



John Mason Brown

THE
POLITICAL BEGINNINGS
OF
KENTUCKY.

A NARRATIVE OF PUBLIC EVENTS
BEARING ON THE HISTORY OF THAT STATE UP TO THE TIME OF ITS ADMIS-
SION INTO THE AMERICAN UNION.

BY
JOHN MASON BROWN.

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TO
REUBEN T. DURRETT,
OF LOUISVILLE, KY.,

Learned beyond all others in the History of Kentucky and
the West, this paper is inscribed
by his friend,

JOHN MASON BROWN.

LOUISVILLE, KY.,
NOVEMBER, 1889

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THE HISTORY of the Commonwealth of Kentucky has attracted many pens. Elements of romantic adventure, of frontier life, of peril encountered and overcome, of daring deeds, crowd the story of its earlier years. Universal interest has attached to the names of her pioneers. Their conflict was maintained in an unexplored and scarcely known wilderness. Hundreds of miles of forest and mountain separated them from the settlements on the frontier of the older States from which they went forth, ever westward, to subdue and occupy the plains beyond the Alleghanies. The game that furnished sport and subsistence to the hunter was numerous beyond all former story. It was in kind different from that which the Atlantic slope afforded. Great bison and tall elks roamed in countless bands.

The Indians, whose hunting ground the new country was, were of higher type than those whom the colonists had encountered at the seaboard. The Shawnees, Wyandots, Cherokees, and allied tribes had many warriors whose sagacity in council was not inferior to their bravery in the field. The task before the adventurers in Kentucky was an arduous and a noble one. It was theirs to subdue the wilderness to civilization, to dispossess a brave and skillful foe,

to overcome privation and danger, to create resources that could not else be had, to discipline their own hard and dangerous frontier life to the model of self-imposed law, and to evolve from discouragement, neglect, and danger a new State.

Their adventures, attacks, escapes, and wars have been the theme of poem and romance and history; but their services in the field of political construction, no less prolific of results and equally worthy, have scarce been noticed.

The earlier political history of Kentucky falls naturally into two periods. The first terminates with the admission of the State into the Federal Union, on the 1st of June, 1792, and embraces the purely formative epoch. The second period extends to the close of the alarms that attended Burr's demonstrations in the Southwest. Within that epoch (from 1792 to 1807) are included the organization of executive and legislative powers, the mission of Power and other Spanish emissaries, and their attempts upon Sebastian, Nicholas, and Murray, the ferment that grew out of the Alien and Sedition laws and excise legislation, the excitement fomented by Genet and other French agents, the remodeling of the constitution in 1799, the acquisition of Louisiana, and the arrest and trial of Burr.

Neither space nor leisure is now available for the proper treatment of this second period, for the history of which, however, the writer has collected much material.

It is the design of this paper to trace the political development that marked the history of Kentucky during that

first period that closed with the establishment of statehood and admission to membership in the Union, that the memory of the sagacity, patience, and forbearance of the pioneers may be perpetuated along with their better known virtues. Its purpose will be to examine their acts and explore their motives in the light of documentary evidence, much of which has been recently unearthed, and which speaks the true contemporary opinion. The lapse of years has cleared the historical atmosphere of many clouds engendered by personal rivalries and political antagonisms. It is possible now to cite a responsible contemporary voucher for almost every important public fact in the earlier history of the State.

To his brethren of the FILSON CLUB the writer wishes here to repeat acknowledgments of co-operation and sympathy in his work. Their constant and interested attention, dispassionate examination into the narrated facts, and free and well-informed criticisms upon conclusions drawn from them, have secured for this paper an accuracy and fairness that otherwise could not have been hoped for.

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THE POLITICAL BEGINNINGS

OF

KENTUCKY.

The Indian Title.

An occupation of one hundred and fifty years had not sufficed to fully people the Atlantic slope of North America. The inhabitants who had pitched their first settlements along the tide-water and the greater rivers were slow to venture back westward to the Appalachian Mountains. They accepted the boundary that nature had raised and curbed their enterprise within its limits. Beyond the great divide that turned the waters another way lay a country unexplored and as yet uncoveted. The right of discovery under which the seaboard was held extended, as was claimed, westward to the further ocean; but how far this was, or what the claim embraced, few cared and none knew.

Within the bounds of Virginia's royal charter, directly to the west, and yet separated from the extremest frontier by many miles of impassable mountains, lay the territory now known as Kentucky.

It pushed forward into the wilderness like a huge wedge, resting upon Virginia's western line as its base. Its apex reached the Mississippi; its axis was the mid line of the coming nation. Even in savage times it divided the permanent possessions of northern and southern Indians. It was the key of all the country between the Alleghanies and the Mississippi.

The ownership of this land, fertile and abounding in game beyond all others, was disputed by powerful tribes and alliances. The Cherokees claimed it in great part; the Six Nations asserted that it was entirely theirs. The title was one of arms. The better claim, at least by conquest and use as their hunting ground, seems to have been with the Six Nations. It is from the language of the Iroquois that the name of Kentucky is derived, and from the language of their allied tribes, the Delawares and the Shawnees, comes that other name, "*Kuttawna*," "*the great wilderness*," used by early explorers interchangeably with the Iroquois "*Kentake*," "*the place of the meadows*," "*the hunting grounds*."

¹ John Johnston, long years resident among the Shawnees as their agent, asserts that the word "Kentucky" is Shawnee, signifying "At the head of the river" (*Archæologia Americana*, Vol. I, p. 299), and Dr. D. G. Brinton seems half inclined to attach weight to this explanation. In a letter of 12th August, 1885, commenting upon Johnston's explanation, he writes: "The terminal is no doubt 'aki,' meaning 'land,' 'place,' but I am not able to analyze the root word. There is an Algonkin root, 'kan' or 'kanat,' meaning 'clear,' 'pure,' and hence in Johnston's sense the word would be 'the place of clear, pure, or spring water,' as contradistinguished from the muddy character of the rivers near their outlets." The derivation does not seem sound or admissible. In the Iroquois tongue "*kenta*" (abbreviation of "*kehenta*") signifies "*meadow*," "*prairie*," and

The title of the Six Nations was asserted and vindicated by them with all the confidence of a dominant people. Their war parties went westward to the Wabash, meeting no adequate resistance. Their hunters crossed the Ohio and roamed beyond the Cumberland, and westward to the Tennessee. Within the "Blue Grass" of Kentucky their allies, the Shawnees, built their towns, and from the Scioto to Chickamauga extended the great Warriors' Path, their military road against the Cherokees. The validity of the title claimed by the Six

"*ke*" is the locative particle meaning "place," "land." The combination "*kenta-ke*" would indicate "the meadow land," and in a secondary sense the "hunting land" or "hunting grounds," as it was in this luxuriant country of blue grass and tender cane that the best and most abundant game was found. The learned Father Cuog concurs in this derivation of the word Kentucky, though he does not proceed to the secondary meaning. (*Lexique Iroquoise, sub voce KENTA.*) The word "*kenta*," modified by the Mohawk tribal dialect into "*Genti*," is found in the list of the towns of the Wolf clan, where "*Gentiyo*" is rendered "*Beautiful Plain.*" (*Hale, Iroquois Book of Rites, 118. sec. 5.*) The Algonkin name of Kentucky was doubtless "*kutawa*," very accurately translated as "the great wilderness." Its derivation seems to be from "*kitchi*," otherwise "*ki*," meaning "great," and "*tawa*," "space," "interval," "vacancy," or, secondarily, "wilderness" (Consult Cuog, *Lexique Algonquine.*) The Shawnees, who greatly affected the broad sound of *a*, used the word "*kut-taá-waa*," which the Delawares, also of Algonkin stock, pronounced less broadly "*kutawa*." Dr. Brinton notes the name "*kittawa*," otherwise "*kuttoowawuw*," as that given by the Delawares to the Cherokees, adding the remark, "This word I suppose to be derived from the prefix '*ki*,' 'great,' and the root '*tawa*' (*Cree, yette, tawa*), 'to open,' whence '*tawatawik*,' 'an open,' i. e., 'an uninhabited place,' 'a wilderness' (Zeisberger)." (*Brinton, The Lenape, 16.*) The suffix *wi*, meaning people, added to *kittawa* made the word *kittawawi*, the name given by the Delaware to the Cherokees as "the people living in the great wilderness." This accords with the fact that the territory of Kentucky was so destitute of fixed towns of Indians that the locality of only two Shawnee settlements can certainly be identified. One was situated at what is now called the Indian Old Fields, on Lulbegrud Creek, in Clark County, whence Chattahechassa (Blackhoof) went to fight at Braddock's defeat, and which place he revisited in 1816. (*Letter of Joseph Ficklin to Schoolcraft, Schoolcraft's Indian Tribes, Vol. I, p. 300.*) The other was opposite the mouth of the Scioto River in 1756. (*Dr. Thomas Walker, Calendar Virginia State Papers, Vol. I, p. 298.*) A tradition survives that the Cherokees had a town on the lower waters of the Cumberland, but it had disappeared

Nations and the counter-right of the Cherokees became questions of serious public importance at several junctures.

The first foundation of Virginia's claim to western territory lay, of course, in the charter of 1609, without regard to any Indian rights that might interfere with its magnificent grants. But as the thoughts of enterprising men were directed westward, the conflict of personal interest made them keenly alive to all that could confirm their pretensions. The validity of the title by conquest, claimed by the Six Nations, enlisted one of Dr. Franklin's ablest efforts in its support.

before that region was explored by the whites. Hon. Charles Anderson, of Eddyville, Ky., has conjecturally located it at or near his plantation of "Kutawa." The Cherokees, in 1755, had an "out town," which they called "Kittow" (*Fifth Report Ethnological Bureau, Smithsonian Institute*, p. 143), but there is no clue to its exact location. The old tribal name of the Cherokees appeared again at the beginning of the late civil war. Their predominant sentiment was in favor of the Southern Confederacy, but an opposing party, secretly organized, adhered to the United States. Its membership "was composed principally of full blood Cherokees, and they termed themselves 'ki-tu-wha,' a name by which the Cherokees were said to have been known in their ancient confederations with other Indian tribes." (*Royce, quoting Butler, Fifth Ethnological Report, Smithsonian Institute*, 325.) Much unfounded sentiment and turgid rhetoric has arisen from the mistaken notion that the word Kentucky should be interpreted "The Dark and Bloody Ground." No such translation is warranted. The term "Dark and Bloody Ground" had its origin in the warning given by Dragging Canoe to Henderson at Watauga, in 1775, that the new country was "the bloody ground, and would be dark and difficult to settle." (*Deposition of Samuel Wilson, Virginia Calendar State Papers*, Vol. I, p. 283.) It seems clear that two Indian names were thus affixed to the great hunting grounds south of the Ohio—one being "Ken-ta-ke," signifying in the Iroquois language "The Hunting Grounds;" the other, "Kut-tawa," meaning, in Algonkin, "The Great Wilderness." It seems probable that the latter term and its signification—"the great open space"—had some connection with the existence of the so-called "Barrens" or treeless areas that lay to the west of Salt River, and upon which countless buffalo and other game grazed. Prof. Shaler thinks that these "Barrens" remained destitute of timber because of the fires kindled by hunting parties, and by which the young shoots were destroyed. A glance at the "unexplored regions" on Barker's map (of 1793) lends force to Prof. Shaler's suggestion.

He argued successfully before the Privy Council that the pretensions of a Cherokee claim were baseless; that the treaty which Stuart had concluded with that tribe in 1768 was a nullity; that the early writers, like Pownall, had long before asserted "the right of the Five Nation Confederacy to the hunting lands of Ohio, Tecucksuchrondite, and Scandiaderiada by the conquest they made in subduing the Shawanoes, Delawares (as we call them), Twightees, and Oilinois;" and that Evans, the cartographer, stated that "the Shawnees, who were formerly one of the most considerable nations of those parts of America, whose seat extended from Kentucky southwestward to the Mississippi, have been subdued by the confederates (or Six Nations), and the country since become their property. No nation held out with greater resolution and bravery; and although they have been scattered in all parts for a while, they are again collected on the Ohio under the dominion of the confederates."

The argument of Dr. Franklin, made in 1772, was chiefly directed to the title of the Six Nations, because, by the treaty of Fort Stanwix, of 1768, the lands which he and his associates asked in grant had been relinquished by the Indians to the Crown.¹ The Walpole grant, which Franklin carried triumphantly through the Privy Council over Lord Hillsborough's opposition, was abandoned as the Revolutionary

¹ *Franklin's Works*, Vol. IV, p. 302, and following.

troubles thickened. Its story must, however, always be one of interest. It was the first attempt at distinctively proprietary grant west of the Alleghany Mountains. It substituted defined boundaries for the mere vagaries of the old charter grants. Its 2,400,000 acres were to be included within boundaries that alarmed Washington, and called forth his warning and remonstrance.¹ It embraced that part of Kentucky east of a line connecting the mouth of the Scioto and Ouasioto (Cumberland) Gap, and all of Virginia west of the Alleghanies. The Ohio was its northern line, and it extended southward to the latitude of North Carolina.

The Cherokee claim assumed importance when Stuart, in 1768, concluded his treaty with the chiefs of that people. By this treaty it was agreed between Stuart, as His Majesty's Superintendent of Southern Indian affairs, and the Cherokees, claiming to own the country south of the Ohio, that the western boundary of Virginia should be defined as "extending from the point where the northern line of North Carolina intersects the Cherokee hunting grounds, about thirty-six miles east of Long Island in the Holston River, and thence extending in a direct course north by east to Chiswell's mine on the east bank of the Kanawha River, and thence down that stream to its junction with the Ohio."²

¹ Washington to Lord Botetourt, 15th April, 1770. *Washington's Writings*, Vol. II, p. 355.

² *Ramsay's History of Tennessee*, 77.

The effect of this, if title in the Cherokees were admitted, was to limit Virginia by the Kanawha as a western boundary and destroy the vast claim that rested on the charter of 1609. The Cherokee treaty was concluded by Stuart¹ on the 14th October, 1768, at Hard Labor, in South Carolina; but already another conference was gathering at Fort Stanwix (now Utica, N. Y.), where, on the 5th November, was concluded that famous cession made by the Six Nations to the British Crown.²

¹ This Stewart or Stuart has sometimes been confounded with Boone's companion in the wilderness—the first white man killed in Kentucky. He was the grandfather of the well-known John Ross, Head Chief of the Cherokees. (*Royce, Fifth Ethnological Report, Smithsonian Institute*, 348, note.)

² The Treaty of Fort Stanwix has well been denominated "the corner-stone of the political relations between the citizens of the United States immediately south of the Ohio and the Indians." It was perhaps suggested by Croghan, the deputy agent of Sir William Johnson, after his expedition of 1765 from Fort Pitt by way of the Ohio and the Wabash to Detroit and Niagara. Or, on the other hand, the journey of Croghan may have been one of observation, preparatory to the treaty negotiations contemplated by Sir William. The list of tribes and their military strength, given by Croghan, indicates no occupation of Kentucky. (*Butler, History of Kentucky*, 470, ed. 1836.) This was an all-important fact for the treaty. The assemblage at Fort Stanwix was one of unusual dignity for the times, and especially for so remote a station. There were present, as the report of the council shows, Sir William Johnson, His Majesty's Superintendent of Indian Affairs; His Excellency William Franklin, Governor of New Jersey; Dr. Thomas Walker, representing the colony of Virginia as Commissioner; Hon. Frederick Smith, Chief Justice of New Jersey; Richard Peters and James Tilghman, members of the Council of Pennsylvania, and George Croghan and Daniel Claus, Deputy Agents of Indian Affairs. Three thousand two hundred warriors of the various tribes of the Six Nations attended, as did all the principal chiefs of the confederation. The narrative of the conference and text of the treaty will be found in the appendix to Butler (*Butler History of Kentucky*, p. 472, and following), from which will be seen (what is of interest from the present point of view) that the movement for the cession and treaty was deliberate on all sides. The Speaker of Assembly and Committee of Correspondence of Pennsylvania instructed Dr. Franklin, the colonial agent at London, the Assembly of Virginia considered the subject, the Indians notified the King's agents that a purchase ought to be made to avoid trouble with unauthorized settlers, and the royal command to call the council was received by Sir William Johnson early in 1768.

The treaty negotiated by Stuart was not attended with the ceremonies, the concourse of numbers, or the dignity of participants distinguishing that which Sir William Johnson concluded with the Six Nations. Nor did it bind so many and so formidable warriors. It alarmed the frontiersmen by including many settlements within territory that it assumed to recognize as belonging to the Cherokees, and guaranteed to them in peaceable possession. It imposed an abrupt boundary upon the colony of Virginia and forbade her westward growth. It was natural that the Cherokee treaty should excite displeasure and arouse opposition. And with the opposition to treaty boundary came in easy company a denial of the Cherokee title. That denial came with vigorous utterance from Virginia and her people. It was indirectly supported by the colonial governments that had joined with Virginia in negotiating the treaty at Fort Stanwix; for the title ceded by the Six Nations was incompatible with the Cherokee claim. The Indian signatories at Fort Stanwix were the great chiefs of the Six Confederated Nations, the Mohawks, the Tuscaroras, the Oneidas, the Onondagas, the Cayugas, and the Senecas. The head men of the Delawares and Shawnees assented, but were not permitted to sign the treaty because, though recognized as friends and allies, they had been conquered, and owed all to the grace of the Iroquois league.¹

¹ The chiefs of the Shawnees and Delawares are named in the preliminaries of the treaty, but are not signatories. Their relation to the dominant tribes was very plainly put by the Onondaga Chief, Canassateego, in the council of 1742. The Delawares had

It was over this sense of tribal humiliation that Tecumseh brooded forty years later. One of the chief hopes of his scheme of confederation was to place the Shawnees at the head of a great alliance in the West that should eclipse the power and the fame of the arrogant Six Nations.¹

There was no political or personal interest to support the pretensions of Stuart's treaty; its only purpose seems to have been to check violations of the royal proclamation of 1763,

sold certain lands to colonists and attempted to repudiate the bargain. After censuring their bad faith, Canassateego thus reproved the Delawares for their presumption: "But how came you to take upon you to sell land at all? We conquered you; we made women of you. You know you are women, and can no more sell land than women. Nor is it fit you should have the power of selling lands, since you would abuse it. This land that you claim is gone thro' your guts; you have been furnished with cloathes, meat, and drink by the goods paid you for it, and now you want it again, like children, as you are. But what makes you sell land in the dark? Did you ever tell us that you had sold this land? Did we ever receive any part, even the value of a pipe-shank, from you for it? You have told us a blind story, that you sent a messenger to us to inform us of the sale; but he never came amongst us, nor we never heard any thing about it. . . . And for all these reasons we charge you to remove instantly. We don't give you the liberty to think about it. . . . We therefore assign you to two places to go, either to Wyomen or Shamokin. You may go to either of these places, and then we shall have you more under our eye, and shall see how you behave. Do n't deliberate, but remove away, and take this helt of wampum." (*Colden, History of the Five Nations*, Vol. II, p. 36.) Mr Hale justly remarks that this imperious allocution, which he somewhat softens in his quotation, shows plainly enough the relation in which the two communities stood to one another. (*Hale, Iroquois Book of Rites*, 93, 94.)

¹The reflective and original cast of Tecumseh's mind has often been commented upon. He went through a (real or simulated) profound religious experience, and impressed his views very earnestly upon his tribe. On 23d March, 1807, three Shakers from Turtle Creek (Ohio), visiting a Shawnee village to inquire into a reported religious movement, found "a large frame house, about 150 by 34 feet in size, surrounded with 50 or 60 smoking cottages." The "big house" was used to "worship the Great Spirit," and the leading men were "Laluetseeka and Tekumtha" (Tecumseh). The Shakers were amazed to find that the Indians had a well defined creed based, as they claimed, on direct revelation, and quite similar to the religious views of their own society. McNemar, the Shaker elder at Turtle Creek, formerly a Presbyterian minister,

forbidding acquisitions of lands from Indians by private treaty or purchase. The policy of extinguishing the Indian claim by vesting title in the sovereign, and thus compelling the citizen to acquire ownership through allegiance, was sufficiently protected by the treaty of Fort Stanwix, and all governmental influence was thrown into the scale for its validity.

Thus it was determined in 1768 that the Indian title to the territory of Kentucky, as far westward as the Tennessee River at least, was in the Six Nations, and that it devolved by treaty upon the King of Great Britain. And the treaty of Fort Stanwix, taken together with the proclamation of 1763,¹ made it impossible to acquire lands within the great western area save by grant derived directly or mediately from the Crown.

While the disregard into which Stuart's treaty thus fell was fortunate for Virginia, in that the threatened western

gives a very full account of the origin of this religious movement among the Indians, and of their theological notions. He illustrates their points of belief by quotations from dialogues with them. (*McNemar's Kentucky Revival, etc.*, 111, and following.) Tecumseh had no celebrity at the time of McNemar's writing, and the account can not be suspected of being overdrawn for the purpose of introducing a famous character. McNemar spells Tecumseh's name according to the true Shawnee pronunciation, which always converted the sibilant *s* into *th* by lisping. The religious ferment of the Shawnees has generally been considered as part of the plan of Tecumseh and his brother, The Prophet, to establish their influence. The controversy between Col. James Smith and McNemar on that point is curious, and the publications very rare.

¹ This proclamation may be found printed as an appendix to Dr. Franklin's argument on the Walpole grant. (*Franklin's Works*, Vol. IV, p. 374.) The Kentucky land titles, earlier than such Virginia grants as postdate 1776, are nearly if not quite all based upon warrants authorized by the royal proclamation of 1763, to be issued to soldiers in the North American wars.

boundary of the Kanawha was abandoned, the adoption of the treaty of Fort Stanwix brought embarrassments. It was soon asserted that Virginia had no title westward of the Alleghany range, because the cession by the Six Nations was (as contended) a new and original title in the King, incompatible with the pretensions of Virginia to the territory which her charter boundary would include. It was thus that Franklin, in his argument before the Privy Council in 1772,¹ ingeniously established the royal title from the Iroquois and checked Virginia with a mountain boundary, finding a location as well as a title for the Walpole grant.

The original boundaries granted to Virginia were certainly declared in ignorance of what would be their gigantic extent, but it can hardly be contended that they were impossible of ascertainment or application. There were well-defined beginning points on the Atlantic coast; the courses of the lines to the north and south were unmistakably indicated, and the limit of the grant to the west was the sea. The royal grantor declared:

“And we do also of our special Grace, certain knowledge and mere Motion, give, grant, and confirm unto the said Treasurer and Company, and their successors, under the Reservations, Limitations, and Declarations hereinafter expressed, all those Lands, Countries, and Territories situate, lying, and being in that part of America called Virginia, from the Point of

¹ *Franklin's Works*, Vol. IV, p. 324, and following.

Land called Cape or Point Comfort all along the Sea Coast to the Northward two hundred miles; and from said Point of Cape Comfort all along the sea coast to the southward two hundred miles; and all that space and Circuit of Land lying from the Sea Coast of the Precinct aforesaid. up into the Land throughout from Sea to Sea, West and Northwest; and also all the Islands lying within one hundred miles along the Coast of both Seas, of the Precinct aforesaid: Together with all the Soils, Grounds, Havens, and Ports, Mines, as well Royal Mines of Gold and Silver, as other Minerals, Pearls, and precious Stones, Quarries, Woods, Rivers, Waters, Fishings, Commodities, Jurisdictions, Royalties, Privileges, Franchises, and Preheminences within the said Territories, and the Precincts thereof whatsoever; and thereto and thereabouts, both by Sea and Land, being in any sort belonging or appertaining, and which We by our Letters Patents may or can grant, in as ample Manner and Sort as our noble Progenitors have heretofore granted to any Company, Body Politic or Corporate, or to any Adventurer or Adventurers, Undertaker or Undertakers, of any Discoveries, Plantation or Traffic of, in, or unto any Foreign Parts whatsoever, and in as large and ample Manner as if the same were herein particularly mentioned and expressed: To have and to hold," etc.¹

Of this grant it has well been observed² that all the conditions can be satisfied only by extending from a point two hundred miles south of Point Comfort a line due west to the Pacific, and, from a point equally distant and to the north of Point Comfort, another line stretching northwest to the Pacific. Between these lines on the north and south and the ocean limits on the east and west was the chartered

¹ For the charter of the London Company see *Poore's Constitutions and Charters*, Government Press, 1878, Vol. II, p. 1897.

² *Hinsdale, The Old Northwest*, p. 75.

area of Virginia. The divergence of the inclosing boundaries spreading at an angle of forty-five degrees would have included a Pacific coast line from the vicinity of Monterey to the snows of Alaska.

Spanish occupation, and the treaty of 1763, made it impossible for Virginia to assert (as she came to the status of a revolutionary State) territorial claims west of the Mississippi. But never was her claim abated short of the great river.¹ Jefferson, more than any, appreciated the paper title which the charter of 1609 gave, and his far-sighted comprehension urged George Rogers Clark from the Falls of the Ohio into the northwest, that actual occupation at the close of the Revolution might secure to the new nation territory for new commonwealths. His broad intelligence kept steadily in mind that divergent line toward the northwest for nearly thirty years longer, until, by the purchase from France of the Louisiana territory, the old Spanish title to the trans-Mississippi was extinguished, and Great Britain and the United States were left sole owners of all above the Gulf of Mexico. Then once more he started exploration on the northwest line, dispatching Lewis and Clark up the Mis-

¹The 7th article of the treaty of 1763, between France, Great Britain, and Spain, fixed the boundary line between Spain and Great Britain as to their North American possessions, by the current of the Mississippi, "une ligne tirée au milieu du fleuve Mississippi, depuis sa naissance jusqu'à la rivière d'Iberville, et, de là, par une ligne tirée au milieu de cette rivière et des lacs Maurepas et Ponchartrain, jusqu'à la mer." (*Martens, Recueil des Traités, etc.*, Vol. I, p. 32, ed. of 1846.)

souri and beyond the Rocky Mountains, enabling his countrymen to claim Oregon by joint title of grant and occupation.

The charter-title thus held by the colony of Virginia concerns the present inquiry only so far as it is connected with the development of Kentucky. During the interval between Boone's first visit to Kentucky, in 1769, and the close of the Revolutionary War, only one occasion called for the assertion of the sovereign title held by Virginia over Kentucky soil.

The King had granted, in 1609, and had perfected the original title, based on the right of discovery by purchase from the Six Nations at Fort Stanwix. It was very much a case of buying in the outstanding claim of an annoying neighbor. The public men of Virginia must have regarded the treaty of Fort Stanwix as confirming, to the extent of its cession, the ancient charter grant. Yet they must have appreciated the argument thus put into the hands of such as might dispute Virginia's right to the territory north of the Ohio. It was forcibly contended in after years that the treaty of Fort Stanwix, in 1768, operated as a resumption by the Crown of all the grant of 1609 that lay west and north of the treaty line.¹ But the urgency of the political

¹This point was pressed by the counsel for Garner, indicted in Virginia for the offense of assisting slaves to escape. He was seized by Virginia officers on the north bank of the Ohio River, between high- and low-water mark. The case is reported in 3 *Grattan, Virginia Reports*, 655.

situation demanded an acceptance of what was procurable; for Stuart's treaty with the Cherokees threatened the barrier of an Indian title, solemnly agreed and guaranteed, which would bar all expansion toward the west. Already Orange County has been constituted by colonial act, in 1734, with a boundary to "the utmost limits of Virginia,"¹ and from it, in 1738, Augusta County has been formed, extending beyond the mountains "to the utmost limits of Virginia."² Botetourt had been carved from Augusta in 1769,³ and from it in turn was taken Fincastle in 1772.⁴ Kentucky County was erected in 1776 by the partition of Fincastle, under one of the earliest acts of the first legislative assembly of the independent State of Virginia.

To a sequence of political acts manifesting sovereignty, Virginia added at the close of the Revolution the proud claim that she, unaided, had subdued and held the Northwest.⁵

The Continental Congress acquiesced in a theory that quite confirmed Virginia's claim. Its committee reported

¹ 4 *Hening, Statutes at Large*, 450.

² 5 *Hening, Statutes at Large*, 79.

³ 8 *Hening, Statutes at Large*, 396.

⁴ 8 *Hening, Statutes at Large*, 600.

⁵The sovereignty of Virginia over the Northwest, and her power to declare boundary, in cession of that territory, was discussed and established by Chief Justice Marshall, in *Handley's Lessee v. Anthony*, 5 *Wheaton*, 374, where the boundary of Kentucky is judicially settled as being low-water mark on the north side of the Ohio River. The same conclusion as to the river boundary of Virginia was reached by the General Court of that State in *Garner's Case*, 3 *Grattan*, 635. The latter case was one where the majority of the court, led by Robertson and Lomax, rose, with noble tranquility of judg-

in January, 1782, that the States, considered as independent sovereignties, had severally succeeded to those limits and boundaries which belonged to them as colonies, and had become entitled to all the territorial rights that the colonial charters conferred.'

Henderson's Purchase.

But in the mean time the question of political authority had been distinctly presented upon the soil of Kentucky.

The King's proclamation of 1763 (among its other provisions) strictly prohibited all purchases of lands by private persons from any Indian tribes. It had come to the general knowledge of the country, and especially to the men of the frontier, because of the liberal patents of land that it authorized to be issued to soldiers in the former French and Indian wars. Almost all the adventurous spirits of the border were embraced in this category, and interested in the grants which the proclamation made. Its terms were well known.²

ment, above the irritation that seems to have disturbed some of the judges. Garner and others, citizens of Ohio, had met and assisted certain fugitive slaves as they crossed the river, and had been arrested in the act. The river was at medium stage, and they were therefore above the low-water mark. It was held that they were not within the jurisdiction of Virginia, and the court directed an acquittal. The argument of Mr. Vinton, counsel for Garner, was very full upon the history of the Virginia title. It is imperfectly reported.

¹ *Secret Journals of Congress*, Vol. III, p. 151.

² The royal proclamation of 1763 may be found in 7 *Hening, Statutes at Large*, 663. It is also printed in *Franklin's Works*, Vol. IV, p. 374, as already noted.

Richard Henderson, an influential, able, and wealthy citizen of North Carolina, enlisted a number of his friends in the tempting enterprise of securing Indian lands west of the mountains. His acquaintance with Boone doubtless directed his attention to the lands in Kentucky, and the former haunts of the old pioneer on the banks of the Kentucky River were included in the grant that Henderson secured. After a preliminary journey to the Indian country, in which he prepared the minds of the leading chiefs for his plan, Henderson met a great council of the principal chiefs and warriors of the Cherokees at the Sycamore Shoals, on the Watauga River.¹ As many as twelve hundred Indians are said to have been present at the treaty, and ten thousand pounds sterling in value of goods was paid by Henderson and his associates.² The lands granted were thus described in the formal and tediously-lengthened deed which Henderson presented for the signatures of the three great chiefs, Oconistoto (The King), Attacullacullah (Little Carpenter), and Savonooko (Raven Warrior):

“Beginning on the said Ohio River at the mouth of Kentucky, Chenoca, or what by the English is called Louisa River; from thence running up said river and the most northwardly branch of the same to the head spring thereof; thence a southeast course to the top ridge of Powell’s Mountain; thence westwardly along the ridge of said mountain unto a point from which

¹ Watauga in the Cherokee language signifies “River of Islands.”

² *Kamsay, History of Tennessee*, 117; *Monette, Valley of Mississippi*, Vol. I, p. 389.

a northwest course will hit or strike the head spring of the most southwardly branch of the Cumberland River; thence down the said river, including all its waters, to the Ohio River; thence up the said river as it meanders to the beginning."¹

This conveyance, though made to Henderson, Hart, Williams, and their associates by individual description, was to be enjoyed by them in a corporate capacity as "*Proprietors of the Colony of Transylvania*," and they lost no time in entering upon their new possessions. The treaty was no sooner signed, on 17th March, 1775, than Boone was dispatched with a score of expert woodmen to mark and clear a trail to the banks of the Kentucky, where the chief office of the new land company was to be located. He made such speed, in spite of Indian attacks and the loss of one fourth of his force, that he commenced on the 1st April the erection of the "Station" at Boonesborough. The quadrangle of cabins was completed by the 1st June; but before that time Henderson and certain of his associates had arrived, hunters and land-seekers had congregated in some numbers, and the machinery of a colonial government had been devised and put in motion.

The scheme of Henderson was the last appearance on American soil of the old idea of government by lords proprietors. It was too late for success, and could hardly have

¹ The deed of conveyance is given in full by *Butler, History of Kentucky* (second edition), p. 503.

maintained itself had no opposition been shown by the authorities of Virginia. Its career was brief and its history very curious, and totally unlike that of any American community since the original colonial grants.

The proprietors were so energetic that they issued a call for an election of delegates, caused the elections to be had, and assembled the chosen representatives at Boonesborough on the 23d May, 1775.

The record of these proceedings has been preserved and published,¹ as has also a diary kept by Henderson.²

It is to the credit of the American pioneer that his first unaided essay in the organization of a community under laws of their own making should have been pursued with the decorum and orderly regularity that marked the proceedings of the assemblage called by the Transylvania proprietors. Their journal begins thus:

"Journal of the Proceedings of the House of Delegates or Representatives of the Colony of Transylvania, begun on Tuesday, the 23d of May, in the year of our Lord Christ 1775, and in the fifteenth of the reign of his Majesty, King of Great Britain.

"The proprietors of said colony having called and required an election of Delegates or Representatives to be made for the purpose of legislation, or making and ordaining laws and regulations for the future conduct of the

¹ *Butler, History of Kentucky* (second edition), pp. 506-515.

² *Collins' History of Kentucky*, Vol. II, p. 498. and following. In the collection of R. T. Durrett is a manuscript copy of the journal of Col. Henderson, and of the records of the Transylvania Colony, and indeed of all the papers connected with this matter. These are the only full copies known to the writer.

inhabitants thereof, that is to say, for the town of Boonesborough six members, for Harrodsburg three, for the Boiling Spring Settlement four, for the town of St. Asaph four, and appointed their meeting for the purpose aforesaid on the aforesaid 23d of May, Anno Domini 1775.

“It being certified to us here this day by the Secretary that the following persons were returned as duly elected for the several towns and settlements, to-wit: . . . The House unanimously chose Colonel Thomas Slaughter, Chairman, and Matthew Jouett, Clerk, and after divine service was performed by the Rev. John Lythe, the House waited on the proprietors and acquainted them that they had chosen Mr. Thomas Slaughter Chairman, and Matthew Jouett Clerk, of which they approved; and Colonel Richard Henderson, in behalf of himself and the rest of the proprietors, opened the convention with a speech, a copy of which, to prevent mistakes, the chairman procured.”

The convention that thus inaugurated its legislative labors comprised several men who bore an important part in the later history of the West. Daniel Boone and his brother, Squire Boone, together with Richard Callaway, were of the representation of Boonesborough. John Lythe (an ordained Episcopal clergyman) and James Douglass sat for Harrodsburg, James Harrod for Boiling Spring Settlement, and John Todd (afterward Governor of the Illinois, and killed at the Blue Licks), with John Floyd, represented the group of settlers that Ben Logan had collected at St. Asaph (now Stanford).

The delegation was an ample one for so small a constituency; for, counting the company that Henderson brought

with him, there were but sixty-five riflemen at Boonesborough, and the total population of Kentucky at the time has been estimated as not exceeding two hundred and thirty men.¹ There was not a white female within the territory.²

The preamble of their proceedings might be supposed to indicate harmony between the influential pioneers who were delegates and the Transylvania proprietors, and an acquiescence in the title as derived from the Cherokees.

The ceremonious attendance of the body of delegates upon Col. Henderson, as the representative of the proprietors, and his condescending approval of their choice for chairman and clerk, smacked of ancient colonial usage, and it can hardly be doubted that Henderson and his associates contemplated the establishment of a proprietary government as nearly as possible on the model of those existing by royal grant.

Their serious scheme was to dispose of their lands between the Kentucky and the Cumberland. The governmental features of the assemblage at Boonesborough were forced upon them. The regulation of the franchise, the making of laws and appointment to magisterial duties, was

¹ *Collins' History of Kentucky*, Vol. II, p. 509. *Morehead, Boonesborough Address*, p. 41, estimates the number as 150.

² Boone brought his wife and daughter to Boonesborough in June, 1775. Mrs. Harrod, Mrs. Denton, and Mrs. McGary arrived at Harrod's Station in September of the same year.

either reserved in their intention for arrangement by a charter which they hoped to secure, or left to await the development of the future.

But the outlook for the Transylvania Company was far from encouraging, notwithstanding the apparent harmony of its House of Delegates and Proprietors.

Lord Dunmore, Governor of Virginia, had already issued a proclamation against "one Richard Henderson and other disorderly persons, his associates, who, under pretense of a purchase from the Indians, contrary to the aforesaid orders and regulations of His Majesty, has set up a claim to lands of the crown within the limits of the colony;" denouncing the treaty of Watauga and the Transylvania scheme. Henderson, in his speech to the delegates, alludes to this as being "an infamous and scurrilous libel lately printed and published concerning the settlement of this country, the author of which avails himself of his station, and under the specious pretense of proclamation, pompously dressed and decorated in the garb of authority, has uttered invectives of the most malignant kind, and endeavored to wound the good name of persons whose moral character would derive little advantage by being placed in competition with his, charging them, among other things equally untrue, with a design 'of forming an asylum for debtors and other persons of desperate circumstances,' placing the proprietors of the soil at the head of a

lawless train of abandoned villains, against whom the regal authority ought to be exerted, and every possible measure taken to put a stop to so dangerous an enterprise."¹

Governor Martin, of North Carolina, also denounced vigorously and promptly the treaty made within the jurisdiction of his government, and the attempt to obtain Indian lands by private contract. He explicitly declared the Watauga purchase illegal.²

The North Carolina proprietors, thus disowned at home and confronted by Lord Dunmore's assertion of Virginia's ownership and jurisdiction, must have been convinced that their pretensions would find no favor, judged by the precedents of royal colonies. They had distinctly ignored the prohibitions of the Proclamation of 1763, and could scarcely hope for their enterprise a better treatment at Court than had been accorded by the two Governors.

It may have been this thought, or it may have been pure patriotism—perhaps both motives entered into their action—that induced the proprietors when they met in September, 1775, at Oxford, in Granville County, North Carolina, to prepare a memorial addressed to the Continental Congress at Philadelphia.

¹ Henderson's speech is given in *Butler* (second edition) and in *Collins*, Vol. II, p. 503. The proclamation of Lord Dunmore will be found in *Force's American Archives*, Vol. II, p. 174.

² *Ramsay, History of Tennessee*, p. 126.

The purport of this document (along with which went an argument for the legality of the Watauga purchase), was that the proprietors "having made this purchase from the aborigines and immemorial possessors—the sole and uncontested owners of the country—in fair and open treaty, and without the violation of British or American law whatever, are determined to give it up only with their lives . . . requesting that Transylvania might be added to the number of united colonies, having their hearts warmed with the same noble spirit that animates the colonies, and moved with indignation at the late ministerial and parliamentary usurpations, it is the earnest wish of the proprietors of Transylvania to be considered by the colonies as brethren engaged in the same great cause of liberty and mankind."¹

The bearer of the memorial, James Hogg,² one of the proprietors, was not received by the Congress. The ill-success of his mission was largely attributable to the strong opposition which Patrick Henry expressed to the proprietors' claim: He had been consulted in 1774 by Col. William Byrd and John Page upon the possibility of purchasing lands from the Cherokees, and was informed that the Indians were willing to treat on the subject. He testified at a later date that:

¹ *Collins, History of Kentucky*, Vol. II, p. 511; *Morehead, Boonesborough Address*, p. 36.

² James Hogg, native of Augusta County, Va., and brother of Peter Hogg, draftsman of the remonstrance against Transylvania Colony.

“Not long after this and before any treaty was Resolved on, the Troubles with Great Britain seemed to Threaten Serious Consequences, and this Deponent became a member of the first Virginia Convention and a member of the first continental congress, upon which he determined with himself to disclaim all Concern and Connection with Indian Purchases, for the Reasons following, that is to say: He was Informed shortly after his arrival at Congress of many Purchases of Indian Lands, shares in most or all of which were offered to this Deponent and Constantly refused by him, because of the Enormity in the Extent to which the Bounds of those Purchases were carry'd. Another Reason for this Refusal was that Disputes had arisen on the subject of these purchases, & this Deponent, being a member of both Congress & Convention, conceived it improper for him to be concerned as a party in any of these partnerships on which it was probable he might decide as a Judge. The Deponent says he was further fixed in his Determination not to be concerned in any Indian Purchase whatever, on the prospect of the Present War, by which the Sovereignty & Right of Disposal in the soil of America would probably be claimed by the American States.

“After conversing with the said Wm. Byrd, & Communicating his sentiments freely on the subject, the Deponent saith that the scheme dropt, nor did it proceed further than is above related. The Deponent further says that Wm. Henderson & his Partners very soon after their supposed Purchase joined in a letter to this Deponent, in which was contained, as this Deponent thinks, a Distant though plain Hint that he, the Deponent, might be a partner with them. The Deponent also says he rec'd a great number of Messages from Messrs. Henderson & Co., inviting him to be a partner; that Mr. Henderson, in his own person, & Mr. Allen Jones (a partner in the purchase), both apply'd to the deponent to join him in their schemes, but the Deponent uniformly refused, & plainly Declared his Strongest Disapprobation of their whole proceedings, giving as a Reason that the People of Virginia had a right to the back country derived from their Charter & the Blood and Treasure they expended on that account. The Deponent says he is not now nor ever has been concerned, directly or indirectly, in any Indian Purchase of Lands, & that he knoweth nothing of Mr. Henderson's contract.”¹

¹ *Deposition of Patrick Henry, 4th June, 1777. Calendar of Virginia State Papers, Vol. I, p. 289.*

The date of Henry's deposition (4th June, 1777), and the emphatic refusal with which, as he asserts, he met offers of participation in the Transylvania Company, leave no room for doubt that Henderson and his associates resorted to methods not entirely unknown to more modern projectors. But their efforts to bias the pure and patriotic mind of Patrick Henry utterly failed. The attempt to approach him and sell or give to him an interest in enterprises about which he was perhaps to vote as a legislator proved fatal to the plan. Jefferson also was perhaps approached and his influence sought to be enlisted, but the result was equally unfavorable.¹ It was too soon by many years to grow rich in the public employ.

Public life and conscientious discharge of public duty brought Henry and Jefferson and Monroe to poverty, from which the first only rescued himself by a resolute return to private life.

The attempt to practice upon the integrity of Henry and Jefferson at once aroused their attention to the question of colonial boundaries and titles. The true history of the Watauga treaty was exposed by Henry, and the effect of a congressional recognition explained. The memorial failed, and Mr. Hogg, its bearer, returned to North Carolina baffled and disappointed.

¹ *Collins, History of Kentucky*, Vol. II, p. 513.

There were elements of disintegration at work within the Transylvania colony itself. Its first adherents came to doubt the title and question the policy of the proprietors. The proclamations of Dunmore and Martin perhaps first shook their confidence in the title offered them by Henderson, but to this were soon added irritating exactions on the proprietors' part, and acts of discrimination in the interest of their favorites that alienated all the influential men among the pioneers.

The closing days of the meeting at Boonesborough had been signalized by the formal issue of commissions to magistrates.¹ These ran in the name of the proprietors, and were signed by Henderson. An oath of fealty to the proprietors as sovereigns of the country and lords of the soil was demanded of the colonists.² The feudal ceremony of livery of seizin was insisted upon, and acceptance of tenure as from lords paramount made a condition of the grants.³ The multiplication of ceremonies and assertion of feudal title greatly dissatisfied James Harrod and his associates. They soon discovered that for their labor and pains in subduing and protecting the new country they would have at best but a doubtful title to such lands, and in such quantities as the proprietors might choose to sell them.

¹ *Henderson's Diary*, 5th June, 1775, in *Collins*, Vol. II, p. 501.

² *Deposition of James Douglass*, in *Calendar of Virginia State Papers*, Vol. I, p. 309.

³ *Virginia Calendar*, Vol. I, p. 309.

The effect of the treaty of Fort Stanwix began to be discussed by John Todd and Harrod. Douglass admitted the grave doubt which he, as a veteran surveyor, had as to the Henderson title. John Floyd soon had news from his relative, Col. William Preston, of Augusta County, Surveyor and County Lieutenant of Fincastle (and whose deputy he was), that the paramount title of Virginia would be recognized and enforced.

So the adventurers, determined to repudiate the Transylvania Company and its claim of title from the Cherokees, resumed the location of land warrants, under the King's proclamation of 1763, and returned their surveys to the office of Fincastle County, Virginia.

A petition addressed to the Convention of Virginia was prepared in the autumn of 1775, and soon signed by eighty-four of those who had before acquiesced in Henderson's claim. Its draftsman was Capt. Peter Hogg, of Augusta County, "who was a skilled lawyer,"¹ a brother of James, one of the Transylvania proprietors. This document reached the Virginia Convention in March, 1776, and was the beginning of a frequent and important political intercourse between the parent State and its western colony.

The petitioners, after setting forth the alluring hopes of "an indefeasible title," which Henderson and his associates

¹ *Deposition of Abraham Hite*, 23d October, 1778, in *Virginia Calendar State Papers*, Vol. I, p. 302.

had assured, and the many hardships they had encountered in establishing themselves in the wilderness, complained of arbitrary and onerous advances made by the proprietors on the prices of land and the scale of fees for surveys. They alluded to the treaty of Fort Stanwix and the deed of the Six Nations (a copy of which they had just procured), and advanced a doubt if the Cherokees ever had title to give Henderson. Consequently (the petition argued) the royal title would be good for whoever might obtain grants, and those who should rely on Henderson's grant might be turned out of possession. They prayed the convention to take the case of the pioneers under its care, to invoke, if need be, the Continental Congress, and to disallow the claims of Henderson and his associates.

"And [said they] as we are anxious to concur in every respect with our brethren of the United Colonies for our just rights and privileges, so far as our infant settlement and situation will admit of, we humbly expect and implore to be taken under the protection of the honorable convention of the colony of Virginia, of which we can not help thinking ourselves a part." ¹

The Transylvania Company made every effort to carry out their contracts, but the prestige of their claim was gone. Another communication from an assembly of elected dele-

¹ *Collins, History of Kentucky, Vol. II, p. 510.*

gates of pioneers, held at Harrod's Station, was prepared 17th July, 1776, and laid before the convention by John Gabriel Jones and George Rogers Clark, duly chosen as delegates to represent them, and who undertook a journey to Virginia for that purpose.¹

It required the presence of one possessed of Clark's decision to put the relations of Virginia and Kentucky upon the basis of a definite and satisfactory understanding. His conference with Patrick Henry, then Governor, was all that he could ask; but the Executive Council hesitated to send out to the West the five hundred pounds of powder that Clark declared was absolutely needed to protect the frontier. There was doubt with some of the council whether Virginia's borders included Kentucky; whether the Indian title of the Cherokees was not really good, and the right of Henderson under it better than Virginia's. The council, while willing to *lend* the gunpowder to the pioneers as friends, were not sure that it could be *given* to them as fellow-citizens of the colony.

In all his years of distinguished and fruitful service George Rogers Clark never perhaps showed the clearness and strength of his resolution more conspicuously than then. He refused the proffered loan, and announced his intention to return and establish an independent State, whose resources should be

¹ The original manuscript of this noteworthy memorial is in the writer's possession.

exerted in her own protection since the parent colony declined the duties of sovereignty. The firmness of Clark, supported by Henry's powerful aid, convinced the wavering Executive Council, and on 26th August, 1776, was made the decisive order by which Virginia assumed the duty of military provisions for Kentucky. It was the assumption by the State of Virginia, so newly declared independent, of all territorial rights and of all royal prerogatives within the colonial boundaries.

The step once taken was never retraced. The legislation obviously necessary was soon matured and enacted. The vast county of Fincastle was divided into smaller municipalities, and as one of these there came into existence on 7th December, 1776, as an organized political subdivision of Virginia, the county of Kentucky.¹

The claim of the Transylvania Company vanished. Its projectors recognized the force of events they could not control, and wisely abandoned all hope of proprietary sovereignty or ownership. To compensate for the outlay they had sustained, and the real or supposed public benefits that had accrued from their attempted organization of Transylvania, a grant of land was made under act of 17th November, 1778.² Henderson and his associates accepted the donation,

¹ 9 *Hening, Statutes at Large*, p. 257.

² The terms of the grant to Henderson and his associates will be found in 9 *Hening, Statutes at Large*, 571.

which included two hundred thousand or more acres in the angle between the west bank of Green River and the Ohio. With the grant they accepted the construction of title that the act declared, that the Cherokee claim of title was void and the Watauga purchase a nullity.

The sovereignty of the soil of Kentucky was assured beyond cavil in the State of Virginia as political successor of the British Crown. Right by discovery; right by charter of 1609; right by treaty stipulation of 1763 between France, Spain, and Great Britain; right by extinction of the title of the Six Nations at Fort Stanwix in 1768; right by extinction of the Cherokee title at Watauga; right by Henderson's abdication of the Cherokee title; right by request and consent of the people of Kentucky; all were now centered in the Commonwealth of Virginia.

And with this consummation disappeared the "proprietary" idea from American institutions. Its success was never possible in those times of political ferment.

County and District of Kentucky.

The County of Kentucky, thus organized as part of the Commonwealth of Virginia, speedily showed that material progress which attends the establishment of political order. A Court of Quarter Sessions was established, holding its

terms at Harrodsburg, and counting among the justices of the quorum such really able men as John Todd, John Floyd, Benjamin Logan, and Richard Callaway.¹ An election was held at which delegates to the Virginia House of Burgesses were chosen; and, most important of all for the immediate needs of the infant settlement, a thorough organization of the militia under Clark's general supervision was at once completed. Every man reported in turn for his share of the military duty rendered absolutely necessary by constant attacks of Indians. As yet there was ample unappropriated land for the adventurous to explore and the strong to keep. The tide of prosperity was setting in; its first fruits were seen in multiplied clearings and patches of corn that dotted the canebrakes and forests. The settlements became more numerous and strong. The solitary stations gathered hamlets about them. Wives and daughters joined the pioneers, and comforts began to accumulate.

The simple machinery of a simple court of quarter sessions was enough for some years. There was but little litigation or cause for it until the conflict of land titles began to arise.

¹ A sketch of the life of John Todd and his important public services, up to his death at the Blue Licks, at the age of thirty-two, will be found in an oration delivered at the Centennial Commemoration of the Battle of the Blue Licks, August, 1882, by the writer of this paper. An account of John Floyd, so far as material availed, is given in an article on Kentucky Pioneers, in Harper's Magazine for June, 1887. Mr. E. G. Mason, of Chicago, is preparing a Life of John Todd, with special reference to his services in the Illinois country. Thomas M. Green, Esq., of Maysville, Ky., has published an elaborate sketch of Logan.

But, as surveys and settlements increased, the confusion of overlapping and interfering grants became well-nigh inextricable. In addition to grants based on the royal proclamation of 1763, there was a variety of State warrants authorizing locations. There was a right of settlement for him who "made an improvement" or "raised a crop of corn," and around this settlement right as a center was the "pre-emption right" of the settler entitling him to one thousand acres on easy terms.

The surveyors of that time were well educated and skillful,¹ but the difficulties were great and the dangers constant. Only a few years passed before a host of land quarrels embroiled the entire population.

The remedy proposed by the parent State was the obvious one of a special land commission to adjust claims and give judicial sanction to those found valid. Such a tribunal was appointed in 1779, convening in the autumn at Harrodsburg.² Its first official act was to examine and validate the land claim of Isaac Shelby, on 14th October, 1779, at St. Asaph Station. A land office of the Commonwealth was also organized in the same year to issue patents for land in

¹ Surveyors were, by law, required to be "nominated and certified" as "able," by the president and professors of William and Mary College. One sixth part of surveyors' fees inured to the benefit of that college. (10 *Hening, Statutes at Large*, 53.)

² The Land Commission for Kentucky was created by Statute of 1779. (10 *Hening, Statutes at Large*, p. 43, sec 8) An account of its constitution and work is given by Dr. Whitsitt, in his paper on Caleb Wallace, in the Filson Club publications. The Commission, as originally named, consisted of William Fleming, Edmund Lyne, James Barbour, and Stephen Trigg, with John Williams, jr., as clerk.

satisfaction of treasury warrants and to dispose of the public domain.

Meantime Richard Callaway and John Todd had represented the County of Kentucky at Williamsburg, and the latter had especially impressed his activity and intelligence upon his brother legislators. At his instance the towns of Boonesborough¹ and Louisville² were incorporated, and with an enlightened prevision of the need of the future State he procured the legislature of Virginia to dedicate the escheated lands of Tory refugees in trust "as a free donation from this commonwealth for the public school or seminary of learning to be erected within the said county."³

The legislative session of May, 1780, accomplished the division of the County of Kentucky into the three counties of Jefferson, Lincoln, and Fayette.⁴ The name Kentucky came near being lost, as had been that of Fincastle. It survived in the usage that had adopted it as a convenient term for the western country, and was revived with the establishment of the "District of Kentucky" in 1782,⁵ and its subse-

¹ 10 *Hening, Statutes at Large*, 134.

² 10 *Hening, Statutes at Large*, 298.

³ 10 *Hening, Statutes at Large*, 287. The preamble declares the policy of the Commonwealth as being "always to promote and encourage every design which may tend to the improvement of the mind and the diffusion of useful knowledge, even among its remote citizens whose situation a barbarous neighborhood and a savage intercourse might otherwise render unfriendly to science." The grant is to a list of well-known men as trustees; but the right of former owners to show cause against the forfeiture is carefully reserved.

⁴ 10 *Hening, Statutes at Large*, 315.

⁵ 11 *Hening, Statutes at Large*, 85.

quent representation in 1787 in the Continental Congress as the District of Kentucky within the Commonwealth of Virginia, and the agitation of its admission as an independent and separate State into the American Union.

The importance of the county organizations within Kentucky was greater than might be supposed. For the first time in their western life the pioneers had within their own limits the elements of strictly legal though limited organization of the civil and military powers. In Fayette, John Todd was the county lieutenant and colonel of militia, with Boone as his second in rank. Across the Kentucky, Ben Logan held the chief rank in Lincoln, and John Floyd in Jefferson. It was thus possible to gather an efficient array in sudden emergencies, and to keep on foot the continual scouts of small parties in which all the able-bodied men of the district took their part by turns. Over the general conduct of these Clark, in his capacity of brigadier, had supervision.

The system of county governments and statutory powers of the local justices enabled the levy of the small taxes for pressing military and civil need. First in the history of taxation within the State is the head-tax of ten pounds of tobacco, which the justices of Lincoln County on 21st November, 1783, imposed upon their constituents. But withal the civil power, though never overborne, was of far less importance

in the affairs of the new communities than was the sharp authority of the military commandants, for the exercise of which occasion was presented daily. It is creditable to the discrimination of the pioneers that they never confused in their own minds nor confounded in practice the executive and judicial ideas. The principal militia officers, who were by statute given power to call out troops, were, perhaps, all of them justices within their several counties. Some of them also filled peculiarly executive posts, as Todd, who was Governor of the Illinois, and some were commissioned judges of oyer and terminer, as was Floyd in the District Court organized in March, 1783.¹ Yet it is very observable that no difficulty seems to have arisen from their apparently incompatible offices. No complaint has come down in memorial or tradition that the military trenched on the civil power, or that the civil magistrate interfered with military relations.

The militant attitude of the communities gave great consideration to the county lieutenants and colonels, and with these, especially after the battle of the Blue Licks, in August, 1782, was, as a general rule, the initiative of public action upon important measures. This will be observed in the history of those conventions which through a series of years

¹The act creating the "District Court on the Western Waters" is given in 11 *Hening, Statutes at Large*, 85.

were convened to consider the erection of the District into a "separate and independent State."¹

The establishment of the County of Kentucky in 1776, and the assumption of military and political sovereignty by Virginia, which the furnishing of gunpowder to the frontiersmen distinctly imported, was the necessary foundation of that series of operations so ably conducted by Clark into the Northwest Territory. Other expeditions were numerous and effective, but they were limited within the narrower lines of retaliatory attack upon Indian towns, or pursuit within their lands of war parties that from time to time made incursions into Kentucky. But the broad and permanent political significance of Clark's plan was thoroughly appreciated by perhaps none but Patrick Henry and Thomas Jefferson in Virginia, and by Clark and his chief lieutenant, John Todd, in the West. To the great body of the people and public men in Virginia the news from across the mountains had but a far-off sound, and was little heeded in the nearer and more personal experience of the Revolutionary struggle. To the northward, and especially in New England, men were marshaled

¹ The phrase "*separate and independent State*" is used in each of the Virginia acts touching the organizing of the State of Kentucky as well as in all the proclamations, memorials, resolutions, and proceedings of conventions concerning that subject. As this movement had its commencement long before the assembling of the Federal Constitutional Convention, there is much ignorance or insincerity in criticising those words in the light of the Federal and Anti-Federal theories of the constitution that came into being at a later period. Much of the political rancor of after days rested upon this confusion of historical sequence, and the changed ideas that such terms suggested to zealous partisans.

in desperate conflict within their own borders, and faced the all-engrossing problem of the subjection or independence of their own communities. Very eminent and patriotic men doubted, and many of them vehemently denied, the wisdom of territorial expansion toward the west. A very influential opinion prevailed that it would be ruinous to the older colonies, now asserting themselves as revolted and independent States, to have their scanty populations drained by the fever of western emigration.¹

The defense of the West was not permitted to become a continental measure. It was relegated as a purely domestic concern to Virginia and her sons in Kentucky. In the face of the appalling difficulties that confronted the establishment of colonial independence, all thought of acquiring new and unexplored territory seemed chimerical. Another and a weighty consideration that tended to confirm the reluctance of the seaboard population to embark the revolted colonies

¹ The feeling of the Atlantic population was at no time friendly to the growth of the West. The reasons given were quite sound from the standpoint of things as they then were. Gerry was not the only prominent man who distinctly advocated the crest of the Alleghanies as the boundary of the united colonies. The opinion lasted in full force up to the inauguration of Washington. In 1789 Governor Clinton, in a conversation with Gardoqui, the Spanish Minister, stated that "the attempt to maintain establishments at so great a distance, by withdrawing the population of the nearer States, would be a national error." (*Gardoqui to Floridablanca, Secret Despatch No. 6, 21st November, 1789.*) The year previous Gardoqui had informed his government that his arrangement with Jay would have the support of the Atlantic States, especially in the matter of occluding the Mississippi, because the leading men of those States clearly realized that the growth of the West would drain the population of the East. (*Gardoqui to Floridablanca, Secret Despatch No. 21, 24th October, 1788.*)

in a direct and aggressive movement upon the British territory in the Northwest, lay in the complications surrounding their relations with Spain.

It was of obvious importance that the good-will of that power should be preserved pending the Revolutionary struggle; and the Congress had no sooner been advised of the rupture between Spain and Great Britain than it sent to Madrid a minister charged with the duty of negotiating an alliance, and of asserting a right to navigate the Mississippi to the Gulf. Both Spain and France refused to admit the claim, and the Court of Madrid clearly declared its exclusive right of navigation, as well as its right to possess itself (as an enemy of England) of all the territory between the "back settlements of the former British provinces" and the Mississippi River. Another announcement was made that savored almost of menace:

"We furthermore expect you to prohibit the inhabitants of your confederacy from making any attempt toward settling on or conquering any portion of the British territory to which we refer."¹

The reluctance of the New England statesmen was therefore not unnatural. It seemed clear to the wisest of them that the powerful friendship of Spain must be conciliated.

¹ The substance of the Spanish demand is well given in *Gayarre, History of Louisiana, Spanish Dom.*, p. 134.

They felt that the abstract right of navigating the Mississippi to the sea could never become a practical question until American independence should first be achieved. To press it upon Spain while the war was waging and the outlook far from encouraging, seemed unwise irritation of a needed friend. And still less could their judgment sanction a military expedition disapproved and indeed forbidden by Spain, and to conduct which troops must be withdrawn from Washington's depleted army. The crisis of the struggle was in the East. Failure there meant ruin everywhere. The subjugation of New England and New York would determine the fate of North America. "Why then," thought they, "shall the demands of a powerful and friendly nation be contemptuously treated in sheer wantonness of unprofitable contention over a right which, if conceded, can not be enjoyed until independence is first achieved?"

A great political idea, nevertheless, took firm hold of Henry and Jefferson, and with their support Clark and the pioneers of Kentucky solved it in the subjugation of the Northwest.

Henry was prompt to put into political shape the successful campaign of Clark, and it was by his influence (aided always by Jefferson) that Virginia, by legislative act passed at the October session of 1778, organized the country beyond the Ohio, and extending to the Mississippi and the Lakes, as

a political subdivision of the Commonwealth, "The County of Illinois," and provided for its proper administration.¹

John Todd, already county lieutenant of Fayette, in Kentucky, was named county lieutenant of the Illinois, and furnished with elaborate and sagacious instructions from the pen of Henry.²

The foothold thus established beyond the Ohio, and the organization of the County of Illinois, gave additional possibilities for political development in Kentucky. With the incursion of Girty in 1782, and the battle of the Blue Licks,

¹ *Hening, Statutes at Large*, 552.

² The executive instructions of 12th December, 1778, are given in full, *1 Virginia Calendar of State Papers*, 312. A perusal of them will confirm that higher estimate of Patrick Henry's wisdom and foresight which recently prevails. A manuscript note book of John Todd, continued after his departure from the Illinois, has been recovered by the Chicago Historical Society. Among other curious entries upon its pages is the following (*Toda's Note Book*, p. 19):

"WARRANT FOR EXECUTION.

"Illinois. to wit:

"To Richard Winston, Esqr., Sheriff in Chief of the District of Kaskaskia.

"Negro Manuel, a slave, in your custody, is condemned by the Court of Kaskaskia, after having made honorable Fine at the Door of the Church, to be chained to a post at the Water Side, there to be burnt alive and his ashes scattered. This sentence you are hereby required to put in Execution on Tuesday next at 9 o'clock in the morning, and this shall be your warrant.

"Given under my hand and seal at Kaskaskia the 13th day of June in the third year of the Commonwealth."

This entry is unsigned, and is erased by eleven perpendicular marks, and does not, therefore, prove that such an execution took place. There was no law of Virginia authorizing such a punishment for crime; but the "Act for establishing the county of Illinois," premising that it would be "difficult, if not impracticable, to govern" the people of that conquered territory "by the present laws of this commonwealth," secured to the French inhabitants full enjoyment of their own customs and system of laws. "All civil officers to which the said inhabitants have been accustomed, necessary for the preservation of peace and the administration of justice, shall be chosen by a majority of the citizens in their respective districts," and these "shall exercise their several jurisdictions, and conduct themselves agreeable to the laws which the present settlers are accustomed to." The inhabitants of Kaskaskia district elected a court entirely

the danger of overwhelming Indian invasion ceased, and thenceforward Indian warfare was restricted to the deadly and frequent encounters of individuals or small parties. The new district was safe from overthrow, and it carried war to the Scioto and the Wabash.

The country, thus comparatively freed from public danger, attracted an immigration that was large in numbers and important in character. With the close of the Revolution the influx of population was marked. From Virginia there came many whose relatives or friends had already located in Kentucky. The "Blue-grass" section attracted large numbers from Augusta and Rockbridge counties whose descendants still present many of their characteristics—large stature, courage and energy of action, and strong Calvinistic creeds.

From Maryland came at different times parties of settlers who established themselves in what are now known as

composed of old French settlers (*Todd's Note Book*, p. 8), and from this fact, and the terms of the sentence directing *amende honorable* at the church door, burning at the stake, and scattering of ashes, it seems that sorcery was the imputed crime. It is to be hoped (as the erasure of the warrant possibly indicates) that the sentence was not executed, and that Todd interposed a pardon. This he could have done in a case of sorcery, but could not have done had the crime been murder; the law being that "it shall and may be lawful for the county lieutenant or commandant in chief to pardon his or her offense, except in cases of murder or treason, and in such cases he may respite execution from time to time, until the sense of the governor in the first instance, and of the general assembly in the case of treason, is obtained." (9 *Hening, Statutes*, 553 *ad. fin.*) It is to be hoped that the researches of Mr. Mason will develop the history of what was almost certainly the last instance of a prosecution for witchcraft or sorcery. The negroes owned by the French on the Mississippi were from Louisiana, and most of them imported from Africa. If so, the practice or suspicion of voodooism could be accounted for.

Marion, Nelson, and Washington counties, bringing with them their ancient friendships and alliances, and impressing on those localities their Roman Catholic faith.

The Baptists, so recently emancipated from legal persecution, also sought the new State in large numbers.¹ Their migrations were, in not a few instances, by congregations, for the new country presented to them a double attraction. As a rule they brought but little wealth, yet the road to that fortune which lay in securing provision for their children seemed open. But the strongest motive with the Baptist adventurers lay in the absolute religious equality they were to enjoy in the new West. The prejudices of an established church still affected them in Virginia, though statute declared all religions alike in the eye of the law. They had lived through so much opprobrium that the breath of full freedom seemed an answer to long-suffering and prayer. They came filled with convictions that gave them deserved influence, and shaped in no small measure the sentiments of the new State.

The absorbing object with the new immigrants was the acquisition of lands upon which they might settle, or which in the expected enhancement of values they might turn to

¹The influence upon Kentucky of the different denominations represented in the early immigration is full of interest for curious inquirers. Waddell's *History of Augusta County, Va.*, Davidson's *History of Presbyterian Church in Kentucky*, Webb's *Centenary History of Catholicity in Kentucky*, Spencer's *History of Baptist Church in Kentucky*, are sources of information; besides such minor publications as Taylor's *Ten Churches*, Hlickman's *Narrative* (MS.), McAfee's *History of Providence Church* (MS.), and the like.

profit. As yet there were but two practicable modes of deriving title: one the location of military warrants for services in the French and Indian wars, and for which the royal proclamation of 1763 provided; the other the location of Virginia treasury warrants, issued during the Revolutionary struggle. These warrants were all assignable, and were for a long time the chief transferable value in the new country. They presupposed the sovereignty of the King and of his political successor, the State of Virginia.

But the influx of population and the avidity with which the better lands were sought suggested again the old question of title, and a party of agitators soon began to make head, contending that with the achievement of American independence the ownership of all the vacant and unoccupied lands devolved upon the United States in exclusion of State claim. In support of this theory, which struck at the root of all land titles in the West, its advocates reproduced and amplified the argument of Tom Paine against the Virginia title, and in favor of treating the northwest country as a fund to pay their Revolutionary War debt.¹

¹ Writings of Thomas Paine: "*Public Good, being an Examination into the Claim of Virginia to the vacant Western Territory, etc.*" (1780), p. 41. This paper very strongly disputed the Virginia claim. It advocated the establishment of a new State "between the Alleghany Mountains and the river Ohio as far north as the Pennsylvania line, thence down said river to the falls thereof, thence due south into the latitude of the North Carolina line, and thence east to the Alleghany Mountains aforesaid" (pp. 36, 37). This would have included all Kentucky east of Louisville—already occupied and politically organized as a county of Virginia.

They noisily argued that all the Virginia patents were void, and all her legislation and the proceedings of the land commission mere nullities. Two apostles of this theory were especially conspicuous, one Galloway, in Fayette, and George Pomeroy, in Jefferson. Their following was the body of the landless or land speculating, and they seem to have played the demagogue with much success. All land owners were alarmed and the country put into a ferment by Pomeroy's repeated assertions that he had news of Congress' action annulling all the Kentucky claims and assuming the ownership of the soil; and even more, by the actual appropriation of lands by those who affected to believe the rumor. Walker Daniel, attorney for the District of Kentucky, very cleverly declined to argue the question of Virginia's title, but taking advantage of the untrue assertion by Pomeroy, that Congress had assumed paramount title, indicted the champions under an ancient colonial statute of Virginia leveled against the spreaders of false news.¹ A conviction followed, and a fine of two thousand pounds of tobacco was inflicted, with a requirement of surety for good behavior in the future.² The treatment was effectual. No new disturber arose.

¹ This statute, "*Divulgers of False News*," is the eleventh in order of colonial enactments, and the first of a civil nature. The ten older colonial acts relate exclusively to glebes, tithes, and the establishment of the State religion.

² Letters of Walker Daniel to Governor Harrison, January 19th and May 21, 1784. (*Virginia Calendar of State Papers*, Vol. III, pp. 555 and 584.) The record of Pomeroy's conviction is preserved at Louisville in the County Court.

The Agitation for Separate Political Organization.

The subdivision of Kentucky into three counties and its organization into a district for judicial purposes tended greatly to stimulate immigration. There was enough of settled civic life to convince new adventurers that order was emerging from the desperate border warfare that had for years prevailed. There was a new land opened for those whose fortunes had been impaired or ruined in the Revolutionary struggle, and a new field for the ambitious and enterprising youth just disbanded from the continental army. So rapid was the influx that the inconvenience of remote legislative and executive authority began to be sensibly felt. The new and strange surroundings required adaptations of laws and exercises of executive power differing greatly from those that quite suited the older communities of the parent commonwealth.

Delegates sent to Williamsburg lost touch of their constituents. They found it difficult to engage the attention of the Virginia burgesses in matters that were of pressing importance to the West.

Executive authority for action, urgently and vitally necessary, could not be procured in time to avert public evils or

pursue with promptitude measures that could not safely be neglected.'

The years 1783 and 1784 made plain to the people of Kentucky the absolute necessity of a distinct State organization.*

A threatened incursion of the Cherokees, whose principal towns were upon the since immortalized stream of Chickamauga, suggested to Col. Benjamin Logan the necessity of concerted action throughout the District. He had been one of the foremost men of the new country since 1775. His station of St. Asaph (near the present town of Stanford) had been established soon after James Harrod had erected the first cabin in the wilderness. A long experience of frontier life had made him perfectly familiar with Indian warfare and keenly appreciative of the methods that pioneers must use. For years he had been lieutenant of his county and colonel of the militia, and his name was a synonym for courage, prudence, and probity.

* The difficulties and dangers of travel between Kentucky and Virginia are admirably set forth in Capt. Thomas Speed's account of "The Wilderness Road," in the publications of the Filson Club. It is there mentioned as late as 1792 the route of Capt. Van Cleve from Fort Washington (Cincinnati) to Philadelphia, when proceeding under orders "with all despatch," was by way of Lexington, Crab Orchard, Cumberland Gap, Powell's Valley, Abingdon, Botetourt, Lexington and Staunton, in Virginia, Hagerstown, Maryland, and York and Lancaster, Pennsylvania. (*Speed, Wilderness Road*, pp. 22, 23.) The distance thus traveled was not less than 826 miles—of which not less than 564 miles lay west of Staunton. See the table of distances given in *Wilderness Road*, p. 17.

² Marshall (*History of Kentucky*, ed. of 1812, p. 225, *et seq.*) gives, very well, the condition of affairs that impelled the Kentuckians to seek a separate State organization. The sentiment was evidently unanimous.

It seemed to Logan that the threatened danger would best be averted by striking the first blow, and that the Cherokees should be attacked before they were ready to take the war-path. The urgency seemed all the greater, for he with others was convinced that the occasional forays from the northwest, as well as the meditated attack from the south, were fomented by British agents, who still occupied the unsundered posts along the lakes. The subsidies contributed to Girty and McKee and other renegades strengthened this opinion. The presence of Col. Bird, an English officer, in the attack of 1781 had confirmed it.¹

The Consultation of Militia Officers.

The urgency of the situation induced Logan to take the initiative in the necessary measure of a general convocation of the militia authorities of the District. He issued a call on his own responsibility for a meeting to be held in November, 1784, at Danville, to which newly established "station" the District Court had already removed its sittings.

The militia officers who met in consultation in answer to Logan's call encountered practical embarrassments that

¹ Judge Walker, quoted by Prof. Hinsdale, has discovered the official list of supplies furnished for Col. Bird's expedition against the Kentucky settlements, and the bills rendered to the British Indian Department. Among the items is the significant one of 476 dozen scalping knives. (*Hinsdale, Old Northwest*, 158.)

seemed to abundantly justify the growing popular desire for an independent State organization. The occasion of their assemblage was the threat of an Indian incursion in such force as would devastate the country. To await the enemy's coming was manifest unwisdom. But who was to authorize a levy of the militia and a march into the enemy's country, or lay a tax to support the troops?

There was no declared state of war, and consequently the county lieutenant possessed no statutory authority to call out the men or take measures to equip and supply them. These powers had lapsed with the promulgation of the peace with Great Britain.

There were no magazines of war material, nor any public funds. It was not possible to pledge the public credit, for there was no legislative power at hand to authorize it. In short there was no public machinery other than the meager authority of the county justices, limited as it was by the statutes erecting the counties, and that of the militia colonels now upon a peace footing. An executive or military act required first to be sanctioned by the Governor of Virginia. New and original powers could be had only from the legislature at Williamsburg.

The meeting found it impossible to take the decisive action suggested by Logan. The counter-attack upon the Cherokees could not be made.

A further discussion awakened the minds of all to the growing needs of the new community and the serious inconveniences that attended the care for ordinary and pressing public affairs. Not a ferry could be established, a village incorporated, or a necessary magisterial office created without the ruinous delay and cost attending a journey of petitioners to the eastern limits of Virginia.

The conference called for a single military purpose broadened into a consideration of the general political situation,¹ and resulted in a unanimous conviction that the time had come when Kentucky should be erected into "a separate and independent State," and be incorporated as such into the American Union, with a local government of its own.

The suggestion was not entirely new. Already the inconveniences of their situation had called forth a memorial bearing date 15th May, 1780, and signed by six hundred and seventy-two inhabitants of "the Countys of Kaintuckey and Illinois," which had reached the Congress, carrying a prayer "*that the Continental Congress will take Proper Methods to form us into a Separate State.*" It was premature, and the MS. slumbered, neither noted in the journals or indexed in the papers of Congress, until recently brought to light.²

¹ *Littell, Political Transactions in and Concerning Kentucky*, 16; *Marshall, History of Kentucky*, ed. 1812, 227; *Butler, History of Kentucky*, 145.

² The manuscript is No. 48 of the series of papers of the old Congress, preserved in the State Department at Washington. It was discovered by Hon. Theodore Roosevelt, who kindly informed the writer.

It was determined, therefore, that a movement should be inaugurated looking to this end, and with due regard to orderly procedure it was recommended to the people at large that representatives be elected—one from each militia company—to meet in convention at Danville in the coming month to deliberate upon the condition of the District and suggest a remedy for the difficulties.

The Convention of Militia Delegates.

The proposition met with general acceptance. The companies were notified and chose their representatives, and these assembled on 27th December, 1784, at Danville.

The sessions were prolonged through ten days. William Fleming, an influential citizen, presided, and Thomas Todd, afterward a Justice of the Supreme Court of the United States, was secretary of the convention.

By far the larger number of the delegates were natives of Virginia, and bound to the ancient Commonwealth by ties of affection and interest. They met without any feeling of animosity or estrangement from the parent State, and conducted all their proceedings and debates with a moderation and decorum that has extorted a compliment from an unfriendly historian.¹

¹ *Marshall, History of Kentucky*, ed. of 1812, 228.

The convention agreed that very many of the inconveniences that oppressed their people might be removed by action on the part of the legislature of Virginia. There were, however, evils inseparably connected with their remote and detached situation which plainly could not be cured until Kentucky was provided with its own government. A multitude of considerations enforced this conclusion. And it was considered that the suggestion could not give offense to Virginia, because her Constitution, adopted in 1776, provided in its twenty-first article for the establishment and government of new territories westward of the Alleghany Mountains.¹

But the delegates, bearing in mind that they were but representatives of their respective militia companies, chosen without formal warrant of law, abstained from any action that might seem to transcend their special powers, and contented themselves with a recommendation that a convention be held in the coming spring (1785), to which delegates should be sent instructed to consider the propriety of an application to the legislature of Virginia for an act establishing the independent State of Kentucky.

¹ "The western and northern extent of Virginia shall, in all other respects, stand as fixed by the charter of King James the First, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Great Britain and France, in the year one thousand seven hundred and sixty-three, unless by act of legislature one or more territories shall hereafter be laid off and governments established westward of the Alleghany Mountains." (9 *Hening, Statutes at Large*, 118.)

The choice of these delegates, they advised, should be made by the people at a civic vote to be taken at the April court days (1785) of the several counties. It was thought that ample time would thus be given for preliminary discussion, and the best opportunity afforded for expression of popular opinion.¹

The reasons for this recommendation and the details of a plan of procedure were disseminated in conversations and by written circulars, for as yet there was not a printing press within the District,² and the suggestion met with such general favor that by a very full vote a body of twenty-six delegates were selected on the basis of an approximate representation of the population of the three counties.³

¹ The minutes of the convention of 27th December, 1784, are given by Crèvecoeur. (*Lettres d'un Cultivateur Américain*, Vol. III, p. 438) They are not to be found elsewhere. The seven resolutions adopted declared: (1) The many inconveniences, civil and military, that resulted from the distance from the seat of government; (2) The propriety of considering the formation of a new State, and its admission to the Union; (3) The calling of a convention to consider that matter; (4) That representation should be based on freehold population; (5) That 12 delegates from Lincoln, 8 from Fayette, and 8 from Jefferson should be chosen; (6) Who should be elected in April and convene in May; (7) And that the people be enjoined to choose for delegates their best men.

² The establishment of a printing press was invited by the trustees of the village of Lexington, who, in July, 1786, offered the use of a public lot to John Bradford for that purpose. From this press the first number of the "Kentucky Gazette" appeared on 11th August, 1787. Mr. W. H. Perrin, of the Filson Club, has collected the history of the Kentucky press in his "*Pioneer Press of Kentucky*," Filson Club Publications No. 3.

³ *Marshall, History of Kentucky*, ed. of 1812, 230.

The Convention of May, 1785.

The representatives thus chosen met in convention at Danville on the 23d May, 1785. By the terms of their election they were intrusted in behalf of their fellow citizens with the duty of deliberating upon the general political situation, and they felt themselves authorized by the popular voice, expressed in the only form then practicable, to inaugurate the movement for an orderly and legal constitution of a new State.

It was a noteworthy feature of this convention, as indeed of all the gatherings of the pioneers, that the utmost decorum, moderation, and adherence to parliamentary procedure was observed. A deliberate civility and a certain characteristic formality had come with them from their native Virginia and impressed itself upon all their proceedings.

It is interesting to follow the story of those early assemblies. They illustrate some of the finest characteristics of the men who made the new State. They vindicate, as will be shown, the consistent and loyal purpose that animated them, and establish against detraction and envy the purity and wisdom not less than the sagacity and perseverance of the builders of the Commonwealth.

The convention spent an entire week in preliminary interchange of views. It was not until the calmest survey of the

situation had been had that the first declarative resolution was adopted. On the ninth day of the session (31st May, 1785) it was

“ Resolved unanimously, as the opinion of this committee, That a petition be presented to the Assembly, praying that the said district may be established into a State, separate from Virginia.

“ Resolved unanimously, as the opinion of this committee, That this district when established into a State ought to be taken into union with the United States of America, and enjoy equal privileges in common with the said States.”

And further, by way of recommendation to their constituents, it was

“ Resolved, That this convention recommend it to their constituents to elect deputies in their respective counties, to meet at Danville on the second Monday of August next, to serve in convention, and to continue by adjournment till the first day of April next, to take further under their consideration the state of the district.

“ Resolved unanimously, That the election of deputies for the proposed convention ought to be on the principles of equal representation.

“ Resolved, That the petition to the assembly for establishing this district into a state, and the several resolves of the former and present convention, upon which the petition is founded, together with all other matters relative to the interest of the district that have been under their consideration be referred to the future convention, that such further measures may be taken thereon as they shall judge proper.”

It is a significant feature of this resolution that it embodies the idea of equal representation in proportion to population, as was indeed suggested by the first convention

under the military call. This was a departure from the ancient usage of the parent State, where representation in the House of Delegates was by counties, without regard to their population and extent. The innovation thus suggested was not only in accord with the spirit of the new community where, as in all frontier life, individuality was so generally displayed, but voiced a theory inseparable from the results of the Revolution and ultimately accepted throughout the land. It was upon this pivotal point that the political differences of after years in a great degree rested. It involved a theory of individual right to representation not very readily acquiesced in by those who were the later comers from Virginia, but to which the pioneer element and the more energetic of the younger immigration were firmly attached.

Having agreed on its resolutions, the convention proceeded to draft a petition to the General Assembly of Virginia, and also an address to "the inhabitants of the District of Kentucky."

Both documents exhibited a sobriety of thought and language suited to the importance of the measure discussed, and set forth with cogency the necessities that impelled the movement.

The petition to the legislature of Virginia, after advertising to the source from which the convention drew its right "to take into consideration the propriety and expediency of

making application to the legislature for having this district established into a separate State to be taken into union with the United States," called attention to the inconveniences springing from their remoteness from the seat of State government. It reminded the Virginia Legislature of the privilege and duty (declared by themselves) "of all men to seek happiness by entering into any form of civil society, not injurious to others, that they may judge most conducive to this great end." It gratefully acknowledged the fostering care of the parent State, and protested unabated affection for her. The prayer was, that "agreeable to the provisional clause in the Constitution (of Virginia) the District of Kentucky may be established into a separate and independent State, to be known by the name of the Commonwealth of Kentucky."

The Kentucky petitioners had an abhorrence of anarchy quite as sincere as was their desire for a separate State organization, and they carefully guarded against possible injustice or disorder by conditions which they asked to have incorporated in the desired Act of Separation. They prayed that authority be given to assemble a convention by which a constitution and form of government might be framed; that the laws of Virginia in force at the time of separation should continue to be operative; that the common law of England should prevail; and that parliamentary acts of date

anterior to the fourth year of King James the First, general in their nature and unrepealed by Virginia, should remain in force until in due course they might be altered by the legislative power of the new Commonwealth. They wished to assume a proper proportion of the debt of Virginia, and asked that commissioners be appointed to adjust the amount. And in conclusion they asked that the new State "likewise be recommended to Congress to be taken into union with the United States of America, to enjoy equal privileges in common with them."¹

In its address to the inhabitants of Kentucky the convention rehearsed the many reasons supporting the movement for separation from Virginia, the establishment of a sovereign State, and its admission into the Union.

No desire to anticipate the popular will was shown, and the better and more certainly to elicit the sentiments of their fellow citizens on this all-important point, it was determined to recommend another convention of selected delegates to finally speak the wish of the District and approach the legislature of Virginia.²

The tone and language of this address has been criticised and the motives of the members of the convention of May,

¹ *Littell. Political Transactions*, Appendix No. 2.

² The text of the resolutions, petition, and address is given by Littell (*Political Transactions*, Appendix 2), and is reprinted with the other documents that form appendices to this paper.

1785, severely impugned by Marshall in his history of Kentucky.' Allowance must in justice be made for feelings of bitter personal animosity that had existed for nearly thirty years when he gave his history to the press in 1812. The judicial temper of impartial history could hardly exist where there was so much of long-existent, well-fostered controversy. But when the list of delegates is scanned and upon it found as the controlling names those of George Muter, Samuel McDowell, Benjamin Logan, Caleb Wallace, William Kennedy, Harry Innes, James Speed, James Garrard, Levi Todd, John Coburn, Robert Patterson, Andrew Hynes, Matthew Walton, James Rogers, James Morrison, Philip Barbour, and others, the best and most tried and highly trusted of all the pioneers, it is absurd to impute to a convention composed of such material a design injurious to their people, wrong in itself, or uncertain of popular support. To characterize such men as "revolutionists," or insinuate an unpatriotic purpose, is unwarranted by the history of their lives, and unauthorized by any proof that has come down to us. Far from assuming powers, or transcending those implied in their election, the members of the convention of May, 1785, were complained of as proceeding with unnecessary and tardy deliberation. They appealed to the people for still another expression of sentiment, and desired them to select yet

¹ *Marshall, History of Kentucky*, ed. of 1812, 240.

another convention to declare the matured opinion of the District.

Adopting this recommendation, the several counties chose a body of thirty delegates, who assembled at Danville on 8th August, 1785.

The Convention of August, 1785.

In this body a series of resolutions was adopted on the report of the Committee of the Whole on the State of the District, presented through George Muter, its chairman. These set forth that the situation of the District, distant more than five hundred miles from the seat of government, separated from the settlements of Virginia by two hundred miles of intervening mountains, often impassable and never free from Indian menace, precluded a political connection on republican principles, and gave rise to many grievances. Of these the principal were:

1. The impossibility of application to the executive power in cases of public emergency, or in cases where clemency would be implored.

2. The difficulty of adequate legislative representation in view of the long journey and expense that deterred fit persons from serving as delegates.

3. Penalties and losses resulted from want of knowledge

of the laws passed. They often took effect and expired before their existence was made known throughout the District.

4. Appeals taken to the High Court at Williamsburg involved so much expense and sacrifice of time that justice was practically denied to all but the rich.

The unequal operation of revenue and land laws was also pointed out.

The convention were unanimous in their conclusion, which was worded thus:

“Resolved therefore: That it is the indispensable duty of this Convention, as they regard the prosperity and happiness of their constituents, themselves, and posterity, to make application to the General Assembly, at the ensuing session, for an Act to separate this district from the present government forever on terms honorable to both and injurious to neither; in order that it may enjoy all the advantages, privileges, and immunities of a free, sovereign, and independent republic.”

A memorial to the legislature was prepared. Its matter was in every respect unobjectionable, and the ends proposed as laudable as they were distinct. The object was a separation from the parent State and admission to membership in the Federal Union on Virginia's recommendation.

This prayer was from the pen of Gen. James Wilkinson, who had for about a year been a resident of the District. The style was somewhat ambitious, as were all his writings,

and the rhetoric rather turgid, but the matter was sound and the tone unobjectionable. The innuendo of premeditated alliance with Spain has been leveled at the convention of August, 1785, *because* Wilkinson drafted this paper.¹ Whatever may have been his subsequent intrigues, it is absolutely certain that at that time Wilkinson had never met a Spanish official, or been within a thousand miles of the authorities of Louisiana. He had served honorably and usefully to the close of the Revolutionary War, and had come westward from Philadelphia to repair his ruined fortunes. His habitual energy soon made him prominent, and the mercantile schemes in which he embarked were successful. But it was not until 1787 that he made his first commercial voyage to New Orleans, or had opportunity for intrigue. Whether he at any time sooner than 1795 became an actual pensioner of Spain has been at times doubted. But, as will appear hereafter, it is quite certain that as early as 1787 he obtained from the Governor at New Orleans exceptional commercial privileges, for which he paid by a division of profits. And it is now well established that in 1787 he began with Miro an intrigue that fully committed him to Spain.

The bald fact that Wilkinson and Sebastian were members of the conventions of 1785, 1786, 1787, and 1788, and that they failed at a later day in the duties which loyalty and

¹ *Marshall, History of Kentucky*, ed. of 1812, 250.

ordinary sense of propriety would have imposed, seems but an inadequate argument to support a noisy and indiscriminate charge of purposed revolt or change of allegiance. Common fairness toward Sebastian must absolve him of any improper conduct or design until a later period. The charges made against other public men by Marshall were in no respect at any time true, as will appear in the course of this narrative and the discussion of proofs that have been extracted from contemporary documents.

That the repeated conventions and memorials of the people of Kentucky created neither surprise nor anxiety in the breasts of the Revolutionary patriots is apparent from the action taken by the legislature of Virginia. Judge George Muter and Harry Innes, selected as delegates to present the petition of the Kentucky Convention, appeared before the Virginia Legislature at its winter session of 1785-6, and were accorded a favorable hearing. The manifest urgency of the situation was such that a bill entitled, "An act concerning the erection of the District of Kentucky into an Independent State," was promptly passed (January 10, 1786).¹

By its terms the prayer of the petition was granted, and numerous prudent and salutary details of procedure prescribed for putting in motion a new and independent polit-

¹The principal points of the convention's proceedings are given in the Appendix, taken from Littell. The Virginia statute is in 12 *Hening, Statutes at Large*, 37.

ical machinery, and conserving public and private rights, but always subject to affirmative action of the Congress, to be taken prior to 1st June, 1787, and conditioned on its assent that Kentucky should become an independent State, to be admitted at "some convenient time" in the future into the Federal Union.

The act of Virginia (of January, 1786,) directed the selection by the people of Kentucky of yet another body of delegates, to assemble on the 4th Monday of September, 1786, at Danville. These were to speak for "the good people of the District," and declare in due form whether it was their will that the District "be erected into an independent State on the terms and conditions" contained in the act.

The Convention of September, 1786.

Delegates were accordingly chosen by vote in August, and it seemed that at last the successive conventions were to have an end in the meeting appointed for the 30th September, 1786, when the act of Virginia was to be accepted. But another disappointment was in store, for on the day fixed for its assembling the convention was found to lack a quorum. "So many of the members had marched with the two armies" (*i. e.*, with Clark against the Wabash tribes, and with

Logan against the Shawnees) "that a number sufficient to proceed to business could not be had."¹

The minority present, acting as a committee, prepared a memorial reciting the reasons why the convention could not proceed to business, and requesting some alterations in the Act of Separation. They named John Marshall (who was afterward Chief Justice of the United States) as their agent to present the memorial to the Virginia Legislature.

In the mean time, and to keep alive their legal status, the minority caused some of its members, together with the clerk, to meet and adjourn from day to day until the return of the military expeditions should make a quorum possible.

It was not until January, 1787, that a quorum was obtained and business proceeded with. It was immediately voted, in the terms of the Act of Separation passed by Virginia, "That it was expedient for, and the will of the good people of the District to separate from the State of Virginia and become an independent State."²

Hardly had this step been taken when, to the surprise and disappointment of the delegates and the great body of their constituents, news was received of adverse legislation in Virginia.

¹ *Littell, Political Transactions, 21.*

² *Littell, Political Transactions, 22.*

The delays in securing a quorum had consumed so much of the time limited by the act of January, 1786, that it seemed hopeless to expect a formal presentation to Congress and a favorable action by it upon an application for the admission of Kentucky as a member of the Federal Union. The grand proviso of the enabling act was that such action should be taken by Congress "prior to the first day of June, one thousand seven hundred and eighty-seven." Only four months of the unexhausted time were left, and the time in those days of slow communication was inadequate for any discussion or arrangement of the financial prerequisites, and a completion of the congressional legislation necessary to be had before the first day of June. However irritating the delay, and however annoying the tedious repetition of election, assembling of convention, and formal votes, it was evident to the Virginia Assembly that the ground must be gone over again if legal formality and dignity of procedure was to be insisted upon.

The fact was plain to John Marshall who, in his capacity of political agent of the District of Kentucky, attended the deliberations at Williamsburg. It is not to be doubted that he very sincerely sympathized in the movement for a new State organization, nor has it been questioned that he faithfully labored to that end. He yielded to the well-nigh conclusive arguments of those who deemed another legislative

act necessary, and his assent, reluctantly given, brought about the act passed on the 10th January, 1787.¹

The preamble of this act recited the hindrances that had frustrated the execution of the former act looking to a separation, and the impossibility of securing congressional action within the limited period. It reiterated the purpose of Virginia, "that the said District shall become an independent State on the terms and conditions of the act aforesaid whenever the good people thereof shall so determine and the United States in Congress shall thereof approve."

It was therefore enacted that another election should be held in August, 1787, of delegates (five for each county), who should assemble at Danville on the following third Monday in September, 1787, clothed with full powers to vote upon the former terms proposed for separation, and to fix them by their vote of approval as a binding compact between the two high contracting parties.

A proviso to the act withheld sanction from such vote of approval unless Congress should, prior to the 4th of July, 1788, "assent to the erection of said District into an independent State; shall release this Commonwealth from all its federal obligations arising from said District, as being part thereof, and shall agree that the proposed State shall imme-

¹ 12 *Hening, Statutes at Large*, 240; *Littell, Political Transactions*, Appendix No. 7.

diately after the day fixed as aforesaid, or at some convenient time future thereto, be admitted into the Federal Union."

The gist of this legislation was to postpone for more than a year the complete organization of the new State. Instead of 1st September, 1787, as contemplated by the first act, the 1st January, 1789, was fixed as the earliest day.

It is not difficult to imagine the chagrin of those who had labored so long and so patiently, and who, under so many difficulties and discouragements, had kept within all the tedious formalities of repeated votes, conventions, resolves, and memorials. The great and absolutely necessary boon of a separate State organization had slipped their grasp at a time when parent State and colony were both willing that it should be conferred, and the loss was aggravated by the fact that those Indian troubles, which only a new State government could adequately cope with, had withdrawn from convention the services of the men needed to take legal action.

The necessity of the new measure was regretted by John Marshall, though he had to acquiesce in it.

He explained the reasons that dictated its passage in a letter in which he stated with judicial fairness the causes that procured it:

"The act is not precisely such as I wished it to be, nor is it conformable to the resolutions of the committee before whom I appeared, but it may perhaps be formed on more prudent and cautious principles, on principles which

will finally conduce more to the peace and harmony of the district, than had my wishes (which were to enable the present convention to decide the question finally) prevailed. Those, sir, who introduced and passed the law reasoned thus: The power delegated to the convention by the people, to decide upon a separation, was limited in point of time to a decision to be made in such time that Congress might consider and determine on the admission of your State by the first day of June, 1787; That an existence for twelve months was given for other purposes pointed out in the law; that as you are very much divided among yourselves, and there does not appear to be in the minority a disposition to submit with temper to the decision of the majority, and the measures of the convention, in consequence of a defect in the original law, would be liable to some objection, the most safe, unexceptionable, and accommodating plan is to pass a law in which the defects of the former act may be corrected, and which shall enable the present convention to sit till their term has expired, or to call immediately a new convention, to the decisions of which the disappointed can make no objection." (*Littell*, Appendix No. 7, p. 17.)

First Alarm as to the Navigation of the Mississippi.

In the same letter he notified the people of Kentucky of a danger that threatened them, more enduring, unless averted, than the evils of any war, and more fatal to the West than could be all the apprehended inroads of savages. He gave the first news of Jay's project of ceding to Spain the navigation of the Mississippi:

"The negotiation which has been opened with Spain, for ceding the navigation of the Mississippi—a negotiation so dishonourable and injurious to America, so destructive of the natural rights of the western world—is

warmly opposed by this country, and for this purpose the most pointed instructions are given to our delegates in Congress. I persuade myself that this negotiation will terminate in securing instead of ceding that great point." (*Littell*, Appendix 8, p. 21.)

The news thus sent to the West by John Marshall was corroborated from other sources, and particularly by advices from the committees in Western Pennsylvania. It greatly alarmed all who appreciated the vital importance to Kentucky and its people of an unobstructed navigation of the Mississippi.

A meeting of citizens at once convened, and in their behalf a circular letter was put forth over the signatures of George Muter, Harry Innes, John Brown, and Benjamin Sebastian. It bore date 29th March, 1787.¹

The consultations preliminary to the issue of this circular were undoubtedly had at the weekly meetings of the Political Club, an association of the best talent and character of the District, accustomed to meet for the discussion of matters of public interest, and, as events proved, very potent in shaping public opinion. Concerning this "Political Club," more will be said in another place, but it may be remarked in passing that not a little of the acrimony that entered into the political antagonisms of Kentucky's earlier years had its

¹ *Littell*, *Political Transactions*, Appendix No. 8, pp. 19, 20. The text of this circular letter is given in the Appendix.

origin in the social jealousies of membership or non-membership of that Saturday-night Club, which met at Grayson's Tavern, in Danville, over a bowl of punch, as was the manner of the time, to exchange views upon a subject selected a month before, and introduced by debatants appointed to that duty.

The gravity of the threatened surrender to Spain of the navigation of the Mississippi was too real to be neglected. The circular attracted immediate and earnest attention. A conference was had at Danville in May (as the circular letter suggested), but happily Virginia had already taken action that emphatically voiced the sentiments of the West and ratified the views put forth by the committee of citizens. There was practical unanimity throughout the District of Kentucky, and the parent State entirely sympathized. The opinion of both communities had found expression in the resolutions of the Virginia House of Delegates, adopted on the 29th November preceding, but long delayed in reaching the western settlements. Those who have chosen to criticise, and even attribute to the worst and most treasonable motives the continued and unremitting anxiety and persistence shown by the principal Kentuckians for navigation rights unfettered by any superior claim, may be well answered by the terms of the Virginia resolution :

“ Resolved, unanimously, That the free use and navigation of the western streams and rivers of this Commonwealth and of the waters leading into the sea, do of right appertain to the citizens thereof, and ought to be considered as guaranteed to them by the laws of God and nature as well as compact.

“ Resolved, unanimously, That every attempt in Congress or elsewhere to barter away such right ought to be considered as subversive of justice, good faith, and the great foundations of moral rectitude, and particularly of the principles which gave birth to the late revolution, as well as strongly repugnant to all confidence in the federal government, and destructive to its peace, safety, happiness, and duration.

“ Resolved, That a Committee ought to be appointed to prepare instructions to the Delegates representing this State in Congress to the foregoing import, and to move that honorable body to pass an act acknowledging the right of this State, and that it transcends their power to cede or suspend them, and desiring the said delegates to lay before the General Assembly such transactions as have taken place respecting the cession of the western navigation.”

Reassured by this action on the part of Virginia, and strengthened by the confident expectation of speedy welcome as an independent State into the confederation, the people of Kentucky awaited with such patience as they could command the elections which the new Act of Separation had prescribed for August. It required no little forbearance on the part of leading men to brook executive and legislative action that rebuked their most disinterested efforts for the public good, and fixed upon them public affronts.

Clark had been striving with desperate valor and tenacity of purpose to hold Vincennes and the Illinois. Logan had

completely seconded him, hurrying back from the Wabash to make an attack on the Mad River towns of the Shawnees. Their incredible toil, patriotic sacrifice of time and estate, and all their splendid services extorted nothing better than a chilling rebuke. No sooner had Patrick Henry vacated the office of Governor (in December, 1786) than the evil days began for George Rogers Clark and the policy he represented.

The new Governor of Virginia (Edmund Randolph) was quickly apprised by private letters from Kentucky that "Gen. George R. Clark had undertaken without authority to raise recruits, nominate officers, and impress provisions in the District of Kentucky for the defense of the Post of Vincennes, and had for that purpose also seized the property of Spanish subjects contrary to the laws of nations."¹

Gov. Randolph gave all the offense and irritation that was possible in proceeding upon this apparently anonymous information. He wrote to Harry Innes, Attorney General for the District of Kentucky, adverting in very general terms to the complaints that had reached him, and instructing him in vague language "to institute the proper legal inquiries for indicating the infractions of the peace."

The answer of Innes was characteristically frank. He showed how there was not enough of distinct direction in the Governor's letter to warrant any official procedure. But

¹ *Virginia Calendar State Papers*, Vol. IV, p. 322, note.

he improved the occasion to warn the Governor that such persistent neglect (both Federal and on the part of Virginia) to protect the Kentucky frontiers, coupled with complaints against the men who, being so neglected, protected themselves, and followed by official prosecutions of leaders like Clark and Logan, would almost certainly drive the people of the West to desperation, and he added, for the Executive's information:

"I have just dropped this hint to your Exc'y for matter of reflection; if some step is not taken for protection a little time will prove the truth of the opinion."¹

Clark wisely refused to be provoked by the instructions that came from the Attorney General of Virginia directing Innes to institute a criminal prosecution. Logan quietly returned to his farm after a successful campaign, and Innes dexterously avoided the necessity of any official action by reminding the Governor that the Attorney General of Virginia had no authority to instruct Kentucky officials—the right to do so lay solely with the Governor.

The public mind was thus tranquilized, and the elections prescribed for August (1787) were quietly held and members chosen, to the number of five in each county, to represent the people in the convention called to meet in September.

¹ *Harry Innes to Gov. Randolph, 21st July, 1787. (Virginia Calendar State Papers, Vol. IV, p. 322.)*

The Convention of August, 1787.

The sessions of the September Convention were not marked by excitement or debate. Unanimous declaration was made in favor of separation from Virginia in accordance with the act of the Virginia Legislature. Resolutions were adopted fixing 31st December, 1788, as the period of separation, and the legislature of Virginia was requested to cause an inhabitant of the District to be chosen as one of her delegates in the Congress. The two peoples were in accord, the request was promptly granted, and Mr. John Brown (therefore a member of the Virginia Legislature as Senator from the counties of Kentucky) became a member of the Virginia delegation in the Continental Congress, specifically representing the District of Kentucky. His long congressional career ran unbroken through the remaining period of the confederation, continued through the period between the adoption of the Constitution and the admission of Kentucky, and covered three consecutive terms as Senator from that State.

All the preliminary steps having thus been accomplished, the people of Kentucky felt certain of their admission to the Union by that formal vote of the Continental Congress which the Act of Separation prescribed should be passed prior to the 1st July, 1788.

The District had now a voice in the Congress, though its delegate spoke as a representative from Virginia. It was expected that the apathy of politicians in the Atlantic States might be aroused by personal appeals urged by the delegate from the West. Already the Congress had committed itself to the plan of governmental organization of the country west of the Alleghanies. It had passed, on 13th June, 1787, the since famous "*Ordinance for the Government of the Territory of the United States northwest of the river Ohio*,"¹ and provided that out of the territory to which it applied there should be formed "not less than three nor more than five States."² It boldly declared that the most western of these "new States"³ "should extend from the Wabash to the Mississippi."⁴ The line of Clark's conquest was assumed as the national boundary toward the west. The benefit of all his labors was appropriated, while even yet an envious correspondent was reporting to Gov. Randolph that Vincennes was obstinately reinforced and held against Spaniard and Indian by Clark "without authority."⁵

That wide domain, from the Scioto to the Father of Waters, over which the unaided valor of Virginia's sons in Ken-

¹ *Journals of Congress*, Vol. IV, pp. 751, 752, 753, 754.

² *Ordinance of 1787*, Article 5.

³ *Ordinance of 1787*, Article 4.

⁴ *Ordinance of 1787*, Article 5.

⁵ *Virginia Calendar State Papers*, Vol. IV, p. 322, note.

tucky had established dominion, was readily absorbed into the new nation that was forming. The policy of acquisition toward the west was declared and conspicuously acted on, and its purpose was made plain. New States were to come into the Union already formed by the original thirteen. Their admission was pledged "whenever any of the said States shall have sixty thousand free inhabitants therein,"¹ and they were to come into the sisterhood "on an equal footing with the original States in all respects whatever."¹

And the great ordinance that so clearly outlined the principle of expansion in area of new States to come, and the great river as a boundary, had passed into a law by a vote that lacked only Mr. Yates, of New York, to make it unanimous.²

It was fairly assumed by the Kentuckians that Congress stood committed to the passage of the requisite enabling act to perfect their State organization. It was assumed that the long desired separate statehood would soon and smoothly follow.

Increase of Immigration.

The public confidence in this result was evinced by many marks of activity and enterprise. Immigration rapidly increased, and its tide distributed from Limestone to the Yellow

¹ *Ordinance of 1787*, Article 5.

² *Journal of Congress* (13th July, 1787), Vol. IV, p. 754. Massachusetts was the only New England State represented and voting on the Ordinance of 1787, both Dane and Holten voting aye. The subsequent postponement (in 1788) of Kentucky's admission was moved by Mr. Dane, and his action caused much irritation.

Banks, from the Falls of the Ohio to Hazel Patch, families drawn from the best elements of the eastern populations.

Increase of population had brought with it yearly accumulations of the staple products of a purely agricultural community. Tobacco, flour, pork, were now produced in quantities that represented values great enough to enrich the community could a market but be obtained. All eyes were turned toward the broad waterway of the Mississippi; for it was only down its current that transportation of such bulky freight could be had. As early as May, 1782, bold Jacob Yoder had built his great broad-horn at Redstone, on the Monongahela, and as a pioneer of western commerce had safely carried it, freighted with flour, down the Ohio and Mississippi to New Orleans. With the sales of his cargo peltries were bought that had come in tribute to the king, buffalo skins from remote regions beyond the post of St. Louis, in the northern Louisiana, and beaver from the unnamed streams of Iowa and Wisconsin. The furs sold at the Havana purchased sugars that were freighted for Philadelphia; and enriched with the rewards of his expedition the successful adventurer returned across the Alleghanies and past Fort Pitt to his home, where the little hamlet of Bardstown nestled on the banks of the Beech Fork of Salt River.

The voyage of Jacob Yoder and its pecuniary results had fixed all western thought upon the riches that awaited a free

navigation of the Mississippi and an unobstructed outlet to the sea. Interposing mountains and the adverse current of the Ohio prohibited carrying eastward to Atlantic marts the ponderous barter of the new West. Through hundreds of weary miles, through canebrakes and forests, lay the Wilderness Road, the only communication with Virginia, skirting the streams toward their sources, winding through the passes of the Cumberland Mountains, and threading the long furrows that nature has plowed from northeast to southwest between the ranges of the Blue Ridge. Over such a road nothing could be carried except within the limits of a load for a pack-horse.

The people of Kentucky were plainly shut up to a single port and a single route to that port. The port for their commerce was New Orleans; the route was the river Mississippi.

Wilkinson's Scheme of Trade with New Orleans.

It needed some years devoted to securing safety and accumulating the comforts and conveniences of life to bring the new country to that prosperity that demanded commerce. It was not until 1786 that Wilkinson had practically begun his plan for the establishment of trade with the Spanish ports. Already he had made an impression upon the District by his

activity and intelligence. His manners were engaging, his oratory fervid and persuasive, and his facility as a writer astonishing. From his first appearance at Lexington, in 1784, he had taken an intelligent, interested, and useful part in public affairs. A rumor prevailed that the influence and capital of eastern friends supported his adventure to Kentucky, and he was supposed to be the spokesman of those who were controllers of opinion in New York and Philadelphia.

He had come westward for the avowed purpose of repairing his shattered fortunes, and launched at once into mercantile speculations at Lexington. He became a member of the conventions that were called for the purpose of bringing about the severance of Kentucky from Virginia, and the admission of the new State into the Confederation. He prepared the memorial of the Convention of August, 1785, to the legislature of Virginia, as well as the address to the people of Kentucky put forth at the same time. He was, from the first, ardent in supporting the scheme of a new State, and consistent always in asserting that the navigation of the Mississippi was a right as well as a necessity.

The mercantile operations which Wilkinson conducted showed in their scope and success the directing power of an able mind. His military career had taught him the value of system and the art of employing subordinates. In less than two years he had almost engrossed the profitable trade in

salt, and through numerous agents bartered for otter and beaver skins far and near. His agents were everywhere, and his untiring vigilance spurred their activity. Success and comparative ease had already been secured by him, when he began in 1786 to mature a great plan for direct trade from the Falls of the Ohio to New Orleans and the outer world.

The story of this commercial venture is important to a right understanding of much of the political and personal controversy that marked the history of Kentucky for twenty years. The current of narrative may profitably be interrupted to give it place.

The intelligent mind of Wilkinson soon perceived the gain that would accrue from a trade in tobacco, if permission to introduce it within the Spanish territory could be obtained. Already the increasing crops of three past years had accumulated in quantities for which there was neither domestic demand nor an available foreign market. During the year 1786 Wilkinson dispersed his agents throughout the District, and through them introduced the hitherto unknown commercial feature now so familiar as "options." He readily secured the right to take to himself in the coming spring, should he choose to do so, great quantities of tobacco at very low prices.

He reserved for himself the delicate and hazardous effort to secure for his contemplated purchases a market in Span-

ish territory, and for this purpose made his appearance, unknown and unheralded, at New Orleans in June, 1787. His fleet of boats had, by rare good chance or skillful negotiation, been brought safely past the upper posts that guarded the banks of the Mississippi, and was safely moored at its destination before the Spanish Governor had an intimation of its coming.

The audacity and self-reliance of Wilkinson was equal to his really large abilities and exceptional accomplishments. He presented himself at once, and upon his own introduction, to Gov. Miro, accompanied only by the corporal of the guard stationed at the landing place.¹ Within a few hours he had formally visited the Intendant Navarro and the Contador or revenue agent of the king.

The superior address of Wilkinson prevailed with the Spanish officials. He was permitted to land and sell not less than \$35,000 worth of produce, and to return home (taking ship for Philadelphia) with the profits of his voyage.

The means to which he resorted to achieve this almost unhoped for success are but obscurely known. They are differently asserted as one or another of several estimates of Wilkinson have been accepted.

For himself Wilkinson says no more than that his view was to promote his own fortune and to benefit his fellow

¹ *Wilkinson's Memoirs*, Vol. II, p. 109.

citizens "by awakening the Spanish Government of Louisiana to a just sense of its own interests, and thereby to effect the commercial intercourse which was indispensable to the prosperity of the western country."¹ He half admits what Daniel Clark, in his communication to Timothy Pickering, Secretary of State, asserted in 1798, that adroit intimations were given as to the inflamed state of the public mind, and "that the people of Kentucky were already exasperated at the conduct of the Spaniards in seizing on the property of all who navigated the Mississippi, and if this system was pursued they would very probably, in spite of Congress and the Executive of the United States, take upon themselves to obtain the navigation of the river by force, which they were well able to do—a measure for some time before much dreaded by this [Spanish colonial] government, which had no force to resist them if such a plan was put into execution."²

It can hardly be supposed that so ready and useful an argument was omitted. Traces of its use are found in very diverse quarters.

Oliver Pollock, secret agent of the Congress during the Revolution, charged with important negotiations in procuring money and gunpowder, and on terms of confidence

¹ *Wilkinson's Memoirs*, Vol. II, p. 110.

² *Daniel Clark to Secretary Pickering*, 18th April, 1798. This memorial is reprinted as Appendix 6 to Vol. II of *Wilkinson's Memoirs*.

with the officials, deposed that he had it from Gov. Miro that "he had consented for Gen. Wilkinson to bring down tobacco, in hopes to pacify the Kentuckians and people of the western country, to prevent a rupture between Spain and America, and in order to give time for negotiations between the two powers relative to navigation of the Mississippi."¹

That the Spanish authorities were entirely alive to the danger of an irregular and overpowering attack from the western pioneers appears from State papers emanating from able and judicious officials. Navarro, the Intendant, wrote to his government as early as 12th February, 1787:

"The powerful enemies we have to fear in this province are not the English but the Americans, whom we must oppose by active and sufficient measures. . . . There is no time to be lost. Mexico is on the other side of the Mississippi, in the vicinity of the already formidable establishments of the Americans."²

Miro earnestly entreated the President of the Council of the Indies, in March, 1787, for an outlay of large sums in fortifications.³

¹ *Deposition of Oliver Pollock* (before a court-martial at Washington), 8th June, 1808, concluding paragraph. This deposition is reprinted as Appendix 1 to Vol. II, *Wilkinson's Memoirs*. It was Pollock who procured from Galvez, or with his assistance, the powder which Col. Gibson brought in keel boats up the Mississippi and Ohio to Fort Pitt, and which Linn and Smith assisted in carrying around the portage at the Falls of the Ohio, in 1777. (*Gayarre, History of Louisiana, Spanish Domination*, 109.)

² *Navarro's Despatch* of 12th February, 1787. *Gayarre, History Louisiana, Spanish Domination*, 182.

³ *Miro to Marquis La Sonora*, March, 1787. *Gayarre, History Louisiana, Spanish Domination*, 184.

And after Wilkinson had (in September, 1787) left New Orleans, the long uneasiness, doubtless newly aroused by the inuendos of the adventurer, drew from Navarro another and even more earnest appeal.

Commenting upon what he considered the obvious decline of the Province of Louisiana, he did not hesitate to assign, as one of the principal reasons, the apprehensions produced by the threats of the Americans. He wrote thus:

“It is necessary to keep in mind that between this province and the territories of New Spain there is nothing but the feeble barrier of the Mississippi, which is as easy to pass as it is impossible to protect. . . . It is an incontestable axiom that every remedy ought to be proportioned to the evil to which it is to be applied, and the danger which threatens us from the proximity of the Americans is of such a nature that it will soon be too late to ward it off, if we do not now guard against it by most efficacious measures. Even if New Spain should never be the object of the ambition of the Americans, they ought to be for us a cause of constant distrust and apprehension, because they are not unaware that the river de Arcas is not distant from New Mexico, and that there are mines in the Ouachita district. These are powerful motives for a nation restless, poor, ambitious, and capable of the most daring enterprises.”¹

The mutterings that reached Natchez and New Orleans were true indications of the irritation that prevailed in Kentucky. Navarro rightly estimated the sentiments of the population that looked southward for its mart. It was a race

¹ *Navarro's Despatch of 10th October, 1787, as quoted by Gayarre, History Louisiana, Spanish Domination, pp. 189, 190.*

of men inured to war, skillful in the use of arms, accustomed to campaigns in which the care of the quartermaster counted as the very least, and characterized by a singular and practical mixture of individual self-reliance and mutual support. It was accurately described in Navarro's despatch as

“Una nacion inquieta, pobre, ambiciosa, y arriscada.”¹

To this apprehension of incursion, which Wilkinson adroitly fanned, was added another fact that disquieted the Spaniard.

Already John Fitch had demonstrated the principles of steam navigation, and by practical test upon the Delaware had shown that the current of great rivers could be surmounted. He had joined his old comrade of Valley Forge, Jacob Yoder, at Bardstown, and discoursed with him of the great stream of the Mississippi, and the possibility of stemming it with returning boats. His experience of 1782 led Yoder to flatly deny that the dream of his inventor friend could ever be realized in a boat propelled by any mechanism against the current of the great river. It was, he said, like darting straws against the wind.² But Fitch, in the inter-

¹ *Navarro, Despatch of 10th October, 1787.*

² Fitch and Yoder had known each other in the army. The settlement of his friend at Bardstown probably attracted Fitch to that place, and they remained closely intimate till Fitch's death. Yoder's slave, Harry (who died at a great age), remembered Fitch well, and often related to the present writer stories of his eccentricities. Fitch's temperament was very variable; he was alternately elated with hope and profoundly depressed. He became in his later years quite intemperate. He was unmarried; had simple habits and few wants, even for those simple times, and it is a mistake to suppose that he suffered want or neglect in his last days. His grave is at Bardstown, Ky.

vals of his work as a surveyor, eked out with mill-building, became convinced that the necessary power could be applied through paddle-wheels, and he hastened eastward to vend a map of the West, which he had himself engraved, and printed with the rude appliances of a cider press. Supported by this, he devoted himself to the problem of navigation. It was in September, 1785, that this uncouth, intelligent, and self-reliant man presented himself to Gardoqui, the Agent of the Spanish King near the United States, and then at Philadelphia. It is evident that if he had indeed then perfected his idea of applying steam to the propulsion of vessels, he singularly failed to communicate it to Gardoqui, though the occasion would naturally have brought it under discussion.

The intelligent account of the western country and its resources given by Fitch, and the maps he exhibited, enlisted Gardoqui's attention. The scheme of navigation by power applied to paddle wheels struck him as of sufficient importance to be brought to the consideration of his government, and in his next despatch an account of the invention, and two copies of Fitch's map were sent to Spain.¹

¹ The Spanish Minister, Gardoqui, in his despatch to Marquis La Sonora, President of the Council of the Indies, No. 19, of 3d September, 1785, writes: "By chance I have met a person named John Fitch, a native of these States; a landed proprietor, and resident in the new settlement of Kentucky, with whom I have had much conversation. I inclose two copies of map, which he has engraved, of the ten new States that are contemplated." In a later despatch (No. 30, 21st October, 1785) he adds, concerning Fitch: "From his conversation and the replies he made to my numerous inquiries, I clearly perceive that these new populations (in Kentucky) depend upon the free

One of the two copies of Fitch's map thus transmitted was, along with a copy of Gardoqui's despatch, promptly forwarded from Madrid to Count Galvez, just promoted from Governor of New Orleans to the splendid rank of Viceroy of Mexico and Captain General of Louisiana and the Floridas. The significance of the new idea was at once recognized by that truly great man, and impressed itself upon his subordinates, Miro, Navarro, and others, and the announcement not long delayed that Fitch had perfected his application of steam power confirmed the already accepted omen that the day was passing for occluded streams. The restless people of Kentucky were now furnished with the coming solution of their commercial isolation.

All things were ripe for Wilkinson's fortunate experiment in trade. Every consideration of policy forbade confiscation of his goods or molestation of his person. Though he was but an unofficial personage, he preserved the military air of former service, and magnified his importance by every art of

navigation of the Mississippi, although they are confronted by their inability to overcome the current, for in certain seasons of the year it is impossible. . . . The same person from whom I have derived this information has invented a vessel that, by means of a wheel fixed in its center (which, according to his explanation, resembles a Spanish 'noria' in its plan), and worked by a horse, moves against the current." From this it would seem questionable whether Fitch had made his application of steam to navigation in September, 1785, else he would certainly have mentioned the fact to Gardoqui. If the invention had been made he could hardly have valued it. The improvement of "navigation of boats by horses" was apparently the project of Fitch. He memorialized the Kentucky Legislature for aid in 1798, describing his invention in those words. (*Journal, H. R. of Kentucky*, January 12, 1798, p. 35.)

which he was master. It seems likely that Miro was impressed with the belief that he was still the chief military officer of the United States in the western country.¹

It can not be positively charged that the success of Wilkinson's trading voyage of 1787 was promoted by bribery of Spanish officials. The suspicion, however, is warranted and fortified by the proved relations that in after years existed between him and Miro.

One of the most intelligent observers then at New Orleans confirms the fact as to the tobacco brought to that port in 1789, from the words of the Governor himself. "Gov. Miro told me," says he, "that if the business for supplying the king's stores with tobacco by Gen. Wilkinson had been better conducted, or more fortunately conducted, he should have made a great deal of money by it (or words to that effect) as well as Gen. Wilkinson, by which I understood that he (Gov. Miro) was to have a certain portion of the profit in the nature of a commercial transaction, and I was told the same by Mr. Conway, the brother-in-law of Gov. Miro."²

And at a later date (1796) Philip Nolan and Guilberto

¹ Wilkinson, after the close of the Revolutionary War, continued in civil life until December, 1791. His commercial enterprises of 1787 and later are undeserving of much ignorant criticism that has been leveled at them on the score of official impropriety.

² *Oliver Pollock's Deposition, Answer No. 2.*

Leonard stated the accounts between Wilkinson and Miro, then lately dead.¹

It must, in justice to Wilkinson, be admitted that these accounts concern only the cargoes of tobacco shipped by him in 1790 and 1791, while he was yet a civilian, and while he was forbidden by no law or rule of propriety to engage in commerce. They establish the fact that Miro (as to those shipments) corruptly shared the profits, but they do not prove that Wilkinson was a pensioner of Spain. That charge was not established for many years. Its proof is from another source, and was not accessible until long after Wilkinson's death.

The conduct of Miro in sharing Wilkinson's gains, indefensible as it clearly is, was not perhaps the chief reason that procured his countenance of trade from the upper waters. The policy of attracting immigration and developing the colonial resources had been favored by Navarro, the Intendant, in many despatches, and Miro had distinctly adopted it

¹ The letter of advice from Nolan, together with the itemized account, is to be seen in *Wilkinson's Memoirs*, Vol. II, pp. 117, 118, 119. Wilkinson introduced this proof of personal money accounts between himself and Miro, as evidence before a court-martial, for the purpose of repelling Dr. Clark's charge that he was a pensioner of Spain, and to show whence this money came that was sent to Kentucky in charge of Owens. An examination of the account shows that the transaction that brought Miro in debt to Wilkinson lay in tobacco shipments made by the latter in 1790 and 1791. Remittances were tardily made, and at Miro's death, in 1795, there was a balance due from him to Wilkinson of \$2,095. It is but fair and right to admit that Nolan's letter, Pollock's deposition, and the stated account do not suggest any pension at that time, but they do go to prove bribery of the Spanish Governor.

in his administration. Galvez had gone to his viceroyalty, and was busying himself with the construction of his fortress of Chapultepec, intended, as many suspected, for the palace of an independent empire that he meditated. But the traditions of his administrative policy remained and prompted his successor. Miro had already relaxed the stringent regulations of settlement and commerce.

He had given permission to a number of American Catholic families to settle in Louisiana, had encouraged immigration from the western settlements to the Spanish possessions on the Mississippi and in Florida, and had reduced the duties on utensils, provisions, and personal effects. But however large and wise may have been his general views of policy, he soon encountered an obstacle in the direct opposition of Gardoqui, the Spanish Minister, resident at Philadelphia. Gardoqui, as has been charged (but not clearly proved),¹ had himself corrupt participation in the trade from Philadelphia to New Orleans, and he contemplated the establishment of Morgan and his colony of New Jersey settlers at New Madrid, on the Mississippi. The conflict of ambition and interest antagonized the governor and minister.

The various and often antagonistic motives that thus swayed the opinions and ruled the actions of the Spanish authorities were all skillfully drawn to his own advantage by

¹ *Gayarre, History Louisiana, Spanish Domination, 185.*

Wilkinson. He gained every point of his plans. Permission was given him to unload his cargo. The King of Spain himself became its purchaser. The tobacco bought in Kentucky at \$2.00 per hundred weight brought him \$9.50 delivered into the king's warehouses. A free permit to carry his money beyond the port was granted.

And, more important than all, there followed Wilkinson to his home a permit for trade, invaluable to himself and the people of Kentucky. It ran thus:¹

"I, Don Stephen Miro, Colonel of the Royal Armies, Political and Military Governor and Intendent General of the Provinces of Louisiana and West Florida, and Inspector of the Troops, &c., &c., Grant free and full permission to the American Brigadier Don James Wilkinson, settled in Kentucky, to direct or cause to be brought into this country, by inhabitants of Kentucky, one or more launches belonging to him, with cargoes of the productions of that country. Therefore, I command all officers belonging to this government not to offer any hindrance to his voyage; on the contrary they are to render him every assistance that may be necessary. The present is given signed with my hand, sealed with the seal of my arms, and countersigned by his Majesty's Secretary for this Government, in the City of New Orleans, the 8th August, 1788.

"ESTEVAN MIRO.

"ANDRES ARMESTO,
"Secretary."

The news of Wilkinson's splendid success had preceded his return. In February, 1788, he reached his home in what

¹ The English version here given is that furnished by the translator of the State Department for the use of the court-martial before which Wilkinson was arraigned. The original Spanish text of the permit can not be found.

is now Woodford County, hailed by the entire community as one whose energy and capacity had opened the Mississippi to his countrymen on terms more honorable and tolerable than had been hoped by even the most hopeful. True, his permit for trade was but a personal privilege, and the expected further permit was to be no broader; but it was soon explained that the cover of its protection could be extended to Wilkinson's friends, who might ship produce in what were nominally his barges, or join their boats to the fleet which he began to prepare against the next season.¹ Again his agents were abroad, and for the first time in the history of the West there was a market and specie payment for produce.

The importance of the long desired State organization became apparently greater than ever. It was justly and soundly argued, how much surer and firmer would be the commercial comity if a constituted political community were

¹ Wilkinson is entitled to the praise of much public spirit in his commercial enterprises. He made no secret of the advantageous privilege granted him by Miro, and he offered the benefit of it to the planters of Kentucky on terms that were liberal. Peyton Short became his partner, and they circulated a printed proposition to carry to New Orleans all tobacco that might be intrusted to them, stipulating as their compensation for two thirds of such price as might be realized over 15 shillings per hundred pounds. The charges for transporting were advertised as being 6 shillings from the Kentucky River (Frankfort), and 4 shillings and 6 pence from Louisville. These charges they were willing to advance if desired. This plan was plainly a most advantageous one for the farmers of Kentucky District. A copy of this proposal, addressed "To the Planters of the District of Kentucky," has been preserved, along with a letter addressed to Isaac Shelby, who was desired to consider and give his approval to the project. (See "*Shelby MSS.*," in the collection of R. T. Durrett.)

party to the agreed reciprocity, instead of having the trade of the entire West hang upon the capricious favor shown a single citizen. The right of the new State, when established, to deal practically with arrangements for navigation of the Mississippi seemed clear, for as yet the States had only the bond of the Articles of Confederation.

The right of each State to lay imposts and duties was but slightly restricted by the Articles of Confederation of 1777, and still existed. While the treaty-making power was, by the first section of Article VI, prohibited to the several States, the third section of the same article left open a way that might be utilized without violence to the letter of the Articles or the spirit of the Compact. By this section it was provided that "no State shall lay imposts or duties which may interfere with any stipulations in treaties entered into by the United States in Congress assembled with any king, prince, or State in pursuance of any treaties already proposed by Congress to the Courts of France and Spain."

And by Article IX it was specifically "provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever."

Article II stipulated, as the foundation of the confederation, that "each State retains its own sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled."

The deduction from these provisions of the Articles of Confederation was easy. Inasmuch as no treaty of commerce and navigation had been concluded with Spain by the States through their Congress, there existed no impediment to the levy of imposts and duties upon Spanish imports by any State, and the Spanish intercourse might be absolutely prohibited by the mere action of the particular State, or fostered by its legislation.

Massachusetts Bay or New York could exchange courtesies with Spain by refraining from imposts or prohibitions, and, by indirection, gain advantages at the Havana. Virginia could, without the form of a treaty, accept Spanish commerce on favored terms and secure a European market for her tobacco. In like manner could Kentucky, once severed from the parent State, and organized as an independent and co-equal State, relieve the imposts that Virginia still collected at the Falls of the Ohio and at Limestone,¹

¹ By Virginia statute of 1784 (11 *Henrig, Statutes at Large*, 398, sec. 4), provision was made for collecting customs at the Falls of the Ohio (Louisville) and Limestone (Maysville). Naval officers, as the collectors of customs were called, were provided for those points, clothed with the same powers as "the other naval officers or collectors in

and enjoy the abolition by Spain of her prohibition against navigation and the ruinous custom charges at New Orleans.

Discussion and Adoption of the Federal Constitution.

While these important local considerations of trade and access to the outer world occupied the minds of the people of Kentucky, and the prospect of their establishment as one of the family of States seemed assured, another measure of overshadowing magnitude had been launched. The Convention of Delegates, presided over by Washington, and intrusted with that gravest of all political duties, had, in September, 1787, promulgated a draft of the Constitution, under which the States of the feeble confederation were to be welded into the more perfect union of the Republic.

The promulgation of the "New Plan," as it was termed by American statesmen as well as by the agents of foreign courts, excited debate throughout the land. The division of sentiment was as grave as the subject was momentous. The struggle of opinion lasted in Virginia until nine States had already given in their adhesion. In her convention specially

the Commonwealth." Duties were payable on rum, brandy, and other distilled spirits, as also on sugar and coffee at specific rates. On all other importations the tariff was *ad valorem*. (11 *Hening, Statutes at Large*, 121, 122.) Many papers concerning such importations from Spanish territory, through the naval office at the Falls of the Ohio, are still preserved.

assembled to consider the Federal Constitution, the District of Kentucky was represented by fourteen delegates—two from each of the then seven counties of Jefferson, Lincoln, Fayette, Nelson, Mercer, Madison, and Bourbon. Of these, three voted for adoption of the instrument, nine against it, and two did not vote.¹

It is beyond dispute that the question of the navigation of the Mississippi entered largely into the formation of opinion, and apprehensions were entertained lest the rumored treaty negotiated between Jay and Gardoqui, surrendering for a term of twenty-five years all right to navigate the Mississippi, might be ratified by the Eastern States. The arguments of Henry, Grayson, and Mason were repeated by Monroe, each in different phrase, predicting the loss of the Mississippi and the overthrow of the West and South if the proposed plan of government prevailed.

The Political Club.

The progress of discussion in Kentucky developed some features of opinion that are an interesting episode in the story of the time.

¹ Robert Breckinridge, Rice Bullock, and Humphrey Marshall voted for ratification. John Fowler, John Logan, Henry Pawling, John Steele, Matthew Walton, Thomas Allen, Alexander Robertson, G. Clay, and Henry Lee, followed Patrick Henry in opposition. William Irvine and John Edwards did not vote. (*Elliot's Debates*, ed. 1836. Vol. III, pp. 604-655.)

Allusion has already been made to the "Political Club" that held its Saturday-night meetings in Danville. Its debates were formal and parliamentary, and a careful secretary made minutes of the arguments and preserved the papers.

The form and substance of the new Constitution was minutely considered by this body of frontier statesmen. They were, with scarce an exception, men of liberal education and practical experience in affairs. Their political bias can hardly be better estimated than by noting some of their comments and suggestions of amendments to the proposed Constitution.

The printed copy that reached Danville was scanned line by line, and the concurrence or dissent of the club noted section by section in marginal memoranda that are yet legible. Having closed their deliberations, after many meetings, the secretary, under the club's instruction, reduced to form what the title of the yellowed MS. declares to be

"The Constitution of the United States
"of America as amended and approved by the
"Political Club."

The separate consideration of the articles and sections was preceded by what is significantly labeled as the "Primary Resolution A."

"Resolved, That it is the opinion of this Club: That the Federal Constitution ought to be preceded by a Declaration of Rights, in which it should

be clearly expressed that the Congress of the United States shall not have power by law to alter, repeal, or change any part of the Constitution; and that all laws contrary to the true spirit, intent, and meaning of the same shall be void."

It was the opinion of the Political Club that senators should be chosen for three years, and be ineligible for three full years after serving a term, and that the presiding officer of the Senate should be of its own choosing. (Art. I, Sec. 3.)

The time, place, and manner of holding elections for senators and representatives, it was resolved, should be prescribed only by the State legislature. (Art. I, Sec. 4.)

As to the subject of veto upon legislation (Art. I, Sec. 7), it was considered that bills having passed both houses should be presented to the President, and by him laid before an Executive Council and the Judges of the Supreme Court for their opinion, and by him, with their advice and consent, signed as a law or returned with their objections. With a foresight, as it were, of the verbal quibbles that became so current in 1832 and 1861, it was proposed, and the club resolved, that power should be given to call forth the militia "to *enforce obedience* to the laws of the Union" in preference to the phrase "to *execute* the laws." (Article I, Sec. 8.)

That clause of the seventh section of Article I, which gives Federal jurisdiction over a contemplated District of Columbia and the sites of forts, arsenals, and docks, was voted inadmissible.

The first clause of Section 9, Article I, preventing legislation against the slave trade sooner than 1808, was by a unanimous vote expunged—a significant indication of the general favor with which emancipation of the blacks was regarded in the West.

The President, it was thought, should be ineligible to re-election until a full term of four years should first intervene. And the provision giving the office of Vice-President to the candidate next in number of votes to the President, was, on motion, stricken out. (Art. XI, Sec. 1.) The office of Vice-President was in fact thought useless.

To succeed a President removed or deceased the "eldest counsellor" was indicated.

The bent of educated opinion in Kentucky was evidently in favor of the Federal Constitution, but insisted upon certain necessary amendments. Thomas Allin and Matthew Walton, the two members of the "Political Club" who had seats in the Virginia Convention called to ratify or reject the Federal Constitution, shared the fears of Patrick Henry, and united in his opposition to the unamended instrument. The other members seem to have been, without exception, zealous supporters of the new plan for union and constitutional government.¹

¹ The list of names of the members of the Political Club will suggest to every one familiar with the early story of Kentucky a just idea of the usefulness of that body. Its members were Harry Innes, Samuel McDowell, Christopher Greenup, John Brown,

The delegate to the Continental Congress chosen by Virginia, as especially representing the District of Kentucky, was John Brown.¹ It has been observed that he was already Senator from his district in the legislature of Virginia. He repaired to New York and took his seat in Congress, fresh from that patient discussion of the new Constitution in

Thomas Todd, George Muter, Peyton Short, Thomas Speed, James Speed, Willis Green, James Brown, Baker Ewing, Robert Craddock, B. Tardiveau, Benjamin Sebastian, William Kennedy, John Belli, William McClung, Stephen Ormsby, William McDowell, John Overton, Thomas Ailin, Robert Dougherty, John Barbee, and Abraham Buford. It would not have been possible to assemble another body within the district equal to these men in accomplishments, experience, and possession of public confidence. Their names appear on every page of Kentucky's earlier history. One only of the twenty-five deceived the people's confidence. In 1797 (and the weight of proof shows not till then) Sebastian, Chief Justice of the State, accepted from the Spanish authorities an annual pension of two thousand dollars, in recognition of his personal efforts to arrange a *modus vivendi* as to the import duties at New Orleans. He collected this through ordinary commercial channels, drawing drafts, and apparently making no effort at concealment. His moral obliquity was a curious one. He would not lie, but told the truth, to his own ruin, exactly and fully when taxed with the fact. His case seems to have been one of moral blindness, coupled with much intelligence, learning, and amiability. Sebastian was ordained a minister of the Episcopal Church by the Bishop of London in 1766, and was rector of a church in Northumberland County, Virginia, from 1767 to the close of the Revolution. Having studied law during his pastorate, he came to Kentucky in 1784, succeeded Walker Daniel as Commonwealth's Attorney for Jefferson County. He was a member of the convention called to procure the separation of Kentucky from Virginia, and of the Constitutional Convention of 1792. From 1792 to December, 1806, he was a Judge of the Court of Appeals. He resigned under legislative charges that he had since 1795 been the recipient of an annual pension of two thousand dollars from Spain. His admission of the fact exists in his own handwriting; but he totally failed to appreciate the criminality of the act. He even attempted to justify his course. He lived until 1834.

The papers of the Political Club were recently discovered by Capt. Thomas Speed, grandson of its secretary, and are in his possession. It is expected that they will be published with notes and illustrative comments as a paper of the Filson Club, under Capt. Speed's editorship.

¹ October 31, 1787, Cyrus Griffin, John Brown, James Madison, John Dawson, Mann Page chosen delegates. (*Virginia Calendar State Papers*, Vol. IV, p. 504.) Brown succeeded Monroe in the delegation.

which the Political Club at Danville had been engaged, and in which he was one of the principal debaters, and earnestly impressed with the wisdom and necessity of immediately adopting it. The convictions which he entertained were undoubtedly fortified by the concurrent opinion of those whose intimacy he had shared for years, and who by common consent contributed largely to the formation of political thought. His Revolutionary service had been that of a youth, quitting his college (Princeton) at the age of nineteen, upon John Witherspoon's certificate of leave and approbation, to serve as volunteer *aide* to Lafayette. His reading had been chiefly directed by Jefferson, whose personal friendship he enjoyed, and a constant correspondence continued between them. With Madison, six years his senior, an even closer intimacy subsisted, for their academic associations were the same, and their personal contact frequent. Jefferson was at Paris, yet losing no point of the condition of affairs at home. Madison was busy in the great effort to ratify the Constitution he had helped to frame. With each of them Brown was in cordial agreement, and with Madison in constant and intimate consultation. There is a picture of the times and of the hopes and fears then entertained in their correspondence, rescued after an hundred years from the oblivion into which it had passed.

Brown promptly wrote to Jefferson concerning the pro-

posed Federal Constitution, and his selection as a delegate to Congress. He imparted very freely his anxieties concerning the occlusion of the Mississippi, his hopes for a stable union of the States, and his intent to aid all efforts in that direction.

The tenor of Jefferson's replies may be illustrated by a single letter:

“PARIS, May 28, 1788.

“*Dear Sir :*

“It was with great pleasure I saw your name on the roll of Delegates, but I did not know you had actually come on to New York till Mr. Paradise informed me of it. Your removal from Carolina to Kentucky was not an indifferent event to me. I wish to see that country in the hands of people well-disposed, who know the value of the connection between that & Maritime States, and who wish to cultivate it. I consider their happiness as bound up together, and that every measure should be taken which may draw the bands of Union tighter; it will be an efficacious one to receive them into Congress, as I perceive they are about to desire, if to this be added an honest and disinterested conduct in Congress as to everything relating to them we may hope for a perfect harmony—the navigation of the Mississippi was perhaps the strongest trial to which the justice of the federal government could be put. if ever they thought wrong about it, I trust they have got to rights. I should think it proper for the Western Country to defer pushing their right to that navigation to extremity as long as they can do without it tolerably; but that the moment it becomes absolutely necessary for them, it will become the duty of the maritime states to push it to every extremity to which they would their own right of navigating the Chesapeake, the Delaware, the Hudson, or any other water; a time of peace will not be the surest for obtaining this object. Those, therefore, who have influence in the new country would act wisely to endeavor to keep things quiet till

the Western parts of Europe shall be engaged in war. notwithstanding the aversion of the courts of London & Versailles to war, it is not certain that some incident may not engage them in it. England, France, Spain, Russia, Sweden, & Denmark will all have fleets at sea, or ready to put to sea immediately. who can answer for the prudence of their officers? War is their interest; even their courts are pacific from impotence only, not from disposition. I wish to heaven that our new government may see the importance of putting themselves immediately into a respectable position; to make provision for the speedy payment of their foreign debts will be the first operation necessary. This will give them credit. A concomitant one should be magazines & manufactures of arms. this country is at present in a crisis of very uncertain issue. I am in hopes it will be a favorable one to the rights & happiness of the people; and that this will take place quietly. small changes in the late regulations will render them wholly good. the campaign opens between the Turks and the two empires with an aspect rather favorable to the former. the Russians seem not yet thawed from the winter's torpitude. they have no army yet in motion, and the Emperor has been worsted in two-thirds of the small actions which they have had as yet. he is said to be rather retiring. I do not think, however, that the success of the Turks in the partisan affairs which have taken place can authorize us to presume that they will be superior also in great decisions. their want of discipline and skill in military manoeuvres is of little consequence in small engagements & of great in larger ones. their grand army was at Adrianople by the last accounts, and to get from thence to Belgrade will require a month. it will be that time at least then before we can have any very interesting news from them—in the meantime the plague rages at Constantinople to a terrible degree. I can not think but that it would be desirable to all commercial nations to have that nation & all its dependencies driven from the sea-coast into the interior parts of Asia & Africa. What a field would thus be restored to commerce? the finest parts of the old world are now dead in a great degree to commerce, the arts, to science & to society. Greece, Syria, Egypt, & the northern coast of Africa constituted the whole world almost for the Romans, and to us they are scarcely known, scarcely

accessible at all—the present summer will enable us to judge what turn this contest will take.

“I am greatly anxious to hear that nine states accept our new constitution. We must be contented to accept of its good, and to cure what is evil in it hereafter. It seems necessary for our happiness at home; I am sure it is so for our respectability abroad. I shall at all times be glad to hear from you, from New York, from Kentucky, or whatever region of the earth you inhabit, being with sentiments of very sincere esteem & attachment, Dear Sir,

“Your friend & servant,

“The honble

“TH. JEFFERSON.

“JOHN BROWN, ESQ.”

The sentiments avowed by Brown, and because of which he had been returned as a delegate to Congress, revived and strengthened the old confidential relations between himself and Madison. The latter returned from New York to Virginia to supervise the campaign for the adoption of the new Constitution and assist in the return of members to the Virginia convention called to pass upon the question of ratification.

The elections were ordered for April. The intervening time was full of activity and anxiety. Brown's advices from home were that Kentucky would choose delegates favoring ratification. Madison wrote him that the outlook was favorable, but that he had reason to think that the former unanimity in Kentucky was being disturbed by objectors.¹ Innes

¹ *Madison to Brown*, 9th April, 1788, Ms.

wrote hopefully to his brother, the Attorney General of Virginia. The result of the elections was a disappointment in two ways. The friends of the new Constitution had largely relied on the votes of Kentucky to give them a majority, and had distrusted their chances of success in the counties of Virginia where Patrick Henry, William Grayson, Benjamin Harrison, and George Mason championed the opposition. The opponents of the Constitution relied on the Virginia vote, and especially the counties along the Blue Ridge. They took little heed of the delegation from Kentucky.

As the returns came in, the anxiety of each party increased, for all calculations were at fault. Madison gained hope for the cause that had seemed desperate. His first letter to Brown after the returns began to come in has recently come to light. It is as follows:

"Dear Sir:

ORANGE, April 9, 1788.

"The returns of our elections as far as they are published have raised somewhat the hopes of the friends of the Constitution. Those who are best informed think the adverse party will be outnumbered at the start. It seems pretty clear now that in point of character the advantage will be on the federal side. The three chancellors are elected and are to be included in the description. So are Innes, Marshall, Nicholas, Corbin, Ga. Jones, Zach'y Johnson, Stuart, White, Walter Jones, and probably a number of others in counties not yet heard from. The principal characters on the opposite side are only Henry, Mason, Harrison, Tyler, & Mr. Smith, who will be reinforced by a few secondary characters of some influence. I say nothing of the Governor; because it is not yet certain which party will

have most of his aid, nor of Monroe, whose precise sentiments are not generally known. If I mistake not, he will be found not an enemy to the Constitution. A good deal may depend on the vote of Kentucky on the question. I have taken the liberty of stating to several gentlemen in that quarter my opinion that the constitutional impediments to improper measures relating to the Mississippi will be greater as well as the pretexts for them less under the new than the existing system; and that the former alone can promise any effectual measures either in favor of that object, or of a dispossession of the English of the posts, an object of still more immediate consequence perhaps to the District. I understand that hitherto the people there have been friendly to the Constitution. According to current report, a division of opinions is extending itself to them. I have not heard much from the counties on the western side of the Alleghany. The counties between that and the Blue Ridge have, without an exception I believe, elected federal members. The main body of the antifederalists lies, as was conjectured, on the south side of James River. There appears, however, to be much less unanimity even there than was feared. Very few of the counties have chosen federalists.

“Present my compliments to the family if you please, and particularly to Gen’l Irvine & Col. Reed, if they be still a part of it.

“With very sincere esteem and regard, I am, Dear Sir,

“Your ob’t friend & serv’t,¹

“J’S. MADISON, JR.”

The news from Kentucky, that her fourteen delegates were unfriendly to the Constitution, was quickly communicated by Brown from New York to Madison, still at his home in Virginia. In the same letter was conveyed a request from Brown that Madison should prepare a sketch for a Constitu-

¹ *Madison to Brown*, 9th April, 1788, MS. The original MS. is in the writer’s possession.

tion of the new State of Kentucky, already provided for, as has been seen, now awaiting only formal admission to the Union by vote of the Congress.

On the eve of the assembling of the Virginia Convention Madison wrote in reply as follows:

“Dear Sir :

“ORANGE, May 27, 1788.

“I am much obliged by your favor of the 12th instant, and particularly by the documents covered by it.

“Similar information to that you recite from Kentucky had reached us from the same quarter. Having not heard of the meeting for instructions being actually held, I indulge some hopes that it may not have taken place, and that the delegates will bring to the Convention no other fetters than those of prejudice. I have endeavored to calculate with as much accuracy as possible the comparative merit of the new & old system in relation to the Mississippi, and cannot but persuade myself that if the vote of Kentucky should turn on that point her intelligent & candid friends will embrace the Constitution. There are considerations both of a general nature and peculiar to the Western interest, which, in my opinion, recommend the same policy. It gives me a great deal of pleasure and no small hopes to find that you view the matter in the same light that I do, and that the confidence reposed in your judgment on the question by the members from that district will be made use of on the side wished by the federalists. The unfortunate turn given to the Kentucky elections has not yet extinguished the hopes of this part of the community, nor the fears of their rivals. The calculations which are generally made leave rather a balance, but a very minute one, on the federal scale, after adding Kentucky to the opposite one. But the issue must be somewhat uncertain where the data are so far from being clear & precise and the calculations so nice & tickleish.

“I am anxious that the decision of Congress on the subject of Kentucky may be speedy and conciliatory. It will co-operate persuasively with

the arguments and with the delegates from that Quarter, and in my opinion is in every respect desirable. The request made on the subject of constitution for the new state needed no apology. Nothing would give me more pleasure than to throw in my ideas towards so important a work were it within the compass of practicability. But under present circumstances I can promise nothing of that sort. I did not receive your letter till the day before yesterday; I have been occupied with company and other matters since, and shall not have a moment's leisure before I set off for Richmond. At that place I shall not probably be able to attend to any subject distinct from the one under deliberation. By the end of the convention, if no other difficulties were in the way, the season would be past. Had I rec'd your letter ten days sooner I would at least have attempted some outlines. I shall have an opportunity in Richm'd of conversing with the members from Kentucky; and if this subject sho'd be introduced I shall be very ready to suggest hints that may occur.

“With sincere esteem and regard I am, Dr Sr,

“Yrs affec'y,

“J. MADISON, JR.

“Give my regards to Col. Carrington, to whom I s'd write, had I any thing worth saying to him. Give them also to Mr. Elsworth & Mr. Harmar and the rest of the family, if it retains any other of my acquaintance.”¹

And so Madison went off to attend the convention at Richmond, and Brown addressed himself to the task of getting passed through Congress the measure admitting Kentucky to the Union, and which since March had been stifled in committee.²

The vote by which Virginia, and with it the District of

¹ *Madison to Brown*, 27th May, 1788, MS. The original MS. is in the writer's possession.

² *Journals of Congress*, Vol. IV, pp. 811-819.

Kentucky, adopted the Federal Constitution, did not pass until 26th June, 1788.

The debates in convention were earnest and impassioned throughout its session. The opponents of the Federal Constitution insisted that its ratification would be followed by a surrender of the Mississippi, and studiously kept alive the apprehensions of the Kentuckians. They prophesied, too, that a renewed union of Church and State was inevitable, and especially aroused the alarm of the Baptists, now grown numerous, with obscure suggestions that times were to be once more as they were before the statute of religious equality. Behind these false fears were the potent names of Henry, Lee, Grayson, and Harrison, strenuously objecting on more solid grounds to the unamended Constitution.¹

The efforts of the friends of the proposed Constitution were equally strenuous. The debate led by Madison and Pendleton was, as Bancroft observes, "well seconded by George Nicholas, John Marshall, James Innes, Henry Lee, and Francis Corbin."² Their correspondence was incessant with those who could aid in forming public opinion or enforcing the arguments they suggested, or counteracting the suggestions that inflamed popular alarm. George Nicholas

¹ The general estimate of Patrick Henry's statesmanship will be higher when the fact is recognized that ten of the twelve imperfections which he attributed to the Federal Constitution were admitted, and were cured by immediate amendment. (See *Tyler's Patrick Henry*, 316.)

² *Bancroft, History of the Constitution*, Vol. II, p. 315.

had not yet made Kentucky his home, but relatives and friends had preceded him thither, and these he plied with all his arguments. James Innes was in constant correspondence with his brother, Harry Innes, at Danville, and kept him informed of all that was done, and of all the hopes and fears of the friends of the Constitution. John Marshall had been the agent of the District of Kentucky before the legislature of Virginia, and he, it seems, consulted with Samuel McDowell, the stated chairman of the Kentucky conventions.

The embarrassments of the Spanish Minister, Gardoqui, meantime, were very serious. His perplexities daily increased. He labored under difficulties that might well have caused him to despair of success in his diplomacy, even had its direct objective point been well settled in his own mind or indicated by his government. Copies of Gardoqui's dispatches to his government and of the communications between him and Galvez, Cespides, and Miro, during the entire period of his mission, have been recently permitted to be made from the originals in the royal archives. Among them are the secret papers intended only for the private inspection of the King and Count Floridablanca.¹

¹ Hon. J. L. M. Curry, Minister of the United States to the Court of Spain, most obligingly induced the Spanish authorities to permit copies to be taken for the writer of this paper. The documents are voluminous, filling six MS. volumes. In point of ability they are disappointing; nor is the historical light they shed proportioned to their bulk.

How ill-digested was Gardoqui's plan—if plan it can be called—is best seen from these.

The ill success of the first project of treaty sketched by Jay and Gardoqui disconcerted the Spanish envoy. He had come to America fully imbued with that idea, which he frequently cited as being fundamental in Spanish policy, that the commerce of the king's colonial possessions must be inexorably interdicted to all foreigners.

The application of this doctrine to the navigation of the Mississippi would clearly exclude the inhabitants of the West, those about the sources of the Ohio, those whose fortunes were cast in the Marietta colony, the Kentuckians, and the frontiersmen of Frankland and Cumberland, from access with their products to the outer world.

The alarm sounded by Muter, Brown, Innes, and Sebastian,¹ in their circular letter of 29th March, 1787, had defeated the scheme of relinquishing for the space of twenty-five years all claim on the part of the United States of right to navigate the river to the Gulf.

Brown, representing Kentucky as a Senator in the Virginia Assembly, procured from it the emphatic declaration of 26th November, 1786, already mentioned:

¹ *Littell's Political Transactions*, Appendix VIII, No. 2, p. 19.

" Resolved unanimously, That the free use and navigation of the western streams and rivers of this Commonwealth, and of the waters leading into the sea, do of right appertain to the citizens thereof, and ought to be considered as guaranteed to them by the laws of God and nature as well as compact."

Congress at a later date took cognizance of the rumor, upon motion of the delegates from North Carolina, and put a stop to all negotiations with Spain, declaring by resolution that the report of an intent or disposition to surrender claim to the navigation of the Mississippi was not founded on fact, and that the delegates were at liberty to make public all circumstances of the negotiations. By further vote it adopted the report of its committee, Madison, Hamilton, Williamson, and Dane,¹ and

" Resolved, That the free navigation of the river Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such.

" Resolved, That no further progress be made in the negotiations with Spain by the Secretary for Foreign Affairs; but that the subject to which they relate be referred to the federal government which is to assemble in March next."²

The Spanish Minister found himself environed with difficulties that threatened a failure of all diplomatic arrange-

¹ *Gardoqui to Floridablanca*, No. 306, 24th October, 1788; *Madison to Brown*, MS., 26th September, 1788.

² The resolutions, as well as an excellent preliminary sketch of the respective attitudes of Gardoqui and Jay, and a statement of the Spanish claim are to be found in *Trescot, Diplomatic History*, 49.

ments. The settled policy of his government and its constantly asserted claim of sovereignty over the Mississippi alike forbade a concession by treaty of the right of navigation. His own course for the past three years had committed him fully to that position, and Spanish pride barred any reconsideration. But he was confronted with dangers of armed movement in the west against Natchez, New Orleans, and perhaps even against New Mexico,¹ a danger imminent and serious, and likely to result in loss of territory and prestige, as Navarro had already so forcibly demonstrated in his dispatches.² Clark and his Kentucky troops had already seized Spanish posts and confiscated Spanish munitions.³ The English, still supposing that the sources of the Mississippi lay north of the boundaries defined by their treaty with the United States, showed every disposition to assert for their trade a right of water transportation to the Gulf of Mexico,

¹ *Gardoqui to Cespides*, 1st August, 1787: "La arrogancia y libertad con que ultimamente se han explicado, en gazetas y cartas, los habitantes de los nuevos establecimientos sobre las orillas del Ohio y inmediaciones al Misisipi me obligan a reiterar lo mucho que dicta la prudencia, el que todas nuestras fronteras se pongan en estado de mayor respecto."

² Gardoqui had already ascertained Washington's views of the situation of affairs in the West, and had advised his government of the collision that Washington feared. He quotes Washington as saying of the frontiersmen in effect that they were bold, strong, and insubordinate, and likely to exact what they reckoned a right whether accorded by Spain or denied: "La emigracion a aquel rio es asombrosa, especialmente de aquellas classes de gentes que no estan muy subordinadas a la ley y buen gobierno. Que la prohibicion de la corte de Espana sea justa o injusta politica, o de otra manera, no sera facil contener a esta clase de gentes el que se prihen del goce de suo utilidades naturales." (*Gardoqui to Galves*, 23d August, 1785.)

³ *Gardoqui to Floridablanca*, confidential No. 16, 12th May, 1787: "Se han apoderado del Fuerte o Puesto San Vincent y continuan robos y otros desordenes."

and it was not difficult to see that they might foment the American claim, or even assist it, in the hope of their own advantage. And the Governor of Louisiana had already given a seeming acquiescence to the American claim by the trade permit which Wilkinson held.

The express resolution of Virginia and the debates in her convention, together with the general evidence of popular opinion, demonstrated that the right to navigate the Mississippi would never be surrendered by separate communities or the united Commonwealths.

Moreover, the Spanish officials were at cross-purposes. The governing mind of Galvez no longer exercised the wise control of former years. He had gone to his viceroyalty of Mexico. Jealousies sprang up and increased between Miro and Gardoqui, and it is not clear that the clash of pecuniary interest did not make them mistrust one another.

The Colony of New Madrid.

In this dilemma Gardoqui resolved to adopt a plan that promised, if not a solution of the problem, at least a postponement to more favorable times of that irritating question, the export of western produce down the Mississippi.

He hit upon the expedient of a free port upon the banks of the Mississippi, where a colony of Americans established

in the king's territory might intervene between the distinctly separated and antagonistic communities to its north and south.

It was this *modus vivendi* that brought about the founding of New Madrid by Morgan and his New Jersey colonists.

Col. George Morgan, after serving through the Revolutionary War, had resumed his residence near Princeton, New Jersey. His earlier life had been one of adventure. He had wandered as far west as Kaskaskia many years before the Revolutionary War, and he and his father-in-law had vaguely located an immense land claim in that vicinity.¹ He retained his love for frontier life. His education was liberal and his talents good, but he was an inveterate speculator, had twice been bankrupt, and was then in straitened circumstances. He conceived the idea of planting a colony upon his old British grant of land including Cahokia and Kaskaskia, and for the confirmation of it he petitioned the Continental Congress. In urging his scheme upon the members of Congress, Morgan spent much of the earlier portion of the year 1788 in New York. The committee charged with consideration of his plan reported to Congress² some very

¹ Morgan and his father-in-law, Buynon, together with Wharton, were trading from Fort Pitt to Kaskaskia and its vicinity in 1766. They are frequently mentioned by Matthew Clarkson in his journal of a trip made in that year from Philadelphia to Kaskaskia. An imperfect copy of this journal is given by Schoolcraft. (*Indian Tribes*, Vol. IV, p. 265.) A perfect MS. copy is in Col. Durrett's collection.

² *Journals of Congress*, Vol. IV, p. 823, 20th June, 1788.

necessary modifications looking to the protection of the titles of such as already held lands derived from old French grants within his demarkation. Legislation moved slowly, the more so because the old system was on the eve of its dissolution, and there was a general feeling that important matters should be remitted as far as could be to the action of the new Congress that was to convene in the coming March under the Federal Constitution.

The reckless speculator, with characteristic impatience, abandoned his application to Congress and speedily concluded an arrangement with Gardoqui.

The Spanish Minister had seen much of Morgan and was greatly impressed with his activity and intelligence, and the general esteem shown him by leading men. He avowedly abandoned in this case his favorite maxim that every man should be distrusted, and (as he afterward wrote to his government) admitted that he gave to Morgan his entire confidence.¹

The plan of a colony within the Spanish territory had been discussed (as may be inferred) between Gardoqui and Morgan about the beginning of the year 1788; for before the summer had passed the general subject of attracting

¹ "Confieso a V. E. ingenuamente que partiendo sobre el principio de desconfiar de todos, si algun sujeto me merece algun credito, es este de quien trato, por que su caracter de honorado y habil lo confirman todos a una voz." (*Gardoqui to Floridablanca*, No. 296, 24th October, 1788.)

American settlers had been presented to his government by Gardoqui, and such indications of the royal opinion received as made him confident of the approval which he afterward received.

The proposition of Morgan contemplated a grant to him and his associates of an immense body of land on the west bank of the Mississippi River, extending back and westward through two degrees of longitude, and having a river front from Cape Cinque Hommes to the mouth of the St. Francis. Within this territory the *empresario* was to plant thousands of laborers, farmers, and artisans, and to found the town of New Madrid.

Aside from the provisions for personal recompense to the leading adventurers, which occupy most of the long and formal plans of colonization, there were two or three features that met the present complication of political affairs. It was stipulated that the colonists, if they located within Spanish territory, must take an oath of fealty to the King; on the other hand, they were assured religious toleration, right of unobstructed commerce, and freedom from all disturbance in their navigation of the Mississippi.¹

The arrangement was announced in October, 1788, though

¹ "Con la libre tolerancia de religion, y sin ser molestados en la navegacion del rio Misisipi, con el fin de hallar un mercado libre de derecho para los de sus tierras." (Morgan's accepted plan as reported by *Gardoqui to Floridablanca*, No. 296, 24th October, 1788.)

it had been long before canvassed and the conclusion reached by Gardoqui that he would proceed in some such manner.

The arguments adduced to show how great a safeguard such a colony would be, and how the violence of the Kentuckians would be restrained by Morgan's settlement, were illusive, but Gardoqui wished to believe them, and his government was quite ready to be convinced. Equally fallacious was the pretense that the American settlement established at New Madrid would secure to Spain an exclusive use of the Lower Mississippi, and it is hardly to be supposed that Gardoqui really expected the products of Kentucky and Ohio to be arrested in their voyage down the rivers by so attractive an obstacle as a free port.¹

To the eye of Wilkinson and of Miro, sharpened by self-interest, it was plain that the scheme of Morgan was disastrous to their plan of trade.

The scheme of a free port seemed to them especially objectionable, for it tended to destroy the value of permits and to undermine the importance of the trader who enjoyed the Governor's favor. With the establishment of New Madrid Morgan would become the controller of the commerce of the West, licensed by the royal grant to carry his bargains

¹ "Puerto libre al que el se ha propuesto llamar Nuevo Madrid." (*Gardoqui to Floridablanca*, No. 306, 24th December, 1788.)

free past New Orleans to the outer world. Wilkinson besought Miro to discourage Morgan's enterprise in all possible ways. He wrote that:

"In a political point of view Morgan's establishment can produce no good result, but, on the contrary, will have most pernicious consequences; because the Americans who may settle there will, on account of their proximity to and their constant intercourse with their countrymen on this side of the river, retain their old prejudices and feelings, and will continue to be Americans as if they were on the banks of the Ohio. On the other side, the intention of detaining the productions of this vast country at a point so distant from their real market, whilst the Americans remain the carriers of that trade, can not fail to cause discontents and to embroil the two countries in difficulties. Probably it will destroy the noble fabric of which we have laid out the foundations and which we are endeavoring to complete. If it be deemed necessary to keep the Americans at a distance from Louisiana, let the Spaniards at least be the carriers of the produce they receive in their ports, and of the merchandise which is acceptable to the Americans."¹

The tendency of affairs, however, seemed to leave little room for freedom of action on Gardoqui's part, had he indeed doubted the wisdom of contracting with Morgan.

Baron Steuben had submitted to him a plan of colonization, under which it was proposed to locate four thousand two hundred agriculturists and artisans on the banks of the Mississippi, stipulating for a grant of two million acres, with

¹ *Wilkinson to Miro, 29th February, 1789. Gayarre, History of Louisiana, Spanish Domination, 244.*

privilege of religious toleration to the colonists and right to local government under the general authority of Spain.¹

George Rogers Clark had also forwarded from the Falls of the Ohio, under date of 15th March, 1788, and by the hand of Maj. John Rogers, a similar plan, which he supposed to be the first suggestion of the kind. He wished a grant of land, extending from the thirty-sixth to the thirty-eighth degree of latitude, and measuring back westward from the confluence of the Ohio and Mississippi two degrees of longitude. Upon such territory he was willing to plant colonists, giving out of the general tract one thousand acres to each family; the King to assure religious toleration, and to name the local Governor.²

Gardoqui had also long ago heard of Tardiveau and his scheme of trade between the settlements in Kentucky and the port of New Orleans. As early as July, 1787, he had informed Floridablanca on this point:

“Subsiste un sujeto de la misma nacion en Danville (pueblo de Kentucky), caballero de San Luis, que vive con esplendor y gasta bastante, que la voz general lo cuenta sostenido por su gobierno. Pretendio bajar el Mis-

¹ The entire correspondence with Steuben, and a translation into Spanish of his proposals for colonization is given by Gardoqui. (*Gardoqui to Floridablanca*, No. 252, 18th April, 1788.)

² The letter of Clark and his plan for a colony is given in the despatch of *Gardoqui to Floridablanca*, No. 282, 25th July, 1788.

isipi y pasar al Nuevo Orleans, pero se lo negue con buen modo y estoy siguiendo sus pasos, aunque es casi imposible a tanta distancia y sin comunicacion ni correos." ¹

The importance of Tardiveau, evanescent as it was, increased when Pierre Wower d'Arges² came to Kentucky on a secret mission from Gardoqui to organize a scheme of colonization upon the Lower Mississippi. Those whom he might induce to remove from Kentucky were to be promised liberal grants of land, free right of importing slaves, implements, and other property during two years, free enjoyment of their religion, and an implied guaranty against customs imposts exceeding fifteen per cent.³ D'Arges led Gardoqui to believe that no less than one thousand five hundred and eighty-two Kentucky families⁴ would be induced to come into his plan, and that his potent argument would be the

¹ *Gardoqui to Floridablanca*, confidential, No. 17, 16th July, 1787. The importance and wealth of Tardiveau was entirely overestimated by Gardoqui. He was an intelligent, enterprising Frenchman who sought fortune in the West. While residing at Danville he was a member of the Political Club, and seems to have been respected and esteemed. His earlier history is unknown. He is thought to have removed to Louisiana.

In a document styled "Observations upon the Colony of Kentucky," presumably from Connolly's pen, inclosed in Lord Dorchester's despatch to Lord Sydney, No. 126, 27th August, 1789, it is said: "Lacassang & Co., at Louisville, and Tardezvaus, at Danville, are mercantile houses of note in the interest of France. The latter carried on trade from Bordeaux to the States during the war, and are supposed to have been prisoners at Halifax." This paper will be found in the appendix.

² Frequently called Wouvres.

³ *Perkins, Western Annals*, 486, says 15 per cent; *Gayarre, History of Louisiana, Spanish Domination*, 197, puts it at 25 per cent, but Miro wrote Wilkinson that the duty was to be a uniform rate of 15 per cent. (*Gayarre*, 255.)

⁴ *Gayarre, History of Louisiana, Spanish Domination*, 201

right of trade with New Orleans. It seems incredible that such a migration should have been thought possible. D'Arges, who spent some months at the Falls of the Ohio, had no apparent occupation beyond the amusement of a naturalist. He formed the acquaintance of Tardiveau, and the latter, fired with the possibilities of land speculation, sought Gardoqui with professions of his ability to colonize, and succeeded in enlisting the Count de Moustier, French Envoy, in his behalf.¹ It was discovered by Gardoqui that Tardiveau had two years before represented to the French Home Government the obvious advantages that would follow an occupation by France of New Orleans and Louisiana, and had suggested the seizure.² By this discovery fresh alarm for the Spanish territory was aroused. And withal American immigration continued to flow toward the Ohio Valley. The founders of Marietta were already on their way, under Cutler and Whipple, to found a new New England at the mouth of the Muskingum and reinforce the march of the great West.

Perplexed by these complications, Gardoqui gladly availed himself of the royal permission to close with Morgan.

From that moment the foothold of Spain in North America was destroyed. Time only was required to finish the

¹ *Gardoqui to Floridablanca, No. 314, 4th March, 1789.*

² *Gardoqui to Floridablanca, Secret Despatch No. 19, 11th April, 1788.*

work of American encroachment which the concession of New Madrid and its commercial privileges had begun. The policy of Spain in regard to trade with her colonies had conspicuously weakened. The concession of a uniform fifteen-per-cent customs' duty, once granted and announced, could never be retracted. Though Miro made unremitting opposition to the New Madrid scheme, interposing all sorts of embarrassments to its success, and at last defeating it, the fact of trade was established, and established in a manner that undermined the Spanish prestige and utterly destroyed whatever vague hope there might have been of separating the western country from the Union.

Although his conclusions had been formed and the preliminaries doubtless agreed with Morgan, Gardoqui still in a hopeless and aimless way imagined that in the confusion of events the West might be detached from the Union and drift to a connection with Spain, if not indeed into actual submission to the royal authority.

A better knowledge of the people would have shown him the futility of such an expectation. He would have understood the hopelessness of bringing under Spanish rule and Catholic control and inquisitorial dominion¹ that hardy

¹ Miro was prompt to repudiate the notion that toleration was to import a free right to practice one's own peculiar religion. He thus explicitly instructed Lieutenant Colonel Grandpré, Governor at Natchez, as to any immigrants from Kentucky: "As to religion, you are already aware that the will of His Majesty is that they be not disturbed on that account, but I think it proper that they be made to understand, that this tolera-

and unbending race of Presbyterians and Baptists who had come out of Rockbridge and Augusta to people Kentucky, and impress upon the new State the political and religious features of their faith. The New England colonists at Marietta had come into the West bringing with them the Bible and the sword, as their Puritan forefathers had aforetime done. It was mere madness to expect the allurements or subjection of such a population.

Gardoqui, though four years resident at New York, never acquired a knowledge of the people to whom he was accredited, nor a just conception of their public men. He

tion means only that they shall not be compelled to become Catholics; and it is expedient that this information be conveyed to them in such a manner as to convince them that they are not to have the free exercise of their religion, that is, that they are not to build churches or have salaried ministers of their creed." (*Gayarre, History of Louisiana, Spanish Domination, 202.*)

The design of establishing the Inquisition at New Orleans had long been entertained by unwise zealots in Spain, but the opinions of Charles III were opposed to it. At his death the Capuchin Antonio de Sedella was despatched to New Orleans as Commissary of the Holy Inquisition. This ecclesiastic notified Miro that he would proceed to execute his office, and would perhaps need details of guards to make arrests. Miro had the wisdom and the courage to make a military arrest of the inquisitor and send him back to Spain. He wrote to his government that "the mere name of Inquisition uttered in New Orleans would be sufficient not only to check immigration, which is successfully progressing, but would also be capable of driving away those who have recently come, and I even fear that in spite of my having sent out of the country Father Sedilla the most fatal consequences may ensue from the mere suspicion of the cause of his dismissal." The effect of even a rumor of coming Inquisitorial power upon such staunch and thorough-paced Calvinists as Isaac Shelby, Samuel McDowell, Caleb Wallace, and their associates may be imagined. Had there been no other reason of policy or patriotism, the antagonism of religions, in the then state of religious feeling, would have made impossible any plan for putting Kentucky under Spanish authority. In justice to the Kentucky Catholics, it should be observed that they looked with no less hostility than their Presbyterian and Baptist fellow citizens upon a Spanish ecclesiastical establishment. They were chiefly of English blood and from Maryland, and brought with them the principles of Lord Baltimore and his colonists.

brought with him the diplomatic traditions of his former experience. He assumed that every public man must have his leaning, determined by self-interest, toward some political power other than his own country, and he uniformly acted on the belief that all were approachable. In his ignorance of American character and American ways he continually misconstrued the political characters with whom he came in contact, and continually represented as attached to Spanish interests persons who were utter strangers to the thought. His first estimate of Madison was that he was "a creature of France,"¹ and he was equally confident at another time that a sincere friendship had been established between that statesman and himself.² The informal visits which members of Congress were accustomed to pay, and the perfect freedom of their political conversations, led him to suppose that he was exercising an overmastering influence, when in truth his own opinions and intentions were being sounded.

He expressed his firm belief that Gen. Henry Knox had completely unbosomed himself, in despair of the Republic³ and the necessity of foreign intervention. Richard Henry Lee was reported as completely won over to all that Spain

¹ "Por que el Maddisson, qui vino de Virginia, es criatura de la Francia." (*Gardoqui to Floridablanca, Secret Despatch No. 16, 12th May, 1786.*)

² "Establado con el una amistad reciproca y sincera." (*Gardoqui to Floridablanca, No. 178, 12th May, 1787.*)

³ *Gardoqui to Floridablanca, Secret Despatch No. 16, 12th May, 1786.*

could desire,' and that he would support all measures necessary to carry out the Spanish plan, of which the occlusion of the Mississippi was so important a part.

Col. Henry Lee was "baited," as the minister supposed, by a loan of money, along with John Parker; a supposition not borne out by any vote or speech of theirs or warranted by any history or tradition.

Gardoqui flattered himself, and assured his government, that he had in a large measure formed and maintained a pronounced Spanish opinion in the Atlantic States and among the New England delegates adverse to the interests of the West,² and favorable to a stoppage of the river navigation.³

Judged by his own writings, he must be pronounced singularly deficient in perspicacity and too sanguine by far for a diplomat confronting new and complicated issues. He was in truth completely read and understood by the men whom he thought he was manipulating.

The machinery of the Confederation was so inadequate

¹ "Mi respectable amigo el ex-Presidente Mr. Ricardo Henry Lee, por que es todo nuestro, y Miembro de Virginia en este Congresso, cuya presencia acrobardara a sus concolegas, y es capaz de dar doble consistencia a nuestras ideas." (*Gardoqui to Floridablanca, Secret Despatch No. 16, 12th May, 1786.*)

² "Por que los del norte opinan como nosotros, y los del sur se oponan acerrimos." (*Gardoqui to Floridablanca, 6th August, 1786.*)

³ A memorandum of his conversation with Clinton is given. (*Gardoqui to Floridablanca, Secret Despatch No. 6, 21st November, 1785.*) Mr. Gorham, of Massachusetts, indeed gave color to Gardoqui's report by his avowal in Congress (23d April, 1787), that "the shutting of the Mississippi would be advantageous to the Atlantic States, and he wished to see it sbut." (*Madison Papers, Vol. II, p. 609.*)

to governmental ends, and the powers conferred so restricted that the members of the Continental Congress assembled and acted hardly otherwise than as agents of localities. The reservations of the Articles of Confederation left many occasions for direct conference between a State and a foreign power.

The points of his conversations with Knox, Clinton, Richard Henry Lee, and other influential men are given by Gardoqui in his voluminous despatches. These cover all the public relations and complications that existed or seemed threatened. The expression of individual opinion on the part of delegates in the Congress seems to have been very unreserved. In the then unformed condition of the American government each delegate was (as has already been observed) unfettered to confer with the Spanish Minister; for the States were not yet passed from the union of the Confederation to the more perfect union under the Constitution. The writings of Madison preserve memorials of this significant fact, and give large details of the interviews. Gov. Randolph held communication with Gardoqui through Madison.¹ In March, 1787, Madison and Bingham, of Pennsylvania, had a long private conference with Gardoqui, in which the problem of the Mississippi was discussed and the suggestion ventured by the Spanish Minister that "the people of

¹ *Madison to Randolph*, 2d April, 1787, 2 *Madison Papers*, 629.

Kentucky would make good Spanish subjects, and that they would become such for the privilege annexed to that character."¹ At another time the body of Virginia delegates in Congress in conference with Gardoqui indulged a "free conversation on the western country and the Mississippi." Madison has preserved an account of its points; and notes that Gardoqui "intimated, with a jocular air, the possibility of the Western people becoming Spanish subjects."²

The element of secrecy was singularly absent from all these conferences. The delegates communicated and discussed them freely among themselves, and published them by their correspondence.³

It does not at all appear that there ever was one member of the Congress, or a single public man, other than Gen. James Wilkinson, Judge Benjamin Sebastian, and Dr. James White, Superintendent of Indian Affairs, with whom any corrupt relations were established, or to whom the thought of a traitorous bargain occurred. The virulence of party feeling and personal rivalries filled the air for twenty years with injurious insinuations or defamatory charges; but time has cooled the passions that then raged, and investigation

¹ *Madison Papers*, Vol. II, p. 592.

² *Madison Papers*, Vol. II, p. 601.

³For example, Madison's account to Jefferson (*Madison Papers*, Vol. II, p. 622), and Brown's account to Madison of his conference with Gardoqui, as confirmed by Madison in his letter of 11th October, 1834, to Mann Butler. (MS. in the writer's possession, but published in *Butler's History of Kentucky*, edition of 1836, p. 518, and in *Collin's History of Kentucky*, Vol. I, p. 329.)

vindicates the purity of American public men of the period. The same justice that must vindicate Madison from the charge of being a creature of France, afterward converted to a Spanish partisan, and Richard Henry Lee, and Bingham, and Brown of intrigues and conspiracies, and Henry Lee and Parker of suspicion of bribe-taking, rejects the charge that Gorham was willing to divide the country in order that Massachusetts might secure a market for fish, or that Clinton viewed with dissatisfaction the prosperity of the West, or that Knox sighed for the strong intervention of a foreign power in American affairs. It must alike establish the patriotic fair fame of those soldiers of the Revolution who pushed the American advance guard to the Scioto, the Cumberland, the Kentucky, and to the banks of the Mississippi.

The attention of Congress was so absorbed in anxious watch of the votes upon the adoption of the Federal Constitution that all consideration of the Kentucky memorial was deferred. Brown had already presented the proceedings of the Danville Convention of 1787 and the request of Kentucky for admission as a member of the Confederation.¹ The consideration in committee of the whole, fixed for four days later, was deferred indefinitely. On May 30th Congress named the ensuing Monday for consideration of the matter,² and on 2d June, 1787, the Kentucky delegate had the

¹ 29th February, 1788. *Journals of Congress*, Vol. IV, p. 811.

² 30th May, 1788. *Journals of Congress*, Vol. IV, p. 819.

supreme satisfaction of carrying through the Committee of the Whole a report moved by Mr. Otis of Massachusetts:

“That, in their opinion, it is expedient that the District of Kentucky be erected into an independent State, and therefore they submit the following resolution. That the address and resolutions from the District of Kentucky, with the acts of the legislature of Virginia therein specified, be referred to a committee consisting of a member from each state, to prepare and report an act acceding to the independence of the said district of Kentucky, and for receiving the same into the union as a member thereof in a mode conformable to the articles of confederation.”¹

On the following day, June 3d, Congress by resolution (apparently unanimous) agreed to the report, and designated the special committee that should prepare the necessary legislation, Williamson of North Carolina, Hamilton of New York, Arnold of Rhode Island, Baldwin of Georgia, Dane of Massachusetts, Kearney of Delaware, Gilman of New Hampshire, Brown of Virginia, Clarke of New Jersey, Tucker of South Carolina, and Read of Pennsylvania, were selected.² The committee without difficulty agreed upon the draft of the act, but before it could be reported for passage news came in from the north that disconcerted the plan. On the 2d of July it was announced that New Hampshire had transmitted her ratification of the Federal Constitution

¹ *Journals of Congress*, Vol. IV, p. 819.

² 3d June, 1788. *Journals of Congress*, Vol. IV, p. 819.

"and the same being read, the president reminded Congress that this was the ninth ratification transmitted and laid before them."

The great change was accomplished. The action of New Hampshire inaugurated the Constitutional Republic of America; for by the terms of the new organic law it was provided that

"The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same."

The States which, as members of the Confederation, had entertained the memorial of Kentucky, all save four, were now component parts of a new government, bound by that new and inspired instrument that spoke in the name of the people of the United States, and prescribed allegiance to "a more perfect union."

The old bonds were relaxed, the powers of the old system vanished, save only as they might serve for putting in motion the powers of the new. The governmental work of the Confederation was done; it only remained for the Continental Congress to fix a day on which electors should be chosen in the ratifying States.

The ratification by New Hampshire (21st June) was but a week earlier than that by Virginia (26th June).

¹ 2d July, 1788. *Journals of Congress*, Vol. IV, p. 827.

It was very plain to the Congress that power to receive a new State was no longer one of its functions. The Confederation could not do so, for it was practically at an end; nine of its thirteen members were withdrawn. The Continental Congress had no powers under the new Government in such a matter, for new States could only be received by the Congress that should convene under the Constitution.

The particular result as to Kentucky was a bitter disappointment to that delegate whose every energy had been bent to procuring action that would admit Kentucky while yet the Confederation lived and possessed power. The hopes of his people were dashed; possibilities of disorder loomed up. He discerned misrepresentation, dissension, and trouble in the near future. He was the youngest member of the Continental Congress, and its last survivor; and during the fifty years of his after-life he ever regretted that during the month of June, 1788, his friend Madison had not been present to give his powerful and persuasive aid to the establishment and admission into the Union of the new Commonwealth of Kentucky.¹

¹ John Brown, born near Staunton, Va., 12th September, 1757, died at Frankfort, Ky., 28th August, 1837. At the age of 19, while a student at Princeton, he had John Witherspoon's written permission to leave college "in good standing" for the purpose of joining La Fayette as a volunteer *aide*. He subsequently studied at William and Mary. His public life began in the Virginia Legislature, as senator from the three counties composing the District of Kentucky. In 1787 and 1788 he was a delegate

The Congress reached a right conclusion, it must be admitted, when, thus notified of the operative ratification of the new Constitution, it at once considered the necessity of discharging its committee from further consideration of the Kentucky business. A resolution to that effect was carried, and a final vote on the recognition and acceptance of Kentucky was taken next day (July 3d).

The act already prepared by the committee was called up and its passage moved by Brown, hopeless as he must have been of success. The logic of the situation was all with the substitute moved by Mr. Dane of Massachusetts, and seconded by Mr. Tucker of South Carolina. It was temperate and conciliatory in language, perfectly fair and accurate in its statement of the facts, and it embodied a series of explanations and reasons that were indisputably sound.

The Virginia delegation voted against the proposition to consider Dane's substitute in advance of a vote on the proposed act, and they had the unsubstantial excuse that as yet no official advices of Virginia's ratification had been received. But when, overruled by the voices of all the other States, the direct vote upon Dane's substitute was reached, Brown held his peace, and his colleagues united with the majority so evidently right. As the record has it:

from Virginia to the Continental Congress, and became a member of the first Congress convened under the Constitution, serving as such until the admission of Kentucky as a State, when he was chosen her first senator. This position he filled from 1792 to 1805, when he retired from public life.

“ So it passed in the affirmative, as follows :

“ Whereas, application has been lately made to Congress by the legislature of Virginia and the district of Kentucky for the admission of the said district into the federal union as a separate member thereof, on the terms contained in the acts of the said legislature and in the resolutions of the said district relative to the premises; And whereas, Congress, having fully considered the subject, did, on the third day of June last, resolve that it is expedient that the said district be erected into a sovereign and independent state and a separate member of the federal union, and appointed a committee to report an act accordingly, which committee, on the second instant, was discharged, it appearing that nine states had adopted the constitution of the United States lately submitted to the conventions of the people; And whereas, a new confederacy is formed among the ratifying states, and there is reason to believe that the State of Virginia, including the said district, did, on the 25th of June last, become a member of the said confederacy; And whereas, an act of Congress, in the present state of the government of the country, severing a part of the said state from the other parts thereof, and admitting it into the confederacy formed by the articles of confederation and perpetual union, as an independent member thereof, may be attended with many inconveniences, while it can have no effect to make the said district a separate member of the federal union formed by the adoption of the said constitution, and therefore it must be manifestly improper for Congress, assembled under the articles of confederation, to adopt any other measures relative to the premises than those which express their sense that the said district ought to be an independent member of the union as soon as circumstances shall permit proper measures to be adopted for that purpose :

“ Resolved, That a copy of the proceedings of Congress relative to the independency of the district of Kentucky be transmitted to the legislature of Virginia, and also to Samuel McDowell, Esq., late president of the said convention, and that the said legislature and the inhabitants of the district aforesaid be informed that, as the constitution of the United States is now ratified, Congress think it inadvisable to adopt any further measures for admitting the district of Kentucky into the federal union as an independent

member thereof, under the articles of confederation and perpetual union ; but that Congress, thinking it expedient that the said district be made a separate state and member of the union as soon after proceedings shall commence under the said constitution as circumstances shall permit, recommend it to the said legislature and to the inhabitants of the said district so to alter their acts and resolutions relative to the premises, as to render them conformable to the provisions made in the said constitution, to the end that no impediment may be in the way of the speedy accomplishment of this important business." (*Journals of Congress*, Vol. IV, p. 830, 3d July, 1788.)

The Conference with Gardoqui.

The number and freedom of Gardoqui's interviews with the members of Congress, singly and in delegations, has been noticed, as has been the freedom with which they were discussed in conversation and correspondence.

One of these needs particular notice as bearing on the current political history of Kentucky, and because of the amount of personal bitterness that was engendered by the different constructions that were put upon it.

There are several sources of information as to the fact, the details, the purpose, and the use made of the conversation that passed between John Brown, delegate in Congress from Virginia representing the District of Kentucky, and Don Diego de Gardoqui, the Spanish Minister, in July, 1788.

Its history was not written, even by an unfriendly hand, until Marshall, in 1812, poured out in his *History of Ken-*

tucky the intense feeling, personal, political, and religious, that had rankled for nearly thirty years. It was not till 1834 that Madison's consultative knowledge of the interview and his counsel to Brown was made public. The account given by Gardoqui to his government has not until this time been accessible.

On the 25th July, 1788, Gardoqui recounted in a despatch to Count Floridablanca the particulars of a conversation concerning affairs in the West which he had had with Brown a few days before.

That paper read as follows :

"In my despatches of 18th April, I had the honor to inform your Excellency of that movement which the District of Kentucky had renewed in consequence of the consent given by Virginia (of which it forms a part) to its recognition and admission by Congress as a sovereign, independent State. The matter was agitated vigorously of late, and a committee named, composed of one member from each state, and afterwards upon consideration (as the order of the day) in a general session of Congress, it was agreed that the demand was just; though, in view of the various circumstances of the time, it was referred to the new Government. This determination was very distasteful to those who promoted the separation of the District, and particularly so to Mr. John Brown, a landed proprietor and resident in that District, who was interested in that matter, among others, as member in Congress. Finally the business was passed over to the new Government,¹ in which the State of Virginia will be included as part, because of her consent to join the confederation, given before the fourth of the present month. Foreseeing some of these occurrences, I took occasion during the past year

¹ On 3d July, 1788.

to cultivate the friendship of the aforesaid Brown, and to introduce such topics as I thought would produce good results. Our friendship gradually increased and my sentiments naturally made an impression on him, inasmuch as they touched upon those obstacles, imposed by our treaties with other nations, which forbade us according any extension of favor to his section of country while pertaining to the United States, artfully insinuating that only themselves could remove the difficulty; inasmuch as if separated they would afford excuse for regarding them as an interior District without maritime designs, and perhaps we could devise some plan for adjusting the markets so much needed in some of our possessions. I carefully observed his appearance as I told him this, and it seemed to me that I could discern the satisfaction it gave. He said he would reflect upon it, and would see me and talk at leisure upon the subject. Several days passed and he came to this house, where, a few days since, we had a long conversation in which we renewed the subject, and I repeated the same and other observations. He seemed quite satisfied and obliged to me, and admitted, in confidence, that he had, by a messenger who had left some days before, communicated to his constituents the decision of Congress concerning the separation, referring to the favorable disposition he had discovered in me, and, in short, that he hoped to communicate matters of importance productive of benefit to that country. He told me, in conclusion, that this month the Convention would meet, and that he expected it would resolve upon the erection of an independent state; that he expected to leave this place the 1st of August, and that he would arrive in time to inform and aid what he had discussed with me, for he deemed it a very fit and important subject for consideration, and for the present he thanked me for himself and in the name of all the country, which would be under lasting obligations to me. This, your Excellency, is another element of this arduous business, in which I believe that now more than ever it behooves us to take occasion to make sure for ourselves without incurring resentment of others. I beg that your Excellency will condescend to inform me if this has the approbation of His Majesty, and that the elevated understanding of your Excellency will direct me, so that if any sudden occasion should occur I may meet it effectively and without clash, which I confess seems difficult.

"Your Excellency is aware that the power His Majesty has deigned to confer on me mentions the "United States," and will serve to direct me if occasion offers to do any thing within its scope. I think we need not be disturbed by the English intrigues for obtaining the friendship of that District, because its inhabitants well know how infinitely important to them is communication and friendship with their neighbors of the Lower River who have that which they need, and the Port which naturally pertains to their country.

"It is more than likely that the before-mentioned member will again see me before he departs, and I will not lose an opportunity of forwarding affairs or of informing your Excellency of what may have occurred. In the mean time I conclude, again submitting myself to the orders of your Excellency, and praying that God may guard the life of your Excellency many years.

"New York, 25th July, 1788. Most Excellent Sir, I kiss the hands of your Excellency.

"Your most obliged and obedient servant,

"DIEGO DE GARDOQUI."¹

It is not possible to ascertain with certainty who were the others, if any, that participated in the conversation detailed by Gardoqui. But the probability would seem to be that some of the Virginia delegates may have done so. The conversation was "a few days before" the 25th. It appears that Madison had already returned from Virginia to his place in Congress at New York. The journals show him voting on the 17th.² He had hastened from Richmond to New York immediately after the vote of 26th June, by which

¹ *Gardoqui to Floridablanca, No. 279, 25th July, 1788.*

² *Journals of Congress, Vol. IV, p. 837.*

the Virginia Convention ratified the Constitution of the United States.¹

In New York his lodgings were in the same house with Brown, as appears from his references to the "mess" or "family," and messages to its members, conveyed in his correspondence with Brown,² and their relations were those of intimate friendship. It would seem possible, therefore, that Madison himself was present, as he certainly was fully advised of the overtures of Gardoqui. His recollection of the facts did not go to that extent when he gave them in 1834, though he then distinctly remembered and verified from his manuscripts that the conversation was certainly "communicated to me by Mr. Brown," if not actually taken part in by himself.³ The suggestion of Gardoqui, that by mere creation of the new State a mode of accommodation as to the navigation of the Mississippi could be arrived at, was far more moderate and practicable than that which had already been broached by him to Madison and Bingham,⁴ and to the collective delegation of Virginia.⁵ And it evidently proceeded upon that idea of Gardoqui's which Madison had long since penetrated, that Spain had no expectation or

¹ *Washington to Madison*, 23d June, 1788. In *Bancroft's History of the Constitution*, Vol. II, p. 471.

² *Madison to Brown*, 9th April, 1788; *Madison to Brown*, 27th May, 1788; MSS.

³ *Madison to Mann Butler*, 11th October, 1834, given in *Collins' History of Kentucky*, Vol. I, p. 329. The MS. is in the writer's possession.

⁴ *Madison Papers*, Vol. II, p. 590, and following.

⁵ *Madison Papers*, Vol. II, p. 599, and following.

desire of having the western people as "refractory subjects," but wished rather to find them "friendly neighbors,"¹ and that beneath all the forms and bluster of diplomacy was the serious fact that from mere necessity and to secure safety from violence and invasion of the Spanish dominion, "*trade through the Mississippi would be winked at.*"²

The course presented to the representative of the Kentucky District was one of delicacy and onerous responsibility. He now knew unmistakably from the lips of the Spanish Minister that nothing beyond a pretext, such as would evade the complications of an old diplomacy, was sought for permitting the people of the West to enjoy the natural advantages of their geographical position. It was now definitely admitted that "trade through the Mississippi would be winked at" until a formal international treaty could be concluded, if only some excuse like the declaration of a new State could be presented as a palliative to Spanish pride of opinion.

There was room for casuistry whether the agreement for separation and for the erection of a new State, already concluded between Virginia and Kentucky, had totally fallen to the ground by reason of non-action on the part of the Continental Congress, or whether that agreement could yet be

¹ *Madison Papers*, Vol. II, p. 601.

² *Madison Papers*, Vol. II, p. 593.

regarded as existent and as forming a legitimate basis for an application by Kentucky to the Congress, assembled under the Constitution, for prompt admission into the Union.

The Continental Congress had by its resolution of the 3d July at least given color to the thought that nothing more than a modification of existing legislative and convention acts was requisite. No new agreement between the State and the District consenting to separation was indicated as necessary. The existing acts were considered a sufficient basis. The Congress, therefore, deemed nothing necessary further than to "recommend it to the said legislature and to the inhabitants of the said district so to alter their acts and resolutions relative to the premises as to render them conformable to the provisions made in the said constitution, to the end that no impediment may be made in the way of the speedy accomplishment of this important business."¹

It was provided in the recently ratified Constitution (Art. IV, Sec. 3), that new States might be admitted by the Congress into the Union, and the restriction upon forming new States by partition of an older Commonwealth lay in a requirement prescribed in the same section, that the consent of the States concerned as well as that of Congress should first be given.

The argument, from this point of view, was the obvi-

¹ *Journals of Congress*, Vol. IV, p. 830.

ous and quite forcible one that Kentucky and Virginia had already consented and fully agreed between themselves, and that it was competent, in view of that agreement, for Kentucky to declare it and present herself at once to Congress as a candidate for admission.

It was no doubt the opinion of Brown and his colleagues of the Virginia delegation that this course of procedure would be admissible, and they doubtless felt how important to the public tranquility was the "speedy accomplishment of this important business" that might thus be obtained. They were unquestionably alive to the arguments which considerations of public expediency suggested. It was easy, as they saw, to placate the opposition that had jeopardized the acceptance of the Constitution and to convert the Kentucky representatives who had opposed ratification into zealous supporters of the new government, by demonstration of the fact that under its workings the interests of the West were safe and could be speedily cared for. Patrick Henry, William Grayson, and others had strenuously objected to the new Constitution, that its adoption would ruin the West. James Monroe had doubted if the navigation of the Mississippi could be had under the new Government. And the Kentucky representatives in Virginia Convention largely shared these fears and followed the lead of Henry.

Under these circumstances it was decided by Brown and

Madison that it would be highly inexpedient to give any general publicity to Gardoqui's suggestions and overtures. The state of the public mind forbade it.'

Two persons only in Kentucky were informed of what had occurred, and it is to be noted that against the patriotic integrity of neither of these has a word ever been uttered or an insinuation suggested. Samuel McDowell was one of the two who received confidential information of what had been said by Gardoqui. The reasons for communicating with him were both public and personal. He was justly possessed of the entire confidence of the West. His career had been a long one of military and civil service, marked by unimpeached uprightness and wisdom. He had presided in all the Kentucky conventions, and the weight of his character and the soundness of his patriotism had inspired in the statesmen of Virginia a feeling of security as to the moderation and justness of the action that might be taken in the deliberative bodies of the District, and of certainty that his opinions would greatly influence public conclusions. It was

¹ "My recollection, with which reference to my manuscript papers accords, leaves no doubt that the overture was communicated to me by Mr. Brown. Nor can I doubt that, as stated by him, I expressed the opinion and apprehension that a knowledge of it in Kentucky might, in the excitement there, be mischievously employed. This view of the subject evidently resulted from the natural and known impatience of the people on the waters of the Mississippi for a market for the produce of their exuberant soil; from a distrust of the Federal policy produced by the project of surrendering the use of that river for a term of years, and from a coincidence of the overture in point of time with the plan on foot for consolidating the Union by arming it with new powers," etc. (*Madison to Mann Butler*, 11th October, 1834.)

important that he of all men in Kentucky should be fully informed of all that was likely to affect the affairs of the West, not only that his judgment might assist in arriving at right conclusions, but that his wise policy as a presiding officer might control dangerous debate and steer the conventions clear of unprofitable or irritating questions. His experience as member of the Supreme Court of the District made his opinion on questions of law that were involved very important.

Besides these very sufficient public reasons, there were considerations of a personal character that induced Brown to communicate with McDowell. Between the two families there had existed an ancient and close intimacy antedating their migration from the North of Ireland to Burden's Grant in Virginia. In the days when religious dissent was still frowned upon by the Virginia law, the father of McDowell (John McDowell) and the grandfather of Brown (John Preston) were elders of the Presbyterian congregation that worshiped at Tinkling Spring, within the presbytery of which the elder John Brown was a minister at New Providence and Timber Ridge. Brown was known to McDowell from his infancy, and the confidence was mutual.¹

¹ *Deposition of Samuel McDowell, September, 1812, in the suit of Harry Innes against Humphrey Marshall.* The papers of this suit were quite recently discovered by the writer in the archives of the Mercer Circuit Court. The record contains depositions of many of the leading participants in early Kentucky affairs, which will be referred to in another place.

The other person in Kentucky whom it seemed proper to inform was George Muter, Chief Justice of the District. The propriety of doing so lay in the fact that his opinion would have much influence as to the legality of an immediate application to Congress for admission to the Union based upon the action already taken by Virginia. Beside this, his long service as Quartermaster of Virginia during the Revolution had made Judge Muter well known to all the prominent personages of that State. He was eminently a connecting link between the two peoples, and his patriotism was indisputable. But he was vascillating as compared with the strong men with whom he came in contact, easily influenced as events proved, and neither wise enough to keep counsel nor vigorous enough to permanently command the respect of contending parties.¹

Under the cautious advice of Madison the communication of Gardoqui was thus kept from the knowledge of all persons in Kentucky save McDowell and Muter. Neither Shelby nor Wallace nor Innes was informed, nor did Brown think it proper to let his brother James know of it.

The letter which Brown wrote McDowell was destroyed by accident, but its tenor and a vindication of the writer was published eighteen years afterward by Judge McDowell,²

¹ *Marshall, History of Kentucky*, edition of 1824, Vol. II, p. 78.

² The publication by McDowell, dated 4th August, 1806, is given in full in *Littell's "Political Transactions in and Concerning Kentucky"* (Frankfort, Ky., 1806), where it

and at a still later date deposed to by him in a suit brought by Innes against Humphrey Marshall for libelous publications.¹ The letter to Muter was made public, and it is presumable that the two were in substance the same, and forwarded by the same chance conveyance westward.

Under date of July 10, 1788, Brown explained to Muter the causes that had defeated the Kentucky application, and expressed his belief that the simultaneous admission of Vermont or Maine would be insisted on by the Eastern States as a condition coupled with Kentucky's admission. He alluded to the jealousy even then discernable between the sections, and which he feared might continue under the new government. He distinctly defined the question confronting the people of Kentucky, as being narrowed to "whether or not it will be most expedient to continue the connection with the State of Virginia or to declare their independence and proceed to frame a constitution of government."

He clearly intimated his opinion that the movement for a separate State government had gone too far to be abandoned, and that admission into the Union was too urgently necessary to await the tedious delays that had marked Kentucky's former application. It is evident that he had become

appears as Appendix No. XVIII. It is given in the appendix to this paper. No correct estimate of early Kentucky political development can be made without a careful perusal of this thrice rare little volume by Littell.

¹ *Deposition of Samuel McDowell* in the suit of Innes against Marshall, Mercer Circuit Court.

convinced that the proper and expedient method of procedure was for the July Convention to frame a constitution for the new State and forward it at once to Congress, accompanied by a formal application for admission into the Union. On the subject of the Gardoqui conversation he wrote thus :

“In private conferences which I have had with Mr. Gardoqui, the Spanish minister at this place, I have been assured by him in the most explicit terms, that if Kentucky will declare her independence, and empower some proper person to negotiate with him, that he has authority and will engage to open the navigation of the Mississippi for the exportation of their produce on terms of mutual advantage; but that this privilege can never be extended to them while part of the United States, by reason of commercial treaties existing between that Court and other powers of Europe. As there is no reason to doubt the sincerity of this declaration, I have thought proper to communicate it to a few confidential friends in the district, with his permission, not doubting but they will make a prudent use of the information which is in part confirmed by despatches yesterday received by Congress from Mr. Carmichael, our minister at that court, the contents of which I am not at liberty to disclose.

“Congress is now engaged in framing an ordinance for putting the new government in motion; it is not yet completed, but as it now stands, the elections are to be made in December and the new congress to meet in February, but it may undergo alteration. Ten states have ratified—this State¹ is now in session—what the result of their deliberation will be is yet doubtful; two-thirds of the members are opposed to it, but 'tis probable they may be influenced by motives of expediency. N. Carolina will adopt—time alone can determine how the new government will answer the expectations of its friends; my hopes are sanguine, the change was necessary.”²

¹ New York.

² *Brown to Muter*, 10th July, 1788. This letter is given in full by Marshall, who had it from Muter. (*History of Kentucky*, edition of 1812, Vol. I, pp. 337, 340.

When, at a later period, the rivalry between Brown and James Marshall (candidates seeking to represent Kentucky in the second Congress under the Constitution) aroused an active canvass, the conversation with Gardoqui and the letter received by Muter was made the basis of a very persistent and angry attack upon Brown's public fidelity. The public debates must have satisfied the people, for Brown was returned to Congress by an overwhelming majority, and soon after was unanimously chosen Senator. The sentiments of the leading men of the time are to be gathered from their testimony given in after years before courts and legislative committees.

It was not till 1806 that Brown had opportunity before the legislature of Kentucky, when Sebastian was under impeachment,¹ to testify under oath and repel the charge and explain his actions and his motives. From his MS. memoranda of his testimony so delivered his version can be briefly

¹ The legislative investigations into the conduct of Sebastian, charged with having accepted (in 1795) a pension of two thousand dollars from Spain, are contained in the very scarce "*Report of the Select Committee to whom was referred the information communicated to the House of Representatives charging Benjamin Sebastian, one of the Judges of the Court of Appeals of Kentucky, with having received a pension from the Spanish Government.* Frankfort, Ky. From the press of J. M. Street. 1806." In this report the committee embodied a statement of the substance of the testimony given by the several witnesses called before them. The witnesses examined under oath were Thomas Bullitt, Charles Wilkins, James T. Martin, Christopher Greenup, Richard Steele, Wingfield Bullock, Daniel Weisiger, Harry Innes, Joseph Hamilton Daviess, John Brown, Thomas Todd, Joseph Crockett, Achilles Sneed, and George Madison. The documents referred to by the witnesses are also printed. The writer of this paper has given an extended account of this report and the proceedings upon it in an address delivered at the centennial celebration of Frankfort, Ky., 1886.

stated. "The fact is," said Brown, "that from 1785, when the first convention met at Danville, on the subject of a separation from the State of Virginia, till 1792, when Kentucky was admitted into the Union as a separate State, no motion was at any time made, either in convention or to the people, to separate from the Union and form an alliance with Spain; nor was any measure to that effect discussed or advocated by any man. The proposition of Mr. Gardoqui originated with himself, and was suggested by him in conversation on the subject of his negotiation with Mr. Jay, and was communicated by me to Col. Muter and Col. McDowell, Judges of the Supreme Court, in reply to letters from them requesting whatever information I might obtain relative to that negotiation. At the date of my letter to Muter I intended to write letters of the same import to other friends who corresponded with me, but upon further reflection, and more especially after an interesting conversation with a highly distinguished statesman of Virginia' relative to Gardoqui's project, I deemed it inexpedient to make any further communication on the subject, the public mind of Kentucky being in a high state of excitement in consequence of the rejection by Congress of the application to be admitted into the Union as an independent State."

He strongly protested that never had he, nor any one in Kentucky to his knowledge, entertained a thought of trans-

' Madison.

ferring the allegiance of his people, or of dismembering the Union, or forming any political connection other than with the States and by admission into the Confederation as it first was, or the Union as perfected under the Constitution.

The "History of Kentucky," by Humphrey Marshall, first put forth in 1812, is, so far as it treats of political matters, unfortunately more of a controversial pamphlet than a dispassionate recital of events. The author possessed large abilities; he had resided in Kentucky for nearly thirty years, and he had been, as he continued, a political partisan of the most determined kind. That he was very sincere in his own political views can not be questioned, and he possessed many qualities that commended him. But he was unfortunately blind to the existence of any thing like virtue or probity in those whose views differed from his own. His judgments were intemperate wherever controversy or difference of political faith aroused the spirit of aggressive antagonism that characterized him. He boldly charged upon Brown a wicked purpose to put Kentucky under Spanish domination. It may be conceded that he believed the charge true, but singularly enough he neither quotes nor refers to the testimony of contemporaries nor appealed to their intimate knowledge of men and facts.¹

¹ The quotations by Marshall in the eighth chapter of his first edition (*History of Kentucky*, edition of 1812, Vol. 1, p. 341, *et seq.*) disclose the unusual attempt by an author to use his own anonymous newspaper communications as historical proof of his own statements as a historian.

How completely the historic temperament was lacking in him may be illustrated by his estimate of Dr. Franklin, penned more than twenty years after that great man's death, summing him up as "that singular composition of formal gaiety; of sprightly gravity; of grave wit; of borrowed learning; of vicious morality; of patriotic treachery; of political folly; of casuistical sagacity and republican voluptuousness—Doctor Franklin."¹

In his relations toward public personages in Kentucky, Marshall was pronounced and courageous, but scarcely ever just. His praise of Muter's integrity was unbounded in 1788, but it degenerated into a profound distrust when he was placed upon the Appellate bench of the new State in 1792, and was followed by unmeasured denunciation of him and the court when the decision in the case of *Kenton v. McConnell* was rendered in 1795. From that day Nicholas, the successful lawyer in the case, was added to the list of men whom Marshall classed as the enemies of his country. The services of Nicholas in the Virginia Convention, where (by Bancroft's classification) he stood among the ablest advocates of the ratification of the Federal Constitution, and where he sustained debate against Patrick Henry, availed nothing in the judgment of so determined an adversary.

¹ *Marshall's History of Kentucky*, Vol. I, p. 180, edition of 1812. The passage is omitted in the edition of 1824.

The cloud of his denunciation came in turn upon John Breckinridge and then upon young Henry Clay. With Innes there was never ending war. Each detested the other. One was sincerely religious; the other objectionably profane.¹ One was attached to Jefferson politically and personally; the other a Federalist of the ultra school. Each inaugurated proceedings in Congress seeking the destruction of the other. Innes procured a resolution of the Kentucky Legislature requesting an inquiry by the United States Senate into the moral fitness of Marshall for membership of that body. Marshall introduced into Congress a measure looking to an impeachment of Innes for malversation in his office of District Attorney of the United States.

Both failed, and a calmer view after so many years makes it reasonably certain that it was wise in Congress to drop both sets of charges. Even then it was apparent that neither could fairly judge the other. The tranquil mind of Washington, who knew both men, judged rightly that Thomas Marshall was wrong in suspecting Innes of Spanish intrigue, and that Innes was equally in error in the intimation thrown out that the visit of Connolly, the British emissary, to Col. Thomas Marshall had an ominous purpose. Until 1816, when Innes died, this unrelenting personal hostility contin-

¹ His kinsman says of him: "Humphrey Marshall was violent, profane, and irreligious." (*Paxton, Genealogy, &c., Marshall Family*, p. 81.)

ued, varied with all the phases of threat, charge, denunciation, and suit for libel.¹ No sooner was the printing press available for the uses of controversy in the West, than "Observer," "Vindex," "Publico," and "Coriolanus" waged a war of mutual recrimination, in a style and with a use of epithet plainly modeled upon the writings which Cobbett was launching from his press at Philadelphia.²

He who would candidly survey the history of that early time will be cautious lest the charges which political antagonism suggested or exaggerated be mistaken for pure history. It will be safer to appeal to other and more dispassionate evidence than Marshall offers in his book. A careful investigation of this subject is indeed eminently proper, because of the fact that great injustice was done in the fiercely partisan presentation of the subject by the historian Marshall. He succeeded in giving an erroneous coloring which has never been wholly done away with, and it is only by a rigid scrutiny of the facts that the injustice can be removed and the honorable reputation of good and earnest patriots vindicated.

¹ In 1815, after thirty years of war, Innes and Marshall agreed to cease their strife, and in future to speak respectfully each of the other. It was an ill-kept agreement on Marshall's part. Innes died in 1816. Marshall republished and amplified his *History* in 1824. The correspondence leading to this agreement is in the possession of Harry I. Todd, Esq., Frankfort, Ky. It will be borne in mind that Col. Thomas Marshall was father of John Marshall, Chief Justice of the United States, and uncle to Humphrey Marshall, the historian. Humphrey Marshall married his cousin, a daughter of Thomas Marshall. Another daughter was the wife of Joseph Hamilton Daviess.

² The style of political writing that then obtained had its most influential example in Cobbett's scurrilous "Writings of Porcupine."

It has been seen what was Gardoqui's account to his own government of his conversation with Brown, and it is to be noted that he does not claim Brown as an adherent nor as converted to Spanish interests. How Madison regarded the matter, how immediate was his knowledge of it, and what was his advice to Brown appears in his letter of 1834, already referred to. And the explanation of Brown and his asseverations of the correctness of his motive and his action were given under the sanction of his oath.

It is worth while to inquire what was the judgment of the men of the time, and what were the facts as they knew them.

There was a body of able and truthful public men in Kentucky who were never accused of complicity in any intrigues, and of course were not. They gave their testimony in the suits for libel which Harry Innes brought against the historian Marshall, as author, and Street, the newspaper proprietor, as publisher, and their statements under oath are worthy of credence, and should settle forever the dispute. The papers in these old cases were recently found. The testimony was taken early in the century, and ever since that has slumbered in unopened bundles of ancient court papers. It is now for the first time that this conclusive exposition of the question is brought to light. The statements of these men of early time may solve the dispute.

Isaac Shelby testified in the suit for libel brought by Innes against Marshall thus:

"Ever since the plaintiff's (Innes') removal to Kentucky in 1784 or 1785, I have been in the habits of intimacy with him, have frequently and freely conversed with him on political subjects both as related to Kentucky and also to the United States. In none of these conversations did I ever hear him express one sentiment disrespectful to the Government of the United States, and I say positively that he never uttered an expression to me or in my hearing, of which I have the least recollection, that could induce a belief that he wished a dismemberment of the Union by erecting Kentucky into a separate State independent therefrom. I am confident he never expressed in my hearing the smallest insinuation of his desire to form a connection with the Spanish Government in no respect." (2d Answer.)

"I was a member of nearly all the early conventions held at Danville, but can not certify the particular years. I have a recollection of most of the important subjects that were discussed. In no convention of which I was a member did I ever hear a motion or proposition made by any member to separate Kentucky from the United States and form a connection with Spain. Such a proposition, in my opinion, and the author of it, would have been treated with scorn and contempt in every convention of which I was a member." (7th Answer.)

"I have said I can not identify years. I know I was present when Wilkinson's memorial was read by himself. I recollect the impressions it made on the minds of those I conversed with, but can't state the year. There was but few of the early conventions of which I was not a member; and when I was not a member I often attended the debates and mixed amongst the members, and do say confidently that I never did hear, nor was I ever informed, that any member of any convention had made or advocated a proposition to separate Kentucky from the Union, to establish it into a separate Government and form a connection with any foreign power. I well recollect the people of Kentucky, previous to our separation from Virginia,

was warmly and firmly attached to the union of the United States, and in my opinion any proposition to sever them from that Union would have met their universal disapprobation and contempt, come from whom it might." (8th Answer.)

"I have heard Mr. John Brown speak of his conversation with Gardoqui, the Spanish Minister, but he never expressed a sentence to me that I understood as having any design to attach this country to Spain—on the contrary, I have had more conversations with Mr. Brown on the subject of a separation of Kentucky from Virginia than with any other person, from the year 1784 to the year 1792, and declare that he never did in my hearing express a desire to separate upon unconstitutional principles." (Ans. 6th cross-interrogatory.)¹

Samuel McDowell also testified:

"I was the president of the convention in July, 1788, and did receive a letter from Mr. Brown on the subject of the separation, which had been postponed by congress." (Answer 1st.)

"About the time alluded to (*i. e.*, the Convention of July, 1788), upon showing to the plaintiff Innes the paper enclosed in Mr. Brown's letter, he said, 'It will do,' 'it will do,' and an allusion was made to Vermont which, it was said, was invited into the Union, which would be the case with respect to Kentucky if erected into an independent State." (Ans. 2d.)

"I was well acquainted with the plaintiff (Innes) while he resided in Danville, and both before and since, but never knew or heard that he was concerned in the Orleans or Mississippi trade." (Ans. 4.)

"I have known the plaintiff (Innes) since about the year 1773 or 1774, and ever since, and I always considered him a man of good character and of good understanding, and never heard otherwise until the publications in the *Western World* about the Spanish conspiracy." (Answer to 1st Q. by plff.)

¹ *Deposition of Isaac Shelby*, 25th August, 1813, in the suit of Innes against Marshall, Mercer Circuit Court.

“Question: Were you generally a member of the conventions which were held in Kentucky prior to the separation of the District of Kentucky from Virginia?”

“Answer: I was generally a member of those Conventions.

“Question: Have you any knowledge of a proposition being made at any time by any member of convention to separate the said District absolutely and unconditionally from the United States and to form a connection with any other government?”

“Answer: I have no knowledge or recollection of such a proposition ever having been made by any one.

“Question: Have you known John Brown, of Frankfort, from his infancy, and what is his general character?”

“Answer: I have known him from his infancy, and I never heard any thing prejudicial to his character until those publications in the *Western World* touching the Spanish Conspiracy.

“Question: Were you directed by the Convention of Kentucky, as the president, to present the thanks of that body to John Brown for his faithful attention to the interest of the said District, on an application to the old Congress to be admitted into the Union as an independent State?”

“Answer: I remember that Mr. Brown received the thanks of the Convention for his said services, but whether it was by a vote of the convention or by their direction to me, I do not recollect.

“Question: Have you been in habits of intimacy with the said Brown and the plaintiff (Innes), and did you ever hear either of them express a sentiment which induced you to suspect they had a wish to sever the Union and form a connection between Kentucky and the Spanish Government?”

“Answer: I was in habits of intimacy with both, and I never heard either of them express a wish to sever the Union, or to have any connection with Spain, except to trade to Orleans.”¹

¹ *Deposition of Samuel Mc Dowell* in the suit of Innes against Marshall, Mercer Circuit Court.

The deposition of Caleb Wallace in the same suit, after stating that he had for more than thirty years been intimate with Innes, and that he had conversed frequently and fully with him on political subjects as they related to Kentucky and the United States, declared that he was "confident that he never heard him (Innes) express a sentiment disrespectful to the Government of the United States of America, or that he wished the Kentucky country to be separated from them, or that it should form connexion with the Spanish Government independent of said United States."

Judge Wallace, alluding to the convention of July, 1788, and the purpose of its meeting, which was to frame a Constitution, added, that Congress having referred the admission of Kentucky to the new government, "it was conceived by the members of the convention to be unnecessary and improper to proceed to accomplish the business for which they had been elected;" but that "the members organized themselves for the purpose of recommending to their constituents the election of a convention to take such further measures in the case as might be deemed expedient." He testified that no motion or proposition was made by any one "to separate the District of Kentucky from the said United States, or to establish an independent government in said District, and to engage the District of Kentucky in a connection with the Government of Spain or any other power."

The "general sentiment" of prominent men in that convention was, as Wallace deposed, that uttered by Col. Thomas Marshall, who "expressed great dissatisfaction with Congress for having declined to decide on the application of the people of Kentucky to be erected into a separate State, and declared that he was clear for proceeding to form a constitution of government and establishing the District of Kentucky an independent State. and then apply for its admission into the Union, not doubting but it would be received without further delay." He did not "recollect or believe" that Innes, Brown, or any one "made or advocated any motion to separate the District of Kentucky from the United States." "But he then thought and now (1813) believes that they concurred in the prevailing wish that Kentucky should be erected by Congress into an independent State and received into the Union." And, while all parties were dissatisfied with the delay of the Continental Congress, he neither "knew or heard" of any opinion on the part of Brown "that Kentucky should declare herself independent of of Virginia and the Union."¹

Christopher Greenup, afterward a member of Congress and Governor of the State, was also a witness of the occurrences and intimately acquainted with the principal actors. His testimony has also been preserved.

¹ *Deposition of Judge Caleb Wallace* in the suit of Innes against Marshall. Mercer Circuit Court.

He denied that any movement or suggestion was made by any one in the conventions to separate Kentucky from the State of Virginia and the United States and form a connection with Spain. (Answer No. 6.) He remembered that Wallace did submit in convention a resolution for proceeding to the framing of a constitution and its submission to Congress without applying again to the State of Virginia, "observing that she had already given her consent to the measure, and it would save time." (Answer to question No. 7.) No proposition contemplating a severance from the Union could, he said, have escaped his observation and opposition. (Answer No. 8.) And though the intimacy between him and Innes was close, and their conversations on political subjects, especially the separation from Virginia, very frequent, never did Greenup hear him "express any disrespectful sentiments of the General Government; on the contrary, he seemed to think the General Government could do more for us as an independent State than perhaps she could do while a part of Virginia."¹

The men whose declarations have been quoted stand among the justly revered founders of the Commonwealth; their sturdy integrity and rigid truth has never been doubted.

¹ *Deposition of Gov. Christopher Greenup in the suit of Innes against Marshall, Mercer Circuit Court.*

It has been thought worth the trouble to search out from its forgotten depository the record of their sworn declarations and give them to a generation to whom the true history of that early time is chiefly known through distorted *media*. For they serve to prove what Madison said, what Brown and Innes each asserted upon his corporal oath, what those who knew them best solemnly deposed to be the fact, and what the people at the time said and believed, that the idea of any intent, purpose, or desire to sever Kentucky from the American Union of States never had a place in the mind of either. The so-called "Spanish Conspiracy," gloomily imagined as concocted with Gardoqui, was but a figment of an incensed political adversary's brain; a suspicion unsupported by a particle of testimony, unvouched by document, unestablished by deposition, and refuted by every proof.

The truth, as it seems deducible from all the facts now discoverable, seems to be that Brown, conversing freely with Gardoqui, had fully done what McDowell and Muter desired him to attempt. He had sounded Gardoqui completely, and drawn from him what was to be the last card of his diplomatic game. He had verified this discovery by the secret despatches sent by Carmichael from Madrid to the Congress. He and Madison were now perfectly agreed that Spain had weakened in her resolution, and that the free use of the

Mississippi would soon follow in the sequence of events; and therefore it was that the two persons most able to moderate public excitement and direct opinion in Kentucky were put in full possession of the last phase of Spanish plan.

The Spaniard was really sincere in his wish that a pretext might be found in the purely formal declaration of a new State for according the navigation so much desired, and thus soothing the irritated West. And Brown greatly hoped that the July Convention would frame a Constitution, apply to Congress for admission, and so smooth the way for a conciliatory policy. With the information that he sent to Gardoqui, that the Kentucky Convention would not pursue the prompter plan, but would again memorialize Virginia for separation and Congress for admission, all discussion of the subject ended.'

' It was not until the next year that Brown and Gardoqui again met. Under date 25th June, 1789, Gardoqui mentions to Floridablanca the return of Brown to New York as a member of the House of Representatives in the first Congress. Gardoqui quickly perceived that the frontier delegate had not only escaped his trap, but fathomed the plan of Spain. The meeting was pleasant and the old hint of disunion was not renewed. Still bent upon pushing every practical expedient for securing the navigation of the Mississippi, Brown opened the subject by adverting to Morgan's New Madrid colony, established the year before, and offered to find the capital for establishing at the mouth of the Big Black River one hundred American families within eighteen months, and an additional one hundred families annually for four years, provided a grant of six hundred thousand acres of land was made, and security of religious and civil rights guaranteed to the settlers. The idea was evidently to establish a free port below Morgan's free port of New Madrid. The suggestion does not seem to have been very seriously presented or considered, and went no further than a mention in Gardoqui's despatch. (*Gardoqui to Floridablanca, No. 316, 25th June, 1789*) In the same despatch Gardoqui speaks of Brown's entering the Congress under the Constitution, and that the new government would have the benefit of his knowledge of affairs touching the West and the

The Congressman was encouraged as he wrote to Innes by the outlook of the new government. Nor were Gardoqui's anxieties now so serious, for before the November convention convened the arrangement with Morgan for the colony at New Madrid had been perfected and announced. The *modus vivendi* thus found tided affairs over the breakers of the formative period; the installation of Washington as President steadied the confidence of all the West, and the pacific temper of Carondelet tempered the administration of the Province of Louisiana.'

The letters despatched to McDowell and Muter were (for a time at least) as prudently treated by the recipients as the gravity of their contents required and as the writer intended they should be. They were designed to communicate an important political fact to the personal confidence of two men in the District most proper to know it and most likely to keep from the conventions of their people the exciting

Spanish policy. In his secret despatch he says of Brown: "He will conduct himself with much discretion and precaution, still, by my faith, I will not prove unequal to him, nor do I fear him (*y que esto sujeto procedera con mucho reserva y precaucion, pero, a fe, que yo ni lo ire en zaga, ni lo temo*)."¹ (*Gardoqui to Floridablanca, Secret Despatch No. 25, 25th June, 1789*) This is the last mention by either of the other.

¹ Brown wrote to Innes from New York under date 28th September, 1789: "Judgment, impartiality, and decision are conspicuous in every transaction of the President, and from the appointments which he has made there is every reason to expect that the different departments will be conducted with justice and ability. I consider the appointment of Mr. Jefferson (vice Jay) as a measure favorable to the interests of the Western Country, and calculated to remove those fears which exist respecting the navigation of the river Mississippi. I am fully convinced that we have nothing to fear on that score from the present President. This I speak from a knowledge of his sentiments."

topic which the Spanish Minister would have rejoiced to see brought into public discussion.

A debate in Kentucky, in view of the action of her delegates in opposing the ratification of the Constitution, would have strengthened Gardoqui's position in his diplomatic battle over the commercial treaty between Spain and the United States, by the introduction of that dangerous element which Washington had so clearly discovered in the West. Indiscreet publication would have aroused those "turbulent spirits among its inhabitants who, from the present difficulties in their intercourse with the Atlantic States, have turned their eyes to New Orleans, and may become riotous and ungovernable if the hope of traffic be cut off by treaty."¹ The wisdom of the sage had already perceived that "whenever the new States become so populous and so extended to the westward as really to need it, there will be no power which can deprive them of the use of the Mississippi."²

McDowell never made public the letter received by him until 1806, when he published a statement in vindication of Brown and of the conventions of 1788. Muter gave his letter in 1790 (and long after Miro had abandoned all hope and Gardoqui had gone back to Spain) to Marshall as material

¹ Washington to Henry Lee. (*Washington's Writings*, Vol. IX, p. 180.)

² Washington to Henry Lee. (*Washington's Writings*, Vol. IX, p. 173.)

for a political campaign, incurring the contempt of violated confidence,¹ and at a later day the denunciation of those whose temporary purpose he had served,² forfeiting in his old age the good opinion of all the prominent men of his adopted State.

The Convention of July, 1788.

When the convention already chosen in April met at Danville on 28th July, 1788, a quorum was lacking, and it was not till next day that the chairman laid before the convention the "sundry papers and resolutions of the Congress of the United States, addressed to Samuel McDowell, esquire, late President of the Convention in Kentucky." The original MS. journal of proceedings has been found.³ The proceedings were entirely harmonious, and under the wise and temperate guidance of McDowell as president, and Shelby as chairman of Committee of the Whole, a series of resolutions were adopted by unanimous vote.⁴

The basis of the proceedings taken was a resolution intro-

¹ *Brown's MS. Memorandum* of his statement as a witness in the proceedings against Sebastian.

² *Marshall, History of Kentucky*, edition of 1824, Vol. II, p. 78.

³ The MS. volume fortunately discovered and preserved by Col. R. T. Durrett, of Louisville, Ky., contains the original record of the Conventions of July, 1788, November, 1788, July, 1789, July, 1790, and of the Constitutional Convention of April, 1792. It is wholly in the handwriting of Thomas Todd, afterward Associate Justice of the Supreme Court of the United States.

⁴ *MS. Proceedings of Convention*, 31st July, 1788.

duced on the 30th, the author and mover of which was probably Judge Caleb Wallace, then a Justice of the Supreme Court of the District,¹ the other members of which were McDowell and Muter. The memorandum of the proposition reads as follows in the MS. journal of the convention :

"A resolution, declaring that the powers of this Convention so far as depends on the Acts of the Legislature of Virginia were annulled by the Resolutions of Congress, and resolving that it was the duty of this Convention as the Representatives of the people to proceed to frame a constitution of Government for this District, and to submit the same to their consideration with such advice relative thereto as emergency suggests, was read.

"Ordered that the said resolution be committed to a committee of the whole convention."²

It does not appear from the journal of the convention that this proposition was advocated or opposed with any heat. There was general dissatisfaction at the failure of Congress to grant the former application for admission, but no traitorous purpose was charged by or against any public man. It was not until in after years political rivalries and

¹ Christopher Greenup (at one time Governor) deposed in the suit of Innes against Marshall, in the Mercer Circuit Court, February, 1815, that Wallace introduced this resolution, and that he did so in the November convention of 1788. This is evidently a slip of memory or of the pen by which "November" was substituted for "July;" for Wallace was a delegate in July though not one in November. Greenup uses this language: "I think Mr. Wallace submitted a resolution for proceeding to form a constitution and submitting it to Congress without applying again to the State of Virginia, observing that she had already given her consent to the measure, and it would be saving time." This accords with the original journal of July, 1788, though the name of the mover is not there given.

² *MS. Journal of Convention*, 30th July, 1788.

conflicting ambitions were added to old personal dislikes, that detraction and furious charges of every imaginable sort of wrong doing set the country in an uproar. It is worth noticing at this point that even Thomas Marshall, afterward so strenuous in his denunciation of all who approved the immediate formation of a Constitution and an immediate application to Congress, was then in perfect accord with Wallace' as to the legality, propriety, and expediency of immediate action.

The resolution thus referred to the Committee of the Whole was modified in the report made to the convention.

On the 31st July it is recorded in the MS. journal that "Mr. Shelby reported that the committee had taken into consideration the matters referred to them, and had come to a resolution thereon, which he read in his place and delivered in at the Clerk's table, where it was again twice read and unanimously agreed to, as follows, viz :

¹ In his deposition, given 15th September, 1813, in the suit of Innes against Marshall, Judge Caleb Wallace testified in this regard as follows: "This deponent does not recollect whether the late Colonel Thomas Marshall was or was not a member of the Convention which assembled at Danville in July, 1788. But this deponent, about that time, or shortly before, heard Col. Marshall express great dissatisfaction with Congress for having declined to decide on the application of the people of Kentucky to be erected into a separate State, and declared that he was clear for proceeding to form a constitution of government and establishing the District of Kentucky an Independent State, and then apply for its admission into the Union, not doubting but that it would be received without further delay, and this it was believed was the sentiment of several respectable citizens of the District, and of some who resided in other parts of the State of Virginia."

“ Resolved, Whereas, It appears to the Members of this Convention that the United States in Congress assembled have for the present declined to ratify the compact entered into between the legislature of Virginia and the people of this District respecting the erection of the District into an Independent State, in consequence of which the powers vested in the Convention are dissolved, and whatever order or resolution they pass can not be considered as having any legal force or obligation—But being anxious for the safety and prosperity of ourselves and constituents do earnestly recommend to the good people inhabiting the several counties within the District, each to elect five representatives on the times of holding their Courts in the month of October next, to meet at Danville on the first Monday in November following, to continue in office until the first day of January, 1790; and that they delegate to their said representatives full powers to take such measures for obtaining admission of the District as a separate and independent member of the United States of America, and the navigation of the river Mississippi, as may appear most conducive to these important purposes: And also to form a constitution of government for the District and organize the same when they shall judge it necessary, or to do and accomplish whatever on a consideration of the state of the District may in their opinion promote its interests.

“ Resolved, That the elections directed by the preceding resolution be held at the court house of each county, and continued from day to day for five days including the first day.

“ Resolved, That the sheriffs within the respective counties of this District be requested to hold the said elections and make return thereof to the Clerk of the Supreme Court immediately after the same are finished, and also to deliver to each representative so elected a certificate of his election; and in case there should be no sheriff in either of the said counties, or he should refuse to act, that any two acting magistrates then present may superintend and conduct the said elections and make returns and grant certificates in the same manner that the sheriffs are requested to do.

“ Resolved, That every free male inhabitant of each county within the

said District has a right to vote at the said elections within their respective counties.

“Resolved, That a majority of the members so elected be a quorum to proceed to business.

“Resolved, That if the said convention should not make a house on the said first Monday in November, any three or more members then assembled may adjourn from day to day for five days next ensuing; and if a convention should not be formed at the end of the fifth day, that they may then adjourn to any day they may think proper not exceeding one month.

“Resolved, That the sheriffs of each county, or the said magistrates, as the case may be, read or cause to be read the aforesaid resolutions on each day of the elections, immediately preceding the opening of the said elections.

“Ordered, That the President do request the printer of the Kentucky Gazette to publish the proceedings and resolves of Congress by him laid before this Convention, also such part of the proceedings of this convention as the President shall think proper, and in particular that the printer continue to publish weekly until the first of October next the recommendation for electing another Convention, and the several resolutions relative thereto.”

The convention was not yet so divided into irritated factions as to exchange wanton charges of public infidelity. The letter from Brown to Muter was known to Marshall and Edwards, and McDowell had its duplicate. The estimate of those who knew of the letter and its contents, and of the interview with Gardoqui, was expressed in a resolution for which Muter and Marshall voted along with every other delegate, and by which it was:

"Ordered, That the President do wait on John Brown, Esquire, when he returns to this District, and in the most respectful terms express to him the obligations which this Convention and their constituents are under to him for his faithful attention to their interest in Congress.

"Ordered, That the thanks of this Convention be given to Mr. Thomas Todd for his services as Clerk this session."¹

From the original MS. journal of the July Convention of 1788 it is thus seen [as does not appear from Marshall's history of the State, written twenty-three years after the occurrences] that the convention was unanimous, and that it expressly and without dissent recognized the power of a convention to proceed upon the already given consent of Virginia to frame a Constitution and petition Congress for admission to the Union.²

No apparent difference of opinion is discoverable among the members, save that Wallace thought the July Convention

¹ *MS. Journal Convention, July, 1788.*

² The resolutions of the convention of July, 1788, are incorrectly given in the draft published by Marshall. (*History of Kentucky, Vol. I, pp. 325, 326, 327, edition of 1812.*) He omits that important part of the paper which recites that the resolutions were "unanimously agreed to;" an omission necessary to the political argument pursued by him. The resolve of thanks to Brown is also left out. It is much to be regretted that so strong and well informed a writer as Marshall should have had so little of the true historic reverence for accuracy. The history of Marshall was not written until 1812, twenty-four years after the event. During this period his sentiments toward Innes, Brown, Wallace, and Nicholas had been those of bitterest hostility, most cordially reciprocated by them. He really wrote his side of a personal quarrel and called it (and no doubt thought it) history. Mr. Roosevelt ("*Winning of the West*") has recognized how this affects the trustworthiness of Marshall as an historical authority. Paxton, his relative, admits of Humphrey Marshall and his history, that "it is able and interesting, but prejudice and partisanship appear on every page. He was an overweening Federalist, and wrote more as a politician than as an impartial historian." (*Paxton, Genealogy, etc., of the Marshall Family, p. 81.*)

could do this. Shelby and others thought that a new convention should meet in November to accomplish the work. None seem to have doubted that a Constitution could first be framed, and the necessary action on the part of Congress and of Virginia, if requisite, taken afterward. Col. Thomas Marshall was a member acquiescing in this unanimous vote. So also were Muter and Edwards. All parties, even those who soon became unrelenting personal and political enemies, concurred in approving of a State organization to be effected in the coming November, and they had before them the precedent of Vermont, the already expressed willingness of Virginia, and the good will of the other States as shown by the Continental Congress' resolution of 3d July. They were wise in view of the emergency, and were justifiable in view of the facts. "For," to use the temperate words of Butler in his *History of Kentucky*, "had a domestic government been organized after the repeated and harmonious co-operation of the great contracting parties [Virginia and Kentucky], it is not to be supposed that it would have been so technically misconstrued as to have been viewed as treasonable to Virginia or hostile to the Union, owing to repeated and unavoidable accidents. The magnanimous temper of Virginia would have cured every thing."¹

¹ *Butler's History of Kentucky*, edition of 1836, p. 168. The action of another frontier people in after years is a good commentary upon the practical suggestions of Brown and Wallace, and goes far to prove how wise was that plan which looked to the

The convention of July, having finished its session with the adoption of the resolutions calling yet another convention for November, adjourned. Its members separated in a spirit of harmony, agreed as they were, without a dissenting voice, upon the indicated plan for a speedy organization of the new State and its application for admission into the Union.

The Appearance of Connolly in Kentucky.

The interval between the adjournment of the convention of July and the convening of that called for November, 1788, was marked by the appearance in Kentucky of an emissary empowered to cultivate a British interest and attach, as far as possible, prominent men to a scheme for a British alliance.

Col. John Connolly made his way from Detroit to Kentucky, where he arrived in the beginning of October. He was known by report to the people of the West, and in no

immediate framing of a Constitution and its presentation to Congress. Prof. Royce has excellently told the story of the formation of a State Government in California (*History of California, American Commonwealth Series*, 1886, pp. 246-259). Like the pioneers of Kentucky, the '49ers of California recognized and acted upon "the American political instinct." The chief military authority, Gen. Riley, recognizing the practical needs of the time, issued his proclamation without law therefor, called a convention, provided for orderly elections, the delegates met, and "the ponderous machinery of the Constitution was soon after in order and lightly running, notwithstanding all the preliminary wrangling among master workmen about plans and doctrines."

pleasant way, for he had adhered to the British cause, and in 1775 had been authorized by Lord Dunmore to raise and command a partisan regiment of Loyalists and Indians, to be called the "Loyal Foresters." On his way to the western frontiers, where his command was to act, he was arrested, and Dunmore's instructions for the enrollment of his regiment found concealed in the handle of his satchel. He was cast into prison and kept there until near the close of the war. He was a native of Lancaster County, Penn., a physician by profession, and one of the best informed men of his times about the western country. It was he who selected and secured a patent in 1773 for the two thousand acres of land at the Falls of the Ohio, on which the city of Louisville was first laid out, and he was the conspicuous sufferer by its confiscation under the verdict of a jury, of which Boone was one. Wilkinson imagined that the purpose of the visit was to win over himself, and met Connolly with a show of friendliness that drew from him an avowal of the British plan. It was, in brief, to assist the western settlers in opening the Mississippi to navigation by equipping, arming, and paying a force of ten thousand men to move down the river against New Orleans, where a British fleet would co-operate. Connolly, in the name of Lord Dorchester, promised honors and rewards to such men of influence as would fall into the scheme, and military rank in the

British army equal to that which had been held by them in the American service.¹

His errand was cloaked under the pretense of looking after the valuable lands once owned by him at the Falls of the Ohio, and confiscated because of his adherence to the cause of the Crown in the Revolutionary struggle. He concealed his mission so adroitly that its true purpose was communicated to but three persons besides Wilkinson. These were Thomas Marshall, George Muter, and Charles Scott.²

The true purpose of the British agent's journey to Kentucky was not divulged to the public for many years afterward, nor was any eminent public man intrusted with the secret for several months.³ It was in February, 1789, that Col. Thomas Marshall, in the same letter which intimated his suspicion that Brown favored separation from the Union and

¹ *Wilkinson to Miro*, 12th February, 1789. (*Gayarre, History Louisiana, Spanish Domination*, pp. 235, 236.)

² *Col. Thomas Marshall's Letter to Washington*, 12th February, 1789. It will be found in *Butler, History of Kentucky*, edition 1836, Appendix pp. 520, 521.

³ The former acquaintance of Connolly and Thomas Marshall, and the circumstances of the visit of the former to Marshall's home in (what is now) Woodford County, are detailed by A. K. Marshall (son of Thomas) in the "*Western World*" newspaper for 25th October, 1806, in one of the innumerable articles filled with charge and countercharge that were then so fashionable in political controversy. From this statement it is clear that Connolly made to Thomas Marshall, in October, 1788, direct overtures for a severance from the Union and a State organization under British protection. It is not to be asserted that Marshall agreed; every presumption is to the contrary. Nothing in his history warrants a suspicion of his devotion to American nationality. He did not, however, inform Washington of what had occurred till February, 1789, four months later.

alliance with Spain, admitted to Washington his own interview (in October, 1788) with Connolly, and the discussion between them, Muter participating, of an establishment of commercial and military alliance with England:

“ He (Connolly) presently entered upon his subject, urged the great importance the navigation of the Mississippi must be to the inhabitants of the Western waters, shewed the absolute necessity of our possessing it, and concluded with assurances that, were we disposed to assert our rights respecting the navigation, Lord Dorchester was cordially disposed to give us powerful assistance; that his Lordship had (I think he said) four thousand troops in Canada besides two regiments at Detroit, and could furnish us with arms, ammunition, clothing, and money; that with his assistance we might possess ourselves of New Orleans, fortify the Balize at the mouth of the river, and keep possession in spite of the utmost efforts of Spain to the contrary. He made very confident professions of Lord Dorchester's wishes to cultivate the most friendly intercourse with the people of this country. . . . At taking his leave he begged very politely the favor of our correspondence; we both promised him, provided he would begin it, and devise a means of carrying it on.”¹

The mission of Connolly to Kentucky resulted in nothing of practical worth to the British interest. But he was able to turn a few minds to the contemplation of an English Protectorate, and to elicit some correspondence from those with whom he had conferred, and so to bring vividly before his government the schemes of Spain and the designs of

¹ *Thomas Marshall to Washington*, 12th February, 1789; *Butler. History of Kentucky*, edition of 1836, Appendix, p. 520.

intelligent French agents. Its story may be briefly sketched before resuming the thread of the narrative of convention history.

The news brought back by Connolly to Detroit in the winter of 1788 slowly found its way to Lord Dorchester at Quebec. Its pith was sent, in the early spring of 1789, to Lord Sydney. Dorchester, on the 11th April, 1789, wrote that he was informed of the friendly feeling manifested by the Spanish officials at New Orleans toward certain Kentuckians, and that special permits had been issued for the transportation of quantities of tobacco down the Mississippi, to be purchased on the King's account. He adverted to the invitation extended at d'Arges' suggestion to such Americans as might contemplate settling along the river between the thirty-first and thirty-third parallels. After referring to Morgan's colony at New Madrid, and the correspondence established with New Orleans, and the apprehension still prevalent that Congress would surrender in a Spanish treaty the navigation of the Mississippi, he used this language:

“In a late Convention, held at Danville, it has been proposed by those who are gained over to the Spanish views to throw themselves under the protection of that power.

“But the general result of more private councils among them is said to be to declare Independence of the Federal Union, take possession of New Orleans, and look to Great Britain for such assistance as might enable them

to accomplish these designs. A Committee of private correspondence has been appointed by them to influence all the inhabitants west of the mountains in the same measures.

"I enclose some of their political reflexions on the state of affairs in the Western country."¹

The inclosure thus forwarded by Dorchester to London presents a hitherto unproved fact in the history of the West. It demonstrates that a sentiment, limited no doubt in extent, had been established by Connolly's efforts, and that a few prominent men were inclined to look with complacency upon the suggested British protectorate.

It reads as follows:

"DESULTORY REFLECTIONS BY A GENTLEMAN OF KENTUCKY.

"1. The River Mississippi being the channel by which the Western settlements of America must export their products, we may form a just estimate of the importance of this channel by casting our eyes over a map comprehending that vast and luxuriant country watered by its branches.

"2. As the balance inclines the beam, the Atlantic States of America must sink as the Western settlements rise. Nature has interposed obstacles and established barriers between these regions which forbid their connection on principles of reciprocal interest, and the flimsy texture of republican government is insufficient to hold in the same political bonds a people detached and scattered over such an expanse of territory, whose views and interests are discordant.

"3. Thus local causes, irresistible in their nature, must produce a seces-

¹ *Dorchester to Sydney, No. 107, 11th April, 1789, MS. Canadian Archives, Colonial Office Records, Series Q., Vol. XLI, p. 283.* A copy of this despatch, furnished by Mr. Brymner, is given in the appendix.

sion of the Western settlements from the Atlantic States, and the period is not very distant. But these people must for ages continue agricultural; of consequence foreign protection will be expedient to their happiness, and this protection must necessarily comprehend the right of navigating the Mississippi, with a marine to protect its commerce. That power which commands the navigation of the Mississippi as completely commands the whole country traversed by its waters as the key does the lock, the citadel the outworks.

"4. The politics of the Western Country are verging fast to a crisis, and must speedily eventuate in an appeal to the patronage of Spain or Britain. No interruption can be apprehended from Congress, the seditious temper and jarring of the Atlantic States forbid general arrangements for the public good, and must involve a degree of imbecility, distraction, and capricious policy which a high toned monarchy can alone remedy, but the revolutions and changes necessary to reconcile the people to such a government must involve much delay. Great Britain ought to prepare for the occasion, and she should employ the interval in forming confidential connexions with men of enterprize, capacity, and popular influence resident on the Western Waters."¹

¹ *Dorchester to Sydney, No. 107, 11th April, 1789, enclosure.* This communication to Lord Dorchester, through his agent, has not before been published. It must naturally excite curiosity as to its authorship, a curiosity not likely to be easily satisfied. The Canadian archives, of which this is a part, are copies taken from originals in the Colonial Office at London, so that inspection of handwriting is difficult to be had. Yet it is well established that Connolly conferred with no more than four men of importance in Kentucky, Gen. James Wilkinson, Gen. Charles Scott, Col. Thomas Marshall, and Judge George Muter. The mind naturally turns to one of these as the probable author. Wilkinson seems excluded from the list of probable authors, as well by the concise style of the paper, so different in construction from his usual diffuse productions, as by the fact that he was fully committed to Spain. And his committal was the more binding because he had large pecuniary profit in his intrigue, and his political affiliations were in no small degree controlled by financial considerations. Scott was a brave, straightforward soldier, ever found reliable, brave, and truthful. His literary accomplishments were utterly unequal to the production of such a paper. There is left the unpleasant suggestion that Thomas Marshall or George Muter was its author. There is no positive proof that either did, yet the circumstance remains that they were the only others who conferred with Connolly, and that Marshall admits his agreement to correspond

While Dorchester was thus apprised of the favor shown Wilkinson by Miro (which indeed was no secret), and flattered with the hope of establishing a British party in the Ohio Valley, another fact came to his knowledge that quite disturbed him. His agents procured a copy of an able paper that had been transmitted to the French Minister at New York, and he hastened to transmit it to his own government.¹

He rightly judged that it was "written by a man of judgment," and that its proposition "to induce France to take possession of New Orleans, and thereby to secure to herself all the trade of that vast country, was one deserving a statesman's consideration. He repeated how "some discontented persons of consideration" had "caught the idea that Great Britain might be placed in the room of France," and "had made offers of their service to bring it about." The overture to Great Britain seemed to be gaining, for "some dis-

with Connolly upon political subjects. The reader must in justice remember that the entire history of Thomas Marshall's life is inconsistent with a treasonable intent. If he or Muter were indeed the writer the pen did certainly outrun cool judgment and real political desire. The method of Humphrey Marshall's history applied to their complications would do them cruel injustice.

¹ *Dorchester to Syaney. Secret Despatch No 112, 7th June, 1789, Canadian Archives, Colonial Office Records, Series Q, Vol. XLII, p. 13, with enclosure of copy of the French paper. For the text see appendix. The name of the writer of the memorial addressed to the French Minister is not given, nor is it possible to ascertain it with certainty. A somewhat plausible conjecture might be hazarded that it was from the pen of Creve-cœur, sometime French consul at New York, who traveled through Kentucky in 1787-88. But the writer and his friends of the Filson Club incline to the opinion that Tardeveau was its author.*

contented persons of consideration, he said, "proposed going into the Western Country, and were convinced that by their influence they could effect a separation of it from the Atlantic States, provided England would supply arms and ammunition," and (as he doubted not would be asked) "money for private or public purposes."

So serious was the impression made on Lord Dorchester, that he speedily procured from some evidently well-informed resident a paper of detailed "*Observations upon the Colony of Kentucky*,"¹ in which a mass of information likely to be useful, should negotiations become serious, was condensed. Its author's name was not divulged, but the paper indicates a well-informed and educated resident of the District, one familiar with affairs and accustomed to act in public matters.

From these sources of information it is ascertained that three great powers were actively interested in the probable political fate of the West in the autumn of 1788.

Spain had her double plan; for Miro's hopes were in Wilkinson, and Gardoqui, as he said, reposed unbounded confidence in Morgan and the colony at New Madrid. England, through Connolly, had certainly committed some to the scheme of her protectorate. France had her agents to cultivate popular approval of the scheme under which she

¹ These "*Observations upon the Colony of Kentucky*" were transmitted enclosed in the despatch of *Dorchester to Sydney*, No. 126, 27th August, 1789, *Canadian Archives, Colonial Office Records, Series Q.*, Vol. XLII, p. 83, and are printed in the appendix.

might, by friendly concession on the part of Spain, resume possession of New Orleans, smoothing all resentments by guaranteeing to the Americans a free right of navigation, and to the Spaniard perfect security against American intrusion into the territory west of the Mississippi.

The new State was to be saved from each of the three. And the only escape from the peril of foreign influence was the immediate organization as a Commonwealth, and admission without delay into the Federal Union.

It seems passing strange that the quarter-sessions law argument made by Muter in the letter he published about the time of Connolly's visit to himself and Marshall, and which went forth to affect the convention of November, could have induced the convention to defer a step so critically important. And it is equally strange that Muter and Marshall, fully informed as they professed to be of the danger from Spanish influence, and themselves having conferred with the British agent, should have put forth so technical an objection to the immediate framing of a Constitution and application for admission to the Union.

Every consideration of public safety and loyalty demanded that unanimity which Brown invoked in the convention of November, and the adoption without delay of the Constitution which he had sketched, which Jefferson and Madison had revised and approved, and he was prepared to offer.

The Convention of November, 1788.

The recommendation that members be chosen for a convention that should exercise plenary powers was received with universal favor. Candidates took the field. As the time for elections approached, a long letter addressed by Judge Muter to the "Kentucky Gazette" made its appearance on the 15th October, asserting that the plan suggested, of immediately framing a Constitution and asking admission to the Union, was full of danger and illegality, and even smacked of high treason against the Commonwealth of Virginia. Coming as it did from the Chief Justice of the District, this declaration attracted much attention and carried much weight. His brother Judges, McDowell and Wallace, did not, it would seem, share his view, but they had not sufficient time to reach the people by counter-publication, if indeed they cared to rush into print.

Judge Muter contended that to form a Constitution and to organize for government "before the consent of the legislature of Virginia for that purpose first obtained," would be directly in the teeth of the Virginia Statute denouncing as high treason the setting up of governments within her limits. He criticised the large powers which the new convention was intended to wield, because under them it might, he said, be argued that the convention could treat with Spain to

obtain the navigation of the Mississippi, should it seem conducive to the public interest to do so, a proceeding which he judged to be repugnant to the Constitution. He argued that the delegates should be instructed not to form a Constitution or provide an organization of local government until Virginia could give consent, and to make no application whatever directed to obtaining the navigation of the Mississippi other than to the legislature of Virginia and the Congress of the United States.

The letter of Judge Muter had the support of Col. Thomas Marshall after its publication, probably before. It does not appear what caused this change of opinion, and induced such strong opposition to the identical measures that had commanded their support and vote in the convention of the preceding July. Col. Marshall was of strong and logical mind. Judge Muter was far from being self-reliant or tenacious of opinion. It may be almost read between the lines that the document was thought out by Col. Marshall.

The legal obstacle thus suggested by the Chief Justice raised doubts in many minds that had not before perceived any difficulty. And the result was that the delegates who assembled in November, though all agreed as to the urgent necessity for a State Government and admission to the Union, were no longer unanimous in approval of immediate action.

Brown had returned to Kentucky and was sent as a delegate from the County of Mercer; McDowell, Greenup, Jouett, and Innes being his colleagues. From each of the then seven counties a full representation attended. Among the more distinguished were Wilkinson, Thomas Marshall, Muter, Crockett, and Allen, representing Fayette; Richard C. Anderson and Sebastian among the members from Jefferson; John Logan and Montgomery from Lincoln; William Irvine from Madison, and John Edwards from Bourbon.

It was soon apparent that the unanimity of the former convention as to the expediency of prompt action no longer existed. It was still the hope of McDowell, Greenup, Brown, Innes, and others that the convention would proceed to the formation of a Constitution and make application to Congress for admission of the new State, trusting to Virginia to assent. Muter, Marshall, Edwards, and others were found opposed. The arguments put forth in Muter's public letter were used against every proposition for action, and they found adherents in such numbers as to make unanimity hopeless.

The thoughts of Brown had long been employed upon the question of a form of fundamental government for the new West, and he had attended the convention prepared to present for its consideration a plan of Constitution that had

engaged his thoughts for years,' upon which he had taken the opinion of Jefferson, and to the revision of which Madison lent his aid. The draft of a Constitution which Madison had promised in May, and the thoughts which he promised to put in writing in September, though long delayed, came in time to be presented with the sanction of his name, had the convention proceeded in its work. In anticipation of that assemblage he again wrote to Brown in relation to the political topics that would be of critical importance to the men of Kentucky. His letter bears so directly on the much controverted action, purpose, and wishes of Brown (and with him Innes), that it may here properly be put in more accessible form than the MS. It reads as follows:

"Dear Sir :

NEW YORK, Sep'r 26, 1788.

"I have been duly favored with yours of the 26th ulto from Pittsburg. I believe you are already pretty well acquainted with my ideas of government so far as they vary from the plan chalked out by Mr. Jefferson. But in compliance with your request on that subject I will take the first convenient occasion of explaining them in writing. The delay cannot, I presume, be material, as the formation of a Government for Kentucky must

¹ The framing of a Constitution for the new State they hoped soon to organize was one of the subjects on which the members of the Political Club bestowed its labors. At its "Regular Meeting, Saturday, February 17, 1787," it was

"Resolved, that a Committee be appointed to prepare a Bill of Rights and Constitution or form of Government, which they shall think agreeable to and convenient with the local situation of this District, and make report, and that Mr. Innes, Mr. Brown, Mr. Greenup, Mr. Belli, and Mr. Todd be a Committee for the same."

The preparation thus made was very probably the sketch which Brown submitted to Jefferson.

already be concluded, or suspended for reasons which will not cease immediately. On the other subject which employed our confidential conversation, just before your departure, you are also possessed of my sentiments. It has been frequently since in my mind as its importance made unavoidable, and the first impressions have been in no degree weakened by my reflections. Having no cypher concerted with you, it would perhaps be improper to commit my thoughts to a letter which is to pass through so precarious a conveyance. It will be sufficient to say that I anticipate every political calamity from the event which was for the first time suggested to my contemplation; and that I cannot but persuade myself that it will by degrees be viewed in all quarters as no less unnecessary than it certainly is critical and hazardous. Besides a variety of considerations which encourage this persuasion, and which being well known need not be mentioned, I will add with pleasure the two following resolutions lately passed in Congress, which wear a very different aspect from some former proceedings, and which I sincerely believe are the result of the real opinions which prevail on the subject:

“‘ IN CONGRESS, SEPR 16, 1788.

“‘ On the report of the Committee, &c., to whom was referred the report of the Secy of F affairs, on a motion of the Delegates of North Carolina stating the uneasiness produced by a report that Congress are disposed to treat with Spain for the surrender of their claim to the navigation of the River Mississippi, and proposing a Resolution intended to remove such apprehensions:

“‘ Resolv'd, That the said report not being founded in fact, the Delegates are at liberty to communicate all such circumstances as may be necessary to contradict the same and to remove misconceptions.

“‘ Resolv'd, That the free navigation of the River Mississippi is a clear and essential right of the United States, and ought to be considered and supported as such.'

“‘ The terms of the last resolution, and particularly the word essential, which was not inserted without attention to its force, mark in strongest terms the light in which the subject is now regarded. In addition to these acts is another entered on the secret journal, but tacitly allowed to be confidentially communicated, which explicitly forbids any further negotiation with Spain, and hands over the business with this assertion of right to the

ensuing government. We have no late intelligence from Europe, nor have I anything further to add at present than that I am, with the sincerest esteem and attachment, your friend and servant.

“JS. MADISON, JR.”¹

It is an interesting episode in Kentucky history that the task of laying down the lines of her Constitution should have enlisted the solicitude of Jefferson and Madison through the intervention of Brown. The draft sketched by Brown and elaborated by Jefferson was revised by Madison. It was ready for presentation to the convention. Unfortunately the MS. of the proposed Constitution has eluded all the search made for it.² It is supposed to have perished in the burning of the public offices at Frankfort.

It is much to be regretted that the plan so matured did not gain so much as a hearing in the convention of 1788.

It seems to have been agreed that the immediate formation of a State Constitution could not be undertaken in the divided state of opinion as to its strict legality.

The proceedings of this convention, though republished

¹ *Madison to Brown*, 26th September, 1788. MS. in the writer's possession.

² Madison wrote to Brown from New York under date 12th October, 1788: “I find by the act of your late convention that another is to take place in November, with power to prepare a form of government for Kentucky. In consequence of this information I shall forthwith execute the request contained in your letter from Fort Pitt, and forward the remarks on Mr. Jefferson's draft by the next mail. I am sorry it is not in my power to do so by this. The delay proceeded from an idea that the subject would have been previously decided in Kentucky, or not immediately resumed.” (*Madison to Brown*, New York, 12th October, 1788. MS.) This letter has heretofore been published. (*Littell, Political Transactions, &c.*, p. 74.)

in 1806,¹ are but imperfectly stated by Marshall in his history.² A reference to the MS. journal is needed to correct his omissions and show certain important connections between the occurrences.³ The debate, from Marshall's account, must have been elaborate. He was not a delegate, nor, so far as can be gathered from his writings, was he present, but the entries on the journal (such as "after some time spent" in Committee of the Whole) corroborate his statement in this regard.

On the third day of its session (Wednesday, 5th November, 1788) the convention received petitions from Mercer and Madison counties "praying that a manly and spirited address be sent to Congress to obtain the navigation of the river Mississippi." These requests were referred to the Committee of the Whole on the State of the District. A special committee was the same day raised, consisting of Edwards, Marshall, Muter, Jouett, Allen, and Wilkinson, charged with the preparation of "a decent and respectful address to the Assembly of Virginia for obtaining an Independence of the District of Kentucky, agreeable to the late resolution and recommendation of Congress."

The debate upon the petitions concerning the navigation of the Mississippi was had next day, Innes being chairman

¹ *Littell, Political Transactions*, Appendix No. XIX, p. 41.

² *Marshall, History of Kentucky*, Vol. I, p. 356, edition of 1812.

³ *Original MS. Journal*, Convention of November, 1788.

of the Committee of the Whole. Upon his report and motion the convention

“Resolved, As the opinion of this Committee, that the petitions from the Counties of Madison and Mercer, praying the Convention to prepare an address to Congress for procuring the navigation of the river Mississippi, are reasonable, and that a decent and respectful address be prepared requesting Congress to take immediate and effective measures for procuring the navigation of the said river, agreeable to the prayer of the said petitions.”

The duty of preparing this paper was committed to Innes, Wilkinson, Marshall, Muter, Brown, Sebastian, and Morrison.

At this point, and before the committees were ready with their reports, the MS. journal notes the following resolution, which it is certainly strange that Marshall should not allude to while rehearsing the conduct of his enemy:

“A motion was made by Mr. Brown for the convention to come to the following resolution, viz :

“Resolved, That it is the wish and interest of the good people of this District to separate from the State of Virginia, and that the same be erected into an independent member of the Federal Union.”¹

Its purpose was obvious. It was the prelude, should the convention agree, to the formation of a grand committee for

¹ *MS. Journal*, Convention of November, 1788—6th November, 1788. The reprint in Littell is accurate. (*Littell, Political Transactions*, Appendix XIX.) In the appendix to this paper will be found a copy taken directly from the original MS.

considering the draft of a Constitution which Brown was ready to introduce, backed by the approbation of Jefferson and Madison. It was the most significant movement made in the convention.

Marshall does not copy or mention this resolution, nor does Butler. All subsequent writers have perpetuated their neglect. Its suppression deprives Brown of his real avowal of political principle and plan made on the floor of the convention' and at the time. To leave it out was to dispense with the most interesting feature of the convention, and to lose the key to the political purpose of the author and his friends.

On the 10th November, Wilkinson, chairman of committee, reported "An address to the United States in Congress assembled."

It appealed for consideration and protection "as freemen, as citizens, and as part of the American Republic." It set out with somewhat florid yet effective rhetoric the difficulties that environed the Western people, the wealth of their soil, the teeming abundance of their crops, and the total paralysis of every thing like commerce. It argued the right natural and by treaty of river navigation, demonstrated its absolute necessity, and implored Congress to take measures to secure

¹ *Marshall, History of Kentucky*, Vol. I, p. 356, etc., edition of 1812, gives an account of this convention, but does not allude to this resolution.

it to the people of the whole country. The address was received with general favor and immediately adopted.

The address to the legislature of Virginia was next reported by Mr. Innes, and "agreed to *nemini contradicente*." Its tone was loyal, and its expressions respectful and judicious. The sentiment of the convention which unanimously adopted it may be gathered from its opening paragraph, in which

"The representatives of the good people inhabiting the several counties composing the District of Kentucky, in Convention met, beg leave again to address you on the great and important subject of their separation from the parent state, and being made a member of the Federal Union."¹

The address proceeded to set forth that

"Being fully impressed with these ideas and justified by frequent examples, we conceive it our duty as freemen, from the regard we owe to our constituents, and being encouraged by the Resolutions of Congress, again to appeal to your honorable body praying that an act may pass at the pres-

¹This "Address to the Legislature of Virginia" is given by Marshall (Vol. I. p. 379, edition of 1812), but he uncandidly omits to mention that his enemy, Innes, was its mover. The MS. journal of the convention explicitly recites that Innes, as chairman of the committee, reported the address, "which he read in his place and delivered in to the clerk's table, where it was again twice read and amended and agreed to *nemini contradicente*." Butler scarcely notices the paper, and apparently made little or no exploration of original sources. Littell (*Political Transactions, &c.*) published, in 1806, the entire journal of this convention. His work was an answer to newspaper attacks, emanating from Humphrey Marshall and Street, directed against Innes and Brown. The book was avowedly based on documentary evidence furnished by Innes and Brown. Marshall knew of it, and its preparation and authorship, as appears from his questions to witnesses in the suit of Innes against Marshall. As already observed, Littell's book is very rare. It is doubtful if more than half a dozen copies exist.

ent session for enabling the good people of the Kentucky District to obtain an independent government, and be admitted into the confederation as a member of the Federal Union, upon such terms and conditions as may appear just and equitable. . . . We again solicit the friendly interposition of the parent state with the Congress of the United States for a speedy admission of the District into the Federal Union, and also to urge that honorable body in the most express terms to take effective measures for procuring to the Inhabitants of this District the free navigation of the River Mississippi." ¹

After a vote of thanks to Wilkinson for his paper on the navigation of the Mississippi, the convention closed its session by an adjournment till the first Monday in the ensuing August.

The parting of its members was not the kindly one of the preceding July. Angry taunts of inconsistency had been made against Judge Muter and Col. Marshall. In turn they branded those who differed from them as traitors. The visit of Connolly to Marshall was suggested to be a British intrigue, and with equal heat the conversation of Brown with Gardoqui was declared to be a Spanish conspiracy. Col. Marshall went so far as to write to Washington (12th February, 1789), detailing what had occurred in the convention, and giving his version of what Brown had there said. Innes, in like manner, warned Washington (10th December, 1788)

¹ *MS. Journal of Convention*, Monday, 10th November, 1788, also by Littell, *Political Transactions, &c.*, Appendix XIX, and an appendix to this paper.

of the British intrigue. It was not until 1835 that Sparks gave both letters and the judicious replies of Washington.

When the journal of the convention is thus scanned, and the sworn testimony of its prominent actors examined; testimony taken in causes that involved the bitterest controversy as to the proceedings of that convention and the sentiments of its prominent members, it is astonishing to note how much the history of the time has been distorted and the sentiments, acts, and speeches of men misrepresented. The story of the convention of November, 1788, as told by Marshall¹ has been followed by Butler² with but a mild protest against the vigorous personal feeling of the man who wrote in his anger what was published as history. Since Butler, whose original research was not minute, no compiler or writer has cared to look into the original sources of information or test the accuracy of Marshall's account of this assembly, so important in the annals of Kentucky. It is time that his historical faults of omission and commission be scrutinized in the light of testimony more persuasive than mere denunciation. The purpose of Marshall in writing his *History of Kentucky* was to fix upon Brown and Innes, whom he profoundly disliked, a guilty purpose to bring the West under Spanish dominion.

¹*Marshall, History of Kentucky, Vol. I, p. 356, edition of 1812.*

²*Butler, History of Kentucky, p. 170, &c., edition of 1836.*

He was not a member of either of the conventions of 1788, nor did he profess to have personal knowledge of what took place at the sessions. He does not appeal to contemporary notes, nor vouch the statement of any delegate. When his account is closely examined it will be apparent to such as are patient to endure the labor of the comparison, that for documentary facts he went no further than such extracts from the journals as were published in the Kentucky Gazette at the time. He cites no authority beyond this, pursues no investigation more searching, refers to no original records, and invokes the evidence of no participant in the debates, though many were accessible, and not a few sworn as witnesses in hotly contested suits. A strife of more than twenty-five years had so irritated him that he wrote his book, mistaking anger for proof and controversy for history. But a calmer consideration will correct the error.

Whatever mark Brown made in the convention is to be found in the entry on the journals of the resolution offered by him, to wit:

“Resolved, That it is the wish and interest of the good people of this District to separate from the State of Virginia, and that the same be erected into an independent member of the Federal union.”¹

¹*MS. Journal of Proceedings*, 6th November, 1788. Same in *Littell*, Appendix XIX, and appendix hereto.

It was the first movement declaratory of policy that was taken in the convention. It was evidently made with due purpose, and because of that line of policy and conduct upon which he and Madison had agreed. It served to commit the body to a clear and succinctly defined loyal purpose. It was the basis for introducing the draft of Constitution which Jefferson and Madison had revised. The omission of this fact by Marshall is unjust, disingenuous, and misleading. If any weight is to attach to what actually occurred, Brown is absolved by the secretary's record of the charge that Marshall preferred, and is proved to be the advocate of separation from Virginia coupled with admission into the Union. Candor would have drawn the same conclusion from Brown's letter to Muter, and would have attached importance to its expression that "time alone can determine how far the new government will answer the expectations of its friends. My hopes are sanguine; the change was necessary."¹

No less unfair is Marshall's total failure to mention Innes as the reporter of the address to the legislature of Virginia. That address is replete with sentences that declare the ardent desire of the people of the District to be received into the Union as an independent State upon the consent and

¹ *Brown to Muter*, as given by *Marshall, History of Kentucky*, Vol. I, p. 340, edition of 1812.

recommendation of Virginia. Mention of Innes as its mover and advocate would have vindicated his patriotism, his loyalty, and his moderation, and would have disproved all the suspicions that Marshall cherished.

And the further fact, apparent from the journal,¹ that the address prepared and reported by Innes was "agreed to *nemini contradicente*," would have suggested to a more candid historian that he who introduced and advocated that paper did not deserve the denunciation leveled against him as a disloyal conspirator, especially as his views were supported by the unanimous vote of the convention.

It might, perhaps, be suggested in excuse for such omissions that Marshall, while preparing his history, had not access to the original journals of the convention, nor accurate information of what was said and done. But he published his book in 1812, and certainly knew, after 1806, the exact text of the journals through Littell's publication made that year, and avowed to be an appeal to documentary evidence.²

A more serious wrong than any omission, casual or purposed, is, that without any warrant that can be found in the journals of the convention or in the evidence of any of the

¹ *MS. Journal, Proceedings of November, 1788.* Same in *Littell*, Appendix XIX, and in appendix hereto.

² "*Political Transactions in and Concerning Kentucky, from the first settlement thereof until it became an independent State, in June, 1792.* By William Littell, Esq., Frankfort (Ky). From the press of William Hunter, Printer to the Commonwealth. 1806."

delegates who testified, Marshall assumed to give, in the form of a quotation, the *ipsissima verba* of an alleged utterance made by Brown in the convention of November, 1788, and upon it to found the argument of treasonable intent.

In putting forth the first volume of his History in 1812, Marshall, in detailing the proceedings of the convention of November, 1788, asserts that Brown used the following language, which he carefully puts in quotation marks and marks with the emphasis of italics:

“That he did not think himself at liberty to disclose what had passed in private conferences between the Spanish minister, Mr. Gardoqui, and himself; but this much, in general, he would venture to inform the convention, that, provided we are unanimous, everything we could wish for is within our reach.”¹

The original journal has been scrupulously examined, and nothing suggestive of such an utterance is there to be found.

The files of the Kentucky Gazette, which as public printer published the proceedings of the convention, contain nothing of the kind, nor any allusion that can by stretch of ingenuity be supposed to point to such a speech.²

During the lifetime of Col. Thomas Marshall (father of

¹ *Marshall, History of Kentucky*, Vol. I, p. 359, edition of 1812.

² The only complete file of the Kentucky Gazette is in the Public Library at Lexington.

the great Chief Justice), who died in 1803, nothing warranting the alleged "quotation" was ever published by him or upon his authority. In 1806, after his death, his private letter of 12th February, 1789, addressed to Washington, was printed. It was too late then to test the accuracy of the words used or try his judgment of the facts by cross-examination. But delegates, members of the convention of November, 1788, not a few of whom survived, were called to the witness-stand, and, under the sanction of their oaths, repelled the charge which the "quotation" insinuated.

One just inference was drawn by Marshall and communicated to Washington from the declarations of Gardoqui, the Spaniard, to John Brown, and those of Connolly, the Englishman, to Thomas Marshall and George Muter, for he said:

"It appears plain to me that the offers of Lord Dorchester, as well as those of Spain, are founded on a supposition that it is a fact that we are about to separate from the Union, else why are those offers not made to Congress? We shall, I fear, never be safe from the machinations of our enemies, as well internal as external, until we have a separate State and are admitted into the Union as a federal member."¹

An observation based upon commonest justice to two very different and unfriendly men is suggested by this letter of Col. Marshall.

¹ *Thomas Marshall to Washington, 12th February, 1789.*

Brown had heard from Gardoqui in July the Spanish offer based on separation from the Union. Marshall heard from Connolly in October the British offer, meaning the same thing as he construed it.

Brown recognized the public danger that might come from divulging Gardoqui's plan. Marshall seems to have taken the same view concerning Connolly's plan.

Brown took into his confidence only two men in Kentucky, George Muter and Samuel McDowell. Marshall took into his confidence only two men in Kentucky, George Muter and Charles Scott.

Brown lost no time in counseling with Madison, to whom he detailed Gardoqui's conversation. Marshall, not so promptly, but not very greatly delaying, wrote to Washington the outlines of Connolly's offer.

Brown judged it highly inexpedient to narrate even to the sovereignty convention of November what Gardoqui had said, for he feared lest rash men might make trouble by advocating what Gardoqui proposed. Marshall prudently said nothing in that convention, nor publicly, concerning Connolly and his plan, for he feared that the captivating suggestion of a raid southward, and of arms, money, equipment, and military rank, might embroil the whole country in foreign complications.

The parallel is a singularly exact one, and neither of the

men harbored a disloyal thought. They were both zealous for their country and honest in their service of it.

It is to be regretted that they were not equally just one toward the other.

Brown never allowed himself to question the patriotism of Thomas Marshall. As lines of public policy were laid down under the new government they drifted into the divergencies that marked the school of Adams from that of Jefferson. Personal estrangement continued during their lives. But nothing in print or speech or correspondence escaped Brown asserting or insinuating that Thomas Marshall was a conspirator in his conference with Connolly or a traitor in thought or in act.

Thomas Marshall did hint suspicions of Brown which he never directly charged; perhaps never fully formulated. But strangely enough, upon the identical letter which establishes the secret conferences of Marshall and Muter with Connolly, the nephew and son-in-law of Marshall, twenty-three years later, based the charge against Brown of conspiracy against his country.

The calm mind of Washington discerned the irritation that caused Marshall to write on the 12th February, 1789, in a mood suspicious of Spanish conspiracies, and Innes to write in December, 1788, his fears that intrigues with Great Britain were hatching in Kentucky.

He clearly perceived that each in his zeal misjudged the other, and permitted personal enmity to disturb his estimate of the other's motive.

To each he returned judicious reply, full of the confidence he really felt, and marked by the calm justice of his own grand composure.¹

It was but a short time before Thomas Marshall very clearly saw how unjust were his suspicions, and he very honorably repaired whatever injury his letter of 12th February might have done.

He soon became convinced that he had wronged both Brown and Innes, and on 11th September, 1790, wrote to Washington assuring him of the entire absence of sedition or appearance of it, and of the "good disposition of the people of Kentucky toward the Government of the United States."

The reply of Washington² was characteristic:

"I never doubted that the operations of this government, if not perverted by prejudice or evil designs, would inspire the citizens of America with such confidence in it as effectually to do away with those apprehen-

¹ The letter from Washington to Innes, of 2d March, 1789, is given in *Sparks' Writings of Washington*, Vol. IX, p. 473, where also (in a note) may be found Innes' letter to Washington of date 18th December, 1788. Washington's letter to Thomas Marshall, 27th March, 1789, is given in *Sparks' Writings of Washington*, Vol. IX, p. 485. Butler prints the letter from Thomas Marshall to Washington, 12th February, 1789. (*Butler, History of Kentucky*, Appendix, p. 520, edition of 1836)

² *Washington to Thomas Marshall*, 6th February, 1791; *Sparks' Writings of Washington*, Vol. X, p. 137.

sions which, under the former confederation, our best men entertained of divisions among themselves, or allurements from other nations. I am therefore happy to find that such a disposition prevails in your part of the country as to remove any idea of that evil which a few years ago you so much dreaded."

The correspondence of Brown soon showed Innes that there was no dread of British alliance, nor reason to fear that the Federal Government would neglect the important interests of the West.'

Of those who were present at the convention of November, 1788, as members or influential observers, it is to be noted that not one confirms the charge made in Marshall's History of a movement in the interest of a Spanish alliance or allegiance. Those who afterward testified repelled the charge. Those whose personal feeling was one of enmity had no charge to utter.

Muter never said, wrote, or printed that Brown spoke at all in the convention, much less that he spoke treasonably. No memoranda of his have ever been discovered or mentioned corroborative of any insinuation against Brown's acts or opinions in the convention. Garrard, who became Governor after Shelby, and survived till 1822, was a member of the convention of November, 1788, yet no word or

¹ *Brown to Innes*, New York, 28th September, 1789, MS. ; *Brown to Innes*, Philadelphia, 7th October, 1789, MS.

writing from him has ever been referred to as in the remotest degree sustaining such a supposition. He was not called to substantiate the charge.

John Edwards became a Senator in Congress, and survived until 1837, never having given in speech or writing intimation of such an occurrence, though he, too, sat in the convention and was an ultra Federalist.

John Logan, a delegate in convention from Lincoln County, was Treasurer of the State during the period of most violent enmity between Marshall and Innes and Brown. He never countenanced the assertion.

John Jouett lived longer than Innes (1816), and was never referred to in justification of the alleged quotation or any thing that resembled or could suggest it. It is quite beyond belief that a charge esteemed by Marshall so damaging to his long-time foe, should not have been, if true, verified by such of these men as were alive in 1812, when Marshall wrote, and that a truth deemed so important should not have been established by their testimony. The fact remains that Marshall gave no authority for that which he put forth as an accurate quotation.

As has been already mentioned, bitter litigation arose in 1806 out of newspaper publications that charged upon Innes a corrupt intelligence with the Spanish authorities. Suit for libel was instituted against Street, the publisher, followed,

after some time, by a similar action against Marshall, the anonymous author of the articles. The doors were thrown widely open to testimony. So eager were the parties to vent all their spleen, that agreements were entered in the record that all evidence that in strictness would be confined to the support of special pleas might be given under the general issue.¹

In these suits much proof was taken orally and by deposition. In the litigation between Innes and Marshall no less than twenty-eight depositions of men well known in the early times were taken and are yet extant.² Not one of these depositions sustains the alleged quotation, or warrants any inference like it. Nor is the rumor, tradition, or hearsay of such mentioned in any part of them.

Nor is any thing discoverable in the record of the suit between Innes and Street that gives color to the charge con-

¹The suit of Innes against Street was tried in Jessamine County, where the writer of this discovered the record of the case a few years since. The case of Innes against Marshall was in the Mercer Circuit Court, where the papers were found in 1886. The records of the two suits contain many depositions.

²The names of these witnesses are worth preserving, for the most of them filled posts of consequence. They were Isaac Shelby (twice Governor), Samuel McDowell (Judge of the Supreme Court of the District), Caleb Wallace (Judge of the Court of Appeals), Christopher Greenup (Governor), Benjamin Sebastian (a Judge of the Court of Appeals), Robert Trimble (an Associate Justice of the Supreme Court of the United States), Buckner Thruston (a Senator in Congress from Kentucky, and a Federal Judge in the District of Columbia), John Bradford (the pioneer printer of the West), besides James Morrison, Joshua Barbee, Willis Morgan, Samuel Major, Henry Davidge, S. McKee, Jephtha Dudley, Thompson Mason, John Allen, Cuthbert Bullitt, John Mason, William Hunter, John T. Mason, John Twyman, William McMillan, George Walker, William Littell, Samuel Brents, George M. Bibb, Joseph Street, James French, etc. A cloud of witnesses testified orally.

tained in the alleged quotation. The papers of that case are yet to be seen at Nicholasville. A multitude of witnesses was there examined, among them Isaac Shelby, Samuel McDowell, Christopher Greenup, Robert Johnson, Joseph Crockett, Caleb Wallace, Thomas Todd (the clerk of all Kentucky conventions, afterward Justice of the Supreme Court of the United States), John Jouett and John Bradford of the earlier pioneers, with Robert Trimble, Charles Wilkins, William Blackburn, John Pope, and others, younger men.

From no one of these came any testimony to support aught resembling the alleged quotation from Brown in convention. None of the older men testified to any thing of the kind, but emphatically denied that the imputations were warranted. None of the younger witnesses testified to any thing of the kind as coming down to them from any professing to have heard.

Nor did the legislative investigation into the conduct of Sebastian, had in 1806, elicit any thing that can be tortured into an appearance of support of Marshall's pretended "quotation." Brown appeared in that proceeding and gave under oath his uncontradicted account of his political life, indignantly denying all charges and insinuations against the loyalty of his conduct.

The results of the three inquiries vindicated Innes, who

was chiefly attacked. Street was mulcted by a jury in damages that ruined him. Marshall agreed to refrain in future from assaults on Innes if the suit were dropped, and it was therefore discontinued.¹

From the records of these three bitter controversies, where nothing was omitted that could affix guilt or suspicion of guilt on the opposing party or his friends, it is distinctly ascertained that no man, of his contemporaries present and taking part in the conventions, knew or believed or suspected that Brown or Innes had ever entertained a thought other than that of entering the Union as a sovereign State, or a plan consistent with that thought.

It is an incontrovertible fact, so far as contemporary documents can be trusted, and the testimony of the men of the convention believed, and the evidence of younger men as to what were the rumors and traditions that they received from their elders credited, that Marshall had no warrant whatever for his deductions.

To this subject Marshall devoted the greater part of the ninth chapter of the first volume of his *History of Kentucky*. (Vol. I, page 358 and following, edition of 1812.) It is in truth the objective point of his work, and in the deductions of treason and conspiracy his purpose was accom-

¹The negotiations were conducted by John Jouett in behalf of Innes. The correspondence is preserved by Harry I. Todd, Esq., of Frankfort, Ky.

plished. It will serve as a warning against rash historical assertion to note how the charge, utterly baseless as it was, has floated down the current of Kentucky history, carelessly accepted by every subsequent writer.

When Butler published his history in 1834, he expended no search upon the accuracy of Marshall's statement. Without reference even to Marshall he adopts the statement and perpetuates the quotation marks,¹ using the identical words and adopting the objectionable grammar found in Marshall's first volume. By strange misreading he attributes to Thomas Todd a seeming approval of "*notes made by Col. Thomas Marshall*" of the convention proceedings.² The smallest investigation would have shown that Todd never spoke of "notes," nor said what could intimate the existence of any made by Col. Marshall or any other contemporary.³

So industrious an historian as Collins has given currency to the error, and later writers have taken the story without examination.

¹ *Butler's History of Kentucky*, edition of 1836, p. 177.

² *Butler's History of Kentucky*, edition of 1836, p. 177.

³ Thomas Todd was the clerk of all the earlier conventions in Kentucky. He became an Appellate Judge of the State, and died in office as an Associate Judge of the Supreme Court of the United States. What he really said (in 1806) as to the matter mentioned in the text was this:

"QUESTION. Do you recollect the subject or object of the memorial read by Gen. Wilkinson?"

"ANSWER. I do not; but upon reading the letters published in the newspapers as having passed between Col. Marshall and Gen. Washington, it appears to me to be tolerably accurately stated in Col. Marshall's letter."

The evidence of Judge Todd and others is given in the report of the legislative committee in Sebastian's case, already mentioned.

The November Convention of 1788, having declined (though not by formal vote) to undertake the framing of a State Constitution, adjourned to meet in the coming August, for by the terms under which the delegates had been elected the duration of the body was to 1st January, 1790.

The legislature of Virginia, however, took prompt action to remedy the difficulty suggested by Muter's alarm, that it was treason to Virginia for Kentucky to organize and get ready for admission to the Union.

On the 29th December, 1788, an act was passed "concerning the erection of the District of Kentucky into an independent State." Its effect was to give Virginia's formal assent to Kentucky's becoming an independent member of the Union. It ordered the election of a new convention, to assemble in the coming July, empowered to speak for the people of Kentucky their ratification or disapproval of the terms of separation which the act prescribed. Should the convention accept the terms, they were to become a compact between the two political communities, provided Congress should, prior to 1st September, 1790, recognize and receive the new State as a member of the Union.

The work of so many weary years was thus begun anew. Fortunately, and strangely enough, the animosities of leading men were for the time allayed.

¹ *Hening, Statutes at Large*, Vol. XII, p. 788.

The Convention of July, 1789.

The convention which met on the 20th July, 1789, named Samuel McDowell for his accustomed place of president, and without delay addressed itself to a consideration of the terms of separation proposed by the last Virginia statute.

A serious variation from the former act of separation was discovered in one of the provisions of the new statute which reserved to military claimants holding Virginia land warrants an unlimited time for location and survey, and exempted them in that regard from legislative control on the part of the new State. Another new feature was added in relation to the "domestic debt" of Virginia, imposing a share of it upon the new State.

It was the opinion of the convention that these alterations of the original act of separation were inadmissible, and a memorial was at once prepared praying Virginia to recede from the new conditions.

After providing for a census to be taken in October, the convention adjourned, subject to the call of its president, to await the response of the legislature of Virginia to the memorial.¹

There was still division of opinion as to the erection of a new State. Not a few persisted in their wish to remain part

¹ *MS. Journal of Convention of July, 1789.*

of the Old Dominion. The popular sentiment was otherwise. But men ceased for the time to charge treason upon those whose opinions on the question of statehood were not their own. A feeling of security had followed upon the election of Washington to the Presidency.

Brown, as has been noticed already, wrote to Innes of the confidence inspired by Washington's administration, and the certainty of the West being cared for. Col. Marshall was satisfied, as he wrote Washington, that there was no purpose of disunion. There was a fortunate and most opportune lull of personal enmities and political bitternesses.

The leaders in Virginia lost no time in considering the Kentucky memorial, and as soon as the forms of legislation could be gone through with the final Act of Separation was passed on the 18th December, 1789.¹

By its terms yet another convention was called for the month of July, 1790, to finally accept the offered terms of separation, now definitely conformed to the suggestions of the last memorial.

The Convention of July, 1790.

A resolution declaring the sense of the good people of Kentucky to be that the District should be erected into an independent State upon the conditions embodied in the

¹ *Hening, Statutes at Large*, Vol. XIII, p. 17.

Virginia Act of 18th December, 1789, passed by the narrow majority of twenty-four against eighteen votes.¹ The voice of the minority was the last protest of unalterable attachment to their native Virginia.

A brief and dignified communication to the legislature of Virginia was framed, informing the mother State that her legislation for separation had been accepted, and expressing the thanks of the people of Kentucky for all the care and interest shown by Virginia. A communication "To the President and the Honorable the Congress of the United States of America" was also adopted, asking a sanction of the compact entered into between the peoples and an admission of Kentucky into the Union on the 1st June, 1792.

After providing for the election of delegates to a convention which they called to meet in April, 1792, and to whom should be committed the preparation of a Constitution, the eighth Kentucky Convention dissolved.

The action of Congress was speedy and favorable. On the 4th of February, 1791, it was enacted:

"That upon the aforesaid first day of June, One Thousand seven hundred and ninety-two, the said new State, by the name and style of the State of Kentucky, shall be received and admitted into this Union as a new and entire member of the United States of America."²

¹ *MS. Journal of Convention*, 28th July, 1790.

² *Laws First Congress*, third session. *Debates in Congress, Old Series*, Vol. II. p. 2372, Appendix. The act in full is to be found in *Poore's Collection of "Charters and Constitutions,"* from the Government Press.

The year of intervening time between the vote of admission and the assembling of the Constitutional Convention presented the unusual feature of debates purely upon local affairs and interests. The folly and injustice of their criminations and recriminations seemed to be recognized, and men of all parties turned their thoughts to framing a fundamental law for the new State.

The absorbing political topics had heretofore been almost wholly of a national character. They concerned, as has been shown, the building up of the Commonwealth and its incorporation into the Union; and for their immediate practical bearing looked toward the south for an establishment of trade down the uninterrupted current of the Mississippi, and to the northward for repression of Indian hostilities and the restoration to the American Union of posts still held along the Canadian frontier.

With the assurance of admission into the Union, these questions were transferred to the Congress, to engage the collective wisdom of the country, and enter into the national diplomacy.

Of domestic polity there were but few subjects to agitate the debates that marked the formation of the new State's Constitution. The irrepressible question of slavery, however, presented the problem that for so many succeeding years demanded solution.

So long as Kentucky remained an integral part of Virginia, there arose no division on the subject of negro slavery. Legislation of the parent State alone could deal with it, and to that legislation the District must perforce submit. There was little division of public opinion, and no exhibition of angry differences. The religious sentiment of the entire population was adverse to a perpetuation of the institution of slavery, and political inclinations were in the same direction.

The debates and resolves of the Political Club were significant of the influential sentiment of the country. Its members (as has already been shown) unanimously disapproved of that feature of the Federal Constitution which by implication and in fact continued the African slave trade until 1808. It is almost certainly true that only a minority of the talent, wealth, or influence within the bounds of the District desired or expected a long duration of slavery within its borders. All opinions concurred in the policy of restricting, as far as possible, the importation of slaves from other States, and in the advisability of providing, as soon as possible, a system of emancipation.

As the progress of events made it plain that the statehood of Kentucky was not long to be deferred, the question of slavery began to assume proportions of practical morality in the eyes of many of the most serious and resolute of the pioneers.

It is to the honor of the Baptist preachers of the new country that they faced the problem with a courage that did honor to their intellect, their religious sincerity, and their sense of public duty. They were not then, as a rule, cultured or rich. Their horizon of speculation was narrow, but their mode of thought was the essence of honest logic applied to the rigid Calvinistic doctrines they so devoutly embraced.

The Baptists of Virginia had not flinched from the question which presented itself with the launching of the new government. Their General Committee, convened at Richmond on the 8th August, 1789, took up the subject which had been adjourned from March of the preceding year. It was then

“Resolved, That slavery is a violent deprivation of the rights of nature, and inconsistent with a Republican government, and we therefore recommend it to our brethren to make use of every legal measure to extirpate this horrid evil from the land, and pray Almighty God that our honorable legislature may have it in their power to proclaim the great jubilee, consistent with the principles of good policy.”¹

Their western brethren quickly responded to this declaration, and on 3d October, 1789, the Baptist Church at Rolling Fork, in Nelson County, propounded to the Salem Association, of which it was a member, the query:

¹ *Sample's History of Virginia Baptists*, p. 79; *Spencer's History of Kentucky Baptists*, Vol. I, p. 183.

“Is it lawful in the sight of God for a member of Christ's Church to keep his fellow creature in perpetual slavery?”

The response was not definite, and the dissatisfied questioners withdrew almost unanimously from their ecclesiastical connection.¹

The agitation that moved the Baptist fraternity was profound. Contemporary annals of their churches, pamphlets from the preachers of the day, and their familiar correspondence exhibit the alarmed sincerity with which they treated the problem of morals that confronted them. Carman and Dodge were soon joined in their anti-slavery preaching by the venerable William Hickman, along with Ambrose Dudley, Garrard (afterward Governor of the State), and others more or less influential. Debate grew warm. From a general acquiescence at first, in the proposition that slavery was morally indefensible and politically undesirable, the Baptists divided, in time, into parties, some advocating immediate abolition and non-fellowship with slaveholders; some insisting on a gradual system of emancipation of the negroes then in slavery and the immediate freedom of those born after a date in the near future; and some denouncing all discussion in the churches as tending to confuse politics with religion. The history of the first party may be traced

¹ *Spencer's History of Kentucky Baptists*, Vol. I, p. 184.

through Dodge and Carman, the Suttons,¹ Carter Tarrant, and others, and it culminated in that singularly-named organization, "The Baptized Licking-Locust Association, Friends of Humanity," in 1807.²

The ablest among the preachers who opposed the incorporation of slavery into the polity of Kentucky was David Rice, the father of Presbyterianism in the West. He had come from Virginia in 1783; had established in his house in Lincoln County in 1784 the first grammar school in the West, and the influence of his piety and talents was very great. In the political crisis of 1792, when the Constitution of the State was to be formed, he put in print the doctrine he had long preached and the sentiments of a life-time, issuing a pamphlet entitled, "Slavery inconsistent with Justice and Good Policy."³ A single extract will illustrate the deep feeling that generally prevailed:

"The slavery of the Negroes began in iniquity; a curse has attended it, and a curse will follow it. National vices will be punished with national calamities. Let us avoid these vices, that we may avoid the punishment which they deserve, and endeavor so to act as to secure the approbation and smiles of heaven.

¹ John Sutton organized in Woodford County, in 1791, an avowedly abolition Baptist congregation: "New Hope Church, where Sutton and Tarrant set up the first emancipating church in this part of the world." (*Taylor's History of Ten Churches*, 79.)

² *Spencer, History of Kentucky Baptists*, Vol. I, p. 180; *Tarrant's History of Emancipationists in Kentucky*.

³ This very strong and temperate paper is printed in *Bishop's Memoirs of Rev. David Rice*, p. 385.

“Holding men in Slavery is the National vice of Virginia, and while a part of that State we were partakers of the guilt. As a separate State we are just now come to the birth, and it depends upon our free choice whether we shall be born in this sin or innocent of it. We now have it in our power to adopt it as our national crime, or to bear a national testimony against it. I hope the latter will be our choice; that we shall wash our hands of this guilt, and not leave it in the power of a future legislature ever more to stain our reputation or our conscience with it.”¹

Upon the assembling at Danville on 2d April, 1792, of that last convention in the long series of assemblies to which was intrusted the formation of a State Constitution, it was speedily ascertained that no serious differences existed among the delegates, except as regarded the recognition in the Constitution of the existence or perpetuity of negro slavery.

It is not difficult now to discern the power that overcame the strong public feeling—especially among the religious denominations—adverse to a continuance of slavery.

A new and strong and trained man made his first appearance in Kentucky politics as a member of that body. George Nicholas had but recently come from Virginia, but the fame of his abilities and the record of his public services had preceded him. He had sustained debate against no less opponents than Patrick Henry and George Mason, in the Virginia Convention, and deservedly shared with Madison the

¹ *Bishop's Memoirs of Rice*, pp. 417, 418.

credit of carrying the vote that ratified the Federal Constitution.

He took charge, as if by common consent, of the serious work of the convention. The State Constitution of 1792 may be fairly regarded as his production. He was the principal debater on the floor, and the principal draftsman in committee.

His ablest opponent was the Rev. David Rice, his colleague from Mercer County. Rice, however, resigned on the 11th April, and his successor, Harry Innes, came into the convention too late to participate influentially in the debates.

When the vote came to be taken on the perfected draft of the Constitution, the question of slavery or no slavery in the new State was put to the direct issue.

The ninth Article of the Constitution, as prepared by Nicholas and passed through committee, read as follows:

“Article IX, Section 1. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State. That they shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors and preventing them from

becoming a charge to the county in which they reside. They shall have full power to prevent any slaves being brought into this State as merchandize. They shall have full power to prevent any slaves being brought into this State from a foreign country, and to prevent those from being brought into this State who have been, since the first day of January, One thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity, to provide for them necessary cloathing and provision, to abstain from all personal injuries to them extending to life or limb, and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners."

The system of slavery thus contemplated was designed to be as mild, as humane, and as much protected from traffic evils as possible, but it was to be emphatically perpetual, for no emancipation could be had without the assent of each particular owner of each individual slave.

In opposition to this Article a vote by yeas and nays was taken—the only one noted on the journal. Under date of Wednesday, 18th April, 1792, it is recorded that

"A motion was made by Mr. Taylor, of Mercer, and seconded by Mr. Smith, of Bourbon, to expunge the Ninth Article of the Constitution, respecting slavery, which was negatived; and the yeas & nays on the question were ordered to be entered on the Journals.

"The names of those who voted in the affirmative were: Mr. Andrew Hynes, Mr. Samuel Taylor, Mr. Jacob Froman, The Honorable Harry Innes, The Reverend John Bailey, the Reverend Benedict Swope, the Reverend Charles Kavanaugh, the Reverend George Smith, Mr. Robert Frier,

the Reverend James Crawford, the Reverend James Garrard, Mr. James Smith, Mr. John McKinney, Mr. George Lewis, Mr. Miles W. Conway, and Mr. John Wilson.

"The names of those who voted in the negative were: Mr. President (Samuel McDowell), Mr. Benjamin Sebastian, Mr. John Campbell, Mr. William King, Mr. Matthew Walton, Mr. Joseph Hobbs, Mr. Cuthbert Harrison, Mr. George Nicholas, Mr. Benjamin Logan, Mr. Isaac Shelby, Mr. William Montgomery, Mr. Thomas Kennedy, Mr. Joseph Kennedy, Mr. Thomas Clay, Mr. Higgason Grubbs, Mr. Hubbard Taylor, Mr. Thomas Lewis, Mr. John Watkins, Mr. Richard Young, Mr. William Steele, the Honble Caleb Wallace, Mr. Robert Johnson, Mr. John Edwards, Mr. Benjamin Harrison, Mr. Robert Rankin, & Mr. Thomas Waring. Yeas 16; Nays 26."¹

¹ The six ministers who voted to expunge the article recognizing slavery were three Baptists (Bailey, Smith, and Garrard), one Presbyterian (Crawford), one "Dutch Presbyterian," as the phrase was (Swope), and one Methodist (Kavanaugh, an uncle of the late Methodist Bishop, H. H. Kavanaugh). The place of Rice (Presbyterian) had been filled, after his resignation, by Judge Innes. It is thus readily seen that the religious opinion was unanimous for abolition. The predominating ability, wealth, and political experience of the convention was with their opponents, and its leadership by George Nicholas far surpassed any possible tactics of the minority. It seems strange that Wallace, Walton, and Sebastian, who are known to have been emancipationists, should have voted to retain the ninth article with the feature of perpetuity so woven into it. It is to be explained by the dominating ability of Nicholas. The exclusion of slavery, so desirable and easy, and resting on so solid a foundation of popular opinion in 1792, was made practically impossible at the time of the revision of the Constitution in 1799, by reason of the rapid increase in the number of slaves and in the wealth represented by them. When the present Constitution was framed, in 1849, the burning issue was what was termed the "open clause," that is to say, a constitutional power to take measures for ascertaining the sense of the people as to the extinction of slavery. This was rejected, and the perpetuity of the institution of slavery was considered secured. The further fastening of the system of African slavery upon the State was attempted by interpolating in the Bill of Rights a new declaration, that "the right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever." It required a civil war to correct the error made in 1792. The humble preacher delegates were wiser than their able opponents. It is to be noticed, as an evidence of their disinterestedness, that the preacher-members of the convention voted, without exception, for a constitutional provision disqualifying all ministers of religious societies from service in the legislature. (*MS. Journal Convention of April, 1792.*)

The political unwisdom of this vote has always been apparent to calm observers. Its effects yet linger, though the cause has disappeared. And the unfortunate step was taken under the guidance of a man whose ability and uprightness can not be questioned, whose experience in affairs was large, and whose performances justified confidence. But Nicholas was not yet a Kentuckian. He had not yet learned the ways of the West, nor comprehended where the interests of the new Commonwealth were different from what suited or seemed to suit Virginia and her people.

Had George Nicholas been already ten years in Kentucky he would have voted with Garrard and Innes and the Baptist preachers to exclude slavery from Kentucky. Had he not been a member of the convention a Constitution omitting the ninth article relative to slavery would have been promulgated. His argument was elaborately prepared and carefully reasoned, from premises that he stated with strength and terseness. The MS. statement of his points of argument still exists, a singular example to those who read it in the light of what a century has brought forth of a fabric of false conclusions reared by accurate logic upon a foundation of unsound premises. And it had weight chiefly with the more intellectual element of the convention. The flaw of the argument was more apparent to the conscience of the preachers than to the intellectual apprehension of their fellow delegates, the lawyers.

The adoption of the Constitution of 1792 launched Kentucky fairly upon her career as an independent and sovereign State, indissolubly united by the very terms of her creation with all the sister States in Federal Union.

And at this point of her history the story of Kentucky's Political Beginnings may properly pause. It marks the first period of the life of the State; the time when the hardships of men were great; when the life of the frontier was full of danger; when there was only the shadow of nationality in the feeble confederation; when distance and isolation made the pioneer of the West a stranger to his people; when every temptation was to wrest with a strong hand from Indian and from Spaniard the security which seemed beyond the power of diplomacy to acquire.

Amid all their discouragements hope and reverence for law never failed those men. Through the tedious series of eight disheartening conventions, called with all formality and prolonged through weary years, they sought, in patience and without resentment at repeated failure, the right of statehood. As they carried the arms of their country westward to conquer a wilderness, so they carried with them that spirit which magnifies the law and teaches men to value the self-imposed restraints that freemen alone can devise.

The men who lived amid the dangers of that perilous time, who founded the empire of the West, who builded the

first Commonwealth beyond the Alleghanies, were of strong motives and hardy ways. They merit a judgment as robust as was their own nature. They dealt with great problems and great dangers. They were terribly in earnest, and they became, if they were not at first such, strong in opinion as they were in action.

Those who in these quieter times explore the history of those earlier years will find much that no calm judgment can approve. Suspicion and detraction were rife. Denunciation of motive was frequent. Unjust judgments were common among them. But "if ever there was a time when men might have differed, not only honestly but hotly, when every allowance ought to be made for misconceptions of each other's motives and misunderstandings of each other's characters, it was during the earlier years of our national life. A new government, a vast country, unsettled interests, widespread privation and unreasonable hopes, ambition in high places, restlessness everywhere, and great political difficulties both at home and abroad, surely all these elements must have combined in a public life which requires for its proper appreciation not only wise and stern judgment, but that gentler and better teacher, the charity which believeth no evil and hopeth all things. That the men of the day misjudged themselves and their contemporaries, and that they spoke bitterly one of another is natural enough, for they

were mortal. . . . What they did they did all together; the humblest of them doing much that we should imitate, the highest of them much that we should avoid."¹

The sober judgment of their posterity will not tolerate the thought that the men who did so well their part in times of peril and responsibility were false to any duty of patriotism.

They will refuse to question the integrity of Isaac Shelby or Samuel McDowell, or John Brown or Harry Innes, or Christopher Greenup or Caleb Wallace; for all their acts rebut suspicion; and for the same reason they will absolve John Edwards and George Muter and Thomas Marshall from suspicion of disloyal purpose.

When the element of personal enmity that embittered its political contests is eliminated from Kentucky's early story, there remains for the veneration of a later age the story of a band of brave, patient, sagacious, and patriotic men, devoted to their country, deserving well of it—each a laborer in the common cause—each laboring with honest purpose and efficient zeal to secure the establishment and the perpetuity of a great, a powerful, and a happy Commonwealth.

¹ *Trescot, Diplomatic History of the Administrations of Washington and Adams*, p. 67, note.

APPENDIX.

No. I.

[SEE TEXT, PAGE 67.]

EXTRACTS FROM THE JOURNAL OF A CONVENTION, BEGUN AND HELD
AT DANVILLE, IN LINCOLN COUNTY, THE 23^D DAY OF MAY,
1785: WHICH DAY, BEING THE DAY APPOINTED BY
THE CONVENTION HELD AT DANVILLE,
DECEMBER 27TH, 1784:

Resolved unanimously, as the opinion of this committee, That a petition be presented to the Assembly, praying that the said district may be established into a state separate from Virginia.

Resolved unanimously, as the opinion of this committee, That this district, when established into a state, ought to be taken into union with the United States of America, and enjoy equal privileges in common with the said states.

Resolved, That this Convention recommend it to their constituents, to elect deputies in their respective counties, to meet at Danville on the second Monday of August next, to serve in convention, and to continue by adjournment till the first day of April next, to take further under their consideration the state of the district.

Resolved unanimously, That the election of deputies for the proposed convention ought to be on the principles of equal representation.

Resolved, That the petition to the assembly for establishing this district into a state, and the several resolves of the former and present convention, upon which the petition is founded, together with all other matters relative to the interest of the district that have been under their consideration, be referred to the future convention, that such further measures may be taken thereon as they shall judge proper.

To the Honourable the General Assembly of Virginia :

The petition of a convention of the inhabitants of the District of Kentucky, begun and held at Danville, in Lincoln county, on Monday the twenty-third day of May, 1785:

HUMBLY SHEWETH: That your petitioners, having been deputed by the people, pursuant to the recommendation of a late convention, to take into consideration the propriety and expediency of making application to the legislature for having this district established into a separate state, to be taken into union with the United States (as also the several grievances stated by that convention; and to adopt such measures thereon, and whatever else might come before them, as should appear most conducive

to its interest), are unanimously of opinion — that the remote situation of the district from the seat of government, together with sundry other inconveniences, subjects the good people thereof to a number of grievances too pressing to be longer borne, and which can not be remedied whilst the district continues a part of the state of Virginia; conceiving it to be not only the privilege, but the duty of all men to seek happiness by entering into any form of civil society, not injurious to others, that they may judge most conducive to this great end; at the same time being anxiously desirous to cultivate the most perfect harmony with our brethren in the other parts of the state, and when we are under the necessity of being separated from the parent whose fostering hand, we gratefully acknowledge, has formerly been extended to our infant settlements; wishing nothing more devoutly, than that her blessing may ever attend us; therefore, we are induced to pray that, agreeable to the provisional clause in the constitution, the district of Kentucky may be established into a separate and independent state, to be known by the name of the Commonwealth of Kentucky; which we wish to take place under the following regulations, to wit:

That as soon as may be, after the said state is established, a convention be authorized to assemble and adopt a constitution and form of government; that the several acts of assembly which may be in force at the time of separation, together with the common law of England, all statutes or acts of Parliament made in aid of the common law prior to the fourth year of the reign of James the first, which are of a general nature, not local to that kingdom nor repealed or altered by the legislature of Virginia, continue to be the rule of decision, and be considered as in full force, so far as they are applicable to the district, until the same shall be altered by the legislative power of the commonwealth of Kentucky; and that as soon as conveniently may be, after the district is established into a state, an equal number of commissioners from Virginia and the said state be appointed and authorized to settle and adjust the proportion of the state debt to be paid by each; and, if the commissioners can not agree, that the difference be referred to and settled by Congress, as provided by the articles of confederation and perpetual union.

Finally, we hope and expect that our representatives will cheerfully grant a request justified by the principles of our government as well as by the necessities of our condition, and that by an act of separation we shall be placed in the situation best adapted for attaining the advantages of a free and well regulated government; and that we shall likewise be recommended to Congress to be taken into union with the United States of America, to enjoy equal privileges in common with them.

And your petitioners shall ever pray, &c.

To the inhabitants of the District of Kentucky:

FRIENDS AND FELLOW-CITIZENS: We, your representatives, met in convention, in consequence of our appointment beg leave to address you on a subject which we consider of the last importance to you, to ourselves, and to unborn posterity. In every case where it becomes necessary for one part of the community to separate from the other, duty to Almighty God and a decent respect to the opinions of mankind require that the causes which impel them thereto should be clearly and impartially set forth.

We hold it as a self-evident truth, that government is ordered for the ease and pro-

tection of the governed, and whenever these ends are not attained by one form of government, it is the right, it is the duty of the people to seek such other mode as will be most likely to ensure to themselves and their posterity those blessings to which by nature they are entitled.

In the course of our enquiries, we find that several laws have passed the legislature of Virginia, which, although of a general nature, yet in their operation are particularly oppressive to the people of this district; and we also find, that from our local situation we are deprived of many benefits of government which every citizen therein has a right to expect, as a few facts will sufficiently demonstrate.

We have no power to call out the militia, our sure and only defence, to oppose the wicked machinations of the savages, unless in cases of actual invasion.

We can have no executive power in the district, either to enforce the execution of laws or to grant pardons to objects of mercy; because such a power would be inconsistent with the policy of government and contrary to the present constitution.

We are ignorant of the laws that are passed until a long time after they are enacted, and in many instances not until they have expired; by means whereof penalties may be inflicted for offences never designed, and delinquents escape the punishment due to their crimes.

We are subjected to prosecute suits in the High Court of Appeals at Richmond under every disadvantage, for the want of evidence, want of friends, and want of money.

Our money must necessarily be drawn from us, not only for the support of civil government, but by individuals who are frequently under the necessity of attending on the same.

Nor is it possible for the inhabitants of this district, at so remote a distance from the seat of government, ever to derive equal benefits with the citizens in the eastern parts of the state; and this inconvenience must increase as our country becomes more populous.

Our commercial interests can never correspond with or be regulated by theirs, and in case of any invasion the state of Virginia can afford us no adequate protection in comparison with the advantages we might (if a separate state) derive from the *Federal union*.

On maturely considering truths of such great importance to every inhabitant of the district, with a firm persuasion that we were consulting the general good of our infant country, we have unanimously resolved, 'that it is expedient and necessary for this district to be separated from Virginia and established into a sovereign independent state, to be known by the name of the "commonwealth of Kentucky," and taken into union with the United States of America.' In order to effect this purpose, we have agreed on a petition, to be presented to the legislature of Virginia at their next session, praying that a separation may take place, in which petition are fully set forth such terms as we thought beneficial to our infant country, and not inconsistent for Virginia to grant.

It is generally admitted that this district ought, at some period not far distant, to be separated from the government of Virginia.

The only question then is, whether we are now of sufficient ability either to fill the different offices of government or to provide for its support? In answer to the first part of this objection, examples have taught us that sound principles and plain sense

suffice for every laudable purpose of government; and we generally find that the liberty of the subject and the laws of the land are in the highest reverence at the foundation and rise of states, before the morals of the people have been vitiated by wealth and licentiousness, and their understanding entangled in visionary refinements and chimerical distinctions; and as to the latter part, we have now in our power several valuable funds, which, if by *procrastination* we suffer to be exhausted, we shall be stripped of every resource but internal taxation, and that under every disadvantage; and therefore we do not hesitate to pronounce it as our opinion that the present is preferable to any future period.

“By an act of the last session of assembly we find that the revenue law is now fully and immediately to be in force within the district, so that we shall not only pay a very considerable part of the tax for supporting the civil government of Virginia, but also be obliged to support our supreme court and every other office we need in the district at our own charge; and we are of opinion that the additional expence of the salaries to a governor, council, treasurer, and delegates to congress will, for a number of years, be more than saved out of the funds before alluded to without any additional tax on the people

“To impress you still more with a sense of our regard to your interests as a free people, we have determined not to proceed in a matter of such magnitude without a repeated appeal to your opinions. We have, therefore, recommended the election of another convention, to meet at Danville on the second Monday in August next, to take further into consideration the state of the district and the resolves of this and the preceding convention. In this election we hope you will be actuated by a serious sense of the important objects which the proposed election is designed to promote.”

Ordered, That the clerk of the convention transmit one copy of the petition and one copy of the address now agreed on to the clerks of the several courts in the district, with a request that they be set up at their respective court-house doors.

Ordered, That the resolve of this convention fixing the time of holding the several elections in the district be annexed at the foot of the copies of the two addresses which are to be transmitted to the clerks of the several courts.

Resolved, That the number of members for each county be as follows: For the county of Jefferson six, for the county of Nelson six, for the county of Lincoln ten, for the county of Fayette eight, and that the elections be held on the July court day of each county, at the court-house.

No. II.

[SEE TEXT, PAGE 72]

EXTRACTS FROM THE JOURNAL OF THE CONVENTION, HELD ON MONDAY, THE 8TH DAY OF AUGUST, 1785.

The convention, according to the order of the day, resolved itself into a committee of the whole on the state of the district, and after some time spent therein Mr President resumed the chair, and Mr. Muter reported that the committee had had under

consideration the matters to them recommitted, and had made several amendments, which having read in his place, and afterwards delivered in at the clerk's table, where the same were again read and agreed to, as follows, viz :

Your committee, having maturely considered the important subject to them referred, are of opinion that the situation of this district, upwards of five hundred miles from the seat of the present government, with the intervention of a mountainous desert of two hundred miles, passable only at particular seasons, and never without danger from hostile nations of savages, precludes every idea of a connection on republican principles, and originates many grievances, among which we reckon the following .

1st. It destroys every possibility of application to the supreme executive power for support or protection in cases of emergency, and thereby *subjects the district to continued hostilities and depredations of the savages*; relaxes the execution of the laws, delays justice, and tends to loosen and dissever the bonds of government.

2d. It suspends the operation of the benign influence of mercy, by subjecting condemned persons, who may be deemed worthy of pardon, to tedious, languishing, and destructive imprisonment.

3d. It renders difficult and precarious the exercise of the first and dearest right of freemen — adequate representation — as no person properly qualified can be expected, at the hazard of his life, to undergo the fatigue of long journies and to incur burthensome expenses by devoting himself to the public service.

4th. It subjects us to penalties and inflictions which arise from ignorance of the laws, many of which have their operation and expire before they reach the district.

5th. It renders a compliance with many of the duties required of sheriffs and clerks impracticable, and exposes those officers, under the present revenue law, to inevitable destruction.

6th. It subjects the inhabitants to expensive and ruinous suits in the High Court of Appeals, and places the unfortunate poor and men of mediocrity compleatly in the power of the opulent.

Other grievances result from partial and retrospective laws, which are contrary to the fundamental principles of free government, and subversive of the inherent rights of freemen ; such are,

1st. The laws for the establishment and support of the district court, which, at the same time that we are subject to a general tax for the support of the civil list and the erection of public buildings, oblige us to build our own court-house, jail, and other buildings, by a special poll-tax imposed upon the inhabitants of the district, and leaves several officers of the court without any certain provision.

2d. The law imposing a tax of five shillings per hundred acres on lands previously sold, and directing the payment thereof into the register's office at Richmond before the patent shall issue, the same principles which sanctify this law, would authorize the legislature to impose five pounds per acre on lands previously sold by government on stipulated conditions, and for which an equivalent hath been paid, and is equally subversive of justice as any of the statutes of the British parliament that impelled the good people of America to arms.

3d. General laws, partial and injurious in their operation ; such are the laws, (1) Concerning entries and surveys on the western waters. (2) Concerning the appoint-

ment of sheriffs. (3) For punishing certain offences injurious to the tranquility of this commonwealth, which last law prohibits, while we experience all the calamities which flow from the predatory incursions of hostile savages, from attempting any offensive operation; a savage, unrestrained by any law, human or divine, despoils our property, murders our fellow-citizens, then makes his escape to the northwest side of the Ohio, is protected by this law.

Whereas all men are born equally free and independent, and have certain natural, inherent, and unalienable rights; among which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

Resolved therefore, That it is the indispensable duty of this convention, as they regard the prosperity and happiness of their constituents, themselves, and posterity, to make application to the general assembly, at the ensuing session, for an act to separate this district from the present government forever, on terms honourable to both and injurious to neither; in order that it may enjoy all the advantages, privileges, and immunities of a free, sovereign, and independent republic.

Unanimously agreed to by all the members present, whose names are hereto annexed: Mr. Saml M'Dowell, President; Mr. George Muter, Mr. Christopher Irvin, Mr. William Kennedy, Mr. Benjamin Logan, Mr. Caleb Wallace, Mr. Harry Innes, Mr. John Edwards, Mr. James Speed, Mr. James Wilkenson, Mr. James Garrard, Mr. Levi Todd, Mr. John Coburn, Mr. James Trotter, Mr. John Craig, Mr. Robert Patterson, Mr. Richard Terrell, Mr. George Wilson, Mr. Benjamin Sebastian, Mr. Philip Barbour, Mr. Isaac Cox, Mr. Isaac Morrison, Mr. Andrew Hynes, Mr. Mathew Walton, Mr. James Morrison, and Mr. James Rogers.

To the Honorable General Assembly of Virginia:

GENTLEMEN: The subscribers, resident in the county of Jefferson, Fayette, Lincoln, and Nelson, composing the district of Kentucky, being chosen at free elections held in these counties respectively by the free men of the same, for the purpose of constituting a convention, to take into consideration the general state of the district, and expressly to decide on the expediency of making application to your honorable body for an act of separation—deeply impressed with the importance of the measure, and breathing the purest filial affection, beg leave to address you on the momentous occasion.

The settlers of this distant region, taught by the arrangements of Providence, and encouraged by the conditions of that solemn compact for which they paid the price of blood, to look forward to a separation from the eastern parts of the commonwealth, have viewed the subject leisurely at a distance, and examined it with caution on its near approach—irreconcilable as has been their situation to a connexion with any community beyond the Appalachian mountains other than the federal union; manifold as have been the grievances flowing therefrom, which have grown with their growth and increased with their population; they have patiently waited the hour of redress, nor even ventured to raise their voices in their own cause until youth quickening into manhood hath given them vigour and stability.

To recite minutely the causes and reasoning which have directed, and will justify this address, would, we conceive, be a matter of impropriety at this juncture. It would

be preposterous for us to enter upon the support of facts and consequences, which we presume are incontestible; our sequestered situation from the seat of government, with the intervention of a mountainous desert of two hundred miles, always dangerous, and passable only at particular seasons, precludes every idea of a connexion on republican principles. The patriots who formed our constitution, sensible of the impracticability of connecting permanently in a free government the extensive limits of the commonwealth, most wisely made provision for the act which we now solicit.

To that sacred record we appeal. 'Tis not the ill-directed or inconsiderate zeal of a few; 'tis not that impatience of power to which ambitious minds are prone; nor yet the baser considerations of personal interest, which influence the people of Kentucky; directed by superior motives, they are incapable of cherishing a wish unfounded in justice; and are now impelled by expanding evils and irremediable grievances, universally seen, felt, and acknowledged, to obey the irresistible dictates of self-preservation, and seek for happiness by means honorable to themselves, honorable to you, and injurious to neither. We therefore, with the consent and by the authority of our constituents, after the most solemn deliberation, being warned of every consequence which can ensue, for them, for ourselves, and for posterity unborn—do pray that an act may pass at the ensuing session of assembly, declaring and acknowledging the sovereignty and independence of this district.

Having no object in view but the acquisition of that security and happiness which may be attained by scrupulous adherence to principles of private justice and public honor, we should most willingly at this time enter into the adjustment of the concessions which are to be the condition of our separation, did not our relative situation forbid such negotiation, the separation we request being suggested by necessity and being consonant to every principle of reason and justice, we are persuaded will be cheerfully granted, and that we will be as cheerfully received into the continental union on the recommendation of our parent state.

Our application may excite a new spectacle in the history and politics of mankind. A sovereign power solely intent to bless its people, agreeing to a dismemberment of its parts, in order to secure the happiness of the whole; and we fondly flatter ourselves, from motives not purely local, it is to give birth to that catalogue of great events which we persuade ourselves are to diffuse throughout the world the inestimable blessings which mankind may derive from the American revolution.

We firmly rely that the undiminished lustre of that spark which kindled the flame of liberty and guided the United States of America to peace and independence, will direct the honorable body to whom we appeal for redress from manifest grievances to embrace the singular occasion reserved for them by divine providence, to originate a precedent which may liberalize the policy of nations and lead to the emancipation of enslaved millions. In this address we have discarded the complimentary style of adulation and insincerity. It becomes freemen, when speaking to freemen, to employ the plain, manly, unadorned language of independence, supported by conscious rectitude.

Resolved, That two commissioners be appointed to have the address now agreed on preferred to the next general assembly, and to use their endeavors to give it success.

George Muter and Harry Innes, esquires, were unanimously appointed commissioners to have the address now agreed on preferred to the next general assembly.

To the inhabitants of the District of Kentucky:

FRIENDS AND COUNTRYMEN: Your representatives in convention, having completed the important business for which they were specially elected, feel it their duty before they rise to call your attention to the calamities with which our country appears to be threatened. *Blood has been spilt from the eastern to the western extremity of the district.* Accounts have been given to the convention from Post St. Vincennes which indicate a disposition in the savages for general war. In the mean time if we look nearer home we shall find our borders infested, and constant depredations committed on our property. Whatever may be the remote designs of the savages, these are causes sufficient to rouse our attention, that we may be prepared not only to defend but punish those who unprovoked offend us. God and nature have given us the power, and we shall stand condemned in the eyes of Heaven and mankind if we do not employ it to redress our wrongs and assert our rights.

The Indians are now reconnoitering our settlements in order that they may hereafter direct their attacks with more certain effect, and we seem patiently to await the stroke of the tomahawk. Strange indeed it is that, although we can hardly pass a spot which does not remind us of the murder of a father, a brother, or deceased friend, we should take no single step for our own preservation. Have we forgot the surprise of Bryan's or the shocking destruction of Kinchelo's station, let us ask you? Ask yourselves what there is to prevent a repetition of such barbarous scenes? Five hundred Indians might be conducted undiscovered to our very thresholds, and the knife may be put to the throats of our sleeping wives and children. For shame! Let us rouse from our lethargy; let us arm, associate, and embody. Let us call upon our officers to do their duty, and determine to hold in detestation and abhorrence, and to treat as enemies to the community every person who shall withhold his countenance and support of such measures as may be recommended for our common defence. Let it be remembered that a stand must be made somewhere. Not to support our present frontier would be the height of cruelty as well as folly; for should it give way those who now hug themselves in security will take the front of danger, and we shall in a short time be huddled together in stations, a situation in our present circumstances scarcely preferable to death. Let us remember that supineness and inaction may entice the enemy to general hostilities, whilst preparation and offensive movement will disconcert their plans, drive them from our borders, secure ourselves, and protect our property.

Therefore resolved, That the convention, in the name & behalf of the people, do call on the lieutenants or commanding officers of the respective counties of this district forthwith to carry into execution the law for regulating and disciplining the militia.

Resolved, That it be recommended to the officers to assemble in their respective counties and concert such plans as they may deem expedient for the defence of our country, or for carrying expeditions against the hostile nations of Indians.

No. III.

[SEE TEXT, PAGE 78.]

DEBATES IN THE VIRGINIA CONVENTION, JUNE, 1788, PAGE 128.

(Extract from the Speech of Mr. Monroe.)

Whilst the powers were in force a representative from Spain arrived authorized to treat with the United States on the interfering claims of the two nations respecting the Mississippi and the boundaries, and other concerns wherein they were respectively interested. A similar commission was given to the honourable the secretary of foreign affairs on the part of the United States, with these ultimata: "That he enter into no treaty, compact, or convention whatever with the said representative of Spain which did not stipulate our right to the navigation of the Mississippi and the boundaries as established by our treaty with Great Britain." Eight or ten months elapsed without any communication of the progress of the treaty being made to Congress. At length a letter was received from the secretary stating that difficulties had arisen in his negotiation with the representative of Spain, which in his opinion should be so managed as that even their existence should remain a secret for the present, and proposing that a committee be appointed with full power to direct and instruct him in every case relative to the proposed treaty. The object of this proposition was to disengage him from the ultimata already mentioned in his existing instructions. The secretary, Mr. Jay, being at length called before congress to explain the difficulties mentioned in his letter, presented to their view the project of a treaty of commerce, containing, as he supposed, advantageous stipulations in our favor in that line, in consideration for which we were to contract to forbear the use of the navigation of the river Mississippi for the term of twenty-five or thirty years, and earnestly advised our adopting it. He urged that the commercial project was a beneficial one, and should not be neglected; that a stipulation to forbear the use on her part contained an acknowledgement of the right in the United States; that we were in no condition to take the river, and therefore gave nothing for it. The delegates of the seven eastermost states voted that the ultimata in the secretary's instructions be repealed, and it was entered on the journal by the secretary of Congress that the question was carried, although nine states were necessary, by the Federal constitution, to give an instruction. The animated pursuit that was made of this object required, and I believe received, as firm an opposition. The southern states were on their guard, and warmly opposed it.

No. IV.

[SEE TEXT, PAGE 79.]

CIRCULAR LETTER DIRECTED TO THE DIFFERENT COURTS IN THE WESTERN COUNTRY.

KENTUCKY, DANVILLE, March 29th, 1787.

GENTLEMEN: A respectable number of the inhabitants of this district having met at this place, being greatly alarmed at the late procedure of Congress in proposing to cede

to the Spanish court the navigation of the Mississippi river for twenty-five or thirty years, have directed us to address the inhabitants on the western waters, and inform them of the measures which it is proposed for this district to adopt.

The inhabitants of the several counties in this district will be requested to elect five members in each county, to meet at Danville on the first Monday in May, to take up the consideration of this project of congress; to prepare a spirited but decent remonstrance against the cession; to appoint a committee of correspondence and to communicate with one already established on the Monongahalia, or any other that may be constituted; to appoint delegates to meet representatives from the several districts on the western waters in convention, should a convention be deemed necessary, and to adopt such other measures as shall be most conducive to our happiness. As we conceive that all the inhabitants residing on the western waters are equally affected by this partial conduct of congress, we doubt not but they will readily approve of our conduct and cheerfully adopt a similar system to prevent a measure which tends to almost a total destruction of the western country. This is a subject that requires no comment—the injustice of the measure is glaring—and as the inhabitants of this district wish to unite their efforts to oppose the cession of the navigation of the Mississippi with those of their brethren residing on the western waters, we hope to see such an exertion made upon this important occasion as may convince Congress that the inhabitants of the western country are united in the opposition, and consider themselves entitled to all the privileges of freemen and those blessings procured by the revolution, and will not tamely submit to an act of oppression which would tend to a deprivation of our just rights and privileges. We are, Gentlemen, with respect, your most obedient servants,

GEORGE MUTER,
HARRY INNES,
JOHN BROWN,
BENJAMIN SEBASTIAN.

No. V.

[SEE TEXT, PAGE 156.]

A CERTIFICATE.

(From the Palladium of August 7th, 1806.)

Having observed in the Western World, a publication in which Mr. John Brown is charged with having been engaged in a treasonable conspiracy to transfer and subject this country to the dominion of Spain; and having seen with surprise that a letter written to me in 1788 by Mr. Brown is referred to as containing the evidence of his guilt, I do in justice to Mr. Brown hereby declare that I never received from him any communication, either written or verbal, which could authorize or justify the statement contained in that publication.

In the year 1788, when the application of the people of Kentucky to be admitted into the union as an independent state was depending before congress, Mr. Brown was a member of that body, and was, as I have reason to believe, very anxious that Kentucky should be received into the union as a state, and used his best exertions to effect that object.

After that application had been laid over for the consideration of the new government, Mr. Brown wrote me a letter informing me of the fate of the application, and stating the reasons, in his opinion, of the failure.

In that letter was enclosed a paper containing a statement in the hand writing of Mr. Brown, of which the following is the substance, and to the best of my recollection the very words made use of, viz:

"In a conversation I had with Mr. Gardoque, the Spanish minister, relative to the navigation of the Mississippi, he stated that if the people of Kentucky would erect themselves into an independent state, and appoint a proper person to negotiate with him, he had authority for that purpose, and would enter into an arrangement with them for the exportation of their produce to New Orleans on terms of mutual advantage."

The paper contained the above statement of Gardoque's remarks only, for Mr. Brown subjoined no observations expressive either of his approbation or disapprobation, which induced me to conclude that it had been forwarded merely for information. Mr. Brown never intimated to me, either at that time or any other, that Mr. Gardoque had ever on any pretence made him any propositions tending to his personal aggrandizement, as has been erroneously suggested in the *Western World*. And as to the alleged project of subjecting Kentucky to the government of Spain, and of raising an army to maintain a revolt against the United States, I do declare that nothing of the kind was ever suggested to me by Mr. Brown, nor to the best of my recollection did I ever hear that such ideas were at any time advanced or advocated by him or any other person in the western country until I saw the charges published in the *Western World*.

I regret very much that it is not in my power at present to find the letter and paper above mentioned. I fear they are lost or destroyed.

About ten years ago I removed to Jessamine from Mercer county, and left my son Joseph in possession of my house, in which I left a large bundle of old letters and papers.

Three or four years after my removal, my son informed me that all the old letters and papers I had left behind were destroyed; and as I cannot find the letter and paper referred to among the papers now in my possession, I suspect they were among those left in Mercer county.

AUGUST 4, 1806.

SAMUEL M'DOWELL.

No. VI.

[SEE TEXT, PAGE 187.]

DORCHESTER TO SYDNEY, WITH ENCLOSURE.

(From Canadian Archives, Colonial Office Records, Series Q, Vol. XLI, p. 283, No. 107.)

QUEBEC, 11th April, 1789.

My Lord: I am informed the Spanish Government at New Orleans has for some time past observed a very friendly conduct towards the inhabitants of Kentucky.

Special permits have been put into the hands of some of the leading characters of those settlements for sending down the Mississippi determinate quantities of Tobacco, which are purchased at New Orleans on account of the Government, and ten thousand

dollars have been issued from the public treasury there for the purpose of purchasing merchandize in Kentucky, which sum has been consigned to gentlemen of that country, and is actually arrived at the Falls of the Ohio.

The Spanish Territories upon the Mississippi, between the thirty-first and thirty-third degrees of North Latitude, are erected into a Lieutenancy dependent on New Orleans, a Governor has been appointed, and all Americans are invited to settle there under flattering offers.

A Monsieur d'Arges, a Knight of the Order of St. Louis, who has been a resident of Kentucky for near a year, and in the employ of the Spanish Government, is said to have advised this measure at the Court of Madrid, where he has had several audiences since he left Kentucky.

On the west side of the Mississippi, opposite the mouth of the Ohio, another Spanish settlement is intended with similar views, under the agency of a Mr. Morgan, formerly a merchant at Philadelphia, who is now upon the Ohio.

Notwithstanding the favorable answer given by Congress to the demand of Kentucky to be admitted a sovereign state in the union, the people of that country have lately discovered a strong inclination to an entire separation, and some of their leading men have entered into correspondence with the Spanish Government at New Orleans.

Their apprehension that Congress will consent to give up the Navigation of the Mississippi for twenty-five years is one of the reasons which induces them to listen to the overtures of Spain.

In a late convention, held at Danville, it has been proposed by those who are gained over to the Spanish views to throw themselves under the protection of that power.

But the general result of more private councils among them is said to be to declare Independence of the Federal Union, take possession of New Orleans, and look to Great Britain for such assistance as might enable them to accomplish these designs.

A Committee of private correspondence has been appointed by them to influence all the inhabitants west of the mountains in the same measures.

I inclose some of their political reflexions on the state of affairs in the Western Country.

A new American Settlement is now forming at the mouth of the Great Miami, on the North side of the Ohio, conducted by a Mr. Symms, a late member of Congress, and covered by a garrison of one hundred and fifty Continental Troops.

I am, with much respect and esteem,

Your Lordship's most obedient and most humble servant,

The Right Hon'ble LORD SYDNEY.

DORCHESTER.

DESULTORY REFLEXIONS BY A GENTLEMAN OF KENTUCKY.

[copy.]

(From Canadian Archives, Colonial Office Records, Series Q, Vol. XLI, p. 286.)

1. The River Mississippi being the Channel by which the Western settlements of America must export their products, we may form a just estimate of the importance of this channel by casting our eyes over a map comprehending that vast and luxuriant Country watered by its branches.

2. As the balance inclines the beam, the Atlantic States of America must sink as the Western settlements rise. Nature has interposed obstacles and established barriers between these regions which forbid their connexion on principles of reciprocal interest, and the flimsy texture of republican government is insufficient to hold in the same political bonds a people detached and scattered over such an expanse of territory, whose views and interests are discordant.

3. Thus local causes, irresistible in their nature, must produce a secession of the Western settlements from the Atlantic States, and the period is not very distant. But these people must for ages continue agricultural; of consequence foreign protection will be expedient to their happiness, and this protection must necessarily comprehend the right of navigating the Mississippi, with a marine to protect its commerce. That power which commands the navigation of the Mississippi as completely commands the whole country traversed by its waters as the key does the lock, the citadel the outworks.

4. The politics of the Western Country are verging fast to a crisis, and must speedily eventuate in an appeal to the patronage of Spain or Britain. No interruption can be apprehended from Congress; the seditious temper and jarring interests of the Atlantic States forbid general arrangements for the public good, and must involve a degree of imbecility, distraction, and capricious policy which a high toned monarchy can alone remedy; but the revolutions and changes necessary to reconcile the people to such a government must involve much delay. Great Britain ought to prepare for the occasion, and she should employ the interval in forming confidential connexions with men of enterprize, capacity, and popular influence resident on the Western Waters.

Indorsed: In Lord Dorchester's to Lord Sydney, No. 107, of the 11th April, 1789.

No. VII.

[SEE TEXT, PAGE 189.]

DORCHESTER TO SYDNEY, WITH ENCLOSURE.

[DUPLICATE—SECRET]

(From Canadian Archives, Colonial Office Records, Series Q, Vol. XLII, p. 13, No. 112.)

QUEBEC, 7th June, 1789.

My Lord: The inclosed description and political observations on the affairs of the western country between the Allegany Mountains and the river Mississippi, were presented to the French Minister in America, by whom they were received with great eagerness and forwarded to his Court. I think them tolerably correct, and written by a man of judgment. Their object is to induce France to take possession of New Orleans, and thereby to secure to herself all the trade of that vast country, which of necessity must pass that way.

This plan, and the occurrences in the western country of last year, mentioned in my letter No. 107, are not entirely unknown in the United States, and alarm the governments and people of property on the Atlantic. Hence some discontented persons of consideration among them have caught the idea that Great Britain might be placed in the room of France, and have made me offers of their service to bring this about.

Wishing to understand the nature and extent of their plans and their expectations from me, I learned that some of them proposed going into the Western Country, and were convinced that by their influence they could effect a separation of it from the Atlantic States; that I should supply them only with arms and ammunition by way of the upper posts; that their intercourse with the lakes should be free and open, and that a peace with the Indians would facilitate the business. They required no more, and doubted not but they would be able to take New Orleans and deliver it over to Great Britain, desiring only freedom and protection of their trade down the Mississippi.

To remove any objection, by reason of our being at peace with Spain, I was informed that Spain, when at peace with us, had furnished America with money for the revolt, as might be easily proved, and that they did not want Great Britain to appear concerned till they were in possession of New Orleans. No mention was made of money for private or public purposes, yet I take for granted this would be expected.

After many thanks for their confidence and good will to Great Britain, and assurances that though I could not say these offers of service might prove of advantage to them, they might depend on their not being detrimental, I added that no Governor would venture to adopt a measure of this importance, and that it must proceed from the source of power. Being pushed to declare my opinion of the scheme, I replied, I must think of it as my master thinks. I understand this last question to have been put with a view of carrying the matter home, and to know how far I would countenance the project.

The inclosure is not entire, the introduction having been omitted in the copying, as I was informed, on account of its length, and containing nothing of any moment.

I am, with much respect and esteem,

Your Lordship's most obedient and
Most humble servant,

DORCHESTER.

The Right Hon'ble LORD SYDNEY.

Endorsed: Quebec, 7th June, 1789. Lord Dorchester. Dup'l, No. 112. Secret. R. 16th July. (One inclosure.)

ENCLOSURE WITH FOREGOING.

[COPIE.]

Avant de jeter nos regards sur l'avenir pour decouvrir le germe des evenemens, qu'un petit nombre d'annees, peut-etre, est destinee a faire eclorre, examinons sommairement la situation actuelle des Republiques naissantes de ce cote des apalaches.

Le pais compris entre ces Montagnes, l'Ohio, le Mississippi, et le Golfe de Mexico, renferme plus de tendue de terrain, que le reste des treize Etats Unis. Que sera ceci, si nous y joignons les domaines qui leurs ont ete cedes par l'Angleterre au Nord de l'Ohio? Ce pais, comme il a ete dit ci dessus, par la fertilite messuissable de sou sol, par la salubrite de sou climat, par nue situation heureuse, qui lui promet un jour nu grand commerce, est devenue aujourd'hui nu objet de prediliction, et attire si puissamment les habitans de toutes les parties de l'Amerique, que l'ou craint deja que celle-ci ne manque bientot des cultivateurs. Entre les etatlissemens deja formes dans cette

plaine immense, la contree de Kentucky merite sans contredit le premier rang par sa population, par son site sur une belle riviere navigable presqu'en tout temps, par le grand nombre d'autres rivieres qui la traverse partout, et assurant ses communications par son voisinage du Mississippi et des grands lacs du Canada. Les autres peuplades ont pour le present le desavantage d'etre trop centrales et bornees par des Apalaches, les nations Indiennes des Creeks, Cherochees, Choctows et Chickasaws, par la Floride de l'ouest, et par Kentucky; dans cette position leur progres doit etre plus lent. Elles arriveront plus tard a l'importance mais, neanmoins, elles ajoutent deja beaucoup a la notre, en nous servant de barriere contre un ennemi cruel et toujours en haleine. Kentucky n'a plus a lutter, que contre quelques faibles hordes de sauvages etablis sur le Wabache, et vers le lac Erie. Les courses frequentes que ces barbares font encore dans notre pais les allarment. Les meurtres, les depredations qu'ils suivent sur nos frontieres, peuvent bien arreter un petit nombre d'individus timides, qui se sont fait une idee terrible des Indiens, mais cela n'empêche point la colonie de s'augmenter tous les etes de dix a douze mille emigrants. Les sauvages, d'ailleurs, se sont beaucoup eloignes des Rives de l'Ohio, et leur nombre diminue tous les jours. Ce sont au reste de trop meprisables guerriers, pour que leur resistance puisse etre regardee comme un obstacle capable de retarder l'agrandissement de ces peuplades. Leur genre de guerre peut etre funeste a un petit nombre de malheureux, qu'ils surprennent a l'ecart, mais l'activite generale de l'expansion progressive n'en souffre pas la moindre alteration.

Par un acte solemnel du corps legislatif de la Virginie, le pais de Kentucky doit etre reconnu au premier de Septembre, 1787, etat souverain et independant, et membre de la grande confederation. Le pais de Franklin sur les derriere de la Caroline du Nord jouissoit deja de cet honneur il ya deux ans, mais leur position desavantageuse pour le commerce ne leur permettant pas d'y etabliir un revenu public, ils se sont derechef unis a l'etat primitif, en attendant des circonstances plus favorables. La population du Cumberland n'est pas encore assez nombreuse pour y former un gouvernement separe, mais il ne lui faut que deux ans pour etre tres respectable. Les emigrants sur les derrieres de la Georgie viennent de conclure avec les Creeks un traite tres avantageux, qui va leur permettre de s'etendre dans l'Ouest. Il ne manque a tous ses peuplades, qu'un commerce libre, et la seule voie par laquelle elle puissent le faire, est par le Mississippi. Leurs terres, convenables pour toutes sortes de cultures, sont surtout singulierement propres a produire le chanvre, le lin, et le tabac. Nos recoltes dans ce dernier article sont a present bornees a la consommation interieure et a des faibles exportations sur le Wabache et aux Illinois. Circonscrits comme nous le sommes, sans commerce exterieur, sans debouche pour nos denrees, notre prosperite presente, notre grandeur future, l'accroissement de notre population, l'extension de notre industrie, l'appréciation de nos terres, notre importance comme cultivateurs, comme negociants, comme corps politique, tout depend de savoir si nous jouirons d'un bienfait de la nature, ou si elle aura vainement creuse apres de nous un des plus beaux canaux de communication, avec tous les peuples de l'univers. Le Congre avoit charge ses agents a la Cour d'Espagne d'y soutenir sa dignite et maintenir nos droits. Quelques difficultes relatives aux demarcations du territoire, ou, peut etre, le plan de nous amuser, ont fait transférer les negociations a New York. Quelques fussent a cet egard les intentions de la Cour de Madrid, un danger plus a craindre que ce refus, a ete sur le point d'aneantir nos esperances. La

politique sourde et partielle de quelques états politique dont il serait trop long de développer ici les principes et les projets, se fortifiant de la terreur d'une desertion générale, a presque fait le Congrès tomber dans le piège qu'ils lui avaient tendu. On a fait circuler un papier insidieux, contenant la proposition d'abandonner pour vingt-cinq ans nos prétentions sur la navigation du Mississippi, au moyen de quoi le pays de l'est auroit un commerce libre avec l'Espagne. La Virginie et le Maryland viennent tout récemment de proscrire l'idée d'un pareil traité comme dérogeant à l'honneur des États Unis, et destructif des principes de la confédération, dont l'influence doit se répandre sur toutes les parties de l'Union sans exception, en préférence d'aucune, et l'exemple respectable de ces deux États a été suivi par la majorité des autres auxquelles ils donnent si belle leçon de désintéressement, car leur commerce de tabac doit être vivement affecté si la mer est ouverte à des contrées qui produisent dans la même étendue de terrain trois fois autant des plantes mieux nourries, et généralement reconnues comme supérieures en qualité. Au reste, de quelque manière que notre commerce rompe les entraves qui l'asservissent maintenant, la révolution qui la rendra libre ne peut plus être fort éloignée. Quand une faible digue s'oppose au cours impétueux d'un torrent qui grossit toujours, il faut ouvrir l'écluse ou que la digue soit emportée. On ne doit nous considérer comme des Colonies encore au berceau, nous acquérons tous les jours de nouvelles forces, et nous les connaissons. La nature a prodigé ici toutes les richesses de sa fécondité pour faire équilibre contre l'attrait qui auroit pu fixer les hommes aux bords de la mer, et la commodité de la navigation d'un grand fleuve a déterminé la balance en notre faveur. Nous ne sommes plus une petite société d'aventuriers qui vont s'isoler dans un coin de l'univers; nous avons pris place parmi les nations. Nos voisins quittent par milliers leurs montagnes et leurs sables, pour venir se fixer dans nos plaines, le reste de l'Amérique se dépeuple pour nous enrichir de ses pertes. Bientôt nous allons attirer sur le Mississippi les regards de l'Europe, accoutumés à s'arrêter aux rivages de l'Atlantique. En vain une politique jalouse voudroit y mettre obstacle autant vaudroit défendre à la flamme de monter, à la pierre de descendre. Tel est le langage universel que l'on tient, non seulement à l'Ouest des Apalaches, mais dans toute l'Amérique. Je ne fais que vous répéter ce que j'entends, et que vous avez pu entendre tous les jours. S'il y a en effet quelques principes clairs dans le calcul des probabilités, il ne faut qu'un coup d'œil les apercevoir, qu'une région aussi éminemment favorisée de la nature, doit bientôt, entre les mains du peuple le plus actif que l'on connaisse, le plus amateur de l'agriculture et qui l'entend le mieux, former une masse d'hommes et des productions capables de renverser toutes les barrières. On peut presumer que ce n'est pas tant une vaine chicane pour vingt lieues de territoire, qui cause la jalousie de l'Espagne, que la crainte de voir des voisins dangereux passer le Mississippi et s'emparer de ses possessions de l'Ouest. Elle peut craindre qu'ils ne se répandent dans les plaines superbes qui s'étendent jusqu'au Nouveau Mexique, qu'ils ne lui enlèvent la riche traite du Missouri, que peut être leurs avidité et leurs besoins ne les poussent un jour jusqu'à ses mines. Mais le système de leur foucher le Mississippi est-il bien propre à prévenir ces malheurs. Si un homme cherche à préserver ses champs situés sur les bords d'un ruisseau prêt à se déborder, vaudra-t-il s'obstiner à son embouchure? N'en prévient-il pas au contraire l'engorgement en lui facilitant un recours? N'est-ce pas sur la rive, qui horde ses moissons qu'il élèvera des digues? J'oserai avancer que

l'Espagne devrait faire le sacrifice peu important du territoire qu'oi. lui demande, rendre libre la navigation du fleuve, ouvrir son port a nos marchands, encourager notre commerce, et alors le produit de ses douanes a la Nouvelles Orleans lui rendroit plus que tout le reste de la Louisianne. Les Americains, qui auroient interet a bien vivre avec elle respecteroient ses possessions de l'Ouest, et pour les mettre hors d'insulte, il faudroit qu' elle y animat parmi ses sujets, l' amour de l' agriculture, du commerce. des arts, seuls moyens d'y former une population capable de servir de barriere entre une nation entreprenante et ses mines. J'ai dit ce qu' il faudroit que l'Espagne fit, et ce que je sais bien quelle ne fera pas. Dans cet ordre des choses couroit-on un risque de se tromper en pensant que la Louisianne peut redevenir un objet serieux d'attention pour la France? Le sort de ce beau pais sous le gouvernement Francois a ete assez remarquable. L'indifference qui l'a fait sacrifier a une puissance etrangere n'est nee que de l'opinion trop brillante que la nation en avoit concise dans les premieres tentatives d'etablissements. On le croyoit rempli des mines d'or et d'argent, et quand cet erreur disparite on a cru qu' il n'etoit plus bon a rien. La compagnie d'Occident avoit exalte toutes les imaginations, par l'esperance des profits immenses, qu'elles devroient faire sur son commerce de pelleteries. Mais la vraie richesse de ces vastes et delicieuses contrees ne s'etoit attire un seul regard. Tous les etablissements faits sur le Mississipi avoient pour but unique le commerce. L' agriculture y a toujours ete, et y reste encore dans un etat d'avilissement, qui doit faire genir tout honime ami de l'humanite. Les habitants de cinq villages d'Illinois foulent avec dedain le plus riche terrain de l'univers, et c'est de nous qu'ils recoivent tous les besoins de la vie. A la vue de leurs culture on hesite a determiner lequel de ces deux sentiments ils meritent le plus, l'indignation ou le mepris. Les Francois ni les Espagnols n'ont jamais defriche un arpent de terre au Natches. Et les Americains sous le gouvernement des derniers y ont aujourd'hui trois mille fermes de quatre cents arpents chacune, lesquelles fournissent la majeure partie de consommation de la Nouvelle-Orleans. A quelque distance du Mississipi et sur les branches navigables de ce fleuve les Mathelocks, les Apalousees, les Attacapas, ne font que languir sans augmenter, malgre qu' elles soient au centre d' une plaine de cent cinquante miles de profondeur sur six cents de front, melangee uniformement des prairies naturelles fort etendues, des forets et des terres labourables, dont la richesse egale peut etre tout ce qu' il y a sur le globe. Les causes de cette lethargie sont assez apparentes. Je suis convaincu que la Louisianne est tres a charge de l'Espagne, et qu'elle n'en retire pas a beaucoup pres ce qui lui en coute pour les frais de Gouvernement, et pour les differentes garrisons qu' elle y entretient. Si elle y attache quelque importance ce n'est peut etre que parce qu'elle la regarde comme un boulevard pour ses possessions dans le Nouveaux Mexique. Mais assurement elle se fait illusion a cet egard. Je ne saurois me refuser a l'idee qu' il pourroit et devroit lui convenir, d'abandonner absolument l'une et l'autre rive du Mississipi, et de reculer ses frontieres jusque aux montagnes, pourvu qu'elle fut assuree que les Americains ne passeroient pas ce fleuve. Le moyen qui nous paroit devoir le plus indubitablement remplir cet objet et qui seroit le plus agreable a l' Amerique, c'est que l'Espagne retrocede a la France ces anciennes possessions dans la Louisianne, et que celle-ci s'engage vis-a-vis de la premiere a ne jamais permettre qu' aucune autre puissance forme des etablissements a l'Ouest du Mississipi. Et qu' on ne crois pas qu' il sera besoin d' une grande

force pour faire observer cet arrangement. Si les Américains découvrent qu'on est déterminé à leur ôter toutes espérances de faire leur commerce, on doit s'attendre sans doute que le ressentiment et le désespoir les porteront à des actes de violence; si au contraire on leur offre des facilités, leur intérêt même, le plus grand de tous les intérêts, celui de leur existence commerciale, répond de leur fidélité à remplir les conditions du contrat qu'ils auront souscrit. En supposant même, qu'un jour l'harmonie qui subsiste entre la France et les États Unis, vint à être troublée par des événements qu'une complication des hasards politiques peut amener, une pareille rupture ne pourroit jamais affecter les liaisons établies entre le pays de l'Ouest et la Nouvelle-Orléans. Pour s'en convaincre on n'a qu'à examiner avec un peu d'attention l'emplacement qu'ils occupent sur notre partie du Continent. Séparés des treize États Unis par une chaîne de hautes Montagnes qui interdit toute communication avec eux et avec l'Océan Atlantique n'ayant absolument aucun intérêt commun dans leur commerce maritime, dans leurs pêcheries, dans les alliances qu'ils peuvent faire, ou les guerres qu'ils peuvent avoir, ne devant être comme des Européens que par le Golfe du Mexique. Les habitants de ces nouvelles régions voyent qu'il ne peut leur convenir de contribuer longtemps au support d'une confédération dont le succès ne contribuera rien à leur prospérité, dont les désastres ne peuvent être sentis par eux, qui ne peut les secourir dans leur danger, ni les aider dans leurs besoins. Ils voyent, que les intérêts des deux contrées ont comme leurs eaux un cours diamétralement opposé. Ces deux grandes sections de l'Amérique ne peuvent rester adhérents l'une à l'autre. Elles seroient habitées par des hommes qui parlent la même langue, mais ce ne sera pas longtemps le même peuple. L'unité est rompue par les montagnes. Ceux d'un côté cherchent un nouvel appui. Ils offrent à la puissance qui les accueillera, des avantages qui ne tarderont pas à effacer ceux que l'Amérique aujourd'hui connue a pu promettre. On peut les embrasser d'un coup d'oeil des Apalaches aux Montagnes du Nouveau Mexique, et des lacs du Canada à l'embouchure du Mississippi. Voilà un zone du globe capable de contenir cinquante millions d'habitants, située dans une plaine continue, renfermée dans la même enceinte, dont toutes les parties ont entre elle une liaison intime, un point commun et indivisible de commerce, et de navigation. Peu d'années vont y faire éclore une politique nouvelle et c'est une peuplade qu'on n'aperçoit pas encore, qui en couve le germe. Elle a besoin d'un protecteur, le premier qui lui tendra le bras aura fait la plus grande acquisition, que l'on puisse ambitionner dans le Nouveau Monde. Heureuse ma patrie si elle ne laisse pas échapper ce moment, un de ceux ne se présente pas deux fois. Mais que l'usage en fera-t-elle? Maitresse de la Nouvelle-Orléans, si elle ferme son port à ses colonies, elle retardera leur aggrandissement, c'est-à-dire, qu'elle retiendra sur leur ancien sol plusieurs millions de consommateurs, qui y sont approvisionnés par toutes les nations de l'Europe. Au lieu que si elle leur permet de porter leur denrées à la Nouvelle-Orléans et d'en rapporter leur besoins d'ici elle fera seule la moitié du commerce du continent, et quand elle laissera à leur marchands la liberté d'aller où ils voudroient, et de vendre et acheter où bon leur sembleroit, elle auroit encore la meilleure part à ce trafic, et en tout événement ses douanes rapporteraient toujours beaucoup. En adoptant une conduite qui ne donne pas d'ombrage, en laissant à ses alliés autant de liberté dans leur commerce que sa propre conservation peut permettre, la Nouvelle-Orléans ne tardera pas à devenir ce que la nature l'a destinée à être un jour, la première ville commercante

du monde. Rien ne porte à craindre que les Américains Occidentaux puissent désirer de changer cet ordre des choses. Leur intérêt ne doit pas leur en faire naître l'envie, mais, s'ils l'avoient, une impuissance que tous les siècles ne sauraient vaincre ne leur en laissera jamais les moyens. Il faut une force navale pour s'emparer du Mississipi et assurer un commerce libre par son embouchure. Tout cet immense pays n'a pas une autre sortie. Aucune de ses rivières n'admet d'y construire de gros bâtiments; nous ne saurions y avoir un seul bateau de force; fussions nous jamais en état de chasser de la Nouvelle-Orléans la puissance qui en serait maîtresse. à quoi cela mènera-t-il tant que nous ne pouvons sortir du fleuve? Son embouchure est la clef de l'Occident. Nul ne peut la tourner qu'une puissance maritime. Loin donc que nous devions songer à rompre cette barrière aussi longtemps qu'elle servira à nous protéger, et non pas à nous tenir dans l'oppression. Nous ne saurions désirer rien de plus heureux que de le voir dans les mains d'un allié juste, modéré et puissant, puisqu'il est évident qu'abandonné à nous même nous devons être éternellement dans l'impossibilité d'avoir une marine capable de faire respecter notre pavillon dans le Golfe. Ceux qui connaissent l'homme ne seront pas arrêtés non plus par la considération du genre turbulent, ambitieux, inquiet que l'on connaît à ce peuple. Il apporte ces qualités d'Europe, mais ils ne sont pas indélébiles. Ce sont les guerres continuelles, les dissensions civiles de leur ancienne patrie, l'habitude de parcourir toutes les mers, de braver tous les éléments, qui leurs ont donné de l'énergie. Aucune de ces causes ne peut guère agir sur des cultivateurs paisibles que nul ennemi environne. Relegués dans l'intérieur des terres, vivant dans une sécurité, trop peut-être oisifs pour éprouver aucunes des passions violentes qui déchirent l'âme trop au-dessus de la pauvreté pour ne pas aimer l'ordre, le repos et des jouissances tranquilles. Après ce qui a été dit ci-devant du peu d'avantage que le commerce de France a retiré de ses liaisons avec l'Amérique Septentrionale on pourra être tenté de conclure que le pays occidental ne promet rien de plus flatteur. Le moindre degré de réflexion, éclaircie par la connaissance la plus superficielle du local, suffira pour démontrer la fausseté d'un pareil analogue. Au rivage de la mer les marchands Français sont en concurrence avec toute l'Europe, dans le Mississipi il dépend d'eux de rendre leur monopole aussi exclusif qu'ils le voudront, quoique s'ils sont sages, ils s'en garderont bien. Le tabac est presque le seul article de valeur qu'ils puissent tirer de l'Est, et les autres nations viennent comme eux le chercher directement. Dès que le Mississipi sera ouvert la culture de cette plante cessera dans les deux États qui la produisent aujourd'hui, et les négociants Français deviendront les fournisseurs de l'Europe, outre cet avantage les pays occidentaux leur fourniront encore trois excellents produits, dans la plus grande abondance: le chanvre, le lin et la laine. Là ils ont à combattre l'empire de l'habitude, la force des anciennes connexions, la supériorité de l'air, les collisions de l'industrie. Ici ils régneront sur le goût même, ils n'auront rien à craindre de la rivalité. Quand les Anglais rempliroient des marchandises les postes voisines, qu'ils occupent sur les lacs, ce seroit sans espoir de les vendre. Car aucune des denrées de cette contrée n'est de nature à supporter les frais énormes qu'occasioneroit le transport par des rivières qu'il faut remonter si loin outre plusieurs passages par terre. En reprenant possession de la Louisiane la France y retrouvera trente mille de ses anciens sujets, qui lui sont toujours attachés, et pour qui ce jour sera le plus beau de leur vie. Ce nombre sera bientôt augmenté de tous les Français du Wabash et de cette multitude

des Canadiens qui pour s'être déclarés trop ouvertement en faveur des Américains pendant la dernière guerre se voyent aujourd'hui sans patrie. Ces peuples naturellement laborieux mais anéantis par le découragement émuleront bientôt leur voisins, à l'exemple de qui ils devront le goût et la connoissance des détails des actes paisibles, qui font la richesse des États. C'est principalement vers la culture des terres qu'il faudra diriger. Le commerce avec les sauvages n'a que trop d'attrait pour eux, ils y ont plus besoin de frein que de l'aiguillon. Mais de toutes les cultures dont cette colonie est susceptible, celle qui seroit en même temps plus profitable aux colons, et plus avantageuse à la mère patrie seroit l'éducation des troupeaux, pourvu qu'on s'attache et qu'on réussisse à y avoir des laines assez belles pour valoir la peine d'être exportées; et je crois qu'on pourroit y espérer un succès complet. S'il est impossible de conjecturer juste sur ce point avant l'expérience, il est du moins hors du doute que la colonie peut les fournir à très bas prix, puisqu'elle peut sans frais multiplier à l'infini les bergeries sur un territoire de plus de dix mille lieues quarrées, qui n'est qu'une prairie continuelle.

D.

Endorsed: In Lord Dorchester's Dup'l. No. 112. Secret. 7th of June, 1789.

No. VIII.

[SEE TEXT, PAGE 190.]

ENCLOSURE FROM DORCHESTER TO SYDNEY, 27th August, 1789. (From Canadian Archives, Colonial Office Records, Series Q, Vol. XLII, p. 83.)

OBSERVATIONS UPON THE COLONY OF KENTUCKY.

Louisville is a town opposite to the falls of the Ohio, upon the south shore, very handsomely situated, containing about two hundred houses, and in the vicinity of the place are quarries of rough marble of an excellent quality for building.

On the opposite side of the river, at the foot of the falls, stands *Clarksville*, a small town.

From the falls to the confluence of the Ohio with the Mississippi, upwards of four hundred miles, the current is gentle and the winds, during the summer months, south or southwesterly, so that vessels of considerable burthen can and will in future sail up to the foot of the falls. At this place is already established a warehouse for the reception and inspection of tobacco, and inspectors are appointed by the Legislature. The distance from Louisville, the most westerly settlement of Kentucky, to Limestone, the most easterly, is, by the rout of Danville, about one hundred and ninety miles, traveling on a large and very good carriage road, both sides of which, generally speaking, are tolerably inhabited, & in some places good improvements; in other parts, from the tenure of large military grants and particular exposure to the incursions of the Savages, the inhabitants are scattered.

Danville, the seat of the convention, and considered at present as the capital, is situated in the interior country, upwards of eighty miles east of the Ohio, upon a small branch of Elkhorn river, in a part well inhabited and improved. It contains upwards of one hundred and fifty houses, and some tolerable good buildings.

Lexington is situated upon a small stream of the same river, and contains more than two hundred houses, and a handsome Court-house built of Limestone.

Bourbon is a small town, thirty miles from Lexington, and *Washington*, a long, straggling place in one street, on each side of the great road, and within five miles of Limestone.

Limestone is upon the south side of the Ohio, about five hundred miles below Pittsburgh, and is the general landing place of all emigrants from the Atlantic States, from whence they proceed into the interior country, and disperse either to the right or left of this great state road to form their improvements, having descended with the current of the Ohio in large flat bottomed boats, which they provide at Redstone upon the Monongehela, or at Pittsburgh, where many boat yards are erected for this express purpose.

Exclusive of these towns upon the great road, there is *Harrodstown*, upon the Salt river, about fifty or sixty miles from the Ohio, containing near one hundred houses; *Leestown*, on Chaplain's fork, of nearly the same size, and *Beensburg*, upon Red river, comprehending upwards of one hundred and twenty houses.

Kentucky, as an appendage of Virginia, was thrown into *three great Counties*, Jefferson, *Fayette*, and *Lincoln*, and latterly, it is understood, two more have been laid off by act of Assembly.

Kentucky in general appears to be a limestone soil, excellently watered, abounding with cane, which affords nourishment for their numerous cattle during a short winter, and *saline springs*, which by simple evaporation plentifully supply the country with salt. The cultivated *productions* are Indian corn, wheat, rye, barley, oats, &c., &c., and *tobacco*, which latter article is raised in considerable quantities by slaves, as practised in Virginia, and latterly, by particular permission, is sent down to New Orleans.

The last *Census* of the people, taken by authority in 1788, amounted to sixty-two thousand souls, including a much greater proportion of adult males than is to be looked in a common estimation of this nature, to which great additions have been since made, the writer having seen near five hundred persons at Limestone, who had just landed or arrived there in the course of two days, the time of his stay, besides a constant influx of families he met travelling on the high road.

The *Militia* of the country is numerous, it being supposed that upon any emergency ten thousand men might be easily raised. Two Troops of horse are enrolled every six months, composed of fifty men, who patrol the frontiers of the settlement towards the Ohio to prevent Indian depredations. This militia, regulated by the laws of Virginia and the occasional organization of the convention, have often penetrated the Indian country, and in the year 1783 fifteen hundred mounted militia, under the command of Colonel Logan, made a sudden incursion as far as the sources of the Miamis River, and burnt all the Shawnee towns, which brought them within three days march of Detroit.

The *Inhabitants* of Kentucky are composed of men who fled from the horrors of civil war during the late contention, of a great number of military people who were disbanded from the American Army, of families from the Middle and Southern States, and latterly by a number of emigrants from the North of Ireland, so that this settlement may be said to consist of soldiers and husbandmen.

The *Convention* of Kentucky, whose authority, delegated from the people, is to continue until the year 1790, is composed of a number of representatives from the Coun-

ties. The following are the *leading members*, viz: Colonel George Muter, Chief Justice, with a Salary, from Virginia, Major General Scott, Brigadier General Wilkinson, Colonel Levi Todd, Colonel Robert Todd, Colonel Robert Johnson, Colonel Robert Patterson, Colonel Marshall, Secretary of the Land Office, and Colonel Campbell. It is unnecessary to mention the counties in which they reside, as they are universally known in that country.

The Congressional established *Troops*, under the command of Colonel and Brigadier General Harmar, are supposed to consist of eight hundred men, comprehending two companies of Artillery attached to this corps, and they are in garrison from Venango in the east, on the northwest of the Ohio, to Post St. Vincennes on the Ouabache, in the west, in the following manner, viz: Brigadier General Harmar, at Fort Harmar, on the Muskingum, with five companies; Major Willis at the Falls of the Ohio, with three companies; Major Dougherty at Post St. Vincennes, with four companies, and Captain Doyle at Venango, with two companies. The other two companies cover the new establishment commenced at the mouth of the Great Miamis or Rocky river, under Judge Symms, where they occupy a redoubt at the forks of Great Beaver creek, the name of the commanding officer not known at present.

They are supposed not to be defective in *Field pieces*, and have spare *Iron Ordnance* at Pittsburg and Fort Harman.

People of property in the Western frontiers of Virginia and Pennsylvania must generally be interested in the fate of Kentucky, but until the effects of a correspondence, carried on by a private committee, between these settlements, are better known, many names of the *leading men* of that description can not be given. Brigadier General Nevill, Colonel John Stephenson, of Pennsylvania, and Major General Lincoln, of the New Colony at Muskingum, and even Judge Symms, at the Great Miamis, are of opinion that their interest is inseparably connected with Kentucky.

The *Trade* of this country is now confined to the internal barter of its inhabitants and the supply of the new emigrants, and lately to the exportation of flour and tobacco by special permits to New Orleans, and this intercourse will probably be increased through the medium of the colony establishing at New Madrid on the west shore of the Mississippi, opposite to the mouth of the Ohio, under the direction of Mr. Morgan.

The continual emigration from the Atlantic States, flowing from various causes, the result of the late revolutionary war, must suddenly form very great and extensive colonies upon the Ohio, its lateral branches, and the Mississippi, which will eventually open a field for a more extensive commerce than what the northern parts of America have yet afforded, and consequently New Orleans must become, at no distant period, the great emporium of North America, and therefore highly worthy of the marked attention of the British Government as a commercial and manufacturing kingdom.

Lacassang & Co., at Louisville, and Tardezvous, at Danville, are *Mercantile houses* of note, in the interest of France. The latter carried on a trade from Bourdeaux to the States during the war, and are supposed once to have been prisoners at Halifax. D.

Endorsed: Observations upon the Colony of Kentucky. In Lord Dorchester's to Lord Sydney, No. 126, of 27th August, 1789.

No. IX.**PROCEEDINGS OF CONVENTION OF NOVEMBER, 1788.**

[SEE TEXT, PAGE 202]

At a Convention begun and held for the District of Kentucky at the Court-house in Danville, in the County of Mercer, on Monday, the third day of November, in the year of our Lord One Thousand seven hundred and Eighty-eight. On which day, being the day appointed by a resolution of a Convention held for the said District on the 31st day of July last past, several members appeared and took their seats; but the number not being sufficient to proceed to business, the Convention adjourned till To-morrow, twelve of the Clock.

TUESDAY, THE 4TH DAY OF NOVEMBER, 1788.

The Convention met according to adjournment. A majority of the members appeared and took their seats. The Honorable Samuel McDowell was unanimously elected President. Ordered that Mr. Thomas Todd be appointed Clerk to this Convention. Ordered that a Committee of Privileges and Elections be appointed. And a Committee was appointed, of Mr. Greenup, Mr. Morrison, Mr. Muter, Mr. Logan, Mr. Taylor, Mr. Smith, and Mr. Irvine, who are to examine the Certificates of Election from the different Counties in this District, and make return thereon. Ordered, That the rules and regulations of the last Convention be the rules and regulations for the Government of this Convention. Resolved, That this Convention will To-morrow resolve itself into a Committee of the whole Convention to take into Consideration the present state of the District. Sundry papers and resolutions of the Congress of the United States, addressed to Samuel McDowell, Esquire, late President of the Convention in Kentucky, was ordered to lie on the Clerk's Table. The Convention then adjourned untill To-morrow, Twelve of the Clock.

WEDNESDAY, THE 5TH DAY OF NOVEMBER, 1788.

The Convention met according to adjournment. Several other members appeared and took their seats.

Ordered, That the papers and Resolutions of Congress, the Resolves of the Convention passed on the 22nd day of September, 1787, relative to a separation of this District from the State of Virginia together with the address from the Convention to Congress be referred to a Committee of the whole Convention.

Resolved, That this Convention do now resolve itself into a Committee of the whole Convention on the state of the District.

Mr. Wilkinson was elected to the Chair.

After some time spent therein Mr. President resumed the Chair, and the Chairman reported that the Committee had taken into consideration the matters to them referred, but not having time to go thro' the same, desire leave to sit again to-day, which was granted.

Ordered, That the resolution of the Convention of the 31st day of July, 1788, recommending the Election of & giving powers to this Convention, be referred to a Committee of the whole, which is to sit to-day.

Resolved, That this Convention do now again resolve into a Committee of the Whole on the matters to them referred. Mr. Wilkinson again Elected to the Chair. After some time spent therein Mr. President resumed the Chair, and the Chairman reported that the Committee had taken into consideration the matters to them referred, and had come to a resolution thereon which he was ready to report. Ordered, That the said resolution do lie on the Clerk's table. Ordered, That it be a standing rule of this Convention that the Convention do resolve itself into a Committee of the whole Convention from day to day to take into consideration the present state of the District.

Two petitions, one from the County of Mercer, and the other from the County of Madison, praying that a manly and spirited address be sent to Congress to obtain the Navigation of the River Mississippi, was read and ordered to be referred to a Committee of the whole Convention. Resolved, That this Convention do now again resolve itself into a Committee of the whole to take into consideration the matters to them referred.

Mr. Wilkinson was again elected to the Chair. After some time spent therein, Mr. President resumed the Chair, and the Chairman reported that the Committee of the whole Convention had taken into consideration the matters to them referred, and had come to a resolution thereon which he was ready to report. Ordered, That the said resolution do lie on the Table. Ordered, That the resolution for preparing an Address to the Assembly of Virginia be now read, & then the same was read, amended, and agreed to as follows, viz:

Resolved, That a Committee be appointed to draw up a decent and respectful address to the Assembly of Virginia for obtaining an Independence of the District of Kentucky agreeable to the late resolution and recommendation of Congress, and that they prepare and report the same to the Convention To-morrow. And a Committee was appointed of Mr. Edwards, Mr. Marshall, Mr. Muter, Mr. Jouitt, Mr. Allin, and Mr. Wilkinson. The Convention then adjourned till To-morrow, Twelve of the Clock.

THURSDAY, THE 6TH DAY OF NOVEMBER, 1788.

The Convention met according to adjournment. Ordered, That the resolution reported yesterday from the Committee of the whole, upon the petitions from the Counties of Madison and Mercer, be now read, and the same, being read, was ordered to be committed to a Committee of the whole Convention. Resolved, That this Convention do now resolve itself into a Committee of the whole on the said resolution. Mr. Innes was elected to the Chair. And after some time spent therein, Mr. President resumed the Chair, and the Chairman reported that the Committee of the whole had taken into consideration the matter referred to them and had come to a resolution thereon, which he read in his place and delivered the same in at the Table, where it was again twice read and agreed to as follows, viz:

Resolved, as the Opinion of this Committee, that the Petitions from the Counties of Madison and Mercer, praying this Convention to prefer an Address to Congress for pro-

curing the navigation of the river Mississippi are reasonable, and that a decent and respectful address be prepared, requesting Congress to take immediate and effective measures for procuring the navigation of the said river, agreeable to the prayer of the said Petitions.

Ordered, That a Committee be appointed to prepare the said Address; and a Committee was appointed of Mr. Innes, Mr. Wilkinson, Mr. Marshall, Mr. Muter, Mr. Brown, Mr. Sebastian, and Mr. Morrison.

Mr. Edwards, from the Committee appointed to draw up an Address to the Assembly of Virginia for obtaining the independence of the District of Kentucky, reported that the Committee had taken the matter into consideration and prepared an Address, which he read in his place, and then delivered the same in at the table, where it was again read, and an amendment thereto proposed. Ordered, That the said address, together with the amendment, do lie on the Table

A motion was made by Mr. Brown for the Convention to come to the following resolution, viz:

Resolved, That it is the wish and interest of the good people of this District to separate from the State of Virginia, and that the same be erected into an Independent member of the Federal Union.

Ordered, That the said resolution do lie on the Table. The Convention then adjourned till To-morrow, Twelve of the Clock.

FRIDAY, THE 7TH DAY OF NOVEMBER, 1788.

The Convention met according to adjournment.

A Letter from James Speed addressed to the President Convention was read.

Ordered that the same do lie on the Table. The Convention adjourned till To-morrow morning, Twelve of the Clock.

SATURDAY, THE 8TH DAY OF NOVEMBER, 1788.

The Convention met according to Adjournment.

A motion was made by Mr. Wilkinson for the Convention to come to the following resolution, which was read and agreed to as follows, viz:

Whereas, it is the solemn duty, so it is the ardent desire of this Convention, to pursue such measures as may promote the Interests and meet the approbation of their Constituents; but the discordant opinions which at present divide the good people they represent, render it doubtful whether they can adopt any plan which will embrace the opinions of all, or even secure the support of a majority. In this state of embarrassment—perplexed with doubts and surrounded by difficulties—in order to avoid error and to attain truth, to remove the Jealousies which have infected society, and to restore that spirit of harmony and concord on which the prosperity of all depends, They deem it most eligible to address their Constituents on the momentous occasion. Therefore,

Resolved, That a Committee be appointed to draft an address to the good people of the District, setting forth the principles and motives from which this Convention act; representing to them their true situation, urging the necessity of union, concord, and mutual concession, and solemnly calling upon them to furnish this Convention, at their

next session, with instructions in what manner to proceed on the important subject to them submitted.

And a Committee was appointed, of Mr. Wilkinson, Mr. Innes, Mr. Jouitt, Mr. Muter, Mr. Sebastian, Mr. Allin, and Mr. Caldwell. Resolved, That when this Convention doth adjourn it will adjourn until Monday morning, Seven of the Clock. Ordered, That the address to the Assembly of Virginia be now taken up and read, and the same was read, amended, and referred to a Committee of the whole. The Convention then adjourned till Monday, Seven of the Clock.

MONDAY, THE Tenth DAY OF NOVEMBER, 1788.

The Convention met according to Adjournment.

Mr. Wilkinson, from the Committee appointed to draught an Address to Congress, requesting immediate and effective measures to be taken to obtain the Navigation of the River Mississippi, reported that the Committee had taken the matter into consideration and prepared an address, which he read in his place, and then delivered the same in at the Clerk's Table, where it was again twice read and agreed to as follows, viz:

To the United States in Congress Assembled:

The people of Kentucky in Convention assembled, as free men, as Citizens, and as a part of the American Republic, beg leave by this Humble petition to state their rights and call for protection in the enjoyment of them.

Fathers, Fellow Citizens, and Guardians of our rights: As we address you by the endearing appellation of Fathers, we rely on your paternal affection to hear us; we rely on your Justice as men and citizens to attend to the wrongs done to men and Citizens, and as a People recognized by the solemn Acts of the Union, we look for protection to the Federal Head.

When the peace had secured to America that sovereignty and Independence for which she had so nobly contended, we could not retire with our Atlantic friends to enjoy in ease the blessings of freedom. Many of us had expended in the struggle for our country's Rights that property which would have enabled us to possess a competence with our Liberty. On the western waters the Commonwealth of Virginia possessed a fertile but uninhabited Wild. In this Wilderness we sought, after having procured Liberty for our posterity, to provide for their support. Inured to hardships by a long Warfare, we ventured into almost impenetrable forests; without bread or domestic Cattle we depended on the Casual supplies afforded by the chace. Hunger was our familiar attendant, and even our unsavory meals were made upon the wet surface of the earth with the cloud deformed Canopy for our covering. Tho' forced to pierce the thicket it was not in safety we trod. The wiley savage thirsted for blood, lurked in our paths and seized the unsuspecting Hunter. Whilst we lamented the loss of a friend, a Brother, a Father, a Wife, a Child, became a Victim to the Barbarian Tomahawk; instead of consolation a new and greater misfortune deadened the sense of former afflictions. From the Union we receive no support, but we impeach not their Justice.

Ineffectual treaties, often renewed, and as often broken by the Savage Nations, served only to furnish them with the means of our destruction. But no human cause

could controul that providence which had destined this Western Country to the seat of a Civilized and happy people. The period of its accomplishment was distant, but it advanced with rapid and incredible strides. We derived strength from our falls and numbers from our losses. The unparalleled fertility of our soil made grateful returns, far disproportioned to the slight labour which our safety would permit us to bestow. Our fields and herds afford us not only sufficient support for ourselves, but also for the Emigrants who annually double our numbers, and even a surplus still remains for exportation. This surplus would be far greater did not a narrow policy shut up our navigation and discourage our industry. In this situation we call for your attention, we beg you to trace the Mississippi from the Ocean, survey the innumerable Rivers which water your Western Territory and pay their tribute to its greatness, examine the luxuriant soil which those Rivers traverse. Then we ask, can the God of Wisdom and Nature have created that vast country in vain? Was it for nothing that he blest it with a fertility almost incredible? Did he not provide those great streams which empty into the Mississippi, and by it communicate with the Atlantic, that other nations and climes might enjoy with us the blessings of our fruitful soil? View the Country, and you will answer for yourselves. But can the presumptuous madness of man imagine policy inconsistent with the immense designs of the Deity?

Americans can not. As it (is) the natural right of the Inhabitants of this Country to navigate the Mississippi, so they have also the right derived from treaties and national compacts. By the treaty of Peace, concluded in the year 1763, between the Crowns of Great Britain, France, and Spain, the free navigation of the River Mississippi was ascertained to Great Britain. The right thus ascertained was exercised by the subjects of that Crown until the peace of 1783, and conjointly with them by the Citizens of the United States. By the Treaty in which Great Britain acknowledged the Independence of the United States, she also ceded to them the free Navigation of the River Mississippi. It was a right naturally and essentially annexed to the possession of this Western Country. As such it was claimed by America, and it was upon that principle she obtained it. Yet the Court of Spain, who possess the Country at the mouth of the Mississippi, have obstructed your citizens in the enjoyment of that right. If policy is the motive which actuates political conduct, you will support us in this right, and thereby enable us to assist in the support of Government. If you will be really our fathers, stretch forth your hands to save us. If you would be worthy Guardians, defend our rights. We are a member that would exert every muscle to your service. Do not cut us off from your Body. By every tie of consanguinity and affection, by the remembrance of the blood which we have mingled in the common cause, by a regard to Justice and to policy we conjure you to procure our right. May your Councils be guided by wisdom and justice, and may your determinations be marked by decision and effect. Let not your beneficence be circumscribed by the Mountains which divide us. But let us feel that you are really our Fathers & assertors of Our Rights. Then you would secure the prayers of a people whose Gratitude would be as warm as their vindication of their Rights will be eternal. Then our connexions shall be perpetuated to the latest times, a Monument of your Justice and a Terror to your Enemies.

Resolved, That the President of this Convention inclose the said address to the President of Congress, requesting him to lay the same before that august Body.

Mr. Wilkinson, from the Committee appointed to draught an address to the people of this District, reported that the Committee had taken the matter into consideration and prepared an address, which he read in his place, & then delivered in the same at the Clerk's Table, where it was again read and ordered to be recommitted to a Committee of the whole Convention.

The Convention, according to the order of the day, resolved itself into a Committee of the whole to take into consideration the state of the District. Mr. Innes was elected to the Chair.

After some time spent therein, the President resumed the Chair and the Chairman reported that the Committee had taken into Consideration the Address to the Assembly of Virginia and made an amendment thereto, which he read in his place, and then delivered in the same at the Clerk's Table, where it was again twice read and again amended, and agreed to nemini Contradicente, as follows, to-wit:

To the Hon'ble the General Assembly for the Commonwealth of Virginia:

GENTLEMEN: The Representatives of the good people inhabiting the several Counties composing the District of Kentucky in Convention met, beg leave again to address you on the great and important subject of their separation from the parent state and being made a member of the Federal Union.

To repeat the Causes which impel the inhabitants of this District to continue their application for a separation will, in our Opinion, be unnecessary; they have been generously acknowledged and patronized in former Assemblies, and met the approbation of that august Body, whose consent was necessary towards the final accomplishment of this desirable object, and who resolved that the measure was expedient and necessary, but which from their peculiar situation they were inadequate to decide on.

As happiness was the object which first dictated the application for a separation, so it has continued to be the ruling principle in directing the good people of Kentucky to that great end, upon Constitutional terms, and they conceive the longer that measure is delayed the more they will be exposed to the merciless Savage or (which is greatly to be feared) Anarchy, with all the concomitant evils attending thereon.

Being fully impressed with these ideas, justified by frequent examples, we conceive it our duty as free men, from the regard we owe to our constituents, & being encouraged by the Resolutions of Congress, again to apply to your Honorable Body praying that an act may pass at the present Session for enabling the good people of the Kentucky District to obtain an independent Government and be admitted into the confederation as a Member of the Federal Union, upon such terms and conditions as to you may appear just and equitable; and that you transmit such Act to the President of this Convention with all convenient dispatch, in order for our consideration and the final completion of this business; this we are emboldened to ask, as many of the Causes which produced former restrictions do not now exist.

Firmly relying on the justice and liberality of your Honorable House so often experienced, and which we are ever bound to acknowledge,

We again solicit the friendly interposition of the parent State with the Congress of the United States for a speedy admission of the District into the Federal Union, and also to urge that honorable Body in the most express terms to take effectual measures

for procuring to the Inhabitants of this District the free Navigation of the River Mississippi, without which the situation of a large part of the community will be wretched and miserable, and may be the source of future evils.

Ordered, that the President sign and the Clerk attest the said address, and that the same be inclosed by the President to the Speaker of the House of Delegates.

Resolved, That this Convention highly approve the Address presented by Gen'l James Wilkinson to the Governor and Intendant of Louisiana, and that the President be requested to present him the thanks of the Convention for the regard which he therein manifested for the Interest of the Western Country.

Resolved, That when this Convention doth adjourn, it will adjourn to the first Monday in August next.

Resolved. That the President of this Convention shall, during the recess thereof, with the advice of three or at the request of five Members, call a Convention, and in case of death, removal, or other disability of the President, any six members shall have power to call a meeting of the said Convention.

Ordered, That the Printer of the Kentucky Gazette be requested to publish the proceeding of this Convention.

The Convention then adjourned till the first Monday in August, next.