The Sources, Progress and Printed Evidences of the Written Law in Kentucky: Part II

Lyman Chalkley
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Legal History Commons, and the State and Local Government Law Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol12/iss3/2

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
THE SOURCES, PROGRESS, AND PRINTED EVIDENCES OF THE WRITTEN LAW IN KENTUCKY.

LYMAN CHALKLEY.

II.

THOSE ACTS OF THE ENGLISH PARLIAMENT AND OF VIRGINIA REMAINING IN FORCE IN THE STATE OF KENTUCKY FOR WHICH NO KENTUCKY ACT WAS SUBSTITUTED BY THE FIRST REVISION, 1796-1797.

That significant clause in the Virginia ordinance of 1776,¹ that "the common law of England, all statutes or acts of parliament made in aid of the common law prior to the fourth year of King James the First, and which are of a general nature, not local to that kingdom," became incorporated into the organic law of Kentucky upon its erection into a state in 1792. The act of incorporation was section 6 of Article VIII of the first constitution: "All laws now in force in the state of Virginia, not inconsistent with this constitution, which are of a general nature, and not local to the eastern part of that state shall be in force in this state until they shall be altered or repealed by the legislature."² This Kentucky declaration has been retained in each of the three succeeding constitutions, and appears in the last constitution, that of 1893, in these words: "All laws which were, on the first day of June, one thousand seven hundred and ninety-two, in force in the state of Virginia, and which are of a general nature, and not local to that state, and not repugnant to this constitution, nor to the laws which have been enacted by the legislature of this Commonwealth, shall be in force within this state, until they shall be altered or repealed by the General Assembly." It will be noticed that for the expression in the Virginia ordinance, "the common law of England, and statutes or acts of parliament made in aid of the common law prior to the fourth year of King James the First," these words have been substituted, "all laws which were, on the first day of June, one thousand seven hundred and ninety-two, in force

¹See Kentucky Law Journal, January, 1924, p. 43.
²See the four Constitutions of Kentucky published in "Carroll's Statutes, 1909."
in the state of Virginia;" thus making use of the words "all laws" to embrace both the common law and the statutory enactments.\(^3\)

The courts of Kentucky have recognized and enforced many of the provisions of the common law, and have used terms which import a recognition of that system as a body of law.\(^4\) Their treatment of the statutory enactments has not been so decided.

It has been shown in the preceding article\(^5\) that the statutes in force in Virginia which were made the organic law of Kentucky consisted of three distinct categories: (1) the enactments of parliament made prior to 1607 which had sifted through the legislatures and courts of Virginia down to 1792 without alteration or repeal; (2) the legislative enactments of the colonial legislatures of Virginia, 1607-1776; (3) the acts of the Virginia Assembly, 1776-1792. Thus the present status of statutory enactment in Kentucky may be stated in this form: Those statutes of parliament are in force which were made prior to 1607 and persisted through the Virginia Colonial period, and period of statehood to 1792, and have persisted without alteration or

\(^3\) No doubt the statement in the text is consistent with the legislative intent. But it may be a question for the courts, in particular applications. Littell has suggested a dilemma. He says, in the introduction to his first volume, p. IV: There are many acts which it would be rash and presumptuous to exclude, under the idea of their being repealed, until we have been taught by judicial decision, what effects are to result from a rule of construction introduced into our code by an act of 1789, and afterwards copied by the legislature of Kentucky. The rule is as follows: Whensoever one law which shall have repealed another shall be itself repealed, the former law shall not be revived without express words to that effect. We are yet to learn from judicial construction, whether under this rule, after an act of assembly which has produced a radical change in the law has been repealed, the law will be the same as if such act had never passed, or the same as if it had never been repealed.

"For example, there is a maxim of common law, that an action of covenant shall not be maintained on a writing not under seal: in 1796, an act was passed which says, actions of covenant may be brought on writings not under seal; this necessarily repealed the common law maxim. In 1798, the legislature expressly repealed the act of 1796, but were silent as to what the law should thereafter be. Suppose a question is made whether an action of covenant may now be maintained on a writing not under seal? If it is said that it cannot, what is the effect of the act of 1789? If it is said that it can, what is the effect of the repealing act of 1798?"

"Perhaps it may be suggested that by the term law in the act of 1789, the legislature intended acts of assembly only."

\(^4\) See the cases cited in the Kentucky Law Journal, January, 1924, pp. 43, et seq.

\(^5\) Kentucky Law Journal, January, 1924.
repeal through the Kentucky statehood period, 1792 to the present; together with the acts of Virginia, other than the parliamentary acts which were in force in 1776, and persisted through the Virginia statehood period, without alteration or repeal, 1776-1792; together with the acts of Virginia during the period of statehood, 1776-1792; together with the Kentucky enactments since 1792. The body of the written law of Kentucky in this light, consists of enactments of alteration or repeal of parliamentary laws in force in Virginia, June First, 1792; of alteration or repeal of Virginia laws in force on the same date; of original enactments of the Kentucky legislature since 1792; and successive alterations and repeals of its own prior acts.

What were these English and Virginia statutes with which the Kentucky legislature has been busy for one hundred and thirty years? Their importance rests upon three considerations: (1) They constitute the organic law of the Commonwealth; (2) they are the precedents both as to form and content of subsequent legislation; (3) some are no doubt in force, and obligatory upon the courts of the state. In Nider v. Commonwealth, decided in 1910, the Court of Appeals formulated and laid down a principle which may have a very far-reaching influence in determining what is the present law of the state upon any matter. The problem before the court was whether, in the absence of any Kentucky statute to punish the attempt to commit a crime, there was yet in the body of the law any rule under which an attempt might be punished. The court said: "If this was an offense at common law, then it would be an offense in this state, even if we had no statute on that subject, as the common law of England and all statutes of parlament made in aid thereof have since the organization of this state been a part of the

---

*As these English and Virginia statutes have been made organic law by constitutional enactment, they partake somewhat of the nature of the Constitution itself, in that they are self-operative constitutional provisions binding on the courts without legislative recognition. They are precedents for the legislature laid down in the Constitution. In the growth of the state constitutions, the earliest constitutions served the same purpose. Professor Allen Johnson, in Readings in American Constitutional History, p. 63, uses this language in his prelection to chapter VIII: "Importance attaches to these first State Constitutions not only because they exhibit the political ideas of the time, but also because they reveal precedents and practices upon which the framers of the National Constitution drew in the convention of 1787."*  

140 Ky. 634 (1910).
body not only of the criminal law but the civil law, except where it has been abrogated or superseded by the statute, or is repugnant to the spirit of our laws, or the public policy of the state. And so it is that when there is a wrong to be punished, whether it be great or small, or a right to be redressed, whether it be big or little, and no statute law of this state can be found that will afford the punishment or offer the remedy, we turn to the common law for relief. And if we can find there a principle that is applicable to the situation or condition, its aid may be invoked and under it the wrong punished or the injury redressed.

"That the crime we are considering was an offense at common law is shown by an act of parliament passed in the reign of Queen Elizabeth. . . . . It was passed in aid of the common law and prior to the reign of King James the First, and it is not repugnant to the spirit of our laws or our public policy." Thus it is permissible to read through an ancient English statute and deduce from its terms a principle of common law, and apply the principle as a living law in Kentucky at the present day.

The Virginia statutes from 1619 to June First, 1792, when Kentucky was erected a state, are collected in Henning's Statutes at Large, and are accessible. The task of reading and selecting the English statutes from the earliest times to 1607 would seem to be too great for human life and endurance. Yet that was done by William Littell. The results are published

---

8 The court did not notice in the opinion two points of consideration under the Constitution and laws of Kentucky: (1) Although it might be permitted to go back through this statute of Elizabeth in order to deduce the common law of the case, yet the statute might have been enacted in Virginia and thus have been a legislative enactment binding upon the court through its adoption from that state. (2) The legislature of Kentucky in the enacting clause of the Revised Statutes, January 7, 1852, declared, "All statutes of a general nature, whether of this state, of Virginia, or of England, adopted prior to the first of November, 1851, other than the Revised Statutes adopted at the last session of the general assembly, shall stand repealed when the Revised Statutes take effect." (July 1, 1852.) If the court had in mind these two provisions, then it seems to have laid it down that there may be a body of criminal common law in Kentucky still subsisting notwithstanding its recognition or alteration by statute in Virginia, and notwithstanding the repeal of the Virginia statute by the Kentucky legislature.

9 He says, p. II, Preface to volume II: "Those who may be disposed to think that too many acts have been retained, are respectfully reminded, that when Mr. Bradford's first volume was published, it was very generally believed to contain all the statute law in force in this country. This delusion was then almost universal; and not more than
in two forms, (1) on the form of preelections to the Kentucky statutes in the first and second volumes of Littell's Laws of Kentucky, and (2) an appendix to the second volume. He says in the preface to the first volume, page III: "There have been, in perhaps every state in the union, compilations of laws attempted and executed with varying success; but never, I believe, on a plan as expansive as this. My duty has been not merely to examine and collate the legislative acts of a single state, through a period of fifty or sixty years; I have had to examine the legislative proceedings of Great Britain, from the earliest act on the parliament roll, through all her modifications of monarchy, anarchy and despotism, to the commencement of the seventeenth century, and the acts of Virginia and Kentucky to the present time: in short, to pursue the ever varying stream of legislation, through all kinds of government and all changes of manners, for the appalling period of five hundred and seventy-five years." Following is a chronological list of the "Acts of parliament and acts of Virginia of a general nature which remain in force in the state of Kentucky" as published by Littell in the appendix to the second volume. As the date is 1810, these acts remained in force after the revision of 1796-1797, and the acts of the Kentucky legislature to the date of the publication of the appendix.

1230—Introducing Tenancy by the Courtesy.
1235—Interest does not run against the heir during minority.

five years ago (1805?), two highly respected circuit judges told me that they did not consider a single act of parliament to be in force in this state.

"These facts I considered as sufficient evidence, that on a subject so remote from popular view, public opinion, however general, was at any time a most delusive guide. I, of course, made no further enquiries respecting it; but employed myself in comparing the statute books of Kentucky, Virginia, and England, together—rejecting what the Constitution of Virginia bade me reject, and retaining what that had retained. Wherever I found that Virginia had, previous to the year 1792, adopted an act of parliament, and no similar one was to be found in our Code, I have taken the Virginia instead of the English act.

"I have never consulted my inclination in either excluding or retaining an act: conscious at all times, that whether it was in force or not, did not depend on my volition, or any opinion I might entertain of its merits or demerits, but upon the Constitutions of Kentucky and Virginia. If it shall be found that some of the laws which I have published as being in force, contradict the adjudications of all the courts in the state, I cannot help it. A judicial decision, that no law exists on a particular subject, does not repeal a law actually existing."
1235—A free man may appear in the county court by attorney.

1236—The additional day in leap year shall be reckoned of the same month wherein it groweth, and that day and the day next going before shall be accounted for one day.

1236—Three grains make an inch, twelve inches make a foot, three feet make a yard, five yards and a half make a perch, and forty perches in length and four in breadth make an acre.

1266—Cattle taken under distress may be fed by the owner as long as they are impounded, without having to give anything for their keep.

1267—One who levies a distress is guilty as of a breach of the peace if he cause the distress to be driven out of the county in which it is taken.
   All distress is required to be reasonable and not too great. Acts of revenge or distress are forbidden without the award of a court.
   Lessees are forbidden to commit waste.
   One who having taken a distress refuses to allow the officers to take it, or will not suffer summons, attachments, or executions from the courts, to be levied upon it, is to be fined.
   A landlord who levies a distress when nothing is due is not to be fined, but the tenant is to have his action for damages.
   Bailiffs who are under obligation to render accounts but depart and have no lands by which they may be distrained may be attached in their persons to compel them to account.

1275—if a serjeant or attorney be guilty of deceit or collusion in the courts he is to be disbarred and imprisoned.
   Disseisin committed with force and arms is to be punished by fine and imprisonment.
   No officer is allowed to maintain pleas or suits in the courts under a contract to have part of the thing recovered.
   Every person is required to be ready at the command of the sheriff and the cry of the county to pursue and arrest felons.
1276—The words "have given and granted" in a deed of conveyance import a warranty by the grantor.

1278—In complaints of wounding and maiming the defendants may appear by attorney.

1285—Upon contracts, covenants, obligations, services or customs of record in courts, the plaintiff may within one year have execution forthwith; but if the execution be not levied within one year, knowledge must be given to the defendant to show if he have anything to say why such matters enrolled ought not to have execution.

1285—In actions concerning lands, the parties may plead by attorney.

Upon judgment of debt or damages, the plaintiff may have a writ of fieri facias to levy the debt of lands and goods, or that the sheriff shall deliver to him all the debtor’s chattels (saving only his oxen and beasts of the plow) and one-half the debtor’s land until the debt be levied upon a reasonable price or extent.

1285—New writs to be allowed in consimili casu.

Special verdicts are to be permitted in real actions.

Bailiffs found delinquent in their accounts may be outlawed.

Sheriffs may be required to give receipts for writs delivered to them for service.

Persons who resist the sheriffs in execution of process are to be reported by the sheriffs and punished by the courts.

1290—Statute Quia Emptores, that it shall be lawful for a freeman to sell his lands at his pleasure.

1300—Assignments of the thing in suit are forbidden, and no other will be allowed to take upon himself the business of the suit; but counsel may be taken of learned men for a fee, and of parents and next friend.

1305—the punishment for champerty is fixed at imprisonment for three years.

1322—That before fines of lands are levied, the parties shall appear in person before the judges, and not by attorney.

1327—The courts are given jurisdiction of complaints against sheriffs and jailors who by duress compel their prisoners to accuse innocent persons in order that the sheriffs and jailors may exact ransom.
1328—The writ of Deceit.
1335—If there are several executors, all must be sued jointly, and judgment may be passed against such as appear; and even if not all appear, yet the judgment shall be against the entire estate of the deceased.
1340—The punishment of prison keepers who are guilty of duress upon their prisoners to compel them to accuse others is fixed at judgment of life and member.
1340—No process shall be annulled or discontinued by the clerk's mistaking in writing one syllable or one letter too much or too little; but it may be amended forthwith in due form.
1344—No procedure to proclamation and outlawry shall be taken in cases of trespass, unless against the peace.
1344—Immediate procedure to proclamation and outlawry may be taken against conspirators, confederators, maintainers of false quarrels, those who stir up strife in affray of the people and obstruct the courts, and those who use false money, and not against any others.
1350—Challenges for that cause will lie in trials of felony and trespass against those who have procured the indictment.
1350—Process of Exigent may be awarded in actions of Debt, Detinue and Replevin.
1353—All wools and all manner of avoir de pois shall be weighed by the balance, so that the tongue of the balance be even without bowing to the one side or the other, or without putting hand or foot, or other touch making of the same; and he that doth against the same, to the damage of the seller, shall forfeit the value of the merchandize so weighed, and the party that will complain shall have the quatreble of that which he shall be so endamaged, and the trespasser shall have one year's imprisonment, and be ransomed at the king's will.
1363—Actions of debt and account and all such actions must be brought in the counties where the contracts were made.
1363—Sheriffs and officers who are charged by complainants with having seized the complainants' goods as those of others, which others are of the same name as complainants' but have been outlawed, may have the writ of identity of name.
1377—Transfers of lands and goods by persons in possession, but whose titles are in debate, made to men of great position and influence, to the end that the rightful owners may be hindered in asserting their rights thru the maintenance of such men of influence; and disseisins made with the fraudulent purpose of making similar transfers shall be void.

1382—When women are ravished and afterwards submit to the ravishers, both the ravishers and the women ravished are declared to be disabled to take the benefit of any inheritance, or jointure that might otherwise fall to the husband or wife.

1384—If a judge or clerk make a false entry of pleas, or falsely enter verdicts, they are to be fined, and an action is given to the person injured.

1385—The establishment of writs of error.

1385—Writs to be executed may be delivered to the sheriffs at any place in the county.

1393—When the allegations of a petition in chancery are found to be untrue, the chancellor may award damages to the party injured.

1400—If a special verdict is found against the plaintiff, judgment of non-suit cannot be entered.

1402—Judgments rendered can be assailed only by attaint, or by writ of error.

1403—No one is to be imprisoned by a justice of the peace but in the common jail.

1409—After the judgment has been entered on the record, there can be no change of the record except at the term at which the judgment was rendered.

1429—If a person is prosecuted in one county for a treason, felony or trespass done in another county and is acquitted, he may have action on the case against the procurers of the indictment.

1430—Executors may have the benefit of the writ of identity of name.

1430—The judges may amend the misprisions of clerks, or of the sheriffs, coroners, or other officers in writing a letter or syllable too much or too little.
1430—No judgment shall be reversed or annulled for any erasure, interlining, addition or subtraction of words in any record, process, etc., but the judges may make amendments, except in criminal prosecutions, indictments, and the substance of proper names.

1432—Officers are forbidden to make entry upon the record of the appearance of the defendant in any suit before the party defending has made affidavit in person that he acknowledges himself to be the very person sued.

1436—Persons may give a general power of attorney under seal.

1436—The writ of subpoena is not to be issued out of chancery until surety for damages be given.

1439—Penalty laid upon sheriffs for taking a bribe in arraying a jury.

1439—Warrants of attorney must be recorded.

1439—Escheators must make return within one month of any offices taken before them.

1444—Escheators are required to take their inquisitions in good towns and open places, and not privily.

1452—Remedy shall be given in chancery to a woman kidnapped against any obligation executed by her under that or other duress.

1461—A woman of fourteen at the death of her ancestor to whom she is heir, shall have livery of her lands.

1483—Every conveyance of lands shall be held to the use of the grantee as against the grantor and his heirs and assigns.

1509—Escheators are forbidden under penalty to return any inquisitions or offices concerning lands not found by a jury and indented and sealed by them. They are required to receive the verdicts of juries and inquisitions before them.

1529—If any person die intestate, or die testate and the executors refuse to prove the will, the probate court is to grant administration to the widow, or next of kin, or to both, taking surety for the due administration of the goods, chattels, and debts.

1529—Provision for securing lessees for term of years against recoveries of the lands upon feigned titles.
1535—Conveyances of lands by bargain and sale are required to be by deed and to be enrolled.

1540—If any person unlawfully maintain another, or cause or procure any unlawful maintenance in any action, demand, suit, or complaint in any court, he is subject to fine, and to an action.

1540—Attorneys are required to deliver their warrants of attorney for record at the time they appear.

1540—Leases for terms of years made by persons having lands in their own right, or in right of the church, or in right of their wives, shall be valid as if the lessors had been lawfully seized of the same lands in fee simple to their own only use.

1540—All marriages are required to be between persons not prohibited by God's law to marry: solemnized in the face of the church; consummated with bodily knowledge or fruit of children or child being had between the parties so married; and such shall be indissoluble notwithstanding any precontract of matrimony, not consummated with bodily knowledge, which either of the parties shall have made before.

1540—Every alien and stranger born out of the king's allegiance, not being a denizen, which now or hereafter shall come in or to this realm or elsewhere within the dominions, shall be bound by and unto all the laws and statutes of this realm, and to all and singular the contents of the same.

1540—Executors and administrators of deceased lessors may have the action of debt against tenants of such lessors delinquent in the payment of rent at the time of the decease of the lessors, and may distrain therefor.

Lessors of lands held in right of their wives may upon the death of the wives have an action of debt and also distrain for any rents in arrears at the time of the wives' death.

Owners of estates for the lives of others, and their executors and administrators, to whom rent may be due at the death of the cestui que vie, may have an action of debt against the tenants and may distrain for the same.
Assignees of the reversions have the same rights against lessees and their administrators and assigns by entry for non-payment of rent, for waste, or for other forfeiture; and for non-performance of conditions, covenants, or agreements contained in the indentures of lease, which the lessors or grantors might have had. And lessees for years or life shall have the same rights against the assignees of the reversion upon any condition, covenant, or agreement contained in the indentures which they might have had against the lessors.

If there be a verdict of twelve men, judgment shall be given notwithstanding any mispleading, jeofails, discontinuance, failure of process, misjoinder of issue, lack of warrant of attorney, or other fault or negligence of the parties.

When a jury of inquisition return an office in these words, "are ignorant as to the person or persons by whom the said tenements are held," it shall not be taken that immediate tenure is of the king, but further inquiry shall be made.

If any butchers, brewers, bakers, poulterers, peddlers of vegetables or fruits conspire, covenant, promise or make any oaths not to sell their victuals but at a certain price; if any artificers, workmen, or laborers conspire, covenant, or promise together that they shall not make or do their work but at a certain price or rate, or shall not enterprize or take upon them to finish that another hath begun, or shall do but certain work in a day, or shall not work but at certain hours and times: they may be punished by fine and imprisonment; for a second offense, the pillory; for the third offense, to sit on the pillory and lose one ear and be infamous.

If any such conspiracy be made by any society, brotherhood, company, of any craft, mystery, or occupation of the victuallers mentioned, a majority being present, their society shall be ipso facto dissolved.

It is forbidden to make for sale any feather bed, bolster, or pillow stuffed with other material than dry pulled feathers, or clean down only, without mingling of scalded
feathers, feu down, thistle down, sand, lime, gravel, or hair.
It is forbidden to make any quilt, mattress or cushion stuffed with other than feathers, wool, or flacks alone.

1555—A buyer at market overt of a horse thievishly stolen does not gain a good title against the owner.

1562—Punishment for the offense of fishing and hunting in private fish ponds and deer parks.

1565—Whoever shall institute suits in the names of fictitious persons, or without the consent of the party, shall be imprisoned for six months and pay to the party injured treble the amount of damages to which he may be put.

1576—Common informers upon penal statutes are allowed actions only in their proper persons, and are forbidden to use any deputies, except in cases of maintenance, champerty and imbracery.

1576—Judgment on a verdict shall not be stayed or reversed for fault of form in any writ, count, declaration, plaint, bill, suit, or demand; or for want of any original writ, or insufficient return of the sheriff, or want of warrant of attorney, or any fault in process.

1581—The sale or offering for sale of wax corrupt with rosin, tallow, or turpentine, is forbidden under penalty. Whoever corrupts honey sold or to be sold with any deceitful mixture shall forfeit the barrel or vessel and the honey therein contained.

1585—The sheriff taking a reward for not returning a venireman is to be fined.

1585—Conveyances of lands made with intent to defraud and deceive prior or subsequent purchasers, shall be void as to such purchasers who have purchased for money or other good consideration.
And all persons who put such feigned conveyances in use as true, as made bona fide or upon good consideration are to be fined and imprisoned.

1589—The venue of actions on penal statutes can only be laid in the county where the contract or other matter alleged to be the offense was done in fact.
If the action lies in the name of the king and any other who will prosecute in that behalf, the action if by any
other person, must be brought within one year; otherwise for the benefit of the king, in two years.

1593—Any one making cables of old and overworn stuff shall forfeit four times the value of the cables and suffer imprisonment.
If any one tarr such cable and sell or put it to sale, he shall forfeit treble the value of the cable and suffer imprisonment.

1601—Every person obtaining, receiving and having goods or debts of any intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, or without equivalent and valuable consideration, shall be charged as executor of his own wrong.

1604—If any person import from beyond seas any hops deceitfully mixed with powder, dust, dross, sand or any other soil, he shall forfeit the hops.
If any brewer shall buy such corrupted hops and use them in brewing ale to be sold, he shall forfeit the value of the hops.

1605—For preventing and avoiding the great abuse of the holy name of God in stage plays, interludes, May games, shows, and such likes, any person jestingly or profanely speaking or using the holy name of God, or Christ Jesus, or of the holy Ghost, or of the Trinity, in any such plays shall forfeit ten pounds.

1624—After verdict for the plaintiff in any court of record, judgment shall not be stayed or reversed for any variance in form only, between the writ and the complaint, or for lack of averment of any life, so it be proved the person living, or because the venire was awarded to a wrong officer, or that the venue is in some part misawarded, or for the misnaming any of the jurors, so as they be proved to be the same as were meant to be returned; or for that there is no return upon any of the writs so as a panel be returned and annexed thereto; or because the sheriff's name is not signed to the return so as it appear by proof that the writ was returned by him; or because an infant plaintiff appeared by attorney.
1661—Whereas many idle and busy headed people do forge and divulge false rumors and reports, to the great disturbance of the peace of the people, any person so offending shall be bound to the next county court where if he produce not his author, he shall be fined two thousand pounds of tobacco, and give bond for his behavior if it appear that he maliciously published or invented the reports.

1663—No person not making a positive agreement with any one he shall entertain into his house for diet or storage shall recover anything against anyone so entertained, or against his estate, but everyone shall be reputed to entertain those of courtesy with whom they make not a certain agreement.

1665—That after verdict in a court of record, judgment shall not be stayed or reversed for want of profert of any deed or letters testamentary, or of administration, or for the omission of _vi et armis_ or _contra pacem_, or for the mistake of the Christian or surname of either party, sums, day, month or year in any declaration or pleading, to which the defendant might have demurred; or for want of "this he is ready to verify," or "this he is ready to verify by the record," or "as appears by the record;" or because there is no right venue, so there was a trial by a jury of the proper county; but such defects shall be amended upon writ of error.

1705—A person dying testate, having not more than two children, he shall not have power to dispose of more than two third parts of his estate to any other person than his wife, and one-third part at the least shall be given to her. If he leave more than two children, he shall not leave his wife less than a child's part, according to the number of children; but if he leave no children then the wife shall have at least one equal moiety of the estate. The wife may avoid a provision for her other than this, and may sue for such portion as is provided in this statute. If the wife die before the distribution of the husband's estate, her administrators or executors may sue for so much as may be given her by the will. If the widow die before the appraisement of the hus-
band's estate, then her interest ceases, nor can her repre-
sentatives sue to recover anything.

1734—There shall be out one weight, one measure, one yard and one ell, according to the standard of the exchequer in England.

1719—Upon writ of error, any variance from the record, or other defect, may be amended by the court to which the writ is returnable, and after verdict the judgment shall not be stayed or reversed for any defect or fault in any bill or original writ either in form or substance, or for any variance in such writs.

1748—Persons winning at games of chance by deceitful and fraudulent practices shall forfeit five times the value of the thing won, and be deemed infamous, and suffer corporal punishment as in cases of perjury.
If a person beat or challenge or provoke to fight any other person upon account of anything won by gaming or betting, he shall forfeit ten pounds, and be liable in an action.

1748—Where goods are distrained for rent, and the tenant does not replevy, the sheriff may sell the goods.
Where goods are sold under this act in case rent is not in fact due, the owners of the goods may sue in trespass or on the case, and recover double the value of the goods and full costs.
Where a distress has been levied and the goods are taken by rescue or pound breach, the person aggrieved may sue upon the case, and recover treble damages and costs.
Goods and chattels upon rented lands may not be taken under execution unless the execution creditor, before removal of the goods, pay the landlord or lessor all the rent due at the time of the taking under execution; provided that the rent arrear do not amount to more than one year's rent.
Where a landlord has reason to suspect that his tenant will remove with his effects out of the county before the expiration of his term, he may make affidavit before a justice who is then required to issue an attachment and if the tenant do not give security, the goods may be sold. Upon any fraudulent or clandestine carrying away from
demised premises for which rent is due, with intent to prevent distress, the landlord or his agent may within ten days seize them for distress wherever they may be found, and sell them, except they be bona fide sold for valuable consideration.

That the reversioner of lands let for life upon which rent is due may have an action of debt as if the premises had been let for years.

That landlords may distrain for rent in arrear after the determination of the leases, provided, within six months after the determination of the lease, and during the continuance of the landlord’s title or interest, and during the possession of the tenant.

1748—When any river or creek shall be in one county only, the court of such county is empowered and required to contract and agree with any person or persons they shall think fit to clear the same as far as it shall be passable for loaded boats, if such obstructions were removed. Where any river or creek divides two or more counties, the courts of every such county shall join in such agreement. But no courts are obliged to contract for removing rocks, or such obstructions in any river or creek as cannot be removed without the force of gunpowder.

1748—Upon demurrer joined, the judges shall give judgment according to the very right of the case without regarding any imperfection or defect in any writ, return, plaint, declaration, information or other pleading, process, or course of proceeding whatsoever, except those which the party demurring shall particularly express; and judgment shall not be stayed or reversed by reason of any default in form.

1753—Marriage between whites and blacks or mulattos is forbidden. Ministers are forbidden to marry such persons.

1753—All persons imported into Virginia, not Christians in their native country, except Turks and Moors in amity with his Majesty, and such as can prove their being free in England or any other Christian country, shall be accounted and shall be slaves, and may be bought and sold. If a free person be sold and recover his freedom, the importer or seller shall pay to the party from whom the
freedom is recovered twice the amount for which the person was sold.

1753—The clerk of the General Court is empowered to issue proclamation of outlawry.

1753—The several acts of parliament commonly called the statutes of jeofails, now in force and use in England, shall be and are hereby declared to be, for so much thereof as relates to any mispleading, jeofail, and amendment, in full force.

1755—Whenever an action is brought to recover sterling money, and judgment goes for the plaintiff, the court may specify that the judgment may be discharged in current money at such a difference of exchange.

1755—If a plaintiff declare for sterling money where the debt or duty is not made payable in sterling, he is to be nonsuited. If for any current money debt an obligation be taken payable in sterling, and judgment is rendered upon the obligation, the court is required to order that the debt be discharged or levied in current money at the rate of twenty-five per cent.

1764—A sheriff may proceed summarily by motion against his deputy for moneys collected by the deputy, for which he is delinquent.

1769—Regulating the practice of suing out and prosecuting writs of replevin in cases of distress for rent.

1772—Surveyors are required to lay down new plats by the true and not by the artificial or magnetic meridian.

1772—For the preservation of the breed of deer, and preventing unlawful hunting.

1775—The free inhabitants of the county of Fincastle, and of the district of West Augusta having been one year in possession of twenty-five acres claiming an estate for life at least are allowed to have a vote and be capable of being chosen in the representation in conventions and committees with other land holders.

1776—That 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 King James First, and which are of a general nature, not local to that kingdom, to-
The written law in Kentucky

Together with the acts of the general assembly of this colony now in force, so far as the same may consist with the several ordinances, declarations, and resolutions of the general convention, shall be the rule of decision, and shall be considered as in full force, until the same shall be altered by the legislative power of this colony.

1776—The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina are confirmed to the people of those colonies. The western and northern extent of Virginia is to stand as fixed by the charters of King James First, and by the public treaty of peace between England and France, unless by act of legislature one or more territories shall hereafter be laid off and governments established westward of the Allegheny mountains.

1777—Settlements on the western waters are made subject to taxation, and quit-rents are abolished.

1777—If any person shall buy any goods or victual under transportation to any market in this commonwealth to be sold therein, or to any city or town, or port or harbor in this commonwealth; or make any contract to buy or have the preemption of such goods before they shall be at the market or town or port for sale there, or shall persuade any person coming to this commonwealth to forbear bringing any goods; or use any means or device for the enhancing of the price of any such goods, every such person is declared to be a forestaller. But this does not apply to a person living more than four miles from any town who purchases victuals and goods for family supplies for one year.

If any person buy or get into his possession in any fair or market any victual brought there to be sold and shall make sale thereof again in the same place or in any place within four miles, he is declared to be a regrater.

If any person buy within this commonwealth to sell again in this or any of the United States, any goods or victual imported into this State, or goods or victual or manufactured articles raised or brought within this State, except from the original importer, owner, maker, or manufacturer, he is declared an engrosser. But this does not
apply to a purchase from one who purchased from the importer, and retails the same more than twenty-five miles from any tidewater; nor to purchases for the army and navy; nor to the manager of iron works purchasing for the use of the employees and selling them to such employees; nor to purchasers of materials for manufacture which shall be applied to that use in the family of the purchaser; nor to ordinary keepers, supplies to be retailed in their ordinaries; nor to persons keeping private lodging houses; nor to owners of imported goods sold as damaged.

Any of these, forestaller, regrater, engrosser, shall for the first offense, be imprisoned one month and forfeit the value of the things bought or sold; for the second offense, be imprisoned two months and forfeit double the value; and for any other offense, shall stand in the pillory not exceeding two hours, forfeit treble the value and be imprisoned at the discretion of the jury not to exceed three months.

No goods, victual, manufactures, or materials for manufacture imported into this commonwealth or raised or manufactured within the same (except, &c.) shall be exposed to sale at public vendue.

1779—All white persons born within the territory of this commonwealth, and all who have resided therein two years next before the passage of this act, and all who shall hereafter migrate into the same, other than alien enemies, and give assurance of fidelity to the commonwealth, and all infants, wheresoever born, whose father, if living, or otherwise, whose mother was a citizen at the time of their birth, or who shall migrate hither, their father if living, or otherwise their mother becoming a citizen, or who shall migrate hither without father or mother, shall be deemed citizens of this Commonwealth; and all others, not being citizens of any of the United States of America, shall be deemed aliens.

1779—The importation of slaves is forbidden.

A person imported in violation of this act is to become free.

1779—Lotteries are forbidden.
1779—Declaring that the Commonwealth has the exclusive right of preemption from the Indians of all lands within its territory; and purchases formerly made from Indians are declared to inure to the Commonwealth.

1781—The lands included within the rivers Mississippi, Ohio, Tennessee, and the Carolina boundary line are substituted in lieu of the lands fallen within the borders of North Carolina (which had been allotted to settlements by officers and soldiers), and the same are made subject to be claimed in the same manner by officers and soldiers.

1782—Act authorizing the manumission of slaves.

1782—Act concerning the titles of settlers on the lands surveyed for sundry companies.

1783—Whenever any citizen of this Commonwealth shall by deed in writing under his hand and seal executed in the presence of and subscribed by three witnesses, and by them or two of them proved in the general court, or the court of the county wherein he resides, or by open verbal declaration made in either of the said courts declare that he relinquishes the character of a citizen, and shall depart out of this Commonwealth, he shall from the time of his departure be considered as having exercised his right of expatriation, and shall from thenceforth be deemed no citizen.

1783—All free persons born within the territory of this Commonwealth; all persons not being natives, who have obtained a right to citizenship under the act entitled “an act declaring who shall be deemed citizens of this Commonwealth;” and also all children wheresoever born, whose fathers or mothers are or were citizens at the time of the birth of such children, shall be deemed citizens of this Commonwealth, until they relinquish that character in manner hereinafter mentioned; and all persons who shall migrate into this State and shall before some court of record give satisfactory proof by oath (or being Quakers or Menonists by affirmation) that they intend to reside therein, and also take the legal oath or affirmation for giving assurance of fidelity to the Commonwealth, shall be entitled to all the rights, privileges and advantages of citizens, except that they shall not be capable of
either election or appointment to any office legislative, executive, or judiciary, until an actual residence in the state of two years from the time of taking such oaths or affirmations, nor until they shall have evinced a permanent attachment to the state by having intermarried with a citizen of this Commonwealth, or a citizen of any other of the United States, or purchased lands to the value of one hundred pounds therein.

1783—Act directing that patents issue to those who purchased of companies and have certificates from commissioners.

1783—Act authorizing the representatives in Congress to convey to the United States in Congress assembled all the rights of this Commonwealth in the territory northward of the river Ohio.

1784—if one appointed sheriff fail to give bond within two months, the governor is to be notified.

1784—Concerning preemption rights in swamps, marshes, and sunken grounds.

1784—The governor is authorized to suspend the surveying of lands on the northwestern side of the Ohio, and below the mouth of the Tennessee river which have been reserved for the officers and soldiers of the Virginia Line, and of the Illinois Regiment.

1785—The lands and chattels of idiots and lunatics are to be safely kept, and they and their families shall live and be maintained competently out of the profits, and the residue shall be kept and delivered to them when they come to right mind. If they die in such a state, their lands shall descend to their heirs, and their chattels distributed.

1785—These are bailable—persons apprehended for a crime not punishable in life or limb; or if it be so punishable, but there is only slight suspicion of guilt, they may also be bailed. If the crime be punishable in life or limb, or if it be manslaughter, and there is good cause to believe the accused guilty, he shall not be admitted to bail. No person is to be admitted to bail after conviction of any felony.

If any justice let any one go at large who is not bailable, or refuse to admit to bail any who have right to be bailed, or require excessive bail, he is to be fined.
1785—Acts of assembly are to commence from their passage unless in the act itself another day is appointed for its commencement.

1785—Act for the appointment of ballast masters, and for the unloading of ballast.

1785—The driving of cattle into or through the Commonwealth, unless to remove them from one plantation to another of the same owner, or to be used at his house, unless the driver produce to any freeholder of a county wherein the drove is passing, a bill of health, declared to be a nuisance. Cattle found distempered to be slaughtered and buried four feet deep.

1785—Declared unlawful for any person to offer in payment a private bank bill or note for money, payable to bearer.

1785—Every person of whose grandfathers or grandmothers any one is or shall have been a negro, is deemed a mulatto: and also every person who has one-fourth part of negro blood.

1785—No person shall be slaves except such as were so on the seventeenth October, 1785, and the descendants of the females of them.

No negro or mulatto shall be a witness except in pleas of the Commonwealth against negroes or mulattoes, or in civil cases wherein negroes or mulattoes shall be parties.

1785—Clerks of courts may proceed summarily by motion against sheriffs who do not account to the clerks who have delivered their fee bills to the sheriffs for collection; and the executors and administrators of any such delinquent sheriffs may be similarly proceeded against.

1785—If a robber is convicted on evidence given by the party robbed, or by the owner of the goods or money taken, the justices may award from time to time writs of restitution for the said money and goods.

1785—Whereas it is the true interest and policy of this Commonwealth that the constitution, sovereignty and independence thereof should at all times be maintained and supported, and it is highly criminal in any person or persons to alienate the citizens of the state from their attachment and allegiance to the same:
That every person who shall erect or establish or cause and procure to be erected or established any government separate from or independent of the government of Virginia within the limits thereof, unless by act of the legislature of this Commonwealth for that purpose first obtained; or who shall in any such usurped government, hold or execute any office legislative, executive, judiciary, or ministerial, by whatever name such office may be called; or who shall swear or otherwise solemnly profess allegiance or fidelity to the same; or who shall under pretext of authority derived from or protection afforded by such usurped government, resist or oppose the due execution of the laws of this Commonwealth, shall be adjudged guilty of high treason, and shall be proceeded against and punished in the same manner as other traitors may be proceeded against and punished by the laws now in force. Anyone making such an attempt and joining with others in overt acts, or who shall by writing or advised speaking, endeavor to instigate the people to erect or establish such government, shall suffer pains and penalties not extending to life or member.

If any such combination becomes so powerful as to obstruct the due execution of the laws, it shall be lawful for the governor to call out the militia.

1786—Slaves charged with crimes are to be tried before a court of oyer and terminer.

1786—It is forbidden that any person convey, or take, or bargain to convey or take title to lands unless the person conveying or bargaining or those under whom he claims have been in possession of the same, or of the reversion or remainder one year.

1786—The selling by a butcher or other person of the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, and the sale by a baker, brewer, distiller, or other person, of unwholesome bread or drink is made punishable by imprisonment, fine, and hard labor.

1786—Conspirators are to be punished by imprisonment and fine.

1786—Upon presentments to the county court, if the penalty of the offense be less than thirty shillings, summons is to be
issued against the defendant to answer the presentment, and the court is to proceed in a summary way.

1786—Persons brought before examining courts are to be discharged if in the opinion of the court the evidence is insufficient to convict them.

1787—Defendants in actions on penal statutes may appear by attorney.

1787—Lands may be taken under writs of fieri facias and sold and conveyances made in satisfaction of judgments obtained by the Commonwealth against sheriffs, coroners, and other public collectors. Judgments against any such delinquents bind their lands from the dates of the judgments. Persons are made incapable of executing the offices of under sheriff or deputy sheriff for more than two years in any period of four years who has not collected and accounted for the taxes assigned him by his former principal.

1788—Lawyers practicing in the general court within Kentucky are authorized to receive a fee of thirty shillings in any action at law: and in any real action and chancery suit, fifteen pounds.

1788—The lands of sheriffs, coroners, and public collectors shall be bound to their sureties in the same manner as they are made bound to the Commonwealth.

1788—The statutes of jeofails which passed prior to the year 1753, are declared to be in force.

1788—Notice on replevy bonds, and all other legal occasions, wherein no particular mode is or shall be prescribed shall be good if given to the party in person, or delivered in writing to any free white person above the age of sixteen years, who shall be a member of the family of such person, and shall be informed of the purpose of such notice, or left at some public place at the dwelling house or other known place of residence of such person.

1789—When a law repealing another is itself repealed in turn, the former is not revived without express words to that effect. Acts are to commence on the first day of March ensuing the passage unless the act name another day.
When a question arises whether a law changes or repeals a former law passed during the same session, the same construction is to be placed as if the act of 1785 had not been passed.

1789—One killing another by misfortune, or in self defense, or in any manner not felonious, is to be acquitted.

1789—The judges of the Court of Appeals, high court of Chancery and general court shall be conservators of the peace throughout the Commonwealth; and justices of the peace in each county and corporation shall be conservators of the peace within their several counties and corporations.

1791—Walker’s line declared to be the boundary line. In all courts of law and equity claims for lands lying between the line commonly called Walker’s line, and Henderson’s line to be decided in favor of the oldest title, whether derived from Virginia or North Carolina.

(To be Continued)

LYMAN CHALKLEY,
Professor of Law, University of Kentucky.