

Capital Removal.

Public Aspects of the Question.

BY A COMMITTEE OF CITIZENS OF FRANKFORT.

History of Location.

BY JUDGE W. H. SNEED.

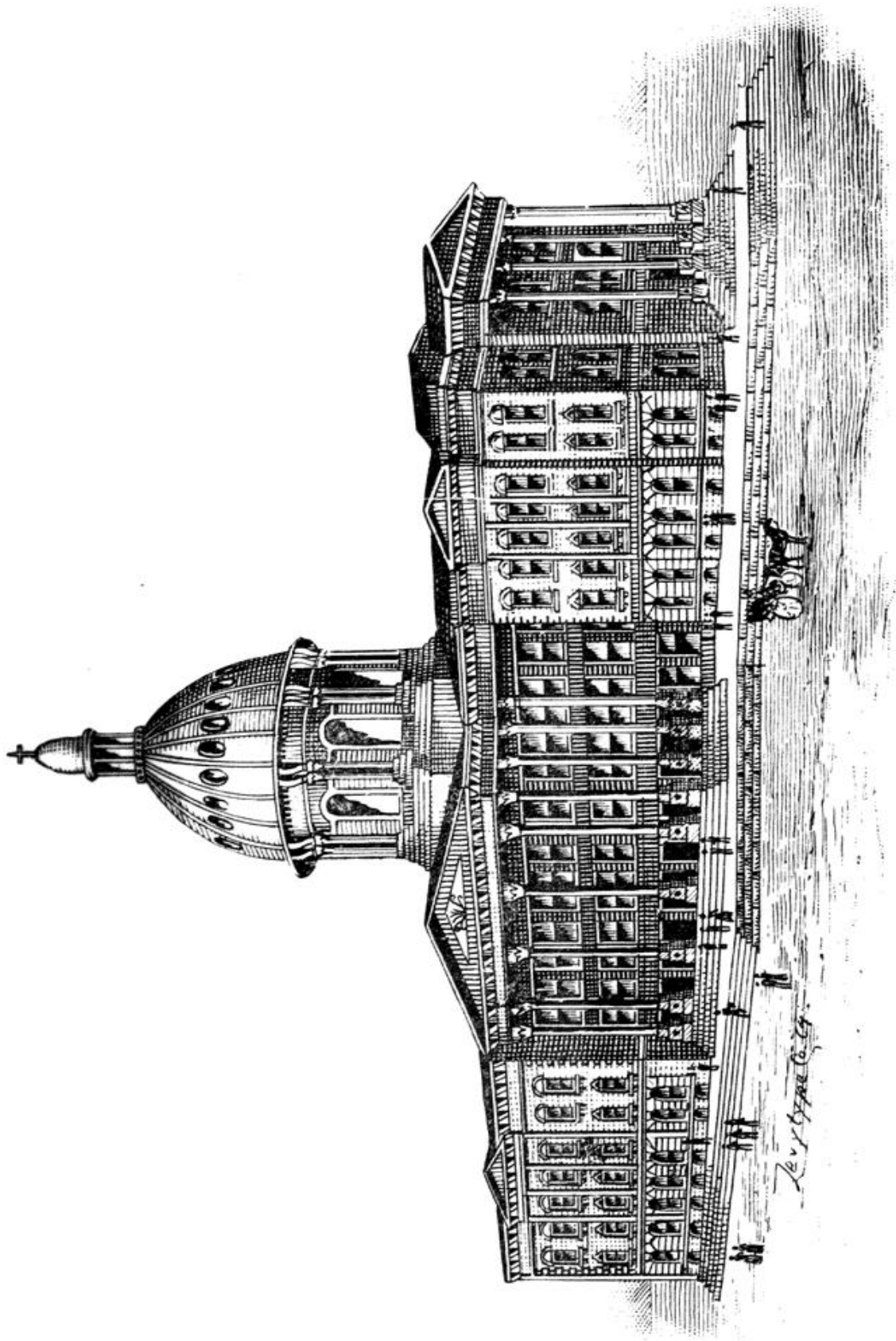
Legal Aspects of the Case.

BY JUDGE WILLIAM LINDSAY.

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DESIGN OF NEW CAPITOL AT FRANKFORT. ORIGINAL ESTIMATE OF COST, \$750,000. EAST WING ALREADY BUILT.

Explanation.



THE vignette of this pamphlet shows the drawing for the proposed new State House at Frankfort. The east wing of the building is already completed, as to the exterior, excepting the approaches, and, although the interior is in an unfinished state, it is now occupied by several of the departments of government. The entire cost of the structure, completed, is estimated at about three-quarters of a million dollars.

The other plate gives a bird's-eye view of the main portions of the city of Frankfort. The portions within the red lines constitute the grounds donated originally to the State, for the purpose of securing the seat of government.* The condition in the face of the deed is "*for and in consideration of fixing the seat of government at Frankfort, and the sum of five pound current money to him paid.*" As will be seen they include the public square, Governor's mansion, the whole of the penitentiary grounds, and also entire squares of the city, which the State sold off and deeded to private individuals.

Not only, therefore, would the public property be involved in a question of reversion, but also all these squares of private property, which the State has warranted to the owners in its title deeds, and which it would be bound to make good.

* The deeds for these grounds are recorded in Woodford county, and that of the penitentiary is recorded at Frankfort.

Capital Removal.

BY the persistent agitation of one or two localities, the question of the removal of the seat of government from the city of Frankfort has been kept before the public mind for more than half a century. At the present time there are two rival cities presenting their claims for the possession of the Capital, the cities of Louisville and Lexington. Manifestly, the subject should be considered from the standpoint of the public interests of the State. Because some locality may want the Capital, that, surely, is no reason why the seat of government should be removed. Are there any public reasons which render Capital removal either necessary or desirable?

HAS FRANKFORT FAILED IN ANY WAY TO MEET
THE DEMANDS OF THE ADMINISTRATION OF STATE AFFAIRS?

AS TO THE PUBLIC WELFARE.

Have the general interests of the Commonwealth suffered in any way by reason of the present location of the seat of Government? No one pretends to say they have.

The men who have served the State at Frankfort have been Kentucky's most gifted and illustrious sons. They have been left free from all undue local influences in the discharge of their public duties. There have been no powerful political rings or cliques to serve or resist.

FACILITIES FOR PUBLIC BUSINESS.

Everything needed for prompt and efficient public service is supplied at Frankfort—railroads, telegraphs, telephones, frequent mails, postal deliveries as numerous and prompt as in any city in the State, strong banking institutions, through which the public treasury has never lost a penny, and enough of them to furnish wholesome competition for the public business. There has never been a government demand of any kind on the community which it has not been able to meet.

COST OF ADMINISTRATION.

The expense of the government service here has always been at the minimum. In rents, salaries, style of living, no extravagance has ever been encouraged or countenanced by the community. The State's servants have been able to live well and at the lowest reasonable cost.

SOCIAL FEATURES.

The society of Frankfort is as intelligent, refined and hospitable as any to be found within the borders of the State. Public officials, while here, have found pleasant homes among an appreciative and companionable people. It is a gratifying compliment to our citizens, and a most significant answer to all depreciation of the social features of the place, that the State officials, almost without exception, have been, and are now, in favor of the present seat of Government. Many of them, on retiring from public place, have taken up their permanent abode here and constitute a conspicuous element of the society of the Capital.

PUBLIC ENTERTAINMENT.

With the exception of two or three high-rate houses in Louisville, the hotel accommodations of Frankfort are as good as can be found in the State, and the rates are more reasonable than at hotels of a similar grade in any city. Private board can be had of every quality and at almost any price. As good living may be had at private houses as can be found anywhere in the world, and at reasonable rates. A better class of private families open their houses to visitors than those who usually do so in larger cities, so that strangers sojourning in our midst may, if they choose, enjoy all the comforts and amenities of refined and elegant homes, and at the same rates that our own citizens pay at the same places for permanent accommodations.

ACCESSIBILITY TO THE PEOPLE.

Frankfort is situated on the lines of the two most extensive railroad systems in the State, the Louisville & Nashville and the Chesapeake & Ohio, their trains running the entire length of the State east and west, passing through the city several times daily, whilst the Midland road connects conveniently with the Cincinnati Southern and Kentucky Central, with their extensive ramifications. Were the Capital removed to a point either east or west, a very large proportion of those visiting it would pass directly through the present seat of Government.

HEALTH OF LOCALITY.

There is no more healthy place in the land than the city of Frankfort. Here officials can reside the year round without discomfort or danger to the health of themselves or their families.

It is an almost phenomenal fact that during the one hundred years that Frankfort has been the Capital of the

State, there has never been the death of any State official while in office. The average death rate in this city is exceptionally low, as appears from the following statement :

Statistics gathered from cities all over the United States show that the death rate for the

Whole Country, per 1,000 population, is	17½ per cent.
City of Louisville “ “ “	14½ per cent.
Kentucky, whole State “ “	14½ per cent.
City of Frankfort, per 1,000, “ “	10 1-10 per cent.

These statistics for Frankfort cover a period of fifteen years.

Whilst some of the surrounding towns and cities have been repeatedly visited by epidemics of various kinds, during the last few years, Frankfort has enjoyed perfect immunity against such visitations. There has not been an epidemic of any kind in this city in fifty years. In the year 1832, when the cholera prevailed in the land, the country around Frankfort suffered more than the town, and the loss of life in Lexington and Louisville was many times over what it was in this place. The water supply and system of drainage for the city are not surpassed by any other place, in or out of the State. The ailments from which visitors may suffer, while at Frankfort, are such as would overtake them any where, and can not, by any facts or evidence, be justly set down to the account of Frankfort.

SITUATION.

It would be well nigh impossible to find a more beautiful spot than the site of Frankfort, viewed from almost any of the eminences by which it is surrounded. Men, who have traveled in all parts of the world, have not hesitated to pronounce it one of the most picturesque little cities they have ever beheld. With suitable and creditable public buildings, and the general improvement which will come

with the permanent settlement of the removal question, Frankfort will make a Capital City every citizen of Kentucky can view with pride.

POPULATION.

It is true that Frankfort is not so large a place as some of the other cities of the Commonwealth. But this is rather in its favor as the Capital of the State, according to the history of Capital location.

Judgment of the Country against Large Capitals.—The universal judgment of the country is against the policy of locating the seat of government in a large city. There is not an instance in the history of the country where a place was made a Capital because it was a commercial metropolis. The only large cities in the United States to-day which are Capitals were in their infancy when they became seats of government, and have since grown up to be the important cities they are. Notably, this is true of Boston, Richmond and Indianapolis. In more than a dozen States the Capital City has a smaller population than Frankfort—among them the States of Maine, Maryland, Louisiana, Mississippi, Missouri and South Carolina. Some of them have less than one-third the population of Frankfort. Yet all these States have large commercial cities to which they could remove their seats of government were it thought wise to do so.

Question Agitated Elsewhere.—In the State of New York, Capital removal was agitated for many years, the City of New York demanding the Capital on precisely the same grounds that are now urged in favor of removal in Kentucky. In 1868 the Legislature decided against removal, and forever settled the question by entering on the erection of a new State House, which has cost over \$20,000,000. In Maryland, Missouri and Illinois the same question has been agitated, but in neither of these States have the peo-

ple been prevailed upon to trust their government to the dominant influences of a great city.

Experiment Tried.—Louisiana actually tried the experiment of removal. At one time, under the promptings of arguments, such as are being urged in Kentucky to-day, she actually removed her Capital to New Orleans. But she soon found that New Orleans governed the State, and she was compelled to carry the seat of government back again to Baton Rouge.

Frankfort Has Met Every Requirement.—*From all of these considerations it is seen that there is absolutely no cause to be found in the place itself for the removal of the Capital from Frankfort.* In every respect it has always served the State well as her Capital. *Why then agitate removal? Are there reasons outside of Frankfort herself why the seat of government should go elsewhere? Would the affairs of the State be better administered in a larger city?*

NOT ONLY ARE THERE NO PUBLIC REASONS TO
JUSTIFY REMOVAL TO A LARGE CITY, BUT
THERE ARE MANY POTENT ONES
AGAINST IT.

THE PUBLIC SERVICE.

This would be injured, rather than benefited by such a change. There could be no better class of officials secured, because as good as the State can produce offer themselves for its service now. But even the best and strongest men are liable to be influenced by local surroundings, and especially by the powerful associations and combina-

tions of a great commercial metropolis. Then there would be greater temptations in the way of the public employes, and a consequent greater liability to neglect their duties and betray their trusts.

PERMANENT EXPENSES OF GOVERNMENT.

It requires constant watchfulness now to keep the expenses of government within reasonable bounds. Remove the Capital to the large city and every class of expense is necessarily and largely increased. The general style of living is more expensive. Rents are dearer. Rates of board are higher. The demands of society on public officials are heavier. Gov. Hoffman, of New York State, gave it as his experience, that in Albany, a city of about one-hundred thousand population, the entertainments alone, which he was expected to give, cost him more than the amount of his entire salary. The salaries of all classes of men are higher in the large cities. There are banks and corporations in the city of Louisville paying salaries of \$10,000 a year, and railroad officials who receive \$25,000 a year.

The State has recognized the necessity for higher salaries in the city already in her legislation, by permitting Louisville to add \$1,000 per annum to the salary of each one of her four circuit judges, and this too, in the face of the constitutional provision that the salaries of circuit judges shall be "equal and uniform throughout the State." The necessity for the additional salary was so great that the Constitution does not stand in the way.

All this goes to show that were the Capital removed to a large city the salaries of all government officials and employes would have to be largely increased, or else no poor man could afford to hold any office under the State.

CORRUPT RINGS.

All large cities are infested by a corrupt class of contractors who fasten themselves upon the public treasury, and the administration becomes powerless to shake them off. The city of Louisville to-day is struggling with such a class and appealing to the courts in vain for relief. In the hall of the Constitutional Convention it has been openly proclaimed that the city treasury is in the hands of "bummer" politicians. These same corrupt classes in the large city can reach the State Treasury as readily as that of the city when it is brought into their midst.

CHARACTER OF LEGISLATION AFFECTED.

Lobby.—Powerful local influences in a large city, can easily control legislation in their interests as against the interests of the State at large. The Legislature becomes the prey of a permanent professional lobby, which is always at hand; large amounts of money can be raised on short notice, and every facility for using it is at hand in the hidden resorts of a city, and in the very nature of city life, where no one knows what another does.

Corporations.—Great corporations and monopolies have their homes in the great commercial metropolis. The struggle of the State now is to protect itself against their powerful influence. This conflict will be intensified more and more in the future, as the aggregations of wealth continue to multiply and increase. To remove State capitals to large cities, at this day, is to wantonly expose the people to an evil whose malign shadow is now over all the land. The signs of the times demand the removal of governments further away from such influences rather than into closer contact with them.

Practical illustration.—Even in the matter under consideration it is proposed to control so important a question as

the location of the seat of government by a purely money power. The proposition is to offer \$1,000,000 to affect the action of the Constitutional Convention, not corruptly, but still, to affect it. It furnishes an illustration to hand of what a great, rich city is able to do to control public policy in its own interests.

DISPATCH OF LEGISLATION.

But not only is the character of legislation affected by its surroundings in the city, but also the dispatch of it. Variety of diversions prevent regularity of attendance on the meetings of committees and the sessions of the legislative bodies; the lodgings of the members are in homes scattered over miles of streets and squares. On call of the House, they can not be reached in any reasonable time, and may easily avoid the service of the summons altogether. It is universally true that it is more difficult to hold the quorum in a large city than in a smaller place.

THE RAILROAD CENTRE.

We hear much of this as a reason for locating the capital in the State's metropolis. Instead of being a benefit, it is a positive hindrance to the dispatch of legislation. It operates to largely increase absenteeism. The members who are so convenient to home that they undertake to attend to their own business and that of the State at the same time, are the ones who break the quorum. Those who can not conveniently come and go are, by the very fact, stimulated to press the completion of their work, in order that they may return to their homes and business at the earliest possible day. The Legislature of the State of New York, which meets at Albany, a railroad centre, by standing rule adjourns over every week, from Friday morning to Monday night, thus regularly wasting one-third of the time.

THE COURTS AND REMOVAL.

Let it suffice, under this head, to quote the opinion of a distinguished jurist, who is a non-resident of Frankfort. He gave it as his opinion that, should the capital be removed to Louisville, it would soon become well nigh impossible for a lawyer from the interior of the State to get a hearing before the Court of Appeals at all, and it would be necessary for him to engage counsel in the city to look after his business, or allow it to be manipulated by opposing counsel. This is an evil already recognized in the profession, and especially by the country members of the bar who have experience in the practice of city courts. The local bar occupies so largely the time of the court by oral argument, that the country lawyer finds it impossible to obtain a hearing, except by going to the city and waiting for days, and sometimes weeks, at heavy expense.

THE QUESTION OF ECONOMY.

Cost of Building.—It is claimed that the cost of public buildings in a large city would be less than at Frankfort. The facts are just to the contrary. The wages of mechanics are higher in the city. The profits of contractors are greater. Corrupt rings manipulate bids to their own aggrandizement; the city of Louisville is now helpless in the hands of such rings. Abundance of the very best building material can be had at Frankfort, without any cost of transportation. Stone, tested by the United States Government and pronounced of the very best quality for building purposes, can be had in the immediate vicinity; brick is shipped from here to Louisville.

Machinery.—We are told about the machinery that is already on hand in the city. All the world knows this is a mere bagatelle, and we should not refer to it here, only its serious mention by the Commercial Club illustrates the

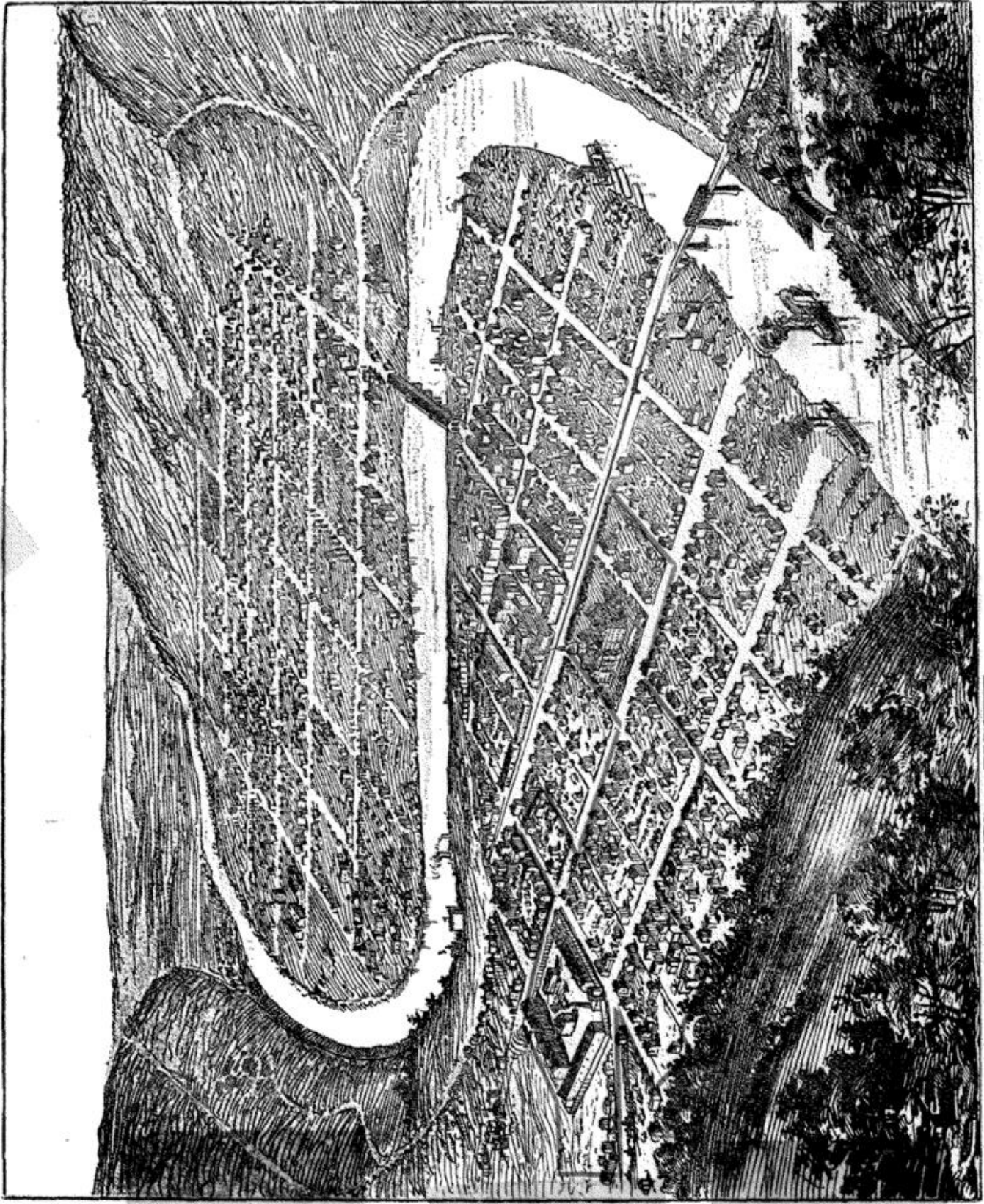
fact that it is taken for granted, by that wide-awake organization, that the same rings which now own the Louisville machinery would be the successful parties in bidding for the contracts for the erection of a State House in Louisville, and they doubtless know whereof they speak.

State Appropriation.—Again, capital removal contemplates the expenditure of \$2,500,000 for public buildings; \$1,000,000, at the outside, is sufficient to complete the buildings at Frankfort, according to the present plan, thus saving to the people \$1,500,000. The simple interest of this difference alone, for a dozen years, would be more than sufficient to finish the State House at Frankfort; and it would give to Kentucky a better capitol (see vignette) than three-fourths of the States of the Union have to-day, and one as complete in its appointments for public business as many of the much more costly and ornamental structures of the richer States. Neither the resources nor sentiment of the State warrant any extravagance in this direction.

THE HONOR AND GOOD FAITH OF KENTUCKY.

History of Location.—It is a matter of history that the State in its infancy and poverty located the Capital at its present site by receiving propositions from different competitors. (See pamphlet of Judge W. H. Sneed.) To ask and accept propositions of a similar character, and locate the Capital elsewhere now, is to repudiate one compact to accept another of the same kind because the terms are considered better. Does Kentucky propose to put such a blot on a page of her history?

Terms of Location.—Frankfort secured the Capital originally over all competitors by the then great liberality of her grants to the State. In addition to large money subscriptions she deeded to the State not only the grounds on which the present public buildings stand, but also grounds the State sold off and on which large portions of the city now



... + FRANKFORT. + ...
Red lines inclose ground given for location of Capital.

stand (see plat at the beginning of this pamphlet), the terms as stipulated in the face of the deeds being, "for and in consideration of fixing the seat of government at Frankfort and the sum of five pounds current money to him paid." For the legal aspects of this transaction, see arguments of Judge Wm. Lindsay and Judge W. H. Sneed.

Moral Obligation.—In addition to the legal obligations of this "contract," as it is called in the negotiations of the original commissioners of the State, it can not be disputed, by fair-minded people, that the honor and good faith of Kentucky are bound, until there are some imperative public reasons making Capital removal necessary. No one will pretend to argue that Kentucky might now accept the considerations proposed to be given for locating the Capital elsewhere, and when the conditions have been fulfilled turn around and repudiate them for some other more favorable terms. The obligations of honor and good faith are the same, whether for one year, or ten years, or for fifty years. Their breach can be justified only on the grounds of imperative reasons, and then the way is clearly pointed out in this case, and that is by a vote of two-thirds of the Legislature.

LITIGATION.

Capital removal, in the way contemplated at the present time, in the judgment of some of the most eminent jurists of the State, who are non-residents of Frankfort, does involve the questions of the reversion of all the State's present property at Frankfort and whole squares of the city besides, to heirs. Questions of law at all events are raised, which must necessarily be settled in the courts, and some of them higher than the Constitution itself, and which may have to be settled by the courts of the General Government. Is there any public necessity for involving the State in this interminable litigation, which will prolong

the settlement in any way of the Capital question, perhaps beyond the life time of the present generation ?

KENTUCKY'S DEAD.

What will you do with them? They have been gathered from all parts of our own and other States, and foreign lands, and given honorable sepulture in the public burying grounds at Frankfort, solely because the seat of government is here, as a public testimony to their honorable lives, and that the memory of their public services might furnish inspiration to the generations of young statesmen who should come to the Capital. Will Kentucky now remove the Capital, the sole cause of her honored dead being buried here, practically repudiate her past homage to their heroic deeds, and silence their speech to future generations ?

Or will you at this late day, ghoulishly, dig into their graves, shovel up their bones, and carry them to some other place? And where will you lay them? Neither Kentucky, nor any other State or land, has a fairer site for the repose of her distinguished dead than the cemetery at Frankfort. In this respect the other places competing for the capital have nothing in comparison to offer.

What will you do with your State monument? Designed and erected by the genius of the famed Launitz, its artistic merits have been the subject of articles in the greatest magazines of the country, and it is to-day the only celebrated and genuine work of monumental art the State of Kentucky possesses.

What will you do with the ashes of Boone? The world does not offer to the eye of man a more picturesque scene than that looked upon from the spot where he sleeps. The thought seems almost like sacrilege, to transport his remains to the vicinity of some great centre of civilization, which was his especial antipathy when living.

In a word, the cemetery, where Kentucky's dead now lie, is something the State can point to with pride—something to be visited by the traveler from foreign lands, and which will not suffer by comparison with any thing his eye has ever rested upon in any part of the world, and it always will be so, for it is nature's own handiwork and can't be changed by the revolutions of time.

SPECIFICALLY AS TO THE PROPOSED SITES FOR
THE SEAT OF GOVERNMENT.

LOUISVILLE.

Frankfort has always been loyal to the interests of Kentucky—loyal to her commercial metropolis. It gives to Louisville a business trade amounting to over half a million dollars a year, to say nothing of the very large retail patronage, which can not be estimated, and which is almost wholly with that city. Nevertheless, there are reasons why we do not believe it would be good public policy to carry the capital to Louisville.

Political Influence.—No man can foresee what a great commercial metropolis may become in the development of the future. The influence of Louisville over the welfare of the State will become more and more dominant as its wealth and population increase. The government, once in its possession, can never be reclaimed, and the more malign its influence the more helpless the State would be in its power. It is already asserting its dominancy. An editorial comment in one of its papers tersely expresses the situation: "A good reason why we should have the capital

is, we are the biggest." The same reason would take every thing else. If this be the logic of the situation now, what may not be expected in the future ?

Commercial Importance.—Louisville now, by reason of its overmastering commercial importance, is dwarfing the other portions of the Commonwealth. It attracts to itself the talent of the State ; it absorbs its material wealth ; it takes away business from smaller communities, until the merchants and tradesmen of interior towns find scarcely a living left them. To remove the Capital to Louisville is to aggravate this evil and make it more widespread.

Avowed Expectations.—Among the reasons given by the Commercial Club "why Louisville wants the Capital," are these : "The retail dealer would gain customers from every part of the State," and "our business relations with Eastern Kentucky would be greatly enlarged." The meaning of this language is that Louisville, by means of the Capital, expects to vastly increase and widen its influence over the business interests of the State of Kentucky. Do the people of the interior portions of the State wish to feed and fatten this power, which is now devouring their own prosperity, by throwing into its hands the power and influence of the State government ?

Location.—It is claimed that Louisville is central. If a point on the circumference of a circle is the centre, then Louisville is central. Should the Ohio river, in some of her wild freshets, sweep through the low lands in the rear of the city, then this central point would become a part of the territory of Indiana. Louisville is now constructing communications of rapid transit to the knobs of New Albany to accommodate the increasing number of her citizens who find it necessary, for the health of their families, to spend their summers in that resort of growing popularity. It is the coming fashionable suburb of Louisville.

Were that city to become the Capital, then, in the near future, we would be treated to the spectacle of State officials, for a large portion of each year, living amongst the nabobs of the knobs of Indiana, and administering the laws of the State of Kentucky.

Louisville, it is true, is a railroad centre; so is Covington, and Cincinnati would probably be willing to put up more money than any Kentucky city for the purpose of locating the capital at a point where it would largely reap the benefits. And if public diversions and entertainments are to be considerations for locating the Capital, then Cincinnati has far more to offer in that line than any city of Kentucky.

LEXINGTON.

Wants It.—This “queen of the Blue Grass region,” with becoming maidenly modesty, has not seen fit to give to the public the reason why she should have the State Capital. But one thing is certain, with feminine consistency “she wants it because she wants it,” and there is no mistake about it. She has wanted it long, is wanting it still, and probably, according to the nature of the sex, she always will. There is no use in reasoning with her; a hundred years of argument and admonition have failed to convince her. In common with all Kentuckians we are proud of the many attractions of our neighboring city, but still we are unable to see how Kentucky would be benefited by making her a present of the State Capital.

Her Claims.—It is true Lexington has more people than Frankfort; but if population is to control the location of the capital, “the biggest” will get it. Lexington is also somewhat of a railroad centre. We have already seen that too much of this may prove a positive disadvantage to the State. Besides, were Lexington the Capital, with all her railroads, a great majority of those visiting it from all the

western portion of the State would be compelled to pass through Frankfort.

Her Trade.—Were Lexington to become the Capital, the large part of the State's money would be spent in Ohio, as her trade is almost entirely with Cincinnati.

Public Accommodations.—Has Lexington a single public inducement to offer, as a consideration for the possession of the Capital, which Frankfort has not? Her hotels and public accommodations are not materially different from those at Frankfort, excepting that their rates are higher. Oftentimes, during the racing season, were it necessary for our citizens to go to the Capital on business, it would be utterly impossible for them to get any accommodations either in her hotels or in her private houses. The writer of this has been compelled to pass the entire night sitting in the office of her leading hotel, in company with many others, and has been charged the same rate as though he had enjoyed the comforts of a luxurious bed.

Water Supply.—The water supply of Lexington is inadequate and of a most objectionable character, and the evil seems to be beyond remedy. On the authority of some of Lexington's own citizens, in a position to know the facts, it is stated that the entire drainage of a large stock farm runs into the sources of supply to the reservoir, which furnishes water to the whole city.

Drainage.—Lexington has no drainage, such as is necessary for the health of the city, and proper drainage in the future seems a practical impossibility on account of the topographical character of the country. We have every wish for the welfare of our sister city, and entertain for her people the most kindly feelings, but we are unable to see why the State's interests would be subserved by removing the Capital to that city.

The Opportunity Lost.—Both Louisville and Lexington competed with Frankfort originally for the possession of the Capital, when they were much stronger and larger than Frankfort was. But they failed to secure the Capital because of their unwillingness to come to the rescue of the State in its poverty, to the extent that Frankfort did. They then lost their opportunity. It is too late in the day now for them to ask the State to compromise its honor and good faith in order to help them repair the mistake they then made. Men would be at no loss to know how to characterize a refusal to abide by the arbitration of such an open and honorable competition in a private business transaction, and we can not see how the principle of the thing is changed in the matter of Capital location, simply because the case involves an aggregation of individuals. These cities did not care for the capital when the State was poor and weak, but now, when it has become rich and populous, they want, by means of its possession, to turn the tide of the State's prosperity to their own aggrandizement.

HOW SHALL THIS QUESTION BE DECIDED ?

SHALL IT BE REFERRED BACK TO THE LEGISLATURE, WITH AUTHORITY TO MUNICIPALITIES TO TAX THEMSELVES TO OFFER BIDS FOR THE POSSESSION OF THE CAPITAL ?

Incongruity of the Proposal.—Such a proposition seems well nigh grotesque in the section of the Constitution where it is proposed to insert it. That section prohibits forever all subscriptions by tax to public enterprises of every kind, and yet, by a clause in this very section, the Constitution tramples under foot its own sweeping inhibi-

tion, by allowing localities to tax themselves for getting the capital. It is bad policy and wicked generally for a community to tax itself to help get a railroad, or water-works, but it is all right to tax itself more than other people to build a State House. You may not bargain with any one else for the purpose of building up your community, says the State in her Constitution, but you may do it with me, no matter how great a burden it may bring on your tax-payers, even though one of your representatives has declared openly in convention, "Our taxation amounts now, practically, to confiscation."

Bad Example.—Such a disposition of the question shows to all future Legislatures the way to defeat the proposed constitutional provision prohibiting special and local legislation. There are now two localities wishing special legislation in the Constitution for their own benefit. They ask the privilege of taxing themselves for the purpose of securing the Capital. Now, in order to grant this special privilege to two towns, it is proposed to introduce into the Constitution a clause giving to all the other municipalities a power which they neither ask nor wish, and which has no pertinency as to them. Thus the special constitutional legislation for these two towns is accomplished under the guise of a general provision. So, in the future, when any person wants some special enactment, all that the Legislature has to do is to follow the example of the Constitutional Convention, and make a general law covering the special case. In this way your statute books will be filled, as heretofore, with special laws, but under the guise of general statutes.

A Reproach to Kentucky.—The proposition at this day to put the Capital up to the highest bidder is unworthy the dignity and wealth of the State of Kentucky. It would be to advertise the State as a pauper to all the world; it

would be a perpetual reproach to have such a dicker incorporated in the organic law.

Injustice of It.—Such a provision would inflict unjust burdens on the tax-payers of one particular community for State purposes, which they would be powerless to prevent. It is safe to say that the great body of the tax-payers of both the cities now competing for the Capital, are opposed to a large additional tax upon themselves to secure it. But the non-tax-paying element of every city largely outnumber the tax-paying, and, under the lead of the politician, the former can far out-vote the latter, and so the burden would be imposed by those who would not help to carry it. The proposition is essentially unjust and inequitable.

SHALL THE LOCATION OF THE CAPITAL BE LEFT TO A VOTE
OF THE PEOPLE

Not Desired.—The people do not care about the question; they have never discussed it; the agitation has always been local. Outside of two cities wanting the capital, there is now no demand for its removal; even in those cities there is no general sentiment in favor of removal. In both of them the public press is divided on the subject, and the agitation of the question is largely confined to certain interested classes, such as the professional politicians, representatives of corporations, and real estate speculators.

Not Wise.—The people have no special information on the subject to enable them to decide the question intelligently.

Majority Vote.—It is not practical to submit it to the people for a fair decision. If a majority vote should be required for one place, it might, and probably would, have to be submitted many times over.

Plurality Vote.—If it should be left to a plurality vote,

that would be to settle this important question by the rule of the minority.

Two-Thirds Vote.—The Convention has already wisely adopted a provision which requires a two-thirds majority of all the people of the county in order to remove its seat of government. Surely it will not be pretended that less interests are involved in the removal of the seat of government for the State. Every principle of justice and reason, and right and good policy, which requires a two-thirds vote to change the seat of government for the county, demands more imperatively that it should require a two-thirds majority of the people to change the seat of government for the State.

Unfair.—It would be practically to remand the question to the decision of one large, populous, and interested community. By means of a large, purchasable vote, and the money that could be raised to control it, the question would be practically settled in favor of one city as soon as the Convention should decide to submit it to the people.

The Morals of It.—It would invite a campaign of corruption in connection with the adoption of the Constitution, which would be a public scandal and a lasting disgrace to the State, and of which the State House, located by such methods, would be the perpetual monument.

The People Have Acted.—Twice over they have ratified the original stipulations, in adopting in the Constitution the section which provides that—"the seat of government shall continue in the city of Frankfort, until it shall be removed by law. Provided, however, that two-thirds of the members elected to each house of the General Assembly shall concur in the passage of such law." The people themselves have no right to remove the seat of government, excepting in the way they originally agreed to, when they entered into covenants with those whose benefactions

they availed themselves of in the original location of the Capital. The people, in the original stipulations, put the question of Capital removal out of their own hands. They delegated it to their representatives in the Legislature; they have neither the legal nor moral right, at this late day, to change that provision. The method of removal is clearly provided for, and is as easy as it ought to be. Whenever the necessities for removal are sufficiently pressing, it will be easy for them to accomplish it, according to their original agreement, by a two-thirds vote of the Legislature, and thus violate no stipulated conditions, keep their own good faith, and raise no troublesome questions.

ONLY ONE WAY TO SETTLE IT.

Let the Convention adhere to the original terms of the compact, so as to raise no vexing questions. Then let it be made mandatory on the Legislature to provide at once for the completion of the public buildings already begun at Frankfort; or, if it seems wiser to the Convention to appropriate a larger sum of money for an entirely new structure at Frankfort, then, on some of the eminences around the city, there can be found sites as commanding and beautiful as anything to be seen amongst the capitals of the world. Such a change of situation would raise no questions of reversion or good faith.

THE IMPORTANCE OF THIS QUESTION.

So great are the public interests involved in this question of Capital removal, that it evidently should not be decided by mere personal preference, or local convenience or advantage. We are at a point in the development of civilization when the coming questions of government are seen to be the questions of law and order; of capital and labor; of corporations, as against the rights of individu-

als; of monopolies and their conscienceless rapacity; in a word, the questions of large cities, with their powerful and corrupt influences against the country at large. How to govern the great cities is confessedly the most difficult question statecraft has to meet in the near future. It would be a rash act, perilous to the future interests of the people, to transport the government into the environment of its most deadly foes at a time like the present.

Gentlemen of the Convention :

In view of all the interests at stake, the serious nature of the questions involved, the contention of rival aspirants for the Capital, and the general sentiment of the people of the State at large, we do not believe there is any reasonable probability that the seat of government will ever be removed from Frankfort. To keep the question open longer is only to prolong useless agitation and impede the progress of the capital city. It shows a commendable public spirit on the part of the citizens of Frankfort, as well as their confidence in the good faith of Kentucky, that they have gone forward and expended nearly a million dollars in public improvements, such as hotels, water-works, drainage, &c., with the public discussions of Capital removal perpetually unsettling the community. Fifty years ago the eminent historian, Humphrey Marshall, wrote that the effect of such agitation then had been—

“To discourage improvements of the place; to keep such as had ventured and laid out their money and labor, ever in jeopardy, and generally to impair or destroy all confidence in arrangements dependent on acts of the Legislature, and thus to avert and prevent useful enterprise and liberal exertion.”

For over fifty years this incubus has been resting upon every enterprise of Frankfort; it oppresses its prosperity to-day. During the sessions of the Legislature, three winters ago, a foreign company was ready to buy a desirable site and erect and equip a first-class hotel, and only awaited the action of the Legislature on the subject of the completion of State House. We have every reason to believe that similar enterprises, for the public accommodation and benefit of the place, will now be inaugurated at once, when this question is definitely settled. There are a number of parties now awaiting the action of this convention before purchasing property and making their permanent homes here.

As citizens of the place, we appeal to you to remove this obstacle from the way of our progress. We appeal to you, as citizens of the Commonwealth, to take such action as may be within your jurisdiction, looking to the permanent settlement of this question, and the speedy erection of such public buildings as shall be a credit to the State of Kentucky.

COMMITTEE OF CITIZENS.

History of the Location of the Capital.

BY JUDGE W. H. SNEED.

FRANKFORT, KY., Sept. 27, 1890.

To the Honorable Delegates to the Constitutional Convention:

It was the privilege of the writer, at the session of the General Assembly in 1872-3, in conjunction with his colleague, Hon. H. I. Todd, the Representative from Franklin county, to prepare and present to that body a report bearing upon the question of the State's Seat of Government. Prior to this session no report of like character had been made, so far as the House and Senate Journals show. Believing that the delegates to the present Constitutional Convention will consider the question of a *permanent* location of the Seat of Government, with that fairness, intelligence and justness that its importance demands, and in the light of its bearing upon the interest of the people of the whole State and not from any local standpoint, the writer begs to submit to the Convention excerpts from said report as to how the Seat of Government was located at Frankfort nearly a century ago, and upon what terms and conditions the location was made, and why the public faith is pledged to its remaining permanently here.

When the State of Kentucky was organized in 1792, her resources were limited. She then paid her Governor,

together with all others of her public officers, a sum in the aggregate not exceeding \$3,000.00. In her embarrassed condition, she directed in the 10th Article of her first Constitution that the Legislature of 1792 should appoint Commissioners, who should have power to fix on the place for the Seat of Government, and to receive grants from individuals therefor, and make such conditions with the grantors of lands on which they should conclude as the most proper place for locating the Capitol, as should by them seem right and proper, and which should be agreeable and acceptable to the grantors.

In pursuance of this direction, the Legislature, after the reading of the message of Governor Shelby, in which he recommended the performance of the duty enjoined upon them by the 10th Article of the Constitution, viz: "to select a *permanent Seat of Government*" (his exact language), proceeded to select the five Commissioners in the manner directed in said article, resulting in the selection of Robert Todd, John Edwards, John Allen, Henry Lee and Thomas Kennedy, and by resolution instructed them to *accept the best proposals that were made in a moneyed point of view, as a bonus for this coveted honor, and to enter into contracts pledging the public faith with those parties whose propositions and donations should be accepted by them.* (See Journal of House of Representatives, Fall Session, 1792.)

The following extracts from said Journal show that the Commissioners gave to this matter fair and just consideration, and finally accepted the proposals of Holmes, Innes, Wilkerson and others upon a condition *precedent*.

Extracts: "*The House then proceeded to take into consideration the proceedings of the Commissioners appointed to fix on the place for the permanent seat of Government.*"

Whereupon the same were read and then ordered to be

entered at large on the Journal of this House, said proceedings are as follows, viz:

“LEXINGTON, August 6th, 1792.

“Robert Todd, Thomas Kennedy, John Allen and Henry Lee, Esquires, four of the Commissioners appointed at the last session of Assembly, pursuant to the 10th Article of the Constitution of this State, to fix on the place for the seat of Government, convened at the house of Love & Brent, pursuant to notice given in the Kentucky Gazette, and being qualified as the Constitution directs, appointed Levi Todd Clerk of the Board, who took an oath for the due discharge of his duty.

“On motion, Thomas Kennedy, Esquire, is appointed Chairman to this Board.

“A proposition from James Ledgerwood and others, offering land in Ledgerwood’s Bend, with a subscription accompanying the same, was presented and read.

“A tract of land adjoining Delaney’s Ferry was proposed as a proper place to fix the Seat of Government.

“The Board then adjourned until to-morrow, ten o’clock, to meet at this place.”

“Tuesday, August 7th, 1792.

“The Commissioners met according to adjournment.

“John Edwards, Esquire, the other member of the Board, attended, and being qualified, agreeable to the Constitution, took his seat.

“Proposals from the town of Louisville were presented by Abraham Owens and read.

“Harry Innes, Esquire, as attorney in fact for Andrew Holmes, proposed the town of Frankfort, and forwarded a list of contributions, in case the Commissioners shall fix the Seat of Government in that place.

“The town of Leestown was also proposed by Harry Innes, Esquire, as attorney in fact for Hancock Lee.

“The town of Lexington was proposed by a committee of the town and offers made.

“*Resolved*, That this Board will proceed to view the different places proposed, and Petersburg.

“The Board then adjourned; meet at the house of Andrew Holmes, in Frankfort, to-morrow at two o'clock.”

“Wednesday, August 8th, 1792.

“The Commissioners met according to adjournment, and proceeded to view the place called Leestown, Frankfort, and the land adjacent, and again met and, after hearing several proposals, adjourned until seven o'clock to-morrow, to meet at this place.”

“FRANKFORT, Thursday, August 9th, 1792.

“The Commissioners met according to adjournment. Proposals in writing were forwarded by Harry Innes, Esquire, attorney in fact for Andrew Holmes, for Frankfort.

“And also for Leestown, by Harry Innes, Esquire, attorney in fact for Hancock Lee and Andrew Holmes.

“The Board then adjourned to James Ledgerwood's house in Ledgerwood Bend. The Board met according to adjournment about three o'clock, and proceeded to view the ground proposed, and then adjourned to Petersburg.”

“PETERSBURG, August 10th, 1792.

“The Board proceeded to view the lands laid off for a town, the river and the lands adjacent, and then adjourned until eight o'clock to-morrow to meet in Lexington.”

“LEXINGTON, August 11th, 1792.

“The Board met according to adjournment.

“*Resolved*, That on Monday, the 3d of September, the Board will meet in Louisville to view that place and the

Falls; and on Friday, the 7th of September, will again meet at this place.

“At which time it is expected that the persons who have made proposals, or others who have any yet to make, will attend, prepared to conclude a contract, and that the purport of this resolution be published in the Kentucky Gazette.

“The Board then adjourned.”

LEXINGTON, September 7th, 1792.

“A majority of the Commissioners, to-wit: Thomas Kennedy, Robert Todd, John Allen and John Edwards, met agreeable to their resolution. A letter from the Commissioners of Louisville was presented and read.

“Also proposals from John Rogers in favor of Petersburg. Proposals from Petersburg were presented and read.

“Additional proposals from Lexington were presented and read.

“The Board then adjourned until the third Monday in April, to meet at this place.”

“LEXINGTON, November 3d, 1792.

“A majority of the Commissioners met agreeable to their resolution, to-wit: Thomas Kennedy, Robert Todd, John Allen and Henry Lee, convened and resolved that an advertisement be inserted in the Kentucky Gazette notifying that the Commissioners will meet at the tavern of Love & Brent, in the town of Lexington, on the 5th day of December, in order to proceed to a final decision on this business. Those gentlemen who have proposals to make for Lexington, Petersburg, Frankfort and Leestown, will (it is hoped) come forward prepared to enter into contracts for the above purpose.

“The Board then adjourned.”

“LEXINGTON, December 5, 1792.

“A majority of the Commissioners met agreeable to their resolution, to-wit: Thomas Kennedy, Robert Todd, John Allen and Henry Lee.

“Resolved, As the opinion of this Board, that Frankfort is the most proper place for the Seat of Government; that the proposals of Andrew Holmes, Harry Innes, Esquire, and other subscribers, be accepted and agreed to; that a copy of the Journals, together with the report now agreed to and the *Proposals for Frankfort* be transmitted to the Speaker of the House of Representatives.

“The Board then adjourned.

“A copy attest :

“LEVI TODD,

“Clerk of the Board of Commissioners.”

“HOLMES AND OTHERS’ PROPOSALS.

“Proposition to the Commissioners to fix on the place for the ‘*permanent seat of government for the State of Kentucky.*’

“If the Commissioners approve of Frankfort as a proper place, I will give to the Government for the term of seven years the house and tenement lately occupied by General Wilkerson, described in the plan of said town No. 1.

“The lots 58, 59, 68, 79, 74, 75, 83 and 84, marked Public Ground, shall be conveyed and warranted to the Government absolutely.

“The half of the unsold lots, which amount to 37, shall also be conveyed, or 30 the choice of those unsold.

“The rents of the warehouse for seven years.

“In addition to the above, I will deliver, on reasonable notice, on the square marked Public Ground, ten boxes of glass, 10 by 12, 1,500 pounds of nails, 50 pounds’ worth of locks and hinges, an equivalent of stone and scantling for building.

"If more space is requisite to be laid off in half-acre lots, I will lay off 50 acres more, which shall be added to the number unsold, and divided with and conveyed to the Government, and if the Commissioners choose to divide the lots in preference to making the choice of 30 of the unsold, I will give the first choice, *i. e.*, the Commissioners to take one lot and I will take the second, and so proceed to the division.

"Signed : ANDREW HOLMES,
 "By HARRY INNES,
 "His Attorney in Fact.

"In addition to the above, we, the underwriters, oblige ourselves, our heirs, &c., to pay to the said Commissioners, for the State of Kentucky, three thousand dollars in specie.

"Witness our hand and seals the 9th day of August, 1792.

"Signed : HARRY INNES,
 "NATHANIEL SANDERS,
 "BENNET PEMBERTON,
 "BENJAMIN CRAIG,
 "JEREMIAH CRAIG,
 "WILLIAM HAYDEN,
 "DANIEL JAMES,
 "GILES SAMUEL.

"In lieu of the stone and scantling offered above, I agree to give stone that will build 1,590 perches of wall in any part of Frankfort, and my said mill, carriage, wagon and two good horses, until a sufficiency of scantling for a State House is procured, and privilege of taking timber from any part of my tract.

"Signed : ANDREW HOLMES."

From the action of the Commissioners, as herein presented, they gave a fair opportunity to those localities de-

siring the location of the Seat of Government at their respective towns to enter the field as competitors for the honor and supposed profit to be derived therefrom. Lexington was especially favored.

That the Commissioners were empowered to make a contract with the citizens of the State is evident from the language of the tenth article of the first Constitution, viz: "*That the House of Representatives of the first General Assembly, &c., &c., should choose by ballot 21 persons; from these the Representatives from Fayette and Mercer counties should, alternately, strike out one name until the number should be reduced to five, and who, or any three of whom, concurring in opinion, should have power to fix the Seat of Government, receive grants therefor, and make such conditions with the proprietors of the land so pitched upon as to them should seem right, and be agreed to by said proprietors.*"

By the resolutions of the Assembly (fall session 1792), instructing these Commissioners, they were directed to accept the best proposals that were made in a moneyed point of view as a bonus, and to enter into contract, pledging the public faith with those parties whose propositions, as to land and donations of money, &c., should be accepted by them (the Commissioners).

That these Commissioners understood their duties, and the powers conferred upon them, is evident from their proceedings had at their meeting in Lexington, November 30, 1792, viz: *That the Commissioners will meet at the tavern of Love & Brent, in the town of Lexington, on the 5th day of December, in order to proceed to a final decision on this business. Those gentlemen having proposals to make for Lexington, Petersburg, Frankfort and Leestown (the four contending competitors) will (it is hoped) come forward prepared to enter into contracts for the above purpose. That they did contract with Holmes and others, and pledge the*

public faith to the maintainance thereof is beyond question.

That Holmes and others dealt with these agents of the State upon the pledge of the public faith as to a *permanent* location of the Seat of Government at Frankfort, is apparent from the heading of their proposals, which must be recognized as the basis thereof, viz:

“HOLMES AND OTHERS’ PROPOSALS.

“*Propositions of the Commissioners appointed to fix on the place for the permanent Seat of Government for the State of Kentucky;*” then follows the proposals (heretofore given in detail).

These proposals and donations of land, material, money, &c., were accepted and agreed to upon *the condition precedent* of a permanent location of the Capital as appears from the resolution adopted at the final meeting of these Commissioners, on Dec. 5th, 1792.

“*Resolved, as the opinion of the Board that Frankfort is the most proper place for the Seat of Government; that the proposals of Andrew Holmes, Harry Innes, Esquire, and other subscribers, be accepted and agreed to,*” &c., &c.

It is contended, however, that the framers of the first Constitution did not intend to confer upon these Commissioners the power to contract for a *permanent* Seat of Government, as the second section of Article 10 provides a mode of removal, viz: “And the Seat of Government so fixed shall continue until it shall be changed by two-thirds of both branches of the Legislature.”

Article 8, of the second, and article 9 of the present Constitution, reads as follows:

“*The Seat of Government shall continue in the city of Frankfort until it shall be removed by law—Provided, however, that two-thirds of all of the members elected to each House of the General Assembly shall concur in the passage of such law.*”

For the sake of the argument, we grant that a mode of removal was pointed out, but we contend, in the face of the proceedings touching this matter, that the *public faith* was pledged to Holmes and others, at least as to the *manner* of a removal of the Seat of Government, by the framers of the first Constitution prior to their contracting with the State's agent, and was an inducement for that contract, and that this *pledge* of the public faith has been sanctioned and confirmed by the framers of the two succeeding Constitutions, and that good faith demand that the framers of the Constitution now under consideration at least leave the matter of the Seat of Government where their predecessors lodged it, and the people, if they desire a change of the Seat of Government, will elect a Legislature pledged to the change in the manner pointed out.

Do the people desire a change of the present Seat of Government?

Where is the evidence thereof?

Has this question ever entered into the arena of State or local politics, where it must be made an issue, if at all?

Has a single reason been presented showing that public policy demands, or that the interests of the State require, a removal of the Seat of Government to any other point?

It is not pretended that Frankfort is unhealthy, or is not possessed of hotel and other accommodations, railroad facilities, &c., &c., for the convenience and comfort of those having private, or those called here, from time to time, to transact public business.

Since the location of the Seat of Government here more than one hundred State Conventions have been held by each of the political parties of the State, in this city, and yet we have never heard a word from the *people* about a removal of the Seat of Government.

In the contests between aspirants of the same party

for party nominations, and in the campaign of the candidates of the two political parties for seats in either House of the Assembly, the question as to the Seat of Government has never been discussed or made an issue by the people of the several counties in the State. Those who, for selfish purposes, have, through their representatives, from time to time, agitated this question in the Legislature, have never made it an issue, or dared to require the representatives of the community desiring the Seat of Government in their midst to pledge themselves to using their endeavors to affect a change of the Seat.

In the contests for seats in the Convention now in session, this question was not made an issue. If the *people* desired a change of their Seat of Government the time most opportune above all others and the best opportunity occurring within the past fifty years for an expression of their views was presented at the last August election, when the issue could have been made in the canvass for seats in this Constitutional Convention, who reflect the sovereign will of the people.

The failure of the people to take any action touching this subject is significant of the fact that they are satisfied with the present location.

The writer contends that the pledge of the public faith reaches out so as to include all of those persons who, relying thereupon, have invested their money in lots and houses, manufacturing enterprises, besides subjecting themselves to heavy taxation for years to raise nearly one million of dollars expended for gas and water-works, streets and sewers, and railroad facilities for the convenience and accommodation of those called here upon private or public business.

A change in the Seat of Government involves an expenditure of not less than four millions of dollars in the pur-

chase of grounds and the erection of suitable and creditable buildings thereon. The State now has public buildings in Frankfort, and by an expenditure of two hundred thousand dollars annually for five years, can reconstruct, remodel and enlarge her present capitol buildings so as to accommodate the public business of the State, at a saving to the tax-payers of three millions of dollars.

For the sake of the good name and financial credit of old Kentucky, it is a matter of regret that a proposition to *auction off* her Seat of Government to the highest bidder should have been entertained nearly one hundred years after her first Seat of Government was secured by private donations. Look at our sister States upon our border—Ohio, Indiana, and Tennessee, with capitol buildings costing from three to six millions of dollars. Tennessee, bankrupted by the late war; tax-ridden by vicious legislation since its close, has expended two millions of dollars upon her public buildings within the last fifteen years.

If the Seat of Government is to be determined by the amount of money to be donated as a bonus by the several localities desiring it, how is this money to be raised? Certainly not by imposing a tax upon the citizens of the locality, because the Court of Appeals, in divers decisions, notably in that of Cypress Pond Draining Company v. Hooper, *et al.* declare that legislation authorizing the imposition of taxes upon citizens of a community for public uses is unconstitutional, and that any tax-payer can enjoin its collection. In that case the court says:

“Ample protection to the citizens against the oppression which might result from the arbitrary exercise of this power is secured in the clause (article 13, section 14) of the Constitution which prohibits *any man's property from being taken without just compensation made.*” Again:

“No matter under what form the power is professedly

exercised, whether it be in the form of *laying or authorizing a tax*, and whether the operation be to appropriate the property of one or more individuals, without their consent, to the use of the *general* or local public, the case must be regarded as one coming within the *prohibition* contained in this clause."

This proposition may be answered by saying that the framers of the Constitution may authorize such taxation; but would they do so? The policy of this Convention, as gathered from its proceedings thus far, is to limit, by constitutional provision, the power of cities and counties to impose taxes upon the community for local purposes.

Would it be just to impose burden upon any integral part of the State, by taxing its citizens to supply public buildings for the entire State's business, especially where there is no evidence that any of the communities urging a change of the Seat of Government, outside of a few local politicians, have expressed any desire to have the Capital in their midst.

* * * * *

In the division of lots referred to in the proposals of Holmes and others, besides those that fell to the State, and upon which are erected the Capitol buildings, penitentiary and warehouse, and Warden's residence connected therewith, Governor's Mansion and grounds appertaining thereto, she took a number of other lots, including those lying east and west of the public square, and sold them to citizens of the State, and warranted title thereto, and covered the proceeds thereof into the State's Treasury for general uses. While the title to the State in all of the property donated by Holmes and others is warranted, and for the nominal consideration of one pound in hand paid, the real and controlling consideration was the *permanent* location of the Seat of Government and the en-

hancing of other property of the grantors and donors in this city. Should the Seat of Government be changed there would be an abandonment of this property for the purposes for which it was originally donated. The Supreme Courts of this State, New York and Massachusetts have held that property donated for public uses, such as the site for a railroad depot, court-houses and churches, when abandoned for such uses, reverts to the grantors and their heirs, together with all of the ameliorations thereon. While this doctrine could not be enforced as against the State, because of the lack of authority to sue the State, would not the heirs of these grantors and donors, and those taking title from the State, have a just right to appeal to the Legislature for some indemnity for the resulting injury sustained by them, by reason of a removal of the Seat of Government? Some have mockingly said that, notwithstanding the advantages Frankfort has had by having the Seat of Government here for nearly a century, yet she can boast of but few manufacturing establishments and other evidences of enterprise.

Had her people been relieved from the apprehension of losing the incidental advantages of having the Capital here; had the subject of removal not been agitated time and again, thereby depressing her and driving capital from her midst, she would to-day be the flourishing city which her natural advantages point out for her.

Remove the Damoclean sword, which has hung over the heads of her people for so long, by *permanently* locating the Seat of Government here, and directing the next Legislature to appropriate a sum of not less than \$2,000,000 to provide suitable buildings for public uses, then capitalists here and elsewhere will invest in manufactories and other enterprises, and we will silence the taunts of our old rivals of 1792.

Respectfully submitted,

W. H. SNEED.

Legal Aspects of Capital Removal.

BY JUDGE WILLIAM LINDSAY.

HISTORY.

The first Constitution of Kentucky, adopted April 19, 1792, provided, by the 10th article, for the appointment of a Commission to fix a place for the Seat of Government, which Commission was empowered to receive grants from individuals therefor, and to make such conditions with the proprietor or proprietors of the land so pitched on by them, as to them shall seem right, and shall be agreed to by the said proprietor or proprietors, and lay off a town thereon in such manner as they shall judge most proper. And the article further declared: "And the Seat of Government so fixed shall continue until it shall be changed by two-thirds of both branches of the Legislature."

The House of Representatives of the first General Assembly caused the Commissioners to be selected in the mode prescribed by the Constitution. They fixed upon Frankfort as the permanent Seat of Government. They accepted the following and other propositions of substantially the same tenor and effect:

"Propositions to the Commissioners appointed to fix on the place for the permanent Seat of Government for the State of Kentucky."

"If the Commissioners approve of Frankfort as the proper place, I will give to the government, for the term of seven years, the house and tenement lately occupied by Gen. Wilkerson, described in the plan of said town as No. 1. The lots, 58, 54, 68, 79, 74, 83 and 84, marked 'public grounds,' shall be conveyed and warranted to the government absolutely. The half of the unsold lots, which amount to thirty-seven, shall also be conveyed, or thirty. The choice of the unsold, the rents of warehouse for seven years.

"In addition to the above I will deliver, on reasonable notice, on the square marked 'public grounds,' ten boxes of glass, 1,500 pounds of nails, \$50 worth of locks and hinges, and equivalent of stone and scantling for buildings. If more space is required to be laid off in half-acre lots, I will lay off fifty acres more, which shall be added to the number unsold, and divided with and conveyed to the government; and if the Commissioners choose to divide the lots in preference to making choice, that is, the Commissioners to take one lot and I will take the second, and so proceed on the division.

"ANDREW HOLMES,

"By Harry Innes, etc."

In addition to the above, other parties subscribed \$3,000, to be paid in specie.

Out of the proceeds of such grants and contributions the first set of public buildings were, in the main, erected. The State accepted the conveyances; occupied the public grounds, and proceeded to sell and convey to private persons the out-lots received in the proposed division of lots, and a very large number of the most valuable lots in the city of Frankfort are now held under titles derived from the State.

The validity of these conveyances to and by the State

was considered and upheld by the Court of Appeals in the case of *Brown v. Anderson*, 1 T. B. Monroe, page 198. The question was there raised that the contracts between the State and the contributors of lands were against sound public policy. But the court said in response:

“The people, in Convention assembled, decided the policy was sound, and then provided for contracts under it. The Legislature, at the succeeding session, accepted this contract in accordance with the then existing Constitution, and provided for carrying it into effect by appointing directors of the new Capitol, and authorizing them to sell the land granted, which was done, and this is one of the sales. This decision, on both the consideration of this contract, as well as on its policy, is of so high a nature as to conclude all the functionaries of the Government from questioning it as a question of *meum and tuum*.”

This decision settles that the State secured the titles to these lands by contract, and that the consideration passing to the grantors was valuable in its character. That consideration was the agreement by the State that the town of Frankfort should be made the Capital under and pursuant to the constitutional declaration, that “the Seat of Government so fixed shall continue until it shall be changed by two-thirds of both branches of the Legislature.”

The contracts thus consummated between the State on the one side and the contributors of lands, money and materials on the other, bound each side alike. The State took titles which it could and did put upon the markets, and those who gave, and those who purchased from the State, did so upon the faith of the State's undertaking that the Seat of Government should remain at Frankfort until changed by two-thirds of both branches of the Legislature.

The struggle to remove the Seat of Government to Lexington commenced at once. But the Convention of 1799,

which adopted the second Constitution, declined to intermeddle with the contract of the State to keep the Seat of Government at Frankfort until the Legislature should change it by the required two-thirds vote, and declared by the eighth article of the said second Constitution, that the Seat of Government shall continue at Frankfort until it shall be removed by law: provided, however, "that two-thirds of all the members elected to each House of the General Assembly shall concur in the passage of such law."

From 1799 to 1849 the struggle to change the Seat of Government by law was renewed from time to time. In 1849 the Convention that framed our present Constitution followed the example of the Convention of 1799; kept the faith of the State; and, by the ninth article of the Constitution, embodied the contract entered into with the parties who made grants of land and contributions of money and material, by providing that whilst the Seat of Government may be removed by law, "the two-thirds of all members elected to each House of the General Assembly shall concur in the passage of such law."

LEGAL AND MORAL ASPECT.

The present Constitutional Convention, like the Conventions of 1799 and 1849, is bound by the contracts under which the State took benefits in 1793, and upon the faith of which parties purchased the lots of land received by the State under those contracts.

The contract which was binding upon the State in 1799 and 1849 is equally binding in 1890. And it is to be presumed that the faith of the State will be as sacredly observed and upheld by the present Convention as it was kept by the Conventions of 1799 and 1849.

The claim that the assembling of the Convention opens the whole question and frees the people of the State from the obligations of their contract, is as unfounded in law as

it is indefensible in morals. Constitutional Conventions, as much as State Legislatures, are bound by the contracts of the constituencies for whom they act. A State can no more impair the obligations of its contracts by the change of its Constitution than it can do so by a legislative enactment. (115 United States Reports, 650; 16 Wallace, 232; 116 United States Reports, 132; 89 New York, 36; Cooley on Constitutional Limitations, sec. 275.)

If it be said there will be no remedy in case the Convention shall assume to remove the Seat of Government, without the consent of two-thirds of each branch of the General Assembly, the answer is, that the want of a remedy makes the obligation of the State to keep its faith so much the greater. The Convention now in session represents not only the sovereignty of the people of Kentucky, but also their history, their good name, and their good faith. It is but fair to assume that each member of the Convention will act upon the fact that the obligations of good faith know no relaxation in favor of any body of men, however exalted or illustrious. An honest man does not refuse to pay an admittedly just debt, because he may interpose the statute of limitations as a bar to the remedy. He does not refuse to perform a contract of which he has received the benefits, because it is not evidenced by such a writing as will take it without the provisions of the statute of fraud. Nor does a sovereign State, proud of its past history and jealous of its good name, refuse to perform an obligation fairly entered into, and sufficiently supported by a beneficial consideration, long since received, because it can not be coerced into standing by its plighted faith. No self-respecting man, acting on his own behalf, would deliberately violate a contract like that entered into by the State in relation to the location of the Seat of Government; and it is difficult to believe that any self-respecting man, acting

as a member of a Constitutional Convention, will give aid or countenance to a movement looking to the violation of that contract by the people of Kentucky. As we have seen, the considerations were sufficient to induce the second and third Conventions each to abide by and reaffirm the contract in question ; and they will, no doubt, be sufficient to induce this Convention to ordain that the Seat of Government shall remain at Frankfort until removed by the votes of two-thirds of all the members elected to each branch of the General Assembly. An adherence to the terms of the contract can work no serious inconvenience to the public. Whenever it shall become the deliberate and fixed opinion of the people of the State that the Seat of Government should be removed the necessary votes to enact the law providing for its removal will be found. It is no extraordinary or unusual thing for a bill to receive the votes of two-thirds of the members of each House; and no hardship can result to any one by leaving established things alone, until the deliberate opinion of the people demands their change. After more than ninety-five years of discussion, the likelihood of the Seat of Government being removed by legislation is probably less to-day than it ever has been.

SELFISH AGITATION.

The people of the State have at no time set on foot the agitation for the removal of the Seat of Government, and they do not to-day encourage its agitation. The discussion has been precipitated upon the present Convention, as it has in the past been precipitated upon the General Assembly, by those who wish to subserve their local and selfish interests, and with no view to the promotion of the general good. The history of the Commonwealth during the century of its existence is indissolubly associated with the city of Frankfort. In this city its Governors have resided, its

Legislatures have held their sessions, and its highest court declared the law to all its people. This association should not be disturbed, unless for all sufficient reasons, and none such have been, or can be given.

NOT THE SUBJECT OF POPULAR VOTE.

Leaving the question of the location of the Seat of Government to the vote of the people is impracticable, unless the Convention be willing to have the sacred contract of the State annulled by a minority of those who may see proper to go to the polls. Suppose the people be called upon to choose between Lexington, Winchester, Danville, Lebanon, Louisville, Bowling Green and Frankfort, or any four or more of these cities, the probabilities are that no single city will receive the votes of one-third of those who go to the polls. To base the removal upon such a vote will be to violate the contract of the State to keep the Seat of Government at Frankfort until removed by two-thirds of both branches of the General Assembly, and this without the sanction, and against the will, of a majority of the voters of the State. Surely such a proposition ought not to receive serious consideration by a body of men engaged in framing the organic law of a Commonwealth as sensitive concerning its honor as it is proud of its history.

ECONOMIC VIEWS.

There is another view of this question that should receive serious consideration. The removal of the Seat of Government will necessarily involve the immediate expenditure of several millions of dollars. Commencing at the foundation, suitable public grounds must be secured, and suitable public buildings erected. These will cost not less than three or four millions of dollars. Economic estimates may be made and small appropriations asked at the outset; but the history of the erection of public buildings during

the last twenty years, whether Federal or State, shows that the extravagant expenditures of public moneys can not be prevented. Donations by towns and cities, however large they may appear, will accomplish little in keeping down the public expense. Those who are willing to give the State expect to be repaid, if not an hundred, at least many fold; and it will be more economical, as well as more dignified, for the State to purchase its lands and erect its public buildings at its own expense, and without the assistance of any person or locality.

The public buildings at Frankfort have answered the purposes of the State during the past fifty years. For less than \$750,000 the plan for their improvement can be carried out, and, this improvement made, they will be sufficient during the coming fifty years for all the purposes of the State, and will be as comfortable and imposing as the republican simplicity of the Kentucky people demands. The proposition, therefore, involves the expenditure of three or four millions of dollars on the one hand, by the removal of the Seat of Government, or of not more than \$750,000 on the other, in case the Seat of Government shall be left at Frankfort, and the present public buildings improved and completed.

In the estimation of the controlling majority of the people of the State, this is not the time to make changes for the mere sake of a change, nor to lay the foundation for the unnecessary expenditure of public moneys, and the consequent increase of taxation. And the Convention will not profit by the experience of the past if it shall act upon the assumption that the Seat of Government can be removed and an increase of taxation avoided. Whether the question be considered from the standpoint of sentiment, or of public morals and good faith, or of judicious economy, the conclusion is inevitable, that the Convention

should leave the Seat of Government to remain at Frankfort.

ADVANTAGES OF FRANKFORT.

But, if it be the will of the Convention that we shall have new and expensive public buildings, let them be erected at the present Seat of Government. In and around the city of Frankfort, and upon her surrounding hills, sites are to be found that none of her ambitious rivals can equal. A magnificent Capitol upon Arsenal Hill, overlooking the city, standing upon the brink of the river that bears the name of the State, and having for its nearest neighbor the final resting place of Kentucky's distinguished dead, would harmonize with the history and traditions of our people, and satisfy those who demand that we shall have public buildings commensurate with the wealth, dignity and grandeur of the Commonwealth. If we are to depart from the simple habits of the olden times, and be satisfied with nothing short of the splendid and luxurious capitol buildings of these modern days, it will be well to so locate them that our future governors and legislators, and judges, and all who come to see and admire, may look out upon the monuments the State has erected to mark the graves, and commemorate the virtues and patriotism of these simple-minded, plain-spoken soldiers, statesmen, jurists and pioneers, who, by their modest and unpretentious lives, won for Kentucky the crown of honor and glory of which the Kentuckians of to-day are so justly proud.

ERRATA.

Since this matter has been put in type, it has been called to the attention of the committee, that the statement on pages 6 and 7, that there had not been the death of a **State** official while in office is not exact; that there had **been, so** far as can be recalled, three deaths during term of office: Govs. Clark and Helm, and Secretary of State Van **Winkle**. But Clark died at Winchester; Helm at **Elizabethtown**, before coming to Frankfort, and although Secretary **Van Winkle** died at Frankfort, his death was due to causes with which his residence at Frankfort had nothing to do. **The** statement as made, therefore, is still true, that the **record** is phenomenal.

On page 3, in the explanation, the words "deed" and "pound" should be read in the plural number.