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Georgia Constitution of 1777

State of Georgia

*THE CONSTITUTION

OF THE

State of Georgia.

WHEREAS the conduct of the legislature of Great-Britain for many years past, Preamble. has been so oppressive on the people of America, that of late years, they have plainly declared, and asserted a right to raise taxes upon the people of America, and to make laws to bind them in all cases whatsoever, without their consent; which conduct being repugnant to the common rights of mankind, hath obliged the Americans, as freemen, to oppose such oppressive measures, and to assert the rights and privileges they are entitled to, by the laws of nature and reason; and accordingly it hath been done by the general consent of all the people of the States of New-Hampshire, Massachusetts-Bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, the counties of New-Castle, Kent and Suffex on Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, given by their representatives met together in General Congress, in the city of Philadelphia.

And whereas it hath been recommended by the said Congress on the fifteenth of May last, to the respective assemblies and conventions of the United States, where no government, sufficient to the exigencies of their affairs, hath been hitherto established, to adopt such government, as may, in the opinion of the representatives of the people, best conduce to the happiness, and safety of their constituents in particular, and America in general.

And whereas the independence of the United States of America has been also declared, on the fourth day of July, one thousand seven hundred and seventy six, by the said Honorable Congress, and all political connection between them, and the crown of Great Britain, is in consequence thereof dissolved.

We therefore the representatives of the people, from whom all power originates, and for whose benefit all government is intended, by virtue of the power delegated to us, Do ordain and declare, and it is hereby ordained and declared, that the following rules and regulations be adopted for the future government of this State.

I. The

* This Constitution gave place to the Constitution of 1786.—p. 29.

Legislative, executive and judiciary departments distinct.

I. The legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other.

Election of Representatives.

II. The legislature of this State shall be composed of the representatives of the people, as is herein after pointed out: and the representatives shall be elected yearly, and every year, on the first Tuesday in December; and the representatives so elected shall meet the first Tuesday in January following, at Savannah, or any other place or places where the House of Assembly for the time being shall direct.

Governor & executive council, how chosen.

On the first day of the meeting of the representatives so chosen, they shall proceed to the choice of a Governor, who shall be styled *Honorable*; and of an executive council, by ballot out of their own body; viz. two from each county, except those counties which are not yet entitled to send ten members. One of each county shall always attend, where the governor resides, by monthly rotation; unless the members of each county agree for a longer or shorter period; this is not intended to exclude either member attending: the remaining number of representatives shall be called the House of Assembly: and the majority of the members of the said house shall have power to proceed on business.

Assembly to be annual.

III. It shall be an unalterable rule, that the House of Assembly shall expire, and be at an end yearly and every year, on the day preceding the day of election mentioned in the foregoing rule.

Ten members from each county except Liberty—fourteen.

IV. The representation shall be divided in the following manner, ten members from each county, as is herein after directed, except the county of Liberty, which contains three parishes, and that shall be allowed fourteen.

Wilkes county.

The ceded lands north of Ogeechee shall be one county, and known by the name of Wilkes.

Richmond.

The parish of St. Paul shall be another county, and known by the name of Richmond.

Burke.

The parish of St. George shall be another county, and known by the name of Burke.

Effingham.

The parish of St. Matthew, and the upper part of St. Philip, above Canouchee, shall be another county, and known by the name of Effingham.

Chatham.

The parish of Christ Church, and the lower part of St. Philip, below Canouchee, shall be another county, and known by the name of Chatham.

Liberty.

The parishes of St. John, St. Andrew, and St. James, shall be another county and known by the name of Liberty.

Glynn.

The parishes of St. David and St. Patrick shall be another county, and known by the name of Glynn.

Camden.

The parishes of St. Thomas and St. Mary shall be another county, and known by the name of Camden.

Port and town of Savannah, four members.

The port and town of Savannah shall be allowed four members to represent their trade.

The

The port and town of Sunbury shall be allowed two members to represent their trade.

Sunbury, two members.

V. The two counties of Glynn and Camden shall have one representative each, and also they, and all other counties that may hereafter be laid out by the house of assembly, shall be under the following regulations, viz. At their first institution, each county shall have one member, provided the inhabitants of the said county shall have ten electors; and if thirty, they shall have two; if forty, three; if sixty, four; if eighty, six; if an hundred and upwards, ten; at which time two executive councillors shall be chosen from them, as is directed for the other counties.

Glynn & Camden, one representative each. Representatives of new counties apportioned.

VI. The representatives shall be chosen out of the residents in each county, who shall have resided at least twelve months in this State, and three months in the county where they shall be elected; except the freeholders of the counties of Glynn and Camden, who are in a state of alarm, and who shall have the liberty of choosing one member each, as specified in the articles of this constitution, in any other county, until they have residents sufficient to qualify them for more: And they shall be of the protestant religion, and of the age of twenty one years, and shall be possessed in their own right of two hundred and fifty acres of land, or some property to the amount of two hundred and fifty pounds.

Qualification of Representatives

VII. The house of assembly shall have power to make such laws and regulations as may be conducive to the good order and well being of the State; provided such laws and regulations be not repugnant to the true intent and meaning of any rule or regulation contained in this constitution.

Assembly to make laws and regulations.

The house of assembly shall also have power to repeal all laws and ordinances they find injurious to the people: And the house shall choose its own speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies; and shall have power of adjournment to any time or times within the year.

May repeal laws choose its own speaker, and appoint its officers &c.

VIII. All laws and ordinances shall be three times read, and each reading shall be on different and separate days, except in cases of great necessity and danger; and all laws and ordinances shall be sent to the executive council after the second reading, for their perusal and advice.

Manner of passing laws and ordinances.

IX. All male white inhabitants, of the age of twenty one years, and possessed in his own right of ten pounds value, and liable to pay tax in this State, or being of any mechanic trade, and shall have been resident six months in this State, shall have a right to vote at all elections for representatives, or any other officers, herein agreed to be chosen by the people at large; and every person having a right to vote at any election, shall vote by ballot personally.

Qualifications of electors; election by ballot.

X. No officer whatever shall serve any process, or give any other hindrance to any person entitled to vote, either in going to the place of election, or during the time of the said election, or on their returning home from such election; nor shall any military officer, or soldier, appear at any election in a military character, to the intent that all elections may be free and open.

Elections to be free and open.

Persons to vote where they reside; title of nobility disqualification.

XI. No person shall be entitled to more than one vote, which shall be given in the county where such person resides, except as before excepted; nor shall any person who holds any title of nobility be entitled to a vote, or be capable of serving as a representative, or hold any post of honor, profit or trust in this State, whilst such person claims his title of nobility; but if the person shall give up such distinction, in the manner as may be directed by any future legislature, then, and in such case, he shall be entitled to a vote, and represent, as before directed, and enjoy all the other benefits of a free citizen.

Persons not voting subject to fine.

XII. Every person absenting himself from an election, and shall neglect to give in his or their ballot, at such election, shall be subject to a penalty not exceeding five pounds; the mode of recovery, and also the appropriation thereof, to be pointed out and directed by act of the legislature; provided nevertheless, that a reasonable excuse shall be admitted.

Representatives to be elected by ballot.

XIII. The manner of electing representatives shall be by ballot, and shall be taken by two or more justices of the peace, in each county, who shall provide a convenient box for receiving the said ballots; and on closing the poll, the ballots shall be compared in public, with the list of votes, that have been taken, and the majority immediately declared; a certificate of the same being given to the persons elected, and also a certificate returned to the house of representatives.

Elector's oath.

XIV. Every person entitled to vote shall take the following oath, or affirmation, if required, viz.

'I *A. B.* do voluntarily and solemnly swear, or affirm as the case may be, that I do owe true allegiance to this State, and will support the constitution thereof. So help me God.'

Representatives oath how administered.

XV. Any five of the representatives elected, as before directed, being met, shall have power to administer the following oath to each other; and they or any other member, being so sworn, shall in the house administer the oath, to all other members that attend, in order to qualify them to take their seats, viz.

Oath.

'I *A. B.* do solemnly swear, that I will bear true allegiance to the State of Georgia, and will truly perform the trusts reposed in me; and that I will execute the same to the best of my knowledge, for the benefit of this State, and the support of the constitution thereof; and that I have obtained my election without fraud or bribe whatever. So help me God.'

Continental delegates to be appointed annually, and deemed a part of the assembly.

XVI. The continental delegates shall be appointed annually by ballot, and shall have a right to sit, debate and vote, in the house of assembly, and be deemed a part thereof; subject however to the regulations contained in the twelfth article of the confederation of the United States.

What persons incapable of a seat.

XVII. No person bearing any post of profit under this State, or any person bearing any military commission, under this or any other State or States, except officers of the militia, shall be elected a representative. And if any representative shall be appointed

appointed to any place of profit or military commission, which he shall accept, his seat shall immediately become vacant, and he shall be incapable of re-election whilst holding such office.

By this article, it is not to be understood that the office of a justice of the peace is a post of profit.

XVIII. No person shall hold more than one office of profit, under this State, at one and the same time.

No person to hold more than one office of profit.

XIX. The governor shall, with the advice of the executive council, exercise the executive powers of government, according to the laws of this State and the constitution thereof; save only in the case of pardons, and remission of fines, which he shall in no instance grant; but he may reprieve a criminal, or suspend a fine, until the meeting of the assembly, who may determine therein as they shall judge fit.

Powers of governor and executive council.

XX. The governor, with the advice of the executive council, shall have power to call the house of assembly together, upon any emergency, before the time which they stand adjourned to.

May convene the assembly.

XXI. The governor, with the advice of the executive council, shall fill up all intermediate vacancies that shall happen in offices 'til the next general election: And all commissions, civil and military, shall be issued by the governor, under his hand, and the great seal of the State.

Fill up all vacancies in office and issue all commissions.

XXII. The governor may preside in the executive council at all times, except when they are taking into consideration, and perusing the laws and ordinances offered to them by the house of assembly.

Governor when to preside in council.

XXIII. The governor shall be chosen annually by ballot, and shall not be eligible to the said office for more than one year out of three, nor shall he hold any military commission under any other State or States.

How chosen & when eligible.

The governor shall reside at such place as the house of assembly for the time being shall appoint.

His residence.

XIV. The governor's oath:

'I, A. B. elected governor of the State of Georgia, by the representatives thereof, do solemnly promise and swear, that I will, during the term of my appointment, to the best of my skill and judgment, execute the said office faithfully and conscientiously, according to law, without favor, affection, or partiality; that I will, to the utmost of my power, support, maintain, and defend the State of Georgia, and the constitution of the same; and use my utmost endeavors to protect the people thereof in the secure enjoyment of all their rights, franchises and privileges; and that the laws and ordinances of the State be duly observed, and that law and justice in mercy be executed in all judgments. And I do further solemnly promise and swear, that I will peaceably and quietly resign the government to which I have been elected, at the period to which my continuance in the said office is limited by the constitution;

Oath.

And

And lastly, I do also solemnly swear, that I have not accepted of the government whereunto I am elected, contrary to the articles of this constitution. So help me God.'

This oath to be administered to him by the speaker of the assembly.

President's oath The same oath to be administered by the speaker to the president of the council.

No person shall be eligible to the office of governor who has not resided three years in this State.

President & officers of council how appointed. XXV. The executive council shall meet the day after their election, and proceed to the choice of a president out of their own body—they shall have power to appoint their own officers, and settle their own rules of proceedings.

Council to vote by counties. The council shall always vote by counties, and not individually.

Protest how entered. XXVI. Every counsellor, being present, shall have power of entering his protest against any measures in council he has not consented to; provided he does it in three days.

Powers of council respecting laws and ordinances. XXVII. During the sitting of the assembly, the whole of the executive council shall attend, unless prevented by sickness, or some other urgent necessity; and in that case, a majority of the council shall make a board to examine the laws and ordinances sent them by the house of assembly; and all laws and ordinances sent to the council shall be returned in five days after, with their remarks thereon.

Proposed amendments how delivered. XXVIII. A committee from the council, sent with any proposed amendments to any law or ordinance, shall deliver their reasons for such proposed amendments, sitting and covered; the whole house at that time, except the speaker, uncovered.

President when to act as governor. XXIX. The president of the executive council, in the absence or sickness of the governor, shall exercise all the powers of the governor.

Governor may administer oath of secrecy to council. XXX. When any affair that requires secrecy shall be laid before the governor, and the executive council, it shall be the duty of the governor, and he is hereby obliged to administer the following oath, viz.

Oath. 'I A. B. do solemnly swear, that any business that shall be at this time communicated to the council, I will not, in any manner whatever, either by speaking, writing, or otherwise reveal the same, to any person whatever, until leave given by the council, or when called upon by the house of assembly; and all this I swear without any reservation whatever. So help me God.'

To secretary &c And the same oath shall be administered to the secretary and other officers necessary to carry the business into execution.

Executive power how long to exist. XXXI. The executive power shall exist 'til renewed as pointed out by the rules of this constitution.

XXXII.

XXXII. In all transactions between the legislative and executive bodies, the same shall be communicated by message, to be delivered from the legislative body to the governor, or executive council, by a committee; and from the governor to the house of assembly, by the secretary of the council; and from the executive council, by a committee of the said council.

Legislature and executive transactions between them how managed.

XXXIII. The governor, for the time being, shall be captain general and commander in chief over all the militia, and other military and naval forces belonging to this State.

Governor's military title.

XXXIV. All militia commissions shall specify, that the person commissioned shall continue during good behaviour.

Militia commissions how long to continue.

XXXV. Every county in this State that has, or hereafter may have, two hundred and fifty men, and upwards, liable to bear arms, shall be formed into a battalion; and when they become too numerous for one battalion, they shall be formed into more, by bill of the legislature; and those counties that have a less number than two hundred and fifty, shall be formed into independent companies.

Battalions how formed.

XXXVI. There shall be established in each county a court, to be called a Superior Court, to be held twice in each year. On the first Tuesday in March in the county of Chatham;

Superior court how established and where to be held.

The second Tuesday in March, in the county of Effingham;

The third Tuesday in March, in the county of Burke;

The fourth Tuesday in March, in the county of Richmond;

The next Tuesday in the county of Wilkes;

And Tuesday fortnight, in the county of Liberty;

The next Tuesday in the county of Glynn;

The next Tuesday in the county of Camden;

The like courts to commence in October, and continue as above.

XXXVII. All causes and matters of dispute, between any parties residing in the same county, to be tried within the county.

Matters in dispute.

XXXVIII. All matters in dispute between contending parties, residing in different counties, shall be tried in the county where the defendant resides, except in cases of real estates, which shall be tried in the county where such real estate lies.

Where tried.

XXXIX. All matters of breach of the peace, felony, murder, and treason against the State, to be tried in the county where the same was committed. All matters of dispute, both civil and criminal, in any county where there is not a sufficient number of inhabitants to form a court, shall be tried in the next adjacent county where a court is held.

Criminals where tried.

XL. All causes, of what nature soever, shall be tried in the supreme court, except as hereafter mentioned; which court shall consist of the chief justice, and three

Superior court jurisdiction.

DIGEST OF THE

- three or more of the justices residing in the county; in case of the absence of the chief justice, the senior justice on the bench shall act as chief justice, with the clerk of the county, attorney for the state, sheriff, coroner, constable, and the jurors. And in case of the absence of any of the aforementioned officers, the justices to appoint others in their room *pro tempore*. And if any plaintiff or defendant in civil causes shall be dissatisfied with the determination of the jury, then, and in that case, they shall be at liberty within three days to enter an appeal from that verdict, and demand a new trial by a special jury, to be nominated as follows, viz. each party, plaintiff and defendant, shall chuse six, six more names shall be taken indifferently out of a box provided for that purpose, the whole eighteen to be summoned, and their names to be put together into the box, and the first twelve that are drawn out, being present, shall be the special jury to try the cause, and from which there shall be no appeal.
- Appeals how to be tried. XLI. The jury shall be judges of law, as well as of fact, and shall not be allowed to bring in a special verdict; but if all, or any of the jury, have any doubts concerning points of law, they shall apply to the bench, who shall each of them in rotation give their opinion.
- Jury, judges of law and fact. XLII. The jury shall be sworn to bring in a verdict according to law, and the opinion they entertain of the evidence; provided it be not repugnant to the rules and regulations contained in this constitution.
- How sworn. XLIII. The special jury shall be sworn to bring in a verdict according to law, and the opinion they entertain of the evidence; provided it be not repugnant to justice, equity, and conscience, and the rules and regulations contained in this constitution, of which they shall judge.
- Special jury how sworn. XLIV. Captures, both by sea and land, to be tried in the county where such shall be carried in; a special court to be called by the chief justice, or in his absence, by the then senior justice in the said county, upon application of the captors, or claimants, which cause shall be determined within the space of ten days. The mode of proceeding and appeal shall be the same as in the superior courts; unless after the second trial, an appeal is made to the Continental Congress; and the distance of time between the first and second trial shall not exceed fourteen days: And all maritime causes to be tried in like manner.
- Captures by sea and land where and how tried. XLV. No grand jury shall consist of less than eighteen, and twelve may find a bill.
- Grand jury. XLVI. That the court of conscience be continued as heretofore practised, and that the jurisdiction thereof be extended to try causes not amounting to more than ten pounds.
- Court of conscience. XLVII. All executions exceeding five pounds, except in the case of a court merchant, shall be stayed until the first Monday in March; provided security be given for debt and costs.
- Executions how stayed.

XLVIII.

XLVIII. All the costs attending any action in the superiour court shall not exceed the sum of three pounds, and that no cause be allowed to depend in the superior court longer than two terms. Superior court costs, causes how long to continue.

XLIX. Every officer of the State shall be liable to be called to account by the house of assembly. Officers how called to account.

L. Every county shall keep the public records belonging to the same, and authenticated copies of the several records now in the possession of this State shall be made out and deposited in that county to which they belong. Public records where kept.

LI. * Estates shall not be entailed; and when a person dies intestate, his or her estate shall be divided equally among their children; the widow shall have a child's share, or her dower, at her option; all other intestates estates to be divided according to the act of distribution, made in the reign of Charles the second, unless otherwise altered by any future act of the legislature. Estates not to be entailed, how divided.

LII. A register of probates shall be appointed by the legislature in every county, for proving wills, and granting letters of administration. Register of probates how appointed.

LIII. All civil officers in each county shall be annually elected on the day of the general election; except justices of the peace, and registers of probates, who shall be appointed by the house of assembly. County officers how appointed.

LIV. Schools shall be erected in each county, and supported at the general expence of the State, as the legislature shall hereafter point out. Publ schs.

LV. A court house and jail shall be erected at the public expence in each county, where the present convention, or the future legislature shall point out and direct. Court-house and jail.

LVI. All persons whatever shall have the free exercise of their religion; provided it be not repugnant to the peace and safety of the State; and shall not, unless by consent, support any teacher, or teachers, except those of their own profession. Religious toleration.

LVII. The great seal of this State shall have the following device: on one side a schroll, whereon shall be engraved, The Constitution of the State of Georgia; and the motto, *Pro bono publico*;—on the other side, an elegant house, and other buildings, fields of corn, and meadows covered with sheep and cattle; a river running through the same, with a ship under full sail, and the motto, *Deus nobis hæc otia fecit*. Great seal its device.

LVIII. No person shall be allowed to plead in the courts of law in this State, except those who are authorised so to do by the house of assembly; and if any person so authorised shall be found guilty of mal practice before the house of assembly, they shall have power to suspend them. This is not intended to exclude any person from that inherent privilege of every *freeman*, the liberty to plead his own cause. Attornies how admitted.

LIX. Excessive fines shall not be levied, nor excessive bail demanded. Fines & bail not to be excessive.

LX.

* See act of 1785. No. 397.

- Habeas Corpus. LX. The principles of the habeas corpus act shall be a part of this constitution.
- Freedom of press & trial by jury. LXI. Freedom of the press, and trial by jury, to remain inviolate *forever*.
- Clergymen ineligible. LXII. No clergyman, of any denomination, shall be allowed a seat in the legislature.
- This constitution how altered. LXIII. No alteration shall be made in this constitution, without petitions from a majority of the counties, and the petitions from each county to be signed by a majority of voters in each county within this State: At which time the assembly shall order a convention to be called for that purpose, specifying the alterations to be made, according to the petitions preferred to the assembly by the majority of the counties as aforesaid.

DONE at Savannah, in Convention, the fifth day of February, in the year of our Lord one thousand seven hundred and seventy-seven, and in the first year of the Independence of the United States of America.

A. D. 1670.

An act for the better settling of Intestates Estates.

22 & 23 C. 2.
c. 10.
All ordinaries
who have power
to grant administrations,
have power to
take bond.
Vaughan, 96.
31 Ed. 3. c. ii.

BE it enacted, That all ordinaries, as well the judges of the prerogative courts of Canterbury and York for the time being, as all other ordinaries and ecclesiastical judges and every of them, having power to commit administration of the goods of persons dying intestate, shall and may upon their respective granting and committing of administrations of the goods of persons dying intestate, after the 1st day of June, 1671, of the respective person or persons to whom any administration is to be committed, take sufficient bonds with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the condition in form and manner following, *mutatis mutandis*, viz.

The condition
of the bonds.

“ II. The condition of this obligation is such, That if the within bounded A. B. administrator of all and singular the goods, chattels and credits of C. D. deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of him the said A. B. or into the hands and possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited into the registry of court, at or before the day of next ensuing; (2) and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased at the time of his death, which at any time after shall come to the hands or possession of the said A. B. or into the hands and possession of any other person or persons for him, do well and truly administer according to law: (3) And further, do make or cause to be made, a true and just account of his said administration, at or before the day of And all the rest and residue of the said goods, chattels and credits which shall be found remaining “ upon