecution before the other: *Houston v. Moore*, 5 Wheat. 1.

RIGHT OF SPEEDY TRIAL.—See note, art. 6, amendments to constitution of United States: *U. S. v. Fox*, 3 Mont. 512.

IMPARTIAL JURY.—See note, art. 6, amendment to constitution of the United States: *Territory v. Bryson*, 9 Mont. 32.

A defendant is entitled to counsel to defend him; and if he is unable to employ counsel the court will assign a member of the bar to that duty: *Carpenter v. Dane County*, 9 Wis. 274; *Dane County v. Smith*, 13 Id. 585.

When counsel has been assigned a conviction will not be reversed on the ground that the selection was not made or approved by defendant, no objection being raised when assignment was made: *People v. Murray*, 52 Mich. 288.

As to jury see art. 3, sec. 23, noted. The accused is entitled to compulsory process to compel the attendance of witnesses in his behalf without payment or tender of fees: *West v. State*, 1 Wis. 281.

The district attorney has the right to admit, on behalf of the territory, that absent witnesses will testify to the facts stated in the affidavit of the defendant for a continuance: *Territory v. Perkins*, 2 Mont. 467.

The discharge of the jury from giving a verdict, without the consent of the prisoner, the jury being unable to agree, is not a bar to a subsequent trial for the same offense: *U. S. v. Perez*, 9 Wheat. 579.

Prosecution by one nation for a crime against the laws of nations is a bar to a prosecution by another nation: *U. S. v. Pirate*, 5 Wheat. 197.

§ 19. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

BAIL.—In all other than capital cases and in all capital cases where the guilt is not evident or the presumption great defendant is entitled to bail as a matter of right, which no court can refuse: *People v. Tinder*, 19 Cal. 539.

The constitution contemplates only those cases where the party has not been already convicted: *Ex parte Voll*, 41 Cal. 29.

The danger of escape increases in proportion to the severity of the impending punishment and the danger of conviction, and in determining the question of accepting bail and the amount thereof, these two elements should be taken into consideration: 1 Bishop Crim. Proc., sec.

255; *People v. Cunningham*, 3 Park Cr. 520; *People v. Van Horne*, 8 Barb. 158.

In determining an application for admission to bail, the principal consideration being the question of probable guilt, the court or judge will look into the depositions taken before the coroner, also by the committing magistrate: 1 Bishop's Crim. Proc., sec. 257; *Rex v. Horner*, 1 Leach C. C., 4th ed., 270; *State v. Den*, Tayl. 142.

So also testimony of witnesses before grand jury: *Ex parte Bramer*, 37 Tex. 1; *Street v. State*, 43 Miss. 1.

Payment by the sureties of their recognizance, in criminal cases, though it discharges the bail, does not discharge the obligation of the principal to appear in court; that obligation still remains, and the principal may at any time be retaken and brought into court: *U. S. v. Ryder*, 110 U. S. 729.

§ 20. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

DISFRANCHISEMENT OF A CITIZEN is not excessive or cruel punishment: *Barber v. People*, 20 Johns. 459; *James v. Commonwealth*, 12 Serg. & R. 220. Nor is flogging cruel: *Garcia v. Territory*, 1 N. Mex. 415; *U. S. v. Collins*, 2 Curt. 194.

Whether a statute restricting the diet

of prisoners to bread and water for fifteen days would be cruel and unusual punishment, *quaere*: *Johnson v. Waukesha County*, 64 Wis. 288.

Imprisonment for two years is not objectionable as cruel or unusual punishment for wife beating: *State v. Pettie*, 30 Am. Rep. 88.

§ 21. The privilege of the writ of habeas corpus shall never be suspended, unless in case of rebellion or invasion, the public safety require it.

HABEAS CORPUS.—Under this section in the United States constitution, where the same language is used, it is the congress, and not the president, that is to determine when the public safety requires the suspension of the writ: *Ex parte Merriman*, Taney 253; *McCall v. McDowell*, Deady 259.

A state court or judge authorized by

the laws to issue habeas corpus may issue it in any case where the party is imprisoned within its territorial limits; provided it does not appear when the application is made that the person imprisoned is in custody under the authority of the United States: *Ableman v. Booth*, 21 How. 506.

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

MARTIAL LAW cannot arise from a threatened invasion; the necessity must be actual and present, the invasion real, such as effectually closes the courts and deposes the civil administration: *Ex parte Mulligan*, 4 Wall. 2.

A state government may declare mar-

tial law so far as is necessary to put down an armed insurrection too strong to be controlled by the civil authority; and the state itself must determine the degree of force which the crisis demands: *Luther v. Borden*, 7 How. 1.

§ 23. The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. A jury in a justice's court both in civil cases and in cases of criminal misdemeanor shall consist of not more than six persons. In all civil actions and in all criminal cases not amounting to felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all of such jury concurred therein.

THE JURY contemplated by this section is, except as otherwise specified, the jury as understood at the time of the adoption of the constitution—the jury of twelve; and a law providing for a jury of

less number in cases not specified in the constitution is void for repugnance to the constitution: *Gaston v. Babcock*, 6 Wis. 503.

RIGHT TO A FULL AND LAWFUL

PANEL.—Every litigant has the right to have a full and lawful panel before him at the commencement of a trial, from which to select a jury. If, between the time of selecting the panel and the commencement of the trial, the law should be changed so as to require a larger panel, the litigant has a right to demand the larger panel: *Kennon v. Gilmer*, 4 Mont. 433.

As to waiver of trial by jury in criminal cases, see *Rapalje's Criminal Procedure*, secs. 149, 150.

NO WAIVER BY CONSENT.—In the trial of all felonies, more especially of capital offenses, a jury of twelve men, neither more or less, is an indispensable requirement of the law; it is not a privilege that can be waived, either by prosecutor or defendant, or allowed by court. A trial of such a cause before a jury of eleven men, though with consent of defendant is a nullity, and any judgment therein is without jurisdiction and void: *Territory v. Ah Wah and Ah Yen*, 4 Mont. 149.

A law rendering a railroad company liable for cattle killed by it, at a value to be determined by appraisalment, which appraisalment is made conclusive evidence of such value, is unconstitutional, as depriving the company of the right of trial by jury: *Graves v. Northern Pacific R. R. Co.*, 5 Mont. 556.

The right of trial by jury is not infringed by an order refusing a new trial

on condition that prevailing party remit a part of the damages awarded him by the jury: *Arkansas v. Mann*, 130 U. S. 69.

This section does not require that a trial by jury shall be provided for equity cases: *Shields v. Thomas*, 18 How. 253; *Burton v. Barbour*, 104 U. S. 126. Its application is only to those cases in which, at the time of the adoption of the constitution, a jury could have been demanded: *Norton v. Rooker*, 1 Pinn. 195; *Board of Supervisors v. Dunning*, 20 Wis. 210. A stipulation in writing that a cause be tried by the court is a waiver of a jury: *Bamberger v. Terry*, 103 U. S. 40. So, also, to submit a case on agreed facts: *Wayne County v. Kennicott*, 103 Id. 554.

The right to a trial by jury can be waived by express agreement in open court, and by implied consent: *Moncure v. Zunts*, 11 Wall. 416; *Kearney v. Case*, 12 Id. 275.

Where a party is present by counsel and goes to trial before the court without objection or exception he has voluntarily waived his right to a trial by jury; but, if not present by himself or counsel, it is error for the court to try the case without a jury: *Kearney v. Case*, 12 Wall. 275; *Morgan v. Guy*, 17 Id. 81.

Trial by jury is a fundamental guaranty of the rights and liberties of the people, consequently every reasonable presumption should be indulged against its waiver: *Hodges v. Easton*, 106 U. S. 408.

§ 24. Laws for the punishment of crime shall be founded on the principles of reformation and prevention, but this shall not affect the power of the legislative assembly to provide for punishing offenses by death.

§ 25. Aliens and denizens shall have the same right as citizens to acquire, purchase, possess, enjoy, convey, transmit and inherit mines and mining property, and milling, reduction, concentrating and other works, and real property necessary for or connected with the business of mining and treating ores and minerals: *Provided*, that nothing herein contained shall be construed to infringe upon the authority of the United States to provide for the sale or disposition of its mineral and other public lands.

§ 26. The people shall have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

A MEETING OF THE PEOPLE having a tendency to force and violence or any apparent tendency thereto or such as to inspire terror, as being armed, making

threatening or violent speeches and the like, is unlawful: 2 Wharton's *Crim. Law*, 8th ed., 1539; *State v. Stran*, 33 Me.; *Rex v. Hughes*, 4 Car. & P 373.

§ 27. No person shall be deprived of life, liberty or property without due process of law.

DUE PROCESS OF LAW is simply the ordinary course of law in cases of the same kind: *Ex parte Wall*, 107, U. S. 265; *Welmer v. Banbury*, 30 Mich. 201.

Due process of law in a state is regulated by the law of the state: *Walker v. Sauvinet*, 92 U. S. 90.

CRIMINAL COSTS.—A statute creating a lien upon the real estate and mining claims of any person for the payment of any judgment for fine and costs, which may be imposed upon him for a criminal offense, such lien to take effect from the time of his arrest, does not encumber his property without due pro-

cess of law: *Silver Bow Co. v. Strumbaugh*, 9 Mont. 81.

EXAMINATION OF MINING PROPERTY.—A statute which provides for the inspection, examination and survey of lode mining claims, upon an order of the district court made upon the petition of any party having any right to

or interest in such mining claim, where such examination or survey is necessary to protect such right or interest upon notice to the adverse party in possession of such claim, does not deprive the adverse party of his property without due process of law: *St. Louis M. & M. Co. v. Montana Co.*, 9 Mont. 288.

§ 28. There shall never be in this state either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

§ 29. The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

§ 30. The enumeration in this constitution of certain rights, shall not be construed to deny, impair or disparage others retained by the people.

§ 31. No armed person or persons or armed body 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 legislative assembly or of the governor when the legislative assembly cannot be convened.

ARTICLE IV.

DISTRIBUTION OF POWERS.

§ 1. The powers of the government of this state are divided into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

§ 1. The legislative power shall be vested in a senate and house of representatives, which shall be designated "The Legislative Assembly of the State of Montana."

LEGISLATIVE POWER embraces the power to legislate. *Wisconsin Cent. Ry. Co. v. Taylor*, 120 U.S. 577, 12 S.Ct. 683, 32 L.Ed. 359. *Co.*, 52 Wis. 37.

§ 2. Senators shall be elected for the term of four years, and representatives for the term of two years, except as otherwise provided in this constitution.

§ 3. No person shall be a representative who shall not have attained the age of twenty-one years, or a senator who shall not have attained the age of twenty-four years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

§ 4. The legislative assembly of this state, until otherwise provided

by law, shall consist of sixteen members of the senate, and fifty-five members of the house of representatives.

It shall be the duty of the first legislative assembly to divide the state into senatorial and representative districts, but there shall be no more than one senator from each county. The senators shall be divided into two classes. Those elected from odd numbered districts shall constitute one class, and those elected from even numbered districts shall constitute the other class; and when any additional senator shall be provided for by law his class shall be determined by lot.

One-half of the senators elected to the first legislative assembly shall hold office for one year, and the other half for three years; and it shall be determined by lot immediately after the organization of the senate, whether the senators from the odd or even numbered districts shall hold for one or three years.

§ 5. Each member of the first legislative assembly, as a compensation for his services shall receive six dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, perquisite or allowance whatsoever.

No session of the legislative assembly, after the first, which may be ninety days, shall exceed sixty days.

After the first session, the compensation of the members of the legislative assembly shall be as provided by law; *provided*, that no legislative assembly shall fix its own compensation.

COMPENSATION OF MEMBERS.—The first legislative assembly of the state having passed no laws, the second legislative assembly made an appropriation by law for the payment of its members at the same rate established by the constitution (sec. 5, art. 5) as the compensation for members of the first legislative assembly. Said section 5 also declares that after the first session the compensation of the members of the legislative assembly shall be as provided by law, *provided*, that no legislative assembly shall fix its own compen-

sation. Sec. 8, art. 5 of the constitution provides that the salary of no member shall be increased by any law passed during the term for which he is elected. Held, that the intent of the constitution being to prevent a legislative assembly from securing extravagant compensation by its own votes, the second legislative assembly did not fix its own compensation within the intent, spirit, or scope of such constitutional provisions, and the appropriation was valid: State ex rel Harrington v. Kenny, 10 Mont. 410.

§ 6. The legislative assembly, (except the first) shall meet at the seat of government at twelve o'clock, noon, on the first Monday of January, next succeeding the general election provided by law, and at twelve o'clock, noon, on the first Monday of January, of each alternate year thereafter, and at other times when convened by the governor.

The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law; *provided*, that the first legislative assembly shall meet at the seat of government upon the proclamation of the governor after the admission of the state into the union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the state into the union.

§ 7. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.

§ 8. No member of either house, shall, during the term for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term.

See note, sec. 5, art. 5.: *State ex rel Harrington v. Kenny*, 10 Mont. 410.

§ 9. The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president, *pro tempore*. The house of representatives shall elect one of its members speaker. Each house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

§ 10. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

§ 11. Each house shall have power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribe or private solicitation, and with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary for the legislative assembly of a free state.

A member expelled for corruption shall not thereafter be eligible to either house of the legislative assembly; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

§ 12. Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question, shall, at the request of any two members, be entered on the journal.

§ 13. The sessions of each house and of the committees of the whole shall be open unless the business is such as requires secrecy.

§ 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 15. The members of the legislative assembly shall, in all cases, except treason, felony, violation of their oath of office and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

PRIVILEGE FROM ARREST.—This privilege is in the interest of the people as well as the member: *Anderson v. Rountree*, 1 Pinn. 115.

It protects, also, delegates to congress from the territories; *Doty v. Strong*, 1 Id. 84. This would seem to extend to all indictable offenses as well those which are in fact attended with force and violence as those which are only constructive breaches of the peace of

the government, inasmuch as they violated its good order: 1 Bla. Com. 106; 1 Story's Com., sec. 865.

They are privileged not only from arrest, both on judicial and mesne process, but from the service of a summons or other civil process while in attendance on their public duties: *Geyer's Lessee v. Irwin*, 4 Dall. 107; *Nones v. Edsall*, 1 Wall, Jr. 191; 1 Story's Com., sec. 860; *Coxe v. McClenacham*, 3 Dall. 478.

§ 16. The sole power of impeachment shall vest in the house of representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

§ 17. The governor, and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust or profit under the laws of the state. The party whether convicted or acquitted shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

§ 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

§ 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

The word "bill" is synonymous with law or act: *Durkee v. Janesville*, 26 Wis. 697.

§ 20. The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly, of the State of Montana."

§ 21. No bill for the appropriation of money, except for the expenses of the government, shall be introduced within ten days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced.

§ 22. No bill shall be considered or become a law unless referred to a committee, returned therefrom and printed for the use of the members.

§ 23. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

A SUBJECT NOT EXPRESSED IN THE TITLE is one which is so foreign to the matter expressed in the title that one reading the act with the title in his mind would be surprised to find it in the body of the act, and could not reasonably have expected to find it in the act: *Matter of the Mayor*, 99 N. Y. 569.

The provisions of the act must be such as are connected with or germane to the subject generally set forth in the title: *Mohornet v. Quackenbush*, 117 U. S. 508. But the title should be liberally construed and acts sustained, though their subject matter may not be expressed with the utmost clearness in the title: *Mills v. Charleton*, 29 Wis. 400. But the title must fairly suggest or furnish a clue to the subject dealt with in the act: *Astor v. New York Arcade R'y Co.*, 113 N. Y. 93. This provision is violated if an act is

so amended as to embrace a subject outside its title: *Stewart v. Father Matthew Society*, 41 Mich. 67. Or when affirmative legislation is had under a title disclosing nothing beyond a purpose to repeal an existing statute: *Striefel v. Maryland Institute*, 61 Md. 144.

A TITLE CONVEYING NO INTELLIGENCE as to the subject matter of the act is insufficient: *Harland v. Territory*, 3 Wash. 131.

The act of March 4, 1891, entitled "An act to amend sections 790, 795, 796 and 808, fifth division of the compiled statutes of Montana," relates to one general subject, and is not obnoxious to this section of the constitution, prohibiting the passage of a law containing more than one subject, which shall be expressed in its title: *Hotchkiss vs. Marion et al.*, 12 Mont. 218.

§ 24. No bill shall become a law except by a vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

§ 25. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

IN AMENDING AN ACT it is not necessary to set forth the section as it stood before amendment. It is sufficient if the act or section be set forth as amended: *Noland v. Costello*, 2 Or. 55; *Portland v. Stock*, 2, Id. 69; *Doland v. Barnard*, 5 Id. 390; *Arnoult v. New Orleans*, 11 La. 56. In Indiana it is ruled otherwise, but not without dissent: *Wilkins v. Miller*, 9 Ind. 102; *Littler v. Smiley*, 9 Id. 118.

Whether a statute can be amended by simply repealing a clause or subdivision of a section quare: *Sayles v. O. C. R. Co.*, 5 Saw. 31. Repeals by implication are not within this restriction: *Grant Co. v. Sels*, 5 Or. 243; *Stingle v. Nevils*, 9 Id. 62.

REFERENCE TO TITLE.—The Mon-

tana act of February, 1885 (Laws Fourteenth Sess. 106, 107), entitled "An act to amend an act to regulate the fees of sheriffs for the board of prisoners, approved Feb. 10, 1881," and providing "that the above-recited act be so amended as to read as follows," is valid, although the act intended to be amended is thus recited in the title only, and not in the body of the act. The intent of the legislature plainly appearing, mere rules of statutory construction should not be permitted to defeat that intent: *Caruthers v. Comm'r's of Madison Co.*, 6 Mont. 482; affirming, *Lane v. Comm'r's of Missoula Co.*, Id. 473.

§ 26. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing

ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, per centages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; for the punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable, no special law shall be enacted.

A SPECIAL OR PRIVATE STATUTE is a statute that relates to or concerns a particular person or certain particular persons by name, or something in which certain individuals or classes of persons are interested in a manner peculiar to themselves, and not common to the entire community: 1 Bla. Com. 85; State v. Chambers, 93 N. C. 600; Montague v. State, 34 Md. 481; Allen v. Hirsch, 8 Or. 412; Bouvier's Law Dict. voce Statute; Burrill's Law Dict. voce Private Statutes.

The character of the statute, as to whether it is public or private, does not depend upon the duration of its operation: People v. Wright, 70 Ill. 388.

So a statute operating alike upon all the people of a particular locality or section of the country has been considered a public statute, notwithstanding its application did not cover the entire state: Levy v. State, 6 Ind. 281; Burnham v. Acton, 4 Abb. Pr. U. S. 1; Pierce v. Kimball, 9 Greenl. 54; State v. Chambers, 93 N. C. 600; People v. Davis, 61 Barb. 456. In like manner a statute may be public and yet be confined in its operation to certain days, such as laws prohibiting the sale of liquor on Sunday, and the like: Van Swartow v. Commonwealth 24 Pa. St. 131.

An act to amend and consolidate the several acts relating to the charter of a certain city, though general in its operation within the city, is a local law, and not a "general" law: People v. Hills, 25 N. Y. 449; People v. O'Brien, 38 N. Y. 173.

An act to provide for the making of a particular public improvement, as for the improvement of a particular stream for purposes of navigation, the construction of public buildings, the making of public thoroughfares for the whole state, are not special or local laws: People v. Allen, 42 N. Y. 378; People v. Supervisors of Chautauqua, 43 Id. 10; State v. Lean, 9 Wis. 297; West v. Blake, 4 Blackf. 236; Allen v. Hirsch, 8 Or. 412.

An act of the territorial legislature fixing the rate of interest on county warrants and excepting the county of Missoula from its operation is in conflict with the state constitution and the act of congress, approved July 30, 1886 (24 U. Stats. 170), prohibiting local or special laws regulating county affairs or the rate of interest on money and it is therefore not illegal for the commissioners of Missoula county to issue coupon bonds to redeem the outstanding warrants of the county: Hotchkiss v. Marion et al., 12 Mont. 218.

§ 27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all the bills and joint resolutions passed by the legislative assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

§ 28. The legislative assembly shall prescribe by law, the number, duties and compensation of the officers and employes of each house; and no payment shall be made from the state treasury, or be in any

way authorized to any such person, except to an acting officer or employe elected or appointed in pursuance of law.

§ 29. No bill shall be passed giving any extra compensation to any public officer, servant or employe, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the state without previous authority of law, except as may be otherwise provided herein.

AN OFFICE is a public station or employment confined by appointment (or election) and embraces the ideas of tenure, duration, emolument, and duties: *U. S. v. Hartwell*, 6 Wall. 385.

The position of a public officer is that of an agent or servant of the government rather than that of a contractor of the government: *People v. Vilas*, N. Y. 459.

AN OFFICER is "one invested by a superior authority and particularly by government with the duty and power of transacting affairs of a certain class; * * * a person designated to execute some function of government": *Abbott's Law. Dict. voce officer*. Offices are usually divided into two classes,—civil and military. "Civil offices are usually divided into three classes, political, judicial, and ministerial. Political are such as are not immediately connected with the administration of justice, or with the execution of the mandates of a superior, as the president, or head of a department.

Judicial offices are those which relate to the administration of justice, and which must be exercised by the persons

appointed for that purpose, and not by deputies. Ministerial offices are those which give the officer no power to judge of the matter to be done, and which require him to obey some superior": *Twenty Per Cent Cases*, 13 Wall. 568; *Mallory's Case*, 3 Nott. & H. 257; *Kirby's Case*, 3 Id. 265.

One who receives no certificate of appointment, takes no oath of office, has no term or tenure of office, discharges no duties and exercises no powers depending directly on the authority of law but simply performs such duties as are required of him by the persons employing him, and whose responsibility is limited to them, is not an officer. "Office" implies authority to exercise some portion of the sovereign power of the state: *Olmstead v. Major*, etc. of New York, 42 N. Y. Sup. Ct. 481. A representative in the state legislature is a public officer: *Morrill v. Haynes*, 2 N. H. 246. A person who has been elected but who has not qualified and entered upon his duties, is not an officer: *Cordell v. Frizell*, 1 Nev. 130; *Zump v. Spence*, 23 Md. 1. He is not an officer either de jure or de facto: *State v. Beloit*, 21 Wis. 280.

§ 30. All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, shall be furnished, and the printing, and binding and distribution of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative assembly, and its committees shall be performed under contract, to be given to the lowest responsible bidder below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and state treasurer.

§ 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment: *Provided*, That this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.

OFFICERS.—It is within the legislative power of a state, unless restrained by some provision of the constitution itself, to create, modify, or abolish an

office, or to increase or diminish the compensation of the officer: *Lloyd v. Silver Bow Co.*, 11 Mont. 408.

See note, art. 1, sec. 10, United States constitution case of *People ex rel Robertson v. Van Gaskin et al*, 5 Mont. 352; also *Territory v. Carson*, 7 Mont. 417.

SALARY AND COMPENSATION.—Where the constitution itself does not fix the compensation of a public officer first elected thereunder, an act of the state legislature decreasing the emoluments of his office during his term, by amending the territorial statute in which they are prescribed, is not in contravention of sec. 31, art. 5 of the constitution, providing in substance that the compensation of a public officer shall not be diminished after his election;

"provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected under this constitution, where such salaries or emoluments are not fixed by this constitution;" and it cannot be said that the compensation of such an officer is fixed by the constitution, within the meaning of such proviso, by force of sec. 1, art. 20 of the constitution, adopting the laws of the territory as the laws of the state, as such adoption is made only until such laws may be altered or repealed: *Lloyd v. Silver Bow Co.*, 11 Mont. 408.

§ 32. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills.

§ 33. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

PUBLIC DEBT.—The term "public debt," as used in this section of the constitution, providing that "no money shall be paid out of the treasury except upon appropriations made by law, * * *

except interest on the public debt," embraces the floating debt evidenced by warrants as well as the bonded indebtedness of the state: *State ex rel Palmer v. Hickman*, 11 Mont. 541.

§ 34. No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt.

PUBLIC DEBT.—Whenever there is a public debt it is not necessary for the legislative assembly to make a specific

appropriation to authorize the payment of interest thereon: *State ex rel Palmer v. Hickman*, 11 Mont. 541.

§ 35. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

§ 36. The legislative assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal functions whatever.

§ 37. No act of the legislative assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation.

§ 38. The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

§ 39. No obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or

postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

§ 40. Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill.

§ 41. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the legislative assembly, in consideration or upon condition that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence, in favor of or against any other measure or proposition pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced in such legislative assembly, or offer, promise or assent so to do, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such legislative assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery; and any member of the legislative assembly, or person elected thereto, who shall be guilty of either such offenses, shall be expelled and shall not thereafter be eligible to the legislative assembly, and on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

§ 42. Any person who shall directly or indirectly offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the legislative assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

§ 43. The offense of corrupt solicitation of members of the legislative assembly, or of public officers of the state, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

§ 44. A member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly,

shall disclose the fact to the house of which he is a member, and shall not vote thereon.

§ 45. When vacancies occur in either house the governor or the person exercising the functions of the governor shall issue writs of election to fill the same.

ARTICLE VI.

APPORTIONMENT AND REPRESENTATION.

§ 1. One representative in the congress of the United States shall be elected from the state at large, the first Tuesday in October, 1889, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by congress the legislative assembly shall divide the state into congressional districts accordingly.

§ 2. The legislative assembly shall provide by law for an enumeration of the inhabitants of the state in the year 1895, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for representatives on the basis of such enumeration according to ratios to be fixed by law.

§ 3. Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be. No county shall be divided in the formation of representative districts.

§ 4. Whenever new counties are created, each of said counties shall be entitled to one senator, but in no case shall a senatorial district consist of more than one county.

§ 5. The senatorial districts of the state shall be constituted and numbered as follows:

The county of Beaverhead shall constitute the First district, and be entitled to one senator.

The county of Madison shall constitute the Second district, and be entitled to one senator.

The county of Gallatin shall constitute the Third district, and be entitled to one senator.

The county of Jefferson shall constitute the Fourth district, and be entitled to one senator.

The county of Deer Lodge shall constitute the Fifth district, and be entitled to one senator.

The county of Missoula shall constitute the Sixth district, and be entitled to one senator.

The county of Lewis and Clarke shall constitute the Seventh district, and be entitled to one senator.

The county of Choteau shall constitute the Eighth district, and be entitled to one senator.

The county of Meagher shall constitute the Ninth district, and be entitled to one senator.

The county of Silver Bow shall constitute the Tenth district, and be entitled to one senator.

The county of Custer shall constitute the Eleventh district, and be entitled to one senator.

The county of Yellowstone shall constitute the Twelfth district, and be entitled to one senator.

The county of Dawson shall constitute the Thirteenth district, and be entitled to one senator.

The county of Fergus shall constitute the Fourteenth district, and be entitled to one senator.

The county of Park shall constitute the Fifteenth district, and be entitled to one senator.

The county of Cascade shall constitute the Sixteenth district, and be entitled to one senator.

§ 6. Until an apportionment of representatives be made in accordance with the provisions of this article, they shall be divided among the several counties of the state in the following manner:

The county of Beaverhead shall have two (2).

The county of Madison shall have two (2).

The county of Gallatin shall have two (2).

The county of Jefferson shall have three (3).

The county of Deer Lodge shall have seven (7).

The county of Missoula shall have five (5).

The county of Lewis and Clarke shall have eight (8).

The county of Choteau shall have two (2).

The county of Meagher shall have two (2).

The county of Silver Bow shall have ten (10).

The county of Custer shall have two (2).

The county of Yellowstone shall have one (1).

The county of Fergus shall have two (2).

The county of Park shall have two (2).

The county of Cascade shall have two (2).

The counties of Dawson and Cascade shall have one (1) jointly.

The counties of Deer Lodge and Beaverhead shall have one (1) jointly.

The counties of Jefferson and Gallatin shall have one (1) jointly.

ARTICLE VII.

EXECUTIVE DEPARTMENT.

§ 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, state treasurer,

state auditor and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election, except that the terms of office of those who are elected at the first election, shall begin when the state shall be admitted into the union, and shall end on the first Monday of January A. D. 1893. The officers of the executive department, excepting the lieutenant governor, shall during their terms of office reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this constitution and by the laws of the state. The state treasurer shall not be eligible to his office for the succeeding term.

§ 2. The officers provided for in section 1 of this article, shall be elected by the qualified electors of the state at the time and place of voting for members of the legislative assembly, and the persons respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislative assembly, at its next regular session, shall forthwith by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

§ 3. No person shall be eligible to the office of governor, lieutenant governor, or superintendent of public instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state, or territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state or territory two years next preceding his election.

§ 4. Until otherwise provided by law, the governor, secretary of state, state auditor, treasurer, attorney general and superintendent of public instruction, shall quarterly, as due, during their continuance in office, receive for their services compensation, which is fixed as follows:

- Governor, five thousand dollars per annum;
- Secretary of state, three thousand dollars per annum;
- Attorney general, three thousand dollars per annum;
- State treasurer, three thousand dollars per annum;
- State auditor, three thousand dollars per annum;

Superintendent of public instruction, two thousand five hundred dollars per annum.

The lieutenant-governor shall receive the same per diem as may be prescribed by law for the speaker of the legislative assembly, to be allowed only during the sessions of the legislative assembly.

The compensation enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office, and the salary of no official shall be increased during his term of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance by any officer of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state. No officer mentioned in this section shall be eligible to, or hold any other public office, except member of the state board of education during his term of office.

APPROPRIATION BY CONSTITUTIONAL PROVISION.—The state treasurer refused to pay a warrant drawn on him by the state auditor in favor of the relator for his quarterly salary as secretary of state, upon the ground that no appropriation had been made by law for the payment of any warrant issued to state officers for their services. Held,

that the state treasurer was required to pay such warrant, as the provision of the constitution that certain enumerated officers shall receive the compensations specified therein is an appropriation made by law, and no legislative act is necessary: *State of Montana ex rel Rotwitt v. Hickman*, 9 Mont. 370.

§ 5. The supreme executive power of the state shall be vested in the governor, who shall see that the laws are faithfully executed.

§ 6. The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

§ 7. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occur in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of secretary of state, state auditor, state treasurer, attorney general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified.

A VACANCY "happens" whenever there is an office without an incumbent, whether the office has ever been filled or not: *State v. Stocking*, 7 Ind. 326; *State v. Brecker*, 56 Mo. 17; *State v. Irwin*, 5 Nev. 111, 130.

§ 8. The legislative assembly shall provide for a state examiner, who shall be appointed by the governor and confirmed by the senate.

His duty shall be to examine the accounts of state treasurer, supreme court clerks, district court clerks and all county treasurers and treasurers of such other public institutions as may be prescribed by law, and he shall perform such other duties as the legislative assembly may prescribe. He shall report at least once a year and oftener if required to such officers as may be designated by the legislative assembly. His compensation shall be fixed by law.

§ 9. The governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of this state: *Provided, however,* That before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the governor concerning the same shall be approved by a board, or a majority thereof, composed of the secretary of state, attorney general and state auditor, who shall be known as the board of pardons. The legislative assembly shall by law prescribe the sessions of said board, and regulate the proceedings thereof. But no fine or forfeitures shall be remitted, and no commutation or pardon granted, except upon the approval of a majority of said board after a full hearing in open session and until notice of the time and place of such hearing, and of the relief sought, shall have been given by publication in some newspaper of general circulation in the county where the crime was committed, at least once a week for two weeks. The proceedings and decisions of the board shall be reduced to writing, and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by them and filed, with all papers used upon the hearing, in the office of the secretary of state. The governor shall communicate to the legislative assembly, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same and the objections, if any, of any member of the board made thereto.

THE WORD "FINE" is usually employed, not to designate a penalty or forfeiture for violation of penal statute, but a pecuniary punishment for a breach of the criminal law: *Common Council of Indianapolis v. Fairchild*, 9 Ind. 315. It may include a forfeiture or penalty recoverable by civil action: *Hanscomb v. Russell*, 11 Gray 37.

Forfeiture as used in connection with penal law, is defined to be "penalty or punishment for a default, wrong or offense by diverting the wrongdoer's title to some property—usually property involved in the wrong," or "the loss of lands or goods by reason of some act in contravention of law:" *Abbott's Law Dict. voce Forfeiture.*

§ 10. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of state

institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The governor shall at the beginning of each session, and from time to time, by message, give to the legislative assembly information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislative assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. He shall also at the beginning of each session present estimates of the amount of money required to be raised by taxation for all purposes of the state.

§ 11. He may on extraordinary occasions convene the legislative assembly by proclamation, stating the purposes for which it is convened, but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation, or which may be recommended by the governor, but may provide for the expenses of the session and other matters incidental thereto. He may also by proclamation convene the senate in extraordinary session for the transaction of executive business.

§ 12. Every bill passed by the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly shall by their adjournment prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislative assembly, unless approved by the governor within fifteen days after such adjournment. In case the governor shall fail to approve of any bill after the final adjournment of the legislative assembly it shall be filed, with his objections, in the office of the secretary of state.

§ 13. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law, and

the item or items disapproved shall be void, unless enacted in the manner following: If the legislative assembly be in session he shall within five days transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

§ 14. In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.

§ 15. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor, from any cause which applies to the governor, or when he shall hold the office of governor, then the president *pro tempore* of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed.

§ 16. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the governor and the lieutenant-governor, the duties of the governor shall devolve upon the president *pro tempore* of the senate until such disqualification of either the governor or lieutenant-governor be removed, or the vacancy filled, and if the president *pro tempore* of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

§ 17. The first legislative assembly shall provide a seal for the state, which shall be kept by the secretary of state and used by him officially, and known as the great seal of the state of Montana.

§ 18. All grants and commissions shall be in the name and by the authority of the state of Montana, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

§ 19. An account shall be kept by the officers of the executive department, and of all public institutions of the state of all moneys received by them, severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report hereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislative assembly, make full and complete reports of their

official transactions to the governor, who shall transmit the same to the legislative assembly.

§ 20. The governor, secretary of state and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prisons as may be prescribed by law. They shall constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claims against the state except for salaries and compensation of officers fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by said board. The legislative assembly may provide for the temporary suspension of the state treasurer by the governor, when the board of examiners deem such action necessary for the protection of the moneys of the state.

SALARIES OF OFFICERS.—The salaries or compensation of officers fixed by law (cont. art. 5, sec. 5) being expressly, in all cases, excepted by the provisions of the constitution from the ac-

tion of the board of examiners, this section does not affect the auditor's duty in relation to such salaries: *State v. Kenny*, 9 Mont. 223.

ARTICLE VIII.

JUDICIAL DEPARTMENTS.

§ 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establish in any incorporated city or town.

§ 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law.

§ 3. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo-warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the supreme court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any

judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

CERTIORARI — CONTEMPT.— This section of the constitution cannot be construed to restrict this court to the use of a writ of certiorari in the exercise of its appellate jurisdiction only, as the clause "necessary and proper to complete exercise of its appellate jurisdiction" relates to "such other original and remedial writs," and not to writs specifically named: *In re Macknight*, 11 Mont. 126.

The scope of the writ of certiorari is not so enlarged by the provisions of this section as to permit a review by this court of an order for the payment of alimony, where imprisonment for contempt is involved, notwithstanding relator has a remedy by appeal from such order: *In re Finkelstein* 13 Mont. 425 (citing *In re Macknight*, 11 Mont. 126).

§ 4. At least three terms of the supreme court shall be held each year at the seat of government.

§ 5. The supreme court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain, and the legislative assembly shall have the power to increase the number of such justices to not less nor more than five.

QUORUM.—The general rule is, in a select and definite body of persons possessing power to elect, that a majority of the quorum may decide: *Ex parte Wilcox*, 47 Cow. 402; 17 Am. Dec. 525. It is competent to stipulate that less than a quorum may render judgment: *Walker v. Rogan*, 1 Wis. 597.

§ 6. The justices of the supreme court shall be elected by the electors of the state at large, as hereinafter provided.

§ 7. The term of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years.

§ 8. There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred ninety-two (1892), and one of the associate justices to hold his office until the general election in the year one thousand eight hundred ninety-four (1894), and the other associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions

of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

§ 9. There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.

§ 10. No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

DISTRICT COURTS.

§ 11. The district court shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this constitution. Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

JURISDICTION.—The district court does not have original jurisdiction, but only appellate jurisdiction, to try the misdemeanor of assault and battery, as jurisdiction to try such misdemeanor is conferred by law upon the justice court: *State v. Meyers*, 11 Mont. 365. Provisions of the compiled statutes which conflict with this section, conferring upon the district court jurisdiction of those misdemeanors which are not otherwise provided for, did not become a law of the state upon adoption of the constitution, by force of sec. 1 of art. 20 thereof. *Id.*

While the jurisdiction bestowed upon the district court by the constitution cannot be abridged by the legislature, it may invest such court with additional jurisdiction in harmony with its character, and not a usurpation of the constitutional powers of any other court, and therefore the provisions of the act to regulate the practice of medicine (*Sess. Laws 1889*, p. 175), allowing an appeal to the district court by the aggrieved party

in case of the revocation or refusal by the board of medical examiners of a license to practice medicine, cannot be held to contravene this section of the constitution: *State ex rel Kellogg v. District Court*, 13 Mont. 370. Nor is such act void, for the reason that it prescribes no rules to guide the district court in adjudicating that class of cases: *Id.*

This section provides that actions concerning land shall be "commenced" in the county in which the land is situated. The statute provides that such actions shall be "tried" in the county where the land is situated. Where an action was commenced in a county in which land was then situated and subsequently, and before defendant's appearance, a new county was formed out of that part in which the land was, defendant was entitled to a change of venue to the new county if he applied therefor at the time he appeared: *Bookwalter v. Conrad et al.*, 15 Mont.

§ 12. The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

JURISDICTION.—This section does not, in the absence of other constitutional or statutory provision giving district judges concurrent jurisdiction, empower a judge acting for another to exercise

out of court the judicial power of the judge whose court he is holding, and an order of injunction issued by such judge in chambers is void: *Wallace v. The Helena Electric Railway Co.*, 10 Mont. 24.

§ 13. Until otherwise provided by law the judicial districts of the state shall be constituted as follows: First district, Lewis and Clark county; Second district, Silver Bow county; Third district, Deer Lodge county; Fourth district, Missoula county; Fifth district, Beaverhead, Jefferson and Madison counties; Sixth district, Gallatin, Park and Meagher counties; Seventh district, Yellowstone, Custer and Dawson counties; Eighth district, Choteau, Cascade and Fergus counties.

§ 14. The legislative assembly may increase or decrease the number of judges in any judicial district; *provided*, that there shall be at least one judge in any district established by law; and may divide the state, or any part thereof, into new districts; *provided*, that each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

§ 15. Writs of error and appeals shall be allowed from the decisions of the said district courts to the supreme court under such regulations as may be prescribed by law.

§ 16. No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age and a citizen

of the United States, and shall have been admitted to practice law in the supreme court of the territory or state of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

§ 17. The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.

TERMS OF COURT.—Under the constitution and statutes of this state a district court without terms is an impossibility: State ex rel Root v. McHatton, 10 Mont. 370.

§ 18. There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be as provided by law.

COUNTY ATTORNEYS.

§ 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be two years, except that the county attorneys first elected shall hold their offices until the general election in the year one thousand eight hundred and ninety two, (1892) and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

JUSTICES OF THE PEACE.

§ 20. There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years. Justices courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; *Provided*, That they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

§ 21. Justices courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of

divorce, nor for annulment of marriage, nor of cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction, or prohibition, nor the power of naturalization: nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer.

§ 22. Justices courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

§ 23. Appeal shall be allowed from justices courts, in all cases, to the district courts, in such manner and under such regulations as may be prescribed by law.

POLICE AND MUNICIPAL COURTS.

§ 24. The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties.

THE JURISDICTION and powers of justices of the peace are derived from statutory provisions: *Martin v. Fales*, 18 Me. 23; 36 Am. Dec. 693. They exercise no common law powers: *Albright v. Lapp*, 26 Pa. St. 99; 67 Am. Dec. 402.

MISCELLANEOUS PROVISIONS.

§ 25. The supreme and district courts shall be courts of record.

§ 26. All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

IMPANELLING OF JURY.—There can be but one law for the impanelling of a jury in each district court, and the provisions of sec. 17 of this art. providing that the district court in each county which is a judicial district of itself shall "be always open for the transaction of business," and when two or more

judges shall "fix the term of court" cannot be construed to suspend the operations of the legislative enactment providing for the appointment of jury commissioners at each regular term in any county, in counties where the district court is in continual session: *State ex rel Root v. McHatton*, 10 Mont. 370.

§ 27. The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

§ 28. There shall be but one form of civil action, and law and equity may be administered in the same action.

§ 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be increased or diminished during the terms for which they shall have been respectively elected. Until otherwise provided by law,

the salary of the justices of the supreme court shall be four thousand dollars per annum each, and the salary of the judges of the district courts shall be three thousand five hundred dollars per annum each.

§ 30. No justice of the supreme court nor judge of the district court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office, in any form whatever, except the salary provided by law.

§ 31. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office.

§ 32. The legislative assembly may provide for the publication of decisions and opinions of the supreme court.

§ 33. All officers provided for in this article, excepting justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed.

§ 34. Vacancies in the office of justice of the supreme court, or judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorneys, clerk of the district court, and justices of the peace, shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

§ 35. No justice of the supreme court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed.

§ 36. A civil action in the district court may be tried by a judge *pro tempore*, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment or decree, made or rendered therein by such judge *pro tempore*, shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

SPECIAL JUDGE.—The authority given by this section of the constitution to a special judge to try a case, carries with it authority to do any act incidental or necessary to the exercise thereof: *Littrell et al v. Wilcox, 11 Mont. 77.*

§ 37. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

ARTICLE IX.

RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE.

§ 1. All elections by the people shall be by ballot.

§ 2. Every male person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people and upon all questions which may be submitted to the vote of the people: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law; *Provided*, first, that no person convicted of felony shall have the right to vote unless he has been pardoned; *Provided*, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; *Provided*, that after the expiration of five years from the time of the adoption of this constitution no person except citizens of the United States shall have the right to vote.

EFFECT OF SUBMISSION OF CITY CHARTER TO VOTE OF THE PEOPLE.—All the legislative powers of the territory are by the organic act vested in the territorial legislature. They cannot be delegated away or lawfully exercised by anybody else. Among these powers is that of creating municipal governments by charter, as auxiliaries in matter of local government. Such charters derive all their powers from legislative enactment, and none from the consent of those who are to live under

them; but the legislature may make the consent of one, a few or many of those on whom the charter is to operate, the contingency upon which the charter shall take effect. A submission to the resident taxpaying freeholders is competent, legal and proper—no one's constitutional rights are abridged thereby, and none have right to complain. Such limitation of the right to vote does not render void the act of incorporation: *People ex rel Boardman v. City of Butte*, 4 Mont. 174.

§ 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any alms-house or other asylum at the public expense, nor while confined in any public prison.

§ 4. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.

§ 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

§ 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

§ 7. No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment.

§ 8. No idiot or insane person shall be entitled to vote at any election in this state.

§ 9. The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.

§ 10. Women shall be eligible to hold the office of county superintendent of schools or any school district office, and shall have the right to vote at any school district election.

§ 11. Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as may be prescribed by the legislative assembly for city offices and offices hereafter created.

§ 12. Upon all questions submitted to the vote of the tax-payers of the state, or any political division thereof, women who are tax-payers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote.

§ 13. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

§ 1. Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, soldiers' home, and such other institutions as the public good may require, shall be established and supported by the state in such a manner as may be prescribed by law.

§ 2. At the general election in the year one thousand eight hundred and ninety-two, the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the state, and the majority of all the votes upon said question shall determine the location thereof. In case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be, and is hereby, submitted in like manner to the qualified electors at the next general election thereafter: *Provided*, That until the seat of government shall have been permanently located the temporary seat of government shall be and remain at the city of Helena.

§ 3. When the seat of government shall have been located as herein provided the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the state voting on that question at a general election at which the question of the location of the seat of government shall have been submitted by the legislative assembly.

§ 4. The legislative assembly shall make no appropriations or expenditures for capital buildings or grounds until the seat of government shall have been permanently located, as herein provided.

§ 5. The several counties of the state shall provide as may be prescribed by law for those inhabitants, who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society.

ARTICLE XI.

EDUCATION.

§ 1. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free common schools.

§ 2. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

§ 3. Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law.

§ 4. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

§ 5. The interest on all invested school funds of the state, and all rents accruing from the leasing of any school lands, shall be apportioned to the several school districts of the state in proportion to the number of children and youths between the ages of six and twenty-one years, residing therein respectively, but no district shall be entitled to such distributive share that does not maintain a public free school for at least three months during the year for which distributions shall be made.

§ 6. It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year.

§ 7. The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.

§ 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

§ 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

§ 10. The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.

§ 11. The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the governor, state superintendent of public instruction, and attorney general, being members ex officio; the other eight members thereof shall be appointed by the governor, subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.

§ 12. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

ARTICLE XII.

REVENUE AND TAXATION.

§ 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

GENERAL POWERS OF TAXATION.—The imposition, modification and removal of taxes, and the exemption of property therefrom, is an ordinary exercise of the power of state sovereignty: *Gilman v. Sheboygan*, 2 Black. 510.

The power of taxation belongs exclusively to the legislative branch of the government but may be delegated by the legislature to municipal corporations: *U. S. v. New Orleans*, 98 U. S. 381.

The right of taxation can be used, only in aid of a public object, and cannot be exercised in aid of private enterprises: *Loan Association v. Topeka*, 20 Wall. 655.

UNITED STATES HAVE PRIORITY.—In case of a tax upon the same subject by the United States and a state government, the claim of the United States as the supreme authority must be preferred: *Union Pac. R. Co. v. Penniston*, 18 Wall. 5.

TAX ON INCOME AND FRANCHISE.—A tax upon a corporation may be proportioned to the income received, as well as to the value of the privileges, or the property owned: *Minot v. Philadelphia, W. & B. B. R.* 18 Wall. 206.

UNIFORMITY.—A tax is uniform within the meaning of the constitutional provision on that subject when it operates with the same effect in all places where the subject is found; and it is not wanting in such uniformity because the thing taxed is not equally distributed in all parts of the United States. *Edge v. Robertson*, (Head Money Cases) 112 U. S. 580.

A tax levied upon real estate only is a discrimination in favor of the personal property obnoxious to the objection of want of uniformity: *Gilman v. Sheboygan*, 2 Black. 510. A state law taxing all legacies, gifts and inheritances going to aliens is constitutional; the privilege of taking them may be denied to aliens altogether: *Magee v. Guira*, 8 How. 490; *Prevost v. Greenaux*, 19 Ill. 1; *Frederickson v. Louisiana*, 23 Id. 445.

While a uniform and equal rate of assessment and taxation must be provided by law on all the property in the state, yet perfect equality in the assessment of taxes is unattainable; approximation to it is all that can be had: *Cooley on taxation* c. 6, p. 167; *Commonwealth v. Savings Bank*, 5 Allen, 428; *Auld v. Richmond*, 23 Gratt. 464; *Allen v. Drew*, 44 Vt. 174; *Dubuque v. Railway Co.*, 47 Iowa, 196; *Beals v. Amador Co.*,

35 Cal., 624; *City of East Portland v. Multnomah County*, 6 Or. 62; *Crawford v. Linn County*, 11 Id. 482.

NO PROPERTY can be granted exemption from taxation, unless it is embraced within the excepted classes specified in the constitution: *Gilman v. City of Sheboygan*, 2 Black. 510; *Crawford v. Linn County*, 11 Or. 482.

TAXATION MUST NOT INTERFERE WITH INTERSTATE COMMERCE.—A state cannot require a license tax from persons dealing in goods in original packages which are not the growth, or produce, or manufacture of the state. It is in conflict with the power vested in congress to regulate commerce: *Wilton v. Missouri*, 91 U. S. 275; *Ward v. Maryland*, 12 Wall. 418; *Webber v. Virginia*, 103 U. S. 344.

Nor can a state tax passengers, whether citizens or foreigners, entering a port; it is unconstitutional as regulating commerce: *Smith v. Turner*, *Norris v. Barton*, (Passenger Cases), 7 How. 283; *New York v. Compagnie Generale Transatlantique*, 107 U. S. 59. Nor can a state levy and collect a tax on passengers leaving it by stage coach or railroad, to be paid by the transportation companies: *Crandall v. Nevada*, 6 Wall. 35. Nor tax a ferry between states bordering or dividing waters: *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196.

The requirement that each vessel passing a quarantine station pay a fee for examination as to her sanitary condition and the ports from which she came is a compensation for services rendered, and not a tax, within the meaning of the constitution inhibiting the levying of tonnage tax by the states: *Morgan's R. R. & Steamship Co. v. Louisiana Board of Health*, 118 U. S. 455.

WHARFAGE, exacted by city ordinance, though graduated by size of the vessel, is not illegal: *Parkersburg & O. R. Trans. Co. v. Parkersburg*, 107 U. S. 691; *Cannon v. New Orleans*, 20 Wall. 577. The property of a corporation—although the corporation is a creature of congress, and the company is an agent of the general government, designed to be employed in the legitimate service of the government, both military and postal—is not exempt from state taxation: *Union Pac. R. R. Co. v. Pennsylvania*, 18 Wall. 5.

But securities issued by the United States cannot be taxed: *Society for Savings v. Colte*, 6 Wall. 594; *New York v. Comms. of taxes*, 2 Black. 620; 2 Id.

635, note; 2 Wall. 200, (Bank Tax Cases).

POLL TAX CONSTITUTIONAL.—A state constitution providing that taxes be uniform in respect to person and property does not forbid the legislature commuting taxes or assessments with individuals or corporate bodies: *Chicago v. Sheldon*, 9 Wall. 50.

LIMITATIONS.—The fourteenth amendment to the constitution of the United States, is a limitation upon the power of the state, among other things in the matter of taxation: *Northern Pac. R. R. Co. v. Carland*, 5 Mont. 146.

§ 2. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation.

EXEMPTION.—Equity will interfere to prevent the collection of a tax upon property exempt from taxation: *Chicago v. Sheldon*, 9 Wall. 50.

This section of the constitution, exempting from taxation certain property, "and such other property as is used exclusively" for certain societies, "for educational purposes, places of religious

worship, hospitals, * * * and institutions of purely public charity," do not exempt a charitable institution as an association or corporate body from the payment of taxes, but only such property of the institution as is used exclusively for charitable purposes: *Montana Catholic Missions S. J. v. The County of Lewis and Clarke et al.*, 13 Mont. 559.

§ 3. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law.

§ 4. The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town, or municipal corporation for county, town, or municipal purposes, but it may by law vest in the corporate authorities thereof powers to assess and collect taxes for such purposes.

§ 5. Taxes for city, town and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes.

§ 6. No county, city, town or other municipal corporation, the inhabitants thereof nor the property therein, shall be released or discharged from their or its proportionate share of state taxes.

§ 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state,

or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

§ 8. Private property shall not be taken or sold for the corporate debts of public corporations, but the legislative assembly may provide by law for the funding thereof, and shall provide by law for the payment thereof, including all funded debts and obligations, by assessment and taxation of all private property not exempt from taxation within the limits of the territory over which such corporations respectively have authority.

§ 9. The rate of taxation of real and personal property for state purposes in any one year shall never exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to one hundred million dollars (\$100,000,000), the rate shall not exceed two and one-half ($2\frac{1}{2}$) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million dollars (\$300,000,000), the rate shall never thereafter exceed one and one-half ($1\frac{1}{2}$) mills on each dollar of valuation; unless a proposition to increase such rate specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

§ 10. All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law.

§ 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

§ 12. No appropriation shall be made or any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.

APPROPRIATIONS.—The provisions of this section of the constitution that "no appropriations of public moneys shall be made for a longer term than two years" is prospective only and does not affect an appropriation made before the adoption of the constitution: State ex rel Maddox v. Kenny, 11 Mont. 553.

§ 13. The state treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal

year report to the governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The governor, or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the legislative assembly may require. The legislative assembly may provide by law further regulations for the safe keeping and management of the public funds in the hands of the treasurer; but notwithstanding any such regulations, the treasurer and his sureties shall in all cases be held responsible therefor.

§ 14. The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law, but part of such punishment shall be disqualification to hold public office.

§ 15. The governor, secretary of state, state treasurer, state auditor and attorney general shall constitute a state board of equalization and the board of county commissioners of each county shall constitute a county board of equalization. The duty of the state board of equalization shall be to adjust and equalize the valuation of the taxable property among the several counties of the state. The duty of the county boards of equalization shall be to adjust and equalize the valuation of taxable property within their respective counties. Each board shall also perform such other duties as may be prescribed by law.

§ 16. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.

§ 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

§ 18. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

ARTICLE XIII.

PUBLIC INDEBTEDNESS.

§ 1. Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.

§ 2. The legislative assembly shall not in any manner create any debt except by law which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars (\$100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.

WHAT IS A DEBT.—A debt against the benevolent or penal institutions of the state, or any of them, is a debt against the state: *State v. Mills*, 55 Wis. 229, 245. But a debt of a municipal corporation is not: *State ex rel v. Madison*, 7 Id. 688; *Watertown v. Cady*, 20 Id. 501. In *People v. Pacheco*, 27 Cal. 175, it is held that an act which creates obligations to pay money, extending over a series of years, but at the same time provides for raising money by taxation, to meet the payments as they mature, and

appropriates the money in advance to that purpose, does not create a debt. But in *Coulson v. Portland*, Deady 481, Judge Deady criticizes this "decision," which he characterizes as an "artificial and unlooked-for construction of the popular and plain terms and phrases."

INTEREST upon a claim against the state which has been considered and approved by the state board of examiners is an obligation of the state which arises by operation of law: *State ex rel Palmer v. Hickman*, 11 Mont. 541.

§ 3. All moneys borrowed by or on behalf of the state or any county, city, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan.

§ 4. The state shall not assume the debt, or any part thereof, of any county, city, town or municipal corporation.

§ 5. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the (value of the) taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any

indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.

MUNICIPAL DEBTS.—Entering into an agreement by a municipal corporation to pay certain sums in the future in installments is contracting debts to the aggregate amount of the payments agreed to be made, notwithstanding the municipality has the power to raise a sufficient sum by taxation to meet the payments as they fall due: *Salem Water Co. v. Salem*, 5 Or. 29.

An ordinance assuming a liability payable in installments and exceeding in the aggregate the amount of the indebtedness which the city is allowed by its charter to contract would be void, notwithstanding provision is made in the ordinance for the payments of the installments as they fall due by levying a

tax therefor: *Coulson v. Portland*, *Deady*, 496.

FUNDING INDEBTEDNESS.—The issuance by a county of coupon bonds to the extent of one hundred and fifty thousand dollars for the purpose of redeeming outstanding county warrants to that amount is merely a change in the form of a subsisting liability, and not the creation of a new indebtedness, or liability, and is therefore not within the inhibition of the constitution and laws of the state, which provide, in effect, that counties shall not incur an indebtedness or liability for any single purpose in an amount exceeding ten thousand dollars without the approval of a majority of the electors of the county: *Hotchkiss v. Marion et al.*, 12 Mont. 218.

§ 6. No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding three per centum of the value of the taxable property therein, to be ascertained by the last assessment for the state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void; *Provided, however*, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the tax-payers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

MUNICIPAL CORPORATIONS.—The act of March 5, 1891 (2d Sess. Laws, p. 245), authorizing certain incorporated cities to incur indebtedness for specific purposes by the issuance of bonds to an extent not exceeding four per cent of their assessed valuation, instead of three per cent as limited by the state constitution, is not void as being wholly in con-

flict with said section of the constitution, but is void only to the extent of such repugnancy; and therefore bonds issued by a city under such act are valid where the amount of indebtedness so incurred is less than three per cent of the assessed valuation of such city: *Dunn v. City of Great Falls*, 13 Mont. 58.

ARTICLE XIV.

MILITARY AFFAIRS.

§ 1. The militia of the state of Montana shall consist of all able-bodied male citizens of the state between the ages of eighteen (18) and forty-five (45) years inclusive, except such persons as may be exempted by the laws of the state or of the United States.

§ 2. The legislative assembly shall provide by law for the organization, equipment, and discipline of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

§ 3. The legislative assembly shall provide by law for maintaining the militia, by appropriations from the treasury of the state.

§ 4. The legislative assembly shall provide by law for the safe keeping of the public arms, military records, relics and banners of the state.

§ 5. When the governor shall, with the consent of the legislative assembly, be out of the state in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the state.

ARTICLE XV.

CORPORATIONS OTHER THAN MUNICIPAL.

§ 1. All existing charters, or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this constitution, shall thereafter have no validity.

§ 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the state; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; *Provided*, That any such laws shall be subject to future repeal or alterations by the legislative assembly.

§ 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.

§ 4. The legislative assembly shall provide by law that in all elections for directors or trustees of incorporated companies, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there are directors or trustees to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or trustees shall not be elected in any other manner.

§ 5. All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the state. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within

this state and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

§ 6. No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its stock, property or franchise, with any other railroad corporation, express or other transportation company, owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation; nor shall any officer of such railroad, express or other transportation company act as an officer of any other railroad, express, or other transportation company owning or having control of a parallel or competing line.

§ 7. All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

§ 8. No railroad, express, or other transportation company, in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form.

§ 9. The right of eminent domain shall never be abridged, nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the state shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

§ 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received;

and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

§ 11. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.

§ 12. No street or other railroad shall be constructed within any city or town without the consent of the local authorities having control of the street or highway proposed to be occupied by such street or other railroad.

§ 13. The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed.

§ 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct or maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquired by purchase or otherwise, any other competing line of telegraph or telephone.

§ 15. If any railroad, telegraph, telephone, express or other corporation or company organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express, or other corporation, organized under any of the laws of any other state or territory of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state, in all matters that may arise as if said consolidation had not taken place.

§ 16. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement whereby such persons, company or corporation, shall be released or discharged from liability

or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof; and such contracts shall be absolutely null and void.

§ 17. The legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

§ 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

§ 19. Dues from private corporations shall be secured by such means as may be prescribed by law.

§ 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporations, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, and in case of foreign corporations prohibiting them from carrying on business in the state.

ARTICLE XVI.

MUNICIPAL CORPORATIONS AND OFFICERS.

§ 1. The several counties of the territory of Montana, as they shall exist at the time of the admission of the state into the union, are hereby declared to be the counties of the state until otherwise established or changed by law.

§ 2. The legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years.

§ 3. In all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed; *Provided*, That nothing in this section shall prevent the re-adjustment of county lines between existing counties.

§ 4. In each county there shall be elected three county commissioners, whose term of office shall be four years. A vacancy in the board of county commissioners shall be filled by appointment by the district judge of the district in which the vacancy occurs.

§ 5. There shall be elected in each county the following officers: One county clerk, who shall be clerk of the board of the county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of taxes; *Provided*, That no person shall hold the office of county treasurer for more than two consecutive terms; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of two years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election.

§ 6. The legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

ARTICLE XVII.

PUBLIC LANDS.

§ 1. All lands of the state that have been, or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal

and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners, as follows: First, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three miles of such limits; *Provided*, That any of said lands may be re-classified whenever, by reason of increased facilities for irrigation or otherwise, they shall be subject to different classification.

§ 2. The lands of the first of said classes may be sold or leased, under such rules and regulations as may be prescribed by law. The lands of the second class may be sold, or the timber thereon may be sold, under such rules and regulations as may be prescribed by law. The agricultural lands may be either sold or leased, under such rules and regulations as may be prescribed by law. The land of the fourth class shall be sold in alternate lots of not more than five acres each, and not more than one-half of any one tract of such lands shall be sold prior to the year one thousand nine hundred and ten (1910).

§ 3. All other public lands may be disposed of in such manner as may be provided by law.

ARTICLE XVIII.

LABOR.

§ 1. The legislative assembly may provide for a bureau of agriculture, labor and industry, to be located at the capital and be under the control of a commissioner appointed by the governor subject to the confirmation of the senate. The commissioner shall hold his office for four years, and until his successor is appointed and qualified, his compensation shall be as provided by law.

§ 2. It shall be unlawful for the warden or other officer of any state penitentiary or reformatory institution in the state of Montana, or for any state officer to let by contract to any person or persons or corporation the labor of any convict confined within said institutions.

ARTICLE XIX.

MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

§ 1. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or

promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly, or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, so help me God." And no other oath, declaration or test shall be required as a qualification for any office or trust.

§ 2. The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state.

§ 3. The legislative assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon lands of the state or upon lands of the public domain the control of which may be conferred by congress upon this state, and to otherwise protect the same.

§ 4. The legislative assembly shall enact liberal homestead and exemption laws.

§ 5. No perpetuities shall be allowed, except for charitable purposes.

§ 6. All county officers shall keep their offices at the county seats of their respective counties.

§ 7. In the disposition of the public lands granted by the United States to this state, preference shall always be given to actual settlers thereon, and the legislative assembly shall provide by law for carrying this section into effect.

§ 8. The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled

in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alteration or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two or more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

§ 9. Amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; *Provided*, however, that not more than three amendments to this constitution shall be submitted at the same election.

SECTION XX.

SCHEDULE.

That no inconvenience may arise by reason of changing from a territorial to a state form of government, it is declared as follows:

§ 1. All laws enacted by the legislative assembly of the territory of Montana and in force at the time the state shall be admitted into the union and not inconsistent with this constitution or the constitution or laws of the United States of America, shall be and remain in full force as the laws of the state until altered or repealed, or until they expire by their own limitation; *Provided*, That whenever in said laws the words, "Territory," "Montana Territory" or "Territory of Montana" occur, the words "State" or "State of Montana" shall be appropriately substituted and read therefor; *And, provided further*, that the duties which now by law devolve upon probate judges as jury commissioners and in relation to issuing marriage licenses and filing and recording marriage certificates, and the duties as ex-officio clerks of their own courts, shall, until otherwise provided by law, devolve

upon and be performed by the clerks of district courts, in their respective counties; *And, provided further,* That the duties of probate judges now imposed by law relative to town sites and to the approval of bonds of other county officers shall, until otherwise provided by law, be performed by the district judges in the several counties in their respective districts.

STATUTES, VALIDITY OF.—Certain sections of the probate practice act being null and void in so far as they prescribed direct appeals to the supreme court, they did not, upon the adoption of the constitution, become laws of the state under this section: *In re McFarland's Estate*, 10 Mont. 445.

§ 2. All lawful orders, judgments and decrees in civil causes, all contracts and claims, and all lawful convictions, judgments and sentences in criminal actions, made and entered, or pronounced by the courts within the territory of Montana, and in force at the time the state shall be admitted into the union, shall continue and be and remain in full force in the state unaffected in any respect by the change from a territorial to a state form of government, and may be enforced and executed under the laws of the state.

§ 3. No crime or criminal offense committed against the laws of the territory of Montana shall abate, or be in any wise affected, by reason of the change from a territorial to a state form of government; but the same shall be deemed and taken to be an offence against the laws of the state, and the appropriate courts of the state shall have jurisdiction over and to hear and determine the same: *Provided,* That this section shall not in any wise be construed to change the law of the statute of limitations, or the due effect or application of the same.

§ 4. Except as herein otherwise provided, the word "district" shall be substituted and read in lieu of the word "probate" in the terms "probate court" or "probate judge" whenever the same occur in the laws of the territory of Montana, and all said laws which by their terms apply to probate courts or probate judges shall, except as in this constitution otherwise provided, upon a change from territorial to state government, be deemed and taken to apply to district courts and district judges; *Provided,* That all laws allowing fees to probate judges are hereby repealed.

§ 5. Clerks of district courts, until otherwise provided by law, shall each perform the duties and be entitled to the same fees as now provided by law for clerks of the district courts of the territory, and until otherwise provided by law shall also perform the services and be entitled to fees therefor that are now provided for clerks of probate courts.

§ 6. Upon a change from territorial to state government the seals in use by the supreme court and the territorial district courts in and for the several counties respectively, shall pass to and become, until otherwise provided by law, the seals respectively of the supreme court and of the district courts of the state in such counties.

§ 7. Prosecutions for criminal offences against the laws of the territory of Montana, pending at the time the state shall be admitted into the union shall not abate; but the same shall continue and be prosecuted in the name of the state of Montana, and the title of every such action shall be changed to conform to this provision.

§ 8. Parties who, at the time of the admission of the state into the union, may be confined under lawful commitments, or otherwise lawfully held to answer for alleged violations of any of the criminal laws of the territory of Montana, shall continue to be so confined or held until discharged therefrom by the proper courts of the state.

§ 9. All writs, processes, prosecutions, actions, causes of action, defenses, claims and rights of individuals, associations and bodies corporate existing at the time the state shall be admitted into the union, shall continue and be respectively executed, proceeded with, determined, enforced and protected under the laws of the state.

§ 10. All undertakings, bonds, obligations and recognizances in force at the time the state shall be admitted into the union, which were executed to the territory of Montana, or any officer thereof in his official capacity, or to any official board for the benefit of the territory of Montana, are hereby respectively assigned and transferred to the state of Montana, to the state officer successor to said territorial officer, or to the official board successor to the aforesaid official board, for the use of the state, as the case may be, and shall be as valid and binding as if executed under state law to the state, or state officer in his official capacity, or official board, for the benefit of the state; and all fines, taxes, penalties and forfeitures due or owing to the territory of Montana or to any county, school district, or municipality therein, at the time the state shall be admitted into the union, are hereby respectively assigned and transferred, and the same shall be payable to the state, county, school district or municipality, as the case may be, and payment thereof may be enforced under the laws of the state.

§ 11. All property, real and personal, and all moneys, credits, claims, demands and choses in action of every kind, belonging to the territory of Montana at the time the state shall be admitted into the union, are hereby assigned and transferred to, and shall be vested in, and become the property of the state of Montana.

§ 12. All obligations of the territory of Montana, existing, in force and unpaid at the time of the admission of the state into the union are hereby assumed by the state, which shall and will well and truly pay the same.

§ 13. All matters, cases and proceedings pending in any probate court in the territory of Montana, at the time the state shall be admitted into the union, and all official records, files, moneys, and other property of, or pertaining to such court, are hereby transferred to the district court in and for the same county, and such district court shall

have full power and jurisdiction to hear, determine and dispose of all such matters, cases and proceedings.

§ 14. All actions, cases and proceedings, and matters which shall be pending in the supreme and district courts of Montana territory at the time of the admission of the state into the union whereof the United States circuit or district court might have had jurisdiction, had such court existed at the commencement of such actions, cases, proceedings and matters, respectively, shall be transferred to said United States circuit and district courts respectively; and all the files, records, indictments and proceedings relating to such actions, cases, proceedings and matters shall be transferred to said United states courts; *Provided*, That no civil action, cause or proceeding to which the United States is not a party, shall be transferred to either of said United States courts except upon written request of one of the parties thereto and in the absence of such request, such case shall be proceeded with in the proper state courts.

§ 15. All actions, cases, proceedings and matters pending in the supreme and district courts of the territory of Montana at the time the state shall be admitted into the union, and all files, records and indictments relating thereto, except as otherwise provided herein, shall be appropriately transferred, as may be proper to the supreme and district courts of the state, respectively, and all such actions, cases and matters shall be proceeded with in the proper state courts.

§ 16. Upon a change from a territorial to a state government, and until otherwise provided by law, the great seal of the territory shall be deemed and taken to be the great seal of the state of Montana.

§ 17. All territorial, county and township officers now occupying their respective positions under the laws of the territory of Montana, or of the United States of America, shall continue and remain in their respective official positions and perform the duties thereof as now provided by law after the state is admitted into the union, and shall be considered state officers until their successors in office shall be duly elected and qualified, as provided by ordinance, notwithstanding any inconsistent provisions in this constitution, and shall be entitled to the same compensation for their services as is now established by law; *Provided*, That the compensation for justices of the supreme court, governor and secretary of the territory shall be paid by the state of Montana.

Done in open convention at the city of Helena, in the territory of Montana, this seventeenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

WILLIAM A. CLARK, <i>President</i> .	JOSEPH HOGAN.
E. D. AIKEN,	THOMAS JOYES,
WALTER M. BICKFORD,	ALLEN R. JOY,
J. F. BRAZELTON,	J. E. KANOUSE,

PETER BREEN,
 SIMMON R. BUFORD,
 WILLIAM MASON BULLARD,
 WALTER A. BURLEIGH,
 ALEX. F. BURNS,
 ANDREW J. BURNS,
 EDWARD BURNS,
 JAMES E. CALLAWAY,
 EDWARD CARDWELL,
 B. PLATT CARPENTER,
 MILTON CAUBY,
 WILLIAM A. CHESSMAN,
 TIMOTHY E. COLLINS,
 CHARLES E. CONRAD,
 WALTER COOPER,
 THOMAS F. COURTNEY,
 ARTHUR S. CRAVEN,
 W. W. DIXON,
 D. M. DUFEE,
 WILLIAM DYER,
 GEORGE O. EATON,
 WILLIAM T. FIELD,
 J. E. GAYLORD,
 PARIS GIBSON,
 WARREN C. GILLETTE,
 O. F. GODDARD,
 FIELDING L. GRAVES,
 R. E. HAMMOND,
 CHARLES S. HARTMAN,
 HENRI J. HASKELL,
 LUKE D. HATCH,
 LEWIS H. HERSHFELD,
 RICHARD O. HICKMAN,
 S. S. HOBSON,

W. J. KENNEDY,
 H. KNIPPENBERG,
 HIRAM KNOWLES,
 CONRAD KOHRS,
 C. H. LOUD,
 LLEWELLYN A. LUCE,
 MARTIN MAGINNIS,
 J. E. MARION,
 CHARLES S. MARSHALL,
 WM. MAYGER,
 P. W. MCADOW,
 C. R. MIDDLETON,
 SAMUEL MITCHELL,
 WILLIAM MUTH,
 ALFRED MYERS,
 WILLIAM PARBERRY,
 W. R. RAMSDELL,
 G. J. REEK,
 JOHN C. ROBINSON,
 L. ROTWITT,
 J. E. RICKARDS,
 FRANCIS E. SARGEANT,
 LEOPOLD F. SCHMIDT,
 GEORGE W. STAPLETON,
 JOSEPH K. TOOLE,
 J. R. TOOLE,
 CHARLES S. WARREN,
 WILLIAM H. WATSON,
 CHAS. M. WEBSTER,
 H. R. WHITEHILL,
 GEORGE B. WINSTON,
 AARON C. WITTER,
 DAVID C. BROWN.

ORDINANCE NO. 1.

FEDERAL RELATIONS.

BE IT ORDAINED: First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of the state of Montana shall ever be molested in person or property, on account of his or her mode of religious worship.

FORCE AND EFFECT.—An ordinance framed and adopted by the constitutional convention and appended to the constitution, and with it adopted by the people, has the same force and effect as a constitutional provision: *State v. Kenney*, 9 Mont. 223.

EFFECT UPON STATUTE.—The effect of an ordinance upon the statute is to change and modify its provisions so far as necessary to give the provisions of the ordinance full scope and effect: *Id.*

Second. That the people inhabiting the said proposed state of Montana, do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any

Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States, that the lands belonging to citizens of the United States, residing without the said state of Montana, shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the said state of Montana on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the said state of Montana from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, but said last named lands shall be exempt from taxation by said state of Montana so long and to such extent as such act of congress may prescribe.

Third. That the debts and liabilities of said territory of Montana shall be assumed and paid by said state of Montana.

Fourth. That provision shall be made for the establishment and maintenance of a uniform system of public schools, which shall be open to all the children of said state of Montana and free from sectarian control.

Fifth. That on behalf of the people of Montana, we in convention assembled, do adopt the constitution of the United States.

Sixth. That the ordinances in this article shall be irrevocable without the consent of the United States and the people of said state of Montana.

Seventh. The state hereby accepts the several grants of land from the United States to the state of Montana, mentioned in an act of congress, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington, to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Approved February 22d, 1889, upon the terms and conditions therein provided.

ORDINANCE II.

ELECTIONS.

Be it Ordained by the Convention assembled to form a Constitution for the State of Montana:

First. That an election shall be held throughout the territory of Montana on the first Tuesday of October, 1889, for the ratification or

rejection of the constitution framed and adopted by this convention.

Second. At said election the constitution framed and adopted by this convention shall be submitted to the people of the territory for their ratification or rejection, and all persons who are then qualified electors under the laws of this territory, shall be qualified to vote for the ratification or rejection thereof.

Third. Said elections shall be held at the several polling places and precincts throughout the territory appointed for the holding of elections under the laws of the territory, and shall be conducted in the manner prescribed by the laws of the territory regulating elections. The boards of county commissioners of the several counties of the territory shall appoint judges and clerks of such election in each of said polling places and precincts in the same manner as is now required by law for the appointment of judges and clerks of general elections in the territory.

Fourth. Each elector voting at said election shall have written or printed upon the ticket he may deposit in the ballot box, the words "For the Constitution" or "Against the Constitution."

Fifth. The votes cast at said election for the adoption or rejection of said constitution shall be canvassed by the canvassing boards of the respective counties not later than fifteen days after said election, or sooner, if the returns from all of the precincts shall have been received and in the manner prescribed by the laws of the territory of Montana for canvassing the votes at general elections in said territory, and the returns of said election shall be made to the secretary of the territory, who with the governor, and the chief justice of the territory, or any two of them shall constitute a board of canvassers who shall meet at the office of the secretary of the territory on, or before, the thirtieth day after the election, and canvass the votes so cast and declare the result.

BOARD OF CANVASSERS.—The board of canvassers provided for in this paragraph were the legally constituted board to canvass the votes for members of the legislative assembly and declare the result: *State v. Kenny*, 9 Mont. 223. A certificate of election issued by said board of canvassers is prima facie evidence of membership in the house of representatives of this state: *Id.*

Sixth. That on the first Tuesday in October, 1889, there shall be elected by the qualified electors of Montana, a governor, a lieutenant-governor, a secretary of state, an attorney general, a state treasurer, a state auditor, a state superintendent of public instruction, one chief justice, and two associate justices of the supreme court, a judge for each of the judicial districts established by this constitution, a clerk of the supreme court, and a clerk of the district court in and for each county of the state, and the members of the legislative assembly provided for in this constitution. The terms of officers so elected shall begin when the state shall be admitted into the union and shall end on the first Monday in January, 1893, except as otherwise provided.

Seventh. There shall be elected at the same time one representative in the Fifty-first congress of the United States.

Eighth. The votes for the above officers shall be returned and canvassed as is provided by law, and returns shall be made to the secretary of the territory and canvassed in the same manner and by the same board as is the vote upon the constitution, except as to clerk of the district court.

Ninth. There shall also be elected at the same time the following county and township officers: Three county commissioners, one clerk of the board of commissioners and ex-officio recorder, one sheriff, one county treasurer, one county superintendent of common schools, one county surveyor, one county assessor, one coroner, one public administrator, one county attorney, two justices of the peace, and two constables for each township. The terms of office for the above named officers shall begin upon the admission of the state and end upon the first Monday of January, A. D. 1893, except as to county treasurer, whose term shall begin on the first Monday in March succeeding his election, and end on the first Monday of March, A. D. 1893, and also as to county commissioners, whose terms are otherwise provided for in this constitution.

Tenth. The votes for the above county and township officers and for clerk of the district court, shall be returned and canvassed and certificates of election to said officers issued as is now provided by law.

Eleventh. Notice of the election for the adoption or rejection of this constitution, and for state, district, county and township officers shall be given by the clerks of the several boards of county commissioners in the same manner as notice of general elections for delegate to congress and county officers is required to be given by the existing laws of the territory.

Twelfth. That the provisions of this ordinance shall apply only to the election and to the officers elected on the first Tuesday of October, 1889.