inherent right to acquire territory; that whenever that acquisition is by treaty, the same constituted authorities in whom the treaty-making power is vested have a constitutional right to sanction the acquisition." The constitutionality of the purchase of Louisiana has been repeatedly confirmed both in courts and by subsequent exercise of the same power under similar circumstances. It is folly to deny it now.

Having attached Louisiana to the United States, the next question which arose was that of its status and relation to the central government. The matter was widely discussed in congress and out of congress, and occasioned no little controversy. To settle the points at dispute, three paths were open. First, a constitutional amendment might be adopted, admitting Louisiana and extending the powers of congress over it as they applied to existing federal territory. Secondly, congress might assume Louisiana to be assimilated to the old territory and to be disposed of in the same manner. Lastly, congress might hold it apart as a peculiar estate and govern it subject to treaty stipulations by an undefined power implied in the right to acquire. The arrangements actually made show that the second plan was the one really acted upon. Nevertheless the supreme court declared fifty years later that the third was the true theory; for Chief Justice Taney asserts in his opinion upon the Dred Scott case that the article in the constitution giving congress general power over the territories "is confined and was intended to be confined to the territory which at that time belonged to and was claimed by the United States," and that the power of congress over Louisiana stands firmly as "the inevitable consequence of the right to acquire territory." Be these later developments as they may, congress placed Louisiana in the same category as the existing territories: what we are alone concerned with is the actual status and consequent disposition of that part of the domain since erected into the state of Nebraska.

The Ordinance of 1787.

There was only one valid precedent for congress to follow in the exercise of the power to make all needful rules and regulations respecting the territory belonging to the United States. The ordinance issued by the confederacy in 1787 was re-enacted during the first session of the first congress and was the basis of nearly all subsequent legislation for the territories. It not only outlined a form of government, but also established a statutory domain of civil liberty for the territorial inhabitants. In brief, it vests the executive power in a governor and secretary appointed by the president for three and four years respectively; the judicial power in a court of three judges, likewise appointed for terms of good behavior; the legislative power in a general assembly consisting of two houses, the representatives elected by the people, the councils of five persons appointed for terms of five years by the president from a list of ten nominated by the representatives. Until a population of 5,000 was attained, however, the presidential appointees were also to exercise the legislative power. In order to extend the fundamental principles of civil and religious liberty, it ordains six articles as "a compact between the original states and the people and states in the said territory and to forever remain unalterable unless by common consent." These articles provide for freedom of religious worship, for the benefits of common law procedure, for the encouragement of schools, for inseparable connection with the union, for admission as commonwealths as soon as a sufficient population should be secured and, finally, for the prohibition of slavery. Now the ordinance of 1787 did not apply to Louisiana and hence was never applied to Nebraska, but its influence can be discerned in every act of congressional legislation dealing with the organization of the territories. We will see how far it affected Nebraska as we continue.

In order to secure the advantages for which the people had paid the purchase price of Louisiana, congress was now forced to adopt some specific measure. The first attempt was the law of October 13, 1803, authorizing the president to take possession of the ceded territory and providing that all the military, civil and judicial powers exercised by the then existing government be vested temporarily in such person or persons as the president of the United States should direct for maintaining and protecting the inhabitants of Louisiana in the enjoyment of their liberty, property and religion. Congress virtually delegated all their power to the president; they simply put the president in the place formerly occupied by the king of Spain; they erected a government which Benton correctly criticised as "despotic." This statute did not long endure, but the next step marks but little improvement.

The Territory of Louisiana.

Further action was taken by congress before adjournment and an act passed March 26, 1804, dividing Louisiana into two territories. That part lying west of the Mississippi and north of the 33d degree north latitude was comprised in the District of Louisiana and brought for the purposes of government under the officers of Indiana territory, whose governor and judges were to make all laws subject, however, to the approval of congress. The only limitations imposed were that no law inconsistent with the constitution or laws of the United States be held valid; that no restriction be laid on individual exercise of religion, and that jury trials be allowed in all criminal cases and, if desired, in civil suits involving $100. Two courts were to be held annually in the district, but even the officers of the militia were to be appointed by the governor or the president. The inhabitants were subjected to almost all the evils of absentee government. Fortunately the act ceased by limitation after a year and was superseded by a new law, March 3, 1805. Yet it too, made little change other than providing a separate staff of officers for the territory of Louisiana as it was now officially called. The officers were all appointed by the president, the governor for three years, the secretary and the judges for four years, while the legislative power was given to the governor and judges or a majority of them. The same provisos for civil liberty were repeated.

The Territory of Missouri.

The admission of Louisiana into the union in 1812 compelled congress to find another appellation for the territory of that name. This was effected by the law of June 4, 1812, entitled an act to provide for the temporary government of the territory of Missouri. At the same time the whole frame of government was changed. The executive and judicial departments remained constituted as before, but the legislative power was now vested in a general assembly consisting of two houses and the governor. The latter formed a co-ordinate branch of the legislature, his assent being necessary for the validity of every legislative act. The representatives were to be chosen for two years in proportion to the number of free white male inhabitants and elected by such of that number as were over 21 years of age. The legislative council was to consist of nine members appointed for five years by the president from persons selected to twice that number by the lower house. The qualifications for membership in each branch are prescribed, the sessions to be annual, and each house to have control over its members and proceedings. The citizens are, moreover, given the right to elect a delegate to represent them in congress. A domain of civil liberty is explicitly established in a detailed bill of rights which declares that the people are entitled to proportionate representation in the assembly, to common law procedure, to jury trials, to full compensation for property or services required for public uses, prohibits ex post facto laws and laws impairing the obligation of contracts, and insists upon freedom of religious worship and the encouragement of schools. We have here a practical grant of representative government. It is not completely representative, because every law requires the unqualified assent of the governor, who in reality is a mere agent of the central government. The act was amended in 1816 to make the legislative sessions biennial but otherwise remained in force until after the Missouri compromise. In 1819 the boundaries were contracted by an act placing all that part of the territory south of a line drawn from the Missouri river along 36° north latitude to the river Saint Francois, thence up that river to 36° 30 minutes, and then west to the western limits, under a separate government for Arkansaw territory.

As Unorganized Territory.

In 1820 came the famous enabling act which cut off for the state of Missouri that portion of the territory east of the meridian passing through the mouth of the Kansas river where it empties into the Missouri, and south of the parallel of latitude, thence east to the falls of the Des Moines river, and a line following that river thence to its mouth in the Mississippi. The northwestern boundary of Missouri was later corrected to its present status. The eighth section contains "the compromise," and has a direct bearing upon the territory now comprised in Nebraska. It enacts that "in all that territory ceded by France to the United States under the name of Louisiana which lies north of 36° 30 minutes north latitude, not included within the state contemplated by the act, slavery and involuntary servitude otherwise than in the punishment of crime, whereof the parties shall have been duly convicted, shall and is hereby forever prohibited." Little need be said here concerning this clause. It was in 1856 declared by the United States supreme court to be unconstitutional and void, but until so declared it had exercised all the influence of a perfectly legal enactment. This act left that part of Missouri territory not included in the commonwealth in an unorganized condition and without provision for local government of any kind whatever. The governmental power was for the time retained in congress themselves.

The next change in boundary occurred in 1834 when that part of the territory lying north of the north line of the state of Missouri and east of the Missouri river and the White Earth river from its junction with the former was attached to the territory of Michigan. The western boundary of the territory of the United States had never been acceptably defined, a considerable margin of country being disputed by both Mexico and the United States. This dispute, so far as it might have trenched upon our title to western Nebraska, was finally settled by the treaty of Guadaloupe Hildalgo, proclaimed July 4, 1848, by which the southern and western boundaries of the United States were defined practically as they stand today with the exception of the strip known as the Gadsden purchase. No further legislation affected the constitutional development of Nebraska until the passage of the Kansas-Nebraska bill.

The Kansas-Nebraska Bill.

At the beginning of the second session of the Thirty-third congress, Representative Dodge of Iowa introduced a bill for the organization of the territory of Nebraska. It was simply a copy of the bill for the same purpose which had passed the house during the previous session and its provisions did not differ from those of other similar bills. Nor was the question novel; the matter had occupied the attention of congress as early as 1844 and again in 1845, 1848 and 1853. The bill went the usual round of congressional legislation, but when reported to the senate by Senator Douglas, from the committee on territories, it had been considerably altered. It still provided for the organization of but one territory under the name of Nebraska, but in the twenty-first section Douglas advanced his new theory of squatter sovereignty. It asserted the principle that all questions relating to slavery be left to the decision of the people residing in the territory, to have been already established by the compromise of 1850. The whole controversy centered in this clause. In January, the bill was recast by the senate committee on territories and the former twenty-one sections grew to forty in number. Instead of one territory, it now contemplated two, the southern to be called Kansas, the northern Nebraska. The opposition claimed that doubling the expense of a costly territorial government was entirely unnecessary and unwarranted by the existing population. And when it was asserted that several thousand people were already residents of the northern territory, the retort was that, if so, they were there in defiance of the law of 1834, which prohibited all except licensed traders from going into the Indian country. Of the fourteenth section, Von Holst declares that "so far as it treated of slavery, [it] was, from the first to the last, constitutionally and politically a fraud, the ulterior consequence of which brought the union and slavery face to face with the question of existence in such a way that the conflict of interests and principles could no longer find final settlement in words, but was forced to seek it in deeds."

Yet, notwithstanding a bitter opposition, the Nebrascals came out victorious and the bill became a law by approval of the president March 30, 1854. What were the provisions? Only the first eighteen sections refer to the territory of Nebraska, which is made to cover the domain included between 40° and 49° north latitude, bounded on the west by the summit of the Rocky mountains and on the east by the line of the boundary of the territory of Minnesota as far as the Missouri river, thence southward "down the main channel of said river." The executive power is vested in a governor appointed by the president for four years; in his absence, in a secretary similarly appointed for five years. The legislative power is vested in the governor and legislative assembly, the latter to consist of a council and house of representatives. Members of the council hold office two years, of the lower house one year and representation in each is by districts in proportion to the qualified voters. Sessions are limited to forty days each year while the suffrage is extended to the free white male inhabitants provided they be citizens of the United States or have declared their intention to become such. The veto of the governor may be overridden by repassage of a bill with a two-thirds vote of each house. Appointments by the governor to territorial offices are subject to the advice and consent of the council. The judicial power is vested in the supreme and inferior courts. The supreme court consists of three justices appointed by the president for terms of three years. The other officers appointed from Washington are the attorney and marshal, each holding four years. The qualified voters are furthermore authorized to elect a delegate every second year to represent them in congress.

The fourteenth section repeals that part of the Missouri compromise referring to slavery as "inconsistent with the principle of non-intervention by congress as recognized by the legislature of 1850, it being the intent of the act to leave the people perfectly free to regulate their domestic institutions in their own way. This is evidently meant to allow slavery in the territory until the assembly should prohibit it. Moreover the first section provides that when admitted as one or more commonwealths, Nebraska shall be admitted with or without slavery as their constitutions then may prescribe. It is to be noticed that the Kansas-Nebraska bill contains no formal bill of rights; it fails altogether to establish any domain of civil liberty for the individual against the territorial government. On the other hand, it constituted the first really representative legislature that has had control over the district composing the present commonwealth. For the first time, too, the governor has only a limited veto power which may be overcome by the representatives of the people by complying with a specified method of procedure.

Boundary Changes.

Nebraska was now an organized territory, but she had not yet attained her permanent boundaries. By a law of 1861 that portion lying south of 41° north latitude, and west of the twenty-fifth meridian of longitude west of Washington was taken from her limits to form part of the territory of Colorado. Her domain was further modified the same year by the act creating the territory of Dakota out of that territory lying north of a line running up the main channel of the Niobrara from its mouth in the Missouri to the mouth of the Keya Paha, thence along that river to 43° north latitude, and thence due west. Section 21 of this law incorporated temporarily into the territory of Nebraska that part of the territories of Utah and Washington between 41° and 43° north latitude and thirty-third meridian of longitude west of Washington. The act of 1863 took away again all that district west of the twenty-seventh meridian of longitude west of Washington, making it a part of the territory of Idaho. This left Nebraska with her present boundaries, the same as were afterwards prescribed by congress in the act of admission to the union.

The merest glance at the map will show that these lines are in the highest degree artificial. When the crest of the Rocky mountains formed her western limits, Nebraska had a natural boundary upon one side; this has since been changed and the rivers now on the north and east can in no way be regarded as natural boundaries. On the contrary they form very undesirable boundaries and have already occasioned much misunderstanding. In the case of Holbrook vs Moore Chief Justice Lake decided that a change in the main channel of the river does not alter the boundaries of the commonwealth. The point arose over the doubtful jurisdiction over an island, but the question of jurisdiction over newly formed territory, if attached to the mainland, is at present before the courts.

The Enabling Act of 1864.

The Thirty-eighth congress took up the matter of erecting the territory of Nebraska into a commonwealth. A bill for that purpose passed the house without discussion. The chief objection made in the senate rested on the fact that while the ratio of congressional apportionment was then one to 127,000, the population in the district was, at the highest, estimated at 40,000. It was also urged that the people concerned had neither asked nor publicly expressed their desire to form a constitution. But the seceded commonwealths were not then represented in congress and any addition to the war party would be welcome. Neither was a possible extra vote in favor of the proposed amendments to the federal constitution undesirable, and so the bill finally passed and became a law by approval of the president, April 22, 1864.

The act of 1864 defines the boundaries of the proposed commonwealth and authorizes the people thereof to form a constitution and government under the name of Nebraska. It prescribes the precise method to be followed in exercising this power: namely, that a convention of delegates, elected from districts, according to population, by all persons legally qualified to vote for members of the territorial assembly, should meet at the capital on the first Monday in July of that year and form a constitution, republican in form and not repugnant to the constitution of the United States and the principles of the declaration of independence. The constitution was further to provide by an article forever irrevocable without the consent of congress—first, that slavery and involuntary servitude except as punishment for crime be forever prohibited; secondly, that perfect toleration of religious sentiment be secured and no person molested in person or property on account of his religious worship; and thirdly, that the people disclaim all title to unoccupied public lands which are to remain untaxed and that lands belonging to non residents be not discriminated against in the matter of taxation. The constitution when formed was to be submitted to the people for ratification or rejection upon the second Tuesday in October, and if carried by a majority vote the fact was to be certified to the president by the acting governor, "whereupon it shall be the duty of the president of the United States to issue his proclamation declaring the state admitted into the union on an equal footing with the original states without any further action whatever on the part of congress." The act also apportioned one representative to Nebraska and made grants of public lands for various purposes.

The delegates were duly chosen in accordance with the law, but when, upon meeting, they refused to frame a constitution and adjourned sine die they simply reflected the sentiments of their constituents, who were at that time opposed to the assumption of the burdens of a commonwealth government. The territorial legislature of 1866, however, without further action of congress, submitted a proposed constitution to the electors to be voted upon in June of that year with directions to choose at the same time commonwealth officers and a member of congress. The board of canvassers declared the vote to be 3,938 in favor of the constitution and 3,838 against it. The legislature thus chosen met in July and elected two senators who together with the representative started for Washington with the constitution in order to ask congress for admission of Nebraska into the union. It is this document which Judge Crounse has declared was notoriously "originally drafted in a lawyer's office by a few self-appointed individuals who then importuned the legislature to subject it to the people."

The Act Admitting Nebraska, 1867.

Scarcely had news of these events reached the halls of congress when on July 23, Senator Wade of Ohio introduced a bill to effect the admission of Nebraska as a commonwealth. It comprised two sections, the first providing that the constitution and government formed by the people be accepted and the commonwealth declared to be one of the United States; the second, that admission be subject to the conditions and restrictions of the original enabling act. Senator Sumner proposed a further "fundamental condition," to be first ratified at a popular election, but it was voted down and the bill passed both houses. Congress adjourned the following day, thus giving President Johnson an opportunity to resort to a pocket veto—a course of action which he eagerly grasped, with fatal result to the measure.

The bill was quickly reintroduced by Senator Wade on the 5th of the next December, and when reported back to the senate occasioned no little controversy. The restriction of the suffrage to white males by the constitution was strenuously opposed, and finally occasioned the introduction and acceptance of the "fundamental condition" prohibiting discrimination on account of color. The democrats regarded the imposition of this condition to be chiefly for the purpose of precedent for the commonwealths then undergoing reconstruction. They also intimated that the votes of the republican senators already at hand from Nebraska were sorely needed to carry out the schemes of the party leaders who at that time were threatening to impeach the president. As it passed both houses the bill consisted of a preamble and three sections. After reciting that the people of Nebraska had complied with the conditions of the act of 1864 enabling them to form a constitution, that constitution is declared accepted and the commonwealth duly entitled to the rights and privileges, as well as subject to the conditions, of the previous act. But section 3 provides that the law shall not take effect "except upon the fundamental condition that within the state of Nebraska there shall be no denial of the elective franchise or any other right to any person by reason of race or color, excepting Indians not taxed." Only upon notification of assent of the legislature to this condition was the president to announce the fact and the admission of the commonwealth to the union to be considered complete.

The President's Veto Message.

On January 29, 1867, the president returned the bill to the senate with his objections. He presents a summary of the points made in congress by the opposition and undoubtedly makes a strong case for his side. The chief objections may be summed up under five heads:

First—A new condition not mentioned in the enabling act has never before been applied to the inhabitants of any commonwealth. Congress here undertakes to authorize and compel the legislature to change a constitution which the preamble declares has received the sanction of the people and which by this bill is accepted, ratified and confirmed.

Second—Making the acceptance of the third section a condition precedent is the assertion of nothing more nor less than the right of congress to regulate the elective franchise in any commonwealth hereafter to be admitted. This assumption is a clear violation of the federal constitution, which leaves each commonwealth free to determine the qualifications necessary for the exercise of suffrage within its limits.

Third—If, as the preamble asserts, the people of Nebraska have complied with all the provisions of the enabling act of 1864, good faith would demand that she be admitted without further requirements. The people ought to have an opportunity to accept or reject this new limitation by popular vote.

Fourth—The president calls attention to the fact that the proceedings attending the formation of the constitution were not at all in conformity with the provisions of the enabling act; that in an aggregate vote of 7,776, the majority in favor of the constitution was less than 100; that alleged frauds make even this result doubtful as an expression of the wishes of the people.

Fifth—It would be better to continue Nebraska as a territory a little longer in order that increased population and wealth might make the burdens of commonwealth taxation less oppressive.

The great question raised by the veto of President Johnson is that of the competency of congress to place irrevocable limitations upon any commonwealth. The whole proceedings had been, to use a mild expression, "throughout very irregular," and the bill itself was contradictory on its very face. If, as the preamble declared, the people of Nebraska had fulfilled the conditions of the act of 1864, then they must have been regarded as already under commonwealth government, "without any further action whatever on the part of congress." But they had not fulfilled the conditions of that act and no amount of declaratory resolutions of congress could change the state of facts. The act of 1864 was not a continuing offer to be accepted any time after rejection by an equivocal compliance, and the action of the territorial legislature in submitting a constitution to the people was entirely extra-legal and without the shadow of authority. On the other hand, it seems to me that congress had a perfectly constitutional right to prescribe any conditions whatever as a precedent to admission into the union. As long as Nebraska remained a territory congress was supreme and had "all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the constitution." Then, as congress has sole power to erect new commonwealths, they can at their discretion refuse to exercise that power until the people agree to a satisfactory constitution; and they can constitutionally authorize any body of persons to accept conditions on behalf of the people. As to the irrevocableness—if I may use such a term—of the conditions after the commonwealth is once admitted, an entirely different question arises. The point came up in the interesting case of Brittle vs the People, reported in 2 Neb., 198, where the court held the "fundamental condition" to be a valid part of the constitution, but we may still doubt that, assuming that the fourteenth and fifteenth amendments to the federal constitution had not been made, this condition would be held "forever irrevocable without the consent of congress." The power of congress over a territory is undisputed; but as soon as the latter becomes a commonwealth it must be considered as holding directly under the federal constitution and "on equal footing with the original states." Under any other theory we would no longer have a union of equal commonwealths. There would be commonwealths of various orders; one class consisting of the original colonies with all powers not appropriated by the federal constitution; one class, such as Louisiana, with all those powers except that of changing the official language; another, such as Nebraska, without control over the suffrage, religion, etc., etc. Chief Justice Mason assumed as an extreme example, a case where congress prescribes that the commonwealth constitution be altered only with its consent. This may be extreme; but there have been commonwealths without any provision whatever for amending the constitution, and congress could again erect others under similar conditions. What would be the result? If this is a union of equal commonwealths, any amendment undeniably carried by the method ordinarily in vogue must be held constitutional. On admission as a commonwealth, the irrevocable character of conditions imposed by congress lapses, and, as Senator Wade expressed it on the floor of the senate in this very connection, "The day after a state comes in it may alter its constitution, throw your amendment to the winds and fix the status of her voters in her own way."

The State of Nebraska.

The veto message lay on the table in the senate until February 8, when it was taken up and a motion that it be not sustained carried by a vote of 29 to 9, 12 being absent. On the following day the bill was taken up in the house and passed over the veto by a vote of 120 to 43; not voting, 28. Speaker Colfax requested the clerk to call his name, and voted aye. According to the Congressional Globe, "the announcement of the result of the vote was received with applause both on the floor and in the galleries." Notice was given in the senate and that body ordered by resolutions that the bill be presented to the secretary of state as a duly enacted law.

The territorial governor of Nebraska convened the legislature on February 20, 1867, and an act was passed which, after reciting the facts, declared that it ratified and accepted the act of congress and that the provisions of the third section be henceforth "a part of the organic law of the state of Nebraska." This act was certified to the president on February 21, who on March 1, 1867, issued his proclamation stating that "the admission of the said state into the union is now complete." The salaries of the senators and representative issued from March 4; the commonwealth government is just completing its twenty-fifth year of continuous operation.

It now remains for us to examine the frame of government created in 1866-7, and to trace the changes effected by the constitutional convention of 1875. This can best be effected by considering the two together and pointing out where the first is supplemented by the second. Externally the government differed but very slightly from the old territorial regime; the great changes lie in the relations of the departments to the federal government, to other commonwealth governments, to one another, and to the people of Nebraska. The constitution falls naturally into three parts, dealing with the organization of the people in the constitution, the establishment of a domain of civil liberty, and the provision of a commonwealth government.

The Amending Power.

Under the constitution of 1866 only one method of amendment was provided, and that rather indefinitely. Whenever a majority of each house of the legislature thought it necessary, they were to submit the question of calling a constitutional convention to revise or change the constitution to a vote of the people. If favorable, the legislature was to provide by law for calling the convention. The succeeding steps are not specified, nor is it clear whether such a convention was to have constituent or merely initiating powers.

These omissions are partly remedied in the present constitution, which states distinctly that the convention shall consist of as many members as the house of representatives, chosen in the same manner, and shall have only initiating powers. Every change recommended must, to be valid, be adopted by a majority of the electors voting for and against the same.

The constitution of 1875 provides also a second method of amendment. Amendments may be proposed by a three-fifths vote of each house of the legislature and are then to take effect after submission to the people "if a majority of the electors voting at such election adopt such amendment." While the majorities required are not excessive, yet the clause just quoted has destroyed its efficiency inasmuch as it has been taken to necessitate votes in number equal to a majority of those cast for the candidate receiving the greatest total vote at such election.

The Domain of Civil Liberty.

The extent to which freedom of person is insured against the commonwealth government by the constitution of 1866 is similar to that marked out in the federal constitution. The commonwealth government may pass no bills of attainder nor laws working corruption of blood; it may not make ex post facto laws, issue general warrants, levy the writ of habeas corpus except in cases of rebellion or invasion, refuse adequate bail except for capital offenses, unduly delay trials, proceed otherwise than upon a grand jury indictment, refuse the accused a jury trial according to the due process of the accepted common law, impose excessive fines, inflict unusual punishments, make any offense treason except as defined in the constitution and proven in the manner therein provided, or abridge the freedom of speech, petition and religion. In all cases of criminal libel, the truth if published without malice is made a sufficient defense. No person is to be imprisoned for debt, no discrimination made in law against resident aliens, no denial of the writ of error in capital cases.

To these immunities the constitution of 1875 adds prohibitions upon the government against transporting any person for offense committed within the commonwealth, from allowing qualified voters to be hindered in the exercise of the franchise and from inflicting penalties out of proportion to the nature of the offense. It further authorizes the legislature to alter or abolish the grand jury system.

The immunities referring to property are also explicit. The commonwealth government is prohibited from making property of man but otherwise may declare in what property shall consist. On the side of the judiciary, the government may not issue general search warrants, refuse jury trials according to due process of law or pass laws impairing the obligation of contracts. All money must be appropriated by law, the peace debt is limited to $50,000, the salaries of commonwealth officers are specified in the constitution and members of the legislature prohibited from drawing pay for more than forty days' service annually. No property may be taken without due compensation, the revenue must be raised by annual tax laws, while the credit of the commonwealth may not be bound for individuals or corporations.

Several further provisions were added in the constitution of 1875. The truth is extended as a valid defense in civil suits for libel; appeal to the supreme court may not be denied in civil cases nor soldiers billeted in time of peace. Taxes must be assessed in proportion to the value of property and franchises and licenses must be uniform for the class upon which imposed. The debt limit in time of peace is raised to $100,000 and all powers not expressly delegated by the constitution are declared to remain with the people.

The Legislative Department.

The constitution of the government is intended to be one of co-ordinate departments. The legislature is, with certain exceptions, practically based on manhood suffrage for all residents who are citizens of the United States, or who have declared their intentions to become such. The principle of representation is the same in both houses, according to population, the only difference being in the number of members. Any qualified voter may serve and when elected is entitled to compensation for his services, to freedom from arrest during session except for treason, felony and breach of peace, and to privilege against liability for words spoken in debate. A majority of elected members constitutes a quorum. Each house elects its own officers and controls its members and procedure. Bills in order to become laws must be read on three different days, passed in each house and be either approved by the governor or repassed over his veto. Sessions are limited. This organization is substantially retained in the present constitution, the chief modification being in the introduction of the lieutenant governor as president of the senate.

Although the constitution assumes to provide a government of specified powers, it makes no express grant other than that vesting all legislative power in the legislature and then places restrictions on the exercise of general power. The constitution of 1866 forbids the legislature from authorizing lotteries, granting divorces, giving extra compensation to public servants or contractors, and from passing special acts conferring corporate powers. The constitution of 1875 encroaches still further upon the discretionary powers of the legislature. It prohibits special legislation upon any subject to which a general law can be made applicable, takes away power to alienate salt springs belonging to the commonwealth or to donate public lands, to divert specified revenue from the school fund, to permit sectarian instruction in public institutions, to change existing county lines without the consent of a majority of the voters in the counties affected, or to create any executive office.

The Executive Department.

By the constitution of 1866, the executive was made to consist of the elective offices of governor, secretary of state and treasurer, with terms of two years, and an auditor with term of four years. Any qualified elector, a citizen of the United States, was eligible. The supreme executive power was vested in the governor, while the order of succession to his office passed along to the secretary of state, president of the senate and speaker of the house. Besides the duty of enforcing the laws, the governor was given a suspensive veto over legislation, the power of reprieve and pardon, the appointment of administrative officers and complete control over the military forces.

The constitution of 1875 creates the additional executive offices of lieutenant-governor, superintendent of public instruction, attorney general and commissioner of public lands and makes the term of office uniformly two years. The requirements for eligibility are slightly increased and succession to the governorship given to the lieutenant governor, president of the senate and speaker of the house in the order named. The executive is explicitly given power to remove appointed officers and the two-thirds majority required to override a veto is cut down to three-fifths of the elected members in each house.

The Judicial Department.

The judicial power was vested by the constitution of 1866 in a supreme court, district courts and certain inferior courts. The three judges of the supreme court were to be elected by popular vote for terms of six years. They were to have original jurisdiction in certain specified cases and to have cognizance of both equity and common law procedure. The senate was to act as a court of impeachment. No material change in the constitution of the courts has been made by the constitution of 1875. The supreme court is now a permanent body, one member vacating his office every second year. General jurisdiction over cases of impeachment has been taken from the senate and vested in the supreme court. In the last instance, the duty of determining whether or not a commonwealth law is in conflict with the commonwealth constitution, devolves upon the supreme court.

With the constitution of 1875 two propositions were submitted separately, one allowing electors to express their preference for United States senators and the other providing that the seat of government shall not be removed or relocated except by a majority of the electors. Both these propositions were carried and as a consequence of the adoption of the latter no serious attempt to remove the capitol has ever been made. Only once have the people paid any attention to the first proposition since its adoption, and that was in 1886 when General Charles H. Van Wyck made a canvass for re-election as United States senator and received a respectable number of votes. The legislature, however, chose to ignore the sentiments of the people, as they are at liberty to do under the proposition, and it has therefore been practically of no consequence.

Efforts have been made to amend the constitution of 1875 every two years beginning with 1882. The only amendment which has ever been carried, however, was one of the two submitted to the electors in 1886, providing for a sixty days' session of the legislature instead of forty days and a remuneration of $5 instead of $3 per day to members of the legislature. Proposed amendments providing for woman's suffrage, for a railroad commission, for increasing the number and pay of judges of the supreme court, and the remuneration of judges of the district court, and for a prohibitory liquor law have all fallen short of the required vote to secure their adoption, and with the single exception above noted amending section 4, article iii, the constitution remains as it was originally adopted. Two amendments are now pending, however, to be voted upon in November next. It is quite probable that a constitutional convention would have been called before this for the purpose of adopting a new constitution except for the fear of prohibition on the part of many and of stringent anti-railway provisions on that of the railway companies and their friends. It is admitted that the fundamental law of the state is defective in very many particulars. It was enacted at a time when the people of the state were suffering from the ravages of grasshoppers and the agricultural communities were seriously depressed. The salaries of executive officers, and especially of judicial officers, are ridiculously inadequate, and the limitations of the constitution in other directions are quite certain to chafe the growing commonwealth more and more until completely changed by amendments or replaced by a new constitution.

VICTOR ROSEWATER.

NEBRASKA CAPITOL BUILDING.

Nebraska's first state house was not an imposing structure, and yet when it was finished it was regarded by the pioneer settlers of the new territory as a marvel of architectural grandeur. It was erected in the city of Omaha on Ninth street, between Farnam and Douglas streets, by the Nebraska Ferry company, and by that organization leased to the territorial officers. It was a two-story brick structure and cost about $3,000. In this humble edifice assembled the first territorial legislature.

The second capitol building was a more imposing structure and stood on the capitol hill on the spot now covered by the High school building. Congress had appropriated $50,000 for the erection of this building and a contract was made on November 29, 1855, with Bovey & Armstrong, who agreed to have the building completed by September 15, 1856. The work was not finished however until some time in 1857. The building completed cost $100,000. It was on the old colonial style, built of brick, two stories in height, and almost perfectly plain. The capitol building and grounds were donated by the state to Omaha for school purposes in 1867, when the capitol was removed to Lincoln. The capitol building was torn down in 1870 to make room for the present High school building.

Nebraska was admitted into the union of states on March 1, 1867, and the legislature at a special session in May of that year decided to move the state capitol from Omaha to some point in the interior of the state. A commission was appointed, consisting of Governor Butler, Secretary of State Kennard and State Auditor Gillespie, to select a sight for the new capital city. Lincoln was selected and the work of building a state house was at once commenced. The first contract for the state house was let to Joseph Ward of Chicago on January 11, 1868, for the sum of $49,000. The building was constructed from magnesian limestone, obtained from extensive quarries in Gage county. It was finished in December of the same year. On the 3d of that month Governor Butler ordered the archives of state transferred from Omaha to the new building. This was the original state capitol. It stood upon the site now occupied by the present edifice, but not a stone is left of the old building. It served its purpose for ten years, at the end of which time work was commenced upon the present structure.

There were a number of causes which contributed to the sentiment in favor of a new capitol. Chief among these was the very evident unfitness of the building for the permanent home of the offices of the state. The walls were badly constructed and soon gave signs of disintegration. The outer courses of stone were affected by the weather and began flaking off. The state officers soon began to be afraid to stay in the building during high winds and each succeeding legislature met under the shaky roof with an increased trepidation. Then the advocates of removing the capitol commenced an agitation which struck terror and dismay to the hearts of the people of Lincoln. That city, at that time, depended almost entirely for the capital for its future, and the agitation for removal had a depressing effect upon values and the growth of the place. In October, 1878, the north wall of the building was condemned. The Board of Public Lands and Buildings had it rebuilt, and in January, 1879, Governor Garber, in his message to the legislature, recommended that a new state house be erected and suggested that a levy be made for a capitol building fund. After a bitter struggle $100,000 was appropriated for the erection of the west wing of the new capitol. Work was commenced on the new building as soon as possible, but it was not until November, 1881, that the wing was ready for occupancy.

NEBRASKA CAPITOL BUILDING.

It was built by W. H. B. Stout of Lincoln, who undertook the contract for $63,400. In 1881 the legislature appropriated $100,000 for the erection of the east wing, and the contract was also let to W. H. B. Stout for the sum of $96,800. In February, 1883, the legislature provided for the demolition of the old building and for the erection of the main or central portion of the present building, and on July 9 of the same year the contract was let to W. H. B. Stout for $439,-187.25. The foundation walls were laid in the fall of 1883, and on July 15, 1884, the corner stone was laid with appropriate ceremonies. From that date the work progressed rapidly, and by January 1, 1889, the new capitol had been completed.

The style is in the Italian renaissance. There is no superfluous ornamentation either on exterior or interior. Quiet elegance and dignity are the characteristics of the design. The main elevations of the structure face north and south and the fronts are uniform in appearance. The main building without the wings is 85 feet in width and 168 feet in depth exclusive of the two porticos, which are each 12 feet wide. The wings are 85 feet wide and 114 feet long. The structure would be cruciform if the main building had been extended about fifty feet further north and south. The extreme length east and west is 313 feet and the breadth 192 feet. The basement is 10 feet in height, the first story 14 feet, the second 15 feet and the third 14 feet. The dome is 45 feet square at the base and the lantern is 200 feet from the grade line.

Entering from the north the visitor finds himself, after passing between the massive piers of the portico, in a vestibule tiled and wainscoted in marble. From that open apartment he steps into the main corridor, running north and south and intersecting in the rotunda the long corridor running the extreme length of the building east and west. These corridors are tiled with Vermont marble and partially wainscoted in scragliola or artificial marble. The heavy doors and frames are of oak. In each of the four corners of the main building is a suite of office apartments. The commissioner of public lands and buildings has the northwest corner, the secretary of state the southwest, the governor the southeast and the State Board of Transportation the northeast. The offices are all large, well equipped, supplied with fireplaces and handsomely furnished. There are immense fireproof vaults, both on the first floor and in the basement, for the storage of state papers. The first floor of the east wing is assigned to the State Board of Agriculture, the state oil inspector, deputy commissioner of labor, state superintendent of public instruction and adjutant general. The west wing is occupied by the auditor of public accounts and the state treasurer.

The rotunda is octagonal, with an inside dimenson of about thirty feet. An opening in the scond floor admits light to the first floor. The second floor is gained by two iron stairways from the rotunda, while a similar stairway leads from each wing. The corridor on the second is paved with hard wood instead of marble, and the finishing of the wainscoting is in scagliola and has a beautiful effect. From the second story the whole interior of the dome is open and in its decoration the frescoer has been given full scope. Viewed from the lower floor the effect is particularly striking. The entire south half of the second story is given up to the state library which now numbers about 30,000 volumes. The main room lies across the front and extends up through the third floor. The main room is 31 by 83 feet in size, the ceilings being nearly forty feet from the floor. The decorations are notably fine, the ceiling being paneled in hard wood.

Opposite the library in the north side of the main building are the rooms assigned to the supreme court. These rooms are by all odds the handsomest in the building. They are richly furnished, the upholstering being in russet leather.

The senate chamber occupies the west wing, and is a fine audience room. It is 85 feet wide with 40-foot ceiling. The room is handsomely carpeted and the walls and ceiling are decorated with lincrusta walton and heavy papers.

The lieutenant governor and the attorney general also have rooms on the second floor of the west wing. Rooms are also provided for the chief clerk and his assistants.

Representative hall occupies the corresponding position in the east wing and is also appropriately decorated and furnished.

The third floor is given up to committee rooms, etc. It is only during a session of the legislature that this floor presents a busy and animated scene. During the balance of the year it is practically deserted.

If the visitor wishes to continue his investigations still further he may climb a succession of spiral iron stairways until he finds himself in the dome 200 feet above the ground and overlooking the entire city and country for ten or fifteen miles around.

CAPITOL REMOVED.

At the meeting of the legislature which convened on May 18, 1865, important matters came up for consideration, principally the location of the several state institutions for which the enabling act had made a liberal appropriation of lands. The Otoe county delegation proceeded to Omaha asking for the State university, and other towns put in similar claims. No town seemed to care much for the state prison. After a struggle for the location of the several institutions, a compromise was effected by the South Platte members, without regard to party lines, by which it was agreed to remove the capitol to the South Platte country, and locate all the state institutions at the state capital. This caused the consolidation of all the North Platte members in opposition. The bill was prepared with due deliberation and introduced. It was entitled, "An act to provide for the location of the seat of government of the state of Nebraska and for the erection of public buildings thereat."

The house passed the bill two days later under a suspension of the rules for a third reading. All manner of filibustering and strategy was resorted to by the North Platte members to defeat the bill. It so happened that all of the Otoe county members were democracts, who had made a fight to secure the state university for Nebraska City, but they relinquished their claims. The original bill provided that the name for the new city should be "Capital City." Senator Reeves of Otoe county had been a southerner in sympathies and disliked the name of Lincoln. Knowing his dislike to President Lincoln, and hoping to prejudice the Otoe county senator against the bill, J. N. H. Patrick of Omaha moved that the bill be amended by striking out the words "Capital City" and substituting that of "Lincoln." This ruse failed to antagonize Senator Reeves, for instantly he was on his feet and accepted the amendment of the member from Douglas. The friends of the bill caught the spirit of the amendment and adopted it. Thus Nebraska's capital bears the name of the illustrious Lincoln owing to the trick designed to defeat the removal bill.

In the lower house a similar move was made to divide the South Platte delegates by an amendment offered to locate the State university at Nebraska City, which the Otoe delegates had striven to secure previous to the compromise, hoping to break the combine. Hon. A. F. Harvey (dem.) from Otoe opposed the amendment, and in his argument said: "I am opposed to the amendment on partisan grounds, for the reason that Otoe county some years ago had a democratic majority of 600. After the city built a High school building the democratic majority was reduced to 250, and if the State university should be located there the entire democratic majority would be wiped out in Otoe county."

The bill passed the senate by a vote of 8 to 5, and the house by a vote of 25 to 10.

FRAUDULENTLY COUNTED OUT

The Nebraska Constitution of 1871 Framed to Protect the People

AGAINST ENCROACHMENTS OF MONOPOLY

The Crusade by Catholic and Protestant—A Chapter in the History of Nebraska that Has Never Before Been Truthfully Recited.

The first constitution of Nebraska was defective and unsatisfactory in many essential particulars. It framers were aiming chiefly to create a state government that would be as inexpensive as had been the territorial government. The salaries of state officers were ridiculously low and a supreme judiciary was improvised out of the three then existing district judges, who periodically met at the state capital to adjudicate cases that had been appealed from the district courts, over which they themselves had presided. Section 9 of the article on judiciary provided that in all cases heard before the supreme court, as an appellate court, the justice who may have tried such cause in the court below shall not participate in the decision thereof until the other two justices, if present, shall have failed to agree in the decision of said cause.

Under this parsimonious constitution the salary of the governor was $1,000 per annum, that of the secretary of state $600, the state treasurer $400 and the state auditor $800 per year, while the salaries of the judges of the supreme court, who also acted as district judges, was $2,000 per annum. The salary of the janitor was just the same as that of the secretary of state and the governor's private secretary received $400 a year more than the auditor.

As early as 1870, within three years after the state had organized under this constitution, popular sentiment was aroused to the necessity of throwing off this tight-fitting garment and replacing it by a constitution that would meet the requirements of the rapidly growing state. In March, 1871, the legislature passed an act calling together a constitutional convention to meet at the state house in the city of Lincoln on the second Tuesday in the month of June of the same year. The convention was to consist of fifty-two members, apportioned from the districts entitled to representation in the two houses of the legislature and $15,000 was appropriated to meet the expenses of the convention. The election took place on the first Tuesday in May, 1871, and in most instances the members were elected on a nonpartisan basis and without any political contest. Douglas county unanimously elected as its representatives Silas A. Strickland, Experience Estabrook, James M. Woolworth, Charles F. Manderson, James E. Boyd, Eleazer Wakeley, George B. Lake, Isaac S. Hascall and John C. Myers. Lancaster county was represented by Oliver P. Mason, T. B. Stevenson represented Otoe county and Seth Robinson Lancaster county.

Following is a list of delegates to the constitutional convention of June 13, 1871, Douglas county excepted:

O. A. Abbott, Hall county, Ninth Senatorial district; M. Ballard, Washington, Seventeenth; J. C. Campbell, Otoe, Third; J. N. Cassell, Lancaster, Eighth; W. H. Curtis, Pawnee, Fourteenth; J. W. Eaton, Otoe, Third; P. S. Gibbs, Burt, Eighteenth; G. C. Granger, Dakota, Twenty-first; E. N. Grennell, Sarpy, Fifteenth; E. F. Gray, Dodge, Nineteenth; N. K. Griggs, Gage, Twelfth; B. I. Hinman, Lincoln, Twenty-sixth; J. A. Keniston, Cass, Fourth; James Kilbourn, Saunders, Eighth; S. M. Kirkpatrick, Cass, Fourth; Lewis Ley, Stanton, Twenty-third; Waldo Lyon, Burt, Sixth; D. J. McCann, Third; S. P. Majors, Nemaha, Second; O. P. Mason, Otoe, Third; Samuel Maxwell, Cass, Fourth; D. T. Moore, York, Thirteenth; J. D. Neligh, Cumming, Twentieth; B. S. Newson, Otoe, Third, W. Parchin, Richardson, First; H. W. Parker, Seward, Tenth; J. E. Philpot, Lancaster, Eleventh; B. Price, Jefferson, Twelfth; H. M. Reynolds, Gage, Seventh; Seth Robinson, Lancaster, Eighth; J. B. Schofield, Otoe, Third; Jacob Shaff, Saunders, Ninth; A. L. Sprague, Saunders, Ninth; A. F. Stevenson, Cuming, Seventh; C. A. Spiece, Platte, Twenty-second; A. S. Stewart, Pawnee, Fifth; George H. Thummell, Hall and Merrick, Twenty-fourth; E. W. Thomas, Nemaha, Fourth; F. A. Tisdal, Nemaha, Second; E. S. Towle, Richardson, First; Victor Vifquain, Saline, Eleventh; A. J. Weaver, Richardson, First; John Wilson, Johnson, Sixth.

The convention met on June 13, and organized by electing General Silas A. Strickland president. The sessions were continued from day to day until its final adjournment on August 19, when the constitution was promulgated, and an election for its ratification or rejection was ordered to take place on Tuesday, September 19, 1871. The constitution was one of the most perfect organic laws that had ever been framed in the United States. The following comment from the pen of Hon. Joseph Medill, editor of the Chicago Tribune, and one of the framers of the present constitution of Illinois, which had been adopted the preceeding year, affords an unbiased view of the constitution which was submitted to the people of Nebraska for ratification in September, 1871:

"The new constitution of Nebraska is to be voted on by the people on the 19th of September. No election has ever been held in the state so important to its welfare as this will be. The state of Nebraska was admitted to the union under a political pressure before it had the population requisite for a congressional district. But the state has had a wonderful growth. The opening of the Pacific railroad through its entire length, the survey and commencement of various other roads within and leading to the state, the concentration, near Omaha, of all the great trunk routes from the east, have given Nebraska, within a few years, the growth and maturity for which other states have had to wait a quarter of a century. The constitution which would have been applicable for a people scattered along one great river, with some settlements in remote valleys or in particular and widely separated localities, is not the constitution suitable for a state enterit upon a commercial career which, in a very short time, will rival that of states half a century older. It was the knowledge of this fact that induced the calling of a convention to prepare a constitution adapted for the present and prospective wants of the state in place of the original charter, which is admitted to be insufficient. In no particular is this better shown than in the provisions of the two constitutions relating to the judiciary. Nothing gives a higher character to a state than its judiciary. A pure and independent court of last resort will give to a state a credit abroad, even if the other branches of the state be steeped in corruption. The old constitution provided for a hearing of appeals by a general term of the circuit or district judges sitting together. Each judge, therefore, was to review his own judgments. The new constitution establishes an independent supreme court to consist of three judges, and such a tribunal will be of incalculable value to the credit of Nebraska, which, as a commercial state, will have business relations with all parts of the country. The existing constitution contains no provision for its amendment, except through the agency of a convention, and should the new constitution be rejected another cannot be framed and go into effect before January, 1876. In the meantime the state will labor under all the embarrassments of the existing law. The new constitution is perhaps the best matured instrument of the kind ever prepared in any state. It embraces nearly all the wise provisions of the new constitution of Illinois, with several additional precautions against fraud and extravagance.

"Had the state of Illinois enjoyed such a constitution twenty years ago it would have spared our people many millions of dollars shamefully wasted, and prevented legislative and other frauds and abuses to recover from the consequences of which will cost years of ceaseless effort and the most expensive and vexatious litigation. In Nebraska the new constitution proposes to keep the state free; to protect the rights, liberties and property of the people against confiscation by monopolies, and to stop at the threshold the creation of corporations greater than the state and beyond and above the reach of the law to which the person and property of every citizen is amenable. If Nebraska wants to be free—wants to escape the despotism of monopolies under which all her sister states have suffered, and from which they are preparing at a heavy cost to escape—let her adopt this constitution now. Five years hence it will be too late; the work will then be accomplished, and the wise restraints