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## CONDITIONS.

TWO DOLLARS, if paid in advance—TWO DOLLARS & FIFTY CENTS in six months—THREE DOLLARS at the expiration of the year.

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## NEW ELECTION OF GOVERNOR.

(DEBATE CONTINUED.)

Mr. MONROE. I do not rise, Mr. Chairman, for the purpose of making a speech, but merely to give the reasons which will govern my vote; and show in a few words wherein I consider the foundation of the arguments of the gentlemen on the other side to be fallacious, and of course their conclusions erroneous.

The question at present is on the amendment offered by the gentleman from Bourbon. For this amendment I shall vote. 1st. The constitution has not conferred on the legislature the power in any case of providing for a new election of governor. 2d. After that instrument has distributed the powers of government into three distinct branches, the legislative, judicial, and executive, it expressly provides a mode for filling vacancies in each department—in the first branch by a new election, in the second by appointment by the governor, and in the third by succession. If any county, the most inconsiderable in the state, is without its due representation, the constitution provides that a writ of election shall issue to supply the vacancy. When this is the fact with respect to that branch, and no mode is pointed out for a new election of governor, can we doubt but that the convention designed that it should be filled by succession? Can we believe the convention designed we should, by the authority of a general principle, provide by law for an election in this event? On which side is the weight of probability?

As this house is the more numerous, so there was less necessity that the constitution should have provided that the place of any particular member should be supplied by a popular election, than in the executive, which consists of but one man. Here the duties of legislation could be done by the remaining representatives who had been elected. There one death happening, a case exists as of much importance as fifty deaths would produce in this house.—Then as the constitution has in the case of a member of the legislature expressly provided for an election, can it be believed, that an election was intended in the case of the executive, and yet no constitutional provision be made? But look to the provision that is made and all is plain. Instead of the mode pointed out to supply vacancies in the representative body, another way is prescribed for filling the executive.—On the death of the governor, the lieutenant governor must supply his place. Gentlemen startle at the idea of being governed by a lieutenant governor; but let them recollect that he must possess the same qualifications as the governor, and is elected by the same voters. Next it is provided that if the lieutenant governor die, the speaker of the senate pro tem. should succeed, and in case of his death the senate would continue to fill up the office, which completely supplies every possible case. There was an objection to this mode under the old constitution, because the person who might fill the office of governor might previously have been chosen by the senate for the purpose of filling a vacancy in the senate. In the new constitution the difficulty is removed; yet somehow argument is founded on that provision of the old constitution, which does not exist in the new. The senators are now all elected by the people with the same qualifications and for the same time as the governor. Thus whether we are governed by a governor, lieutenant governor, or senator, he is elected by the people.

But let us dismiss the constitution & reply to some of the arguments in favor of a new election. The gentleman from Fayette has gone back to antiquity—has travelled to the four quarters of the world and brought us examples from the most distant nations to prove the danger to freedom of executive influence and power; but he has not said a word of the extent of that power and influence in our government. However that was unnecessary, as the power contained in the constitution and his influence is known to us all. There is no government in which the executive

has less power; he cannot create a single office, nor dispose of a single dollar, and of course has less influence.—But we need not enquire what are his means of influence, but what it has been, what its effects? Have our governors heretofore been able to increase their popularity? No; they have all I believe left the office with less popularity than when they came into it.—Though there has been no cause for demagogues to traduce their characters & excite the people against them; for they were ineligible. This argument, therefore, seems to prove nothing—it is only calculated to alarm us into an election.

But there is one broad argument used by all the gentlemen, on which they build their whole fabric:—that we do not derive our power from the constitution, but from our election! and that all power not expressly denied by the constitution is possessed by the legislative department. At such a doctrine I shudder. When our representatives adopt this construction, that our constitution is merely a collection of exceptions to the power of the legislature, and that the exceptions must be pointed and express; when the constitution of our country is thus regarded our republic has past its meridian and is fast on the decline. Do I derive my powers to act on this floor as legislator for the whole commonwealth, by an election which was done by so small a portion of the community?—No, sir; I derive it from the whole community, represented in the convention through the constitution which they framed. The people then conferred on the legislature certain powers in the constitution expressed. The elections designate who shall compose the department, and when we have assembled we are clothed with those powers. Read the last article of the constitution, by which it will appear that the convention through fear that the legislature might assume powers not belonging to them, has expressly restrained them within fixed bounds. The second section of the article says that "all power is inherent in the people," and that "they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government." The last section of the same article guards against transgressions of the powers which had been delegated, and declares, that all laws contrary to the reservations there made, and to the constitution, shall be void.—Now in the former section the people have reserved to themselves the power of reforming their government, and in the latter have declared every innovation upon those reservations null and void. The constitution has given to the lieutenant governor the office of governor under certain contingencies.—Now if we pass a law to prevent this succession, do we not make in effect an alteration in the constitution, which is the form of government, a right expressly reserved by the people to themselves; and would not the act be null and void? It is contended that we should lean to the side of the people.—That is my course in all questions; & when a question involves a constitutional principle, considering that instrument the most invaluable treasure of the people, and their written will; and when there is a doubt, that by acting it may be infringed, I always abstain, lest I should encroach on the powers which the people have reserved to themselves.

But we are told that we ought not to regard the letter, the syllable, nor the syntax of the constitution, but that we ought to soar above all such trifles, & be guided by great first principles. Add to this the doctrine which seems to prevail, that the will of the people is paramount to the constitution, and we will stand on this ground. The constitution is only a bill of exceptions to our powers. Those exceptions we get over by disregarding letters, syllables, and words, and following after principles; & to crown all, if the act is according to the will of the people, alias popular, all little difficulties are rectified and smoothed—when in fact we have no constitution, but would be disorganized and ready for despotism.—Our government is not now a pure democracy. The convention well knew that such a form could not exist. If inconveniences arise under the constitution, they can be remedied by no law; but that instrument must be changed by the people, not by us.

A strange doctrine is advanced, that if the lieutenant governor hold the office for four years, he is still eligible as governor for the next four; and that such may be the influence of the present incumbent that he may be re-elected. It is my opinion, that no officer, whatever may be his style, ought to hold that office longer than four years. The constitution is explicit, that the governor shall hold the office for four

years and no longer. This being intended as a check upon what might be the influence and power of that department, the provisions with respect to the governor will apply with equal force to the lieutenant governor. Yet gentlemen are afraid to trust the people on this point three years hence. I am not afraid to trust them at any time or on any occasion. But they fear the people will be blinded and enslaved by the influence of the present incumbent, and therefore they will push an election down the throats of the people, constitutional or otherwise, whether they will or not.

Mr. RUDD. I shall give my views to the committee on this subject, in as short and simple a way as possible.

Those parts of the constitution which relate to the governor and lieutenant governor, have already been examined; but I will turn to one or two places which relate to the general assembly. Thence I shall be able to show that it was not by mistake or through forgetfulness that the convention omitted a provision for this case. I shall likewise show, that in the case of governor, and lieutenant governor, they have provided against every possible contingency.

In the general provisions of the constitution it is said, that the right of free suffrage shall be secured by laws regulating elections. The constitution has likewise provided, that each house of the general assembly shall judge of the election, qualifications and returns of its own members, and has pointed out a mode for filling up vacancies. Thus it appears that this important subject was not forgotten or neglected.

This is a question which deserves the most serious deliberation. It should not be passed over lightly, but presented in every shape and view, that it may at once be put to rest. We should make every inquiry and not leave a circumstance on which a doubt can rest. I had at once formed an opinion on the subject; but from my high respect for those who entertain a different opinion I was led to doubt.—But on a further examination of the constitution, I am confirmed in my first impressions. Can gentlemen point out a place in that instrument, which contains the least allusion to a new election, after the death of the governor? There is no such provision. On the other hand it expressly provides, that when the governor dies, resigns, &c. his place shall be supplied by the lieutenant governor. If the lieutenant governor die, his place shall be filled by the speaker of the senate; and if a vacancy happen during the recess of the senate the secretary shall call that body together for the purpose of choosing a speaker, who shall fill the office of governor. When the constitution is thus particular and explicit; when the door is completely shut, why should we enquire who shall administer the government? Where is there room for doubt? One gentleman says, it is not his business to show that the constitution gives the power; but ours to show that it takes it away! A doctrine so strange, I did not expect from so respectable a source. Can it be supposed, that the gentleman means, that the framers of the constitution intended to delegate to us all powers which are not enumerated in that charter!—He seems to have forgot the great principle of our government. But in this case there is not only no delegation of power, but an express provision to fill up the vacancy in some other way. In the case of executive officers, it was necessary to provide against every casualty; and this has been so effectually done, that unless you kill the governor, lieutenant governor, and all the senate, an interregnum cannot happen. The constitution has provided for filling legislative vacancies by election; but in the case of governor it has made no such provision. If the convention had intended there should be a new election, would they not have mentioned it with the same care which they have shown in providing a mode of filling vacancies in the general assembly? The legislature have power to decide contested elections and to pass a law to fill up vacancies in its own body; but where is there any provision for a writ of election to fill a vacancy occasioned by the death of the governor? Then on what authority can we take a step so important? Are we ready to exercise powers not given to us, and will gentlemen issue a writ of election on vague presumption? If the constitution had been defective with respect to the filling of vacancies in the general assembly, we should have no power to do it and they would remain unfilled. Our authority is derived from the constitution, and if we cannot find it there, we have no power.

The constitution provides, that contested elections shall be decided by a

committee from both houses of the general assembly; when the votes are equal the election is decided by lot, and for every possible case there is some provision. But in this case vacancy has not happened. Our governor has died; but we have a lieutenant governor, in every respect qualified to discharge the duties of the office. Though we may have cause to lament him who is gone, yet have we reason to rejoice, that one so able and patriotic supplies his place. The constitution declares, that he shall hold the office until another be duly qualified. These words must mean until another be elected according to the constitution. Can they mean more? But the constitution has provided for only one election in four years. It seems then a rational construction, that another cannot be duly qualified, till the end of the four years; and the people must wait until the time for the regular election rolls round. Let it rest as it is. The constitution did not intend, that a writ of election should issue; but that the lieutenant governor or senator should hold out the balance of the term.

We have not like the United States, in case of the death of their President and vice president, assigned his duties to different officers of the government; but confine ourselves to that respectable body the senate. How then can we expect a governor, who is not qualified for the office? Can we suppose, that our lieutenant governor or senators are less qualified for that office, than the governor himself? Is it not in the minds of the people; was it not in the mind of every elector at the last election, that the man for whom he was voting as lieutenant governor or senator might become governor? A principle so well known could not have been overlooked. How then, when this fact is well known, even to children, could it be presumed, that if death should even snatch away our present lieutenant governor, that the office would not be filled from the senate with one equally qualified to discharge its duties?—From thirty-three members in that body, there can certainly be one selected adequate to those important duties.—But the lieutenant governor is particularly marked out as the successor of the governor. Then there can be no convenience in the course pointed out in the constitution, but on the other hand, it seems a wise one.

But I will offer a few remarks on the policy of this measure. I have not yet heard gentlemen give their opinion of the policy of a new election.—It seems to me, that many more dangers than benefits are apprehended from this course. The gentleman from Logan seems to look more at the power of the people, than the dangerous consequences which may result. If he had reflected on the difficulties which may result from the course which he advocates, he would be governed more by sober prudence. Our government is divided into three departments, the legislative, judicial and executive, each of which has its separate functions. The judiciary is the weakest branch; but even this may conflict with the other two, and in this is our greatest danger. Every law signed by a governor so elected, every writ issued under their authority, or executed by a sheriff commissioned by him; may be declared void and of no effect. Hence may arise dangers of the greatest magnitude—suits multiplied—all laws signed by such an executive unconstitutional and no laws—writs so issued of no effect, and all legal proceedings distracted and suspended.

There is in this thing a distinction between our government and that of England. There the acts of a king de jure and a king de facto are equally valid and equally binding upon the people. Is it so here? Can that rule apply to our government? It cannot; but if we make a governor de facto, all his acts will be invalid, and may and will be disregarded by every judge who knows his duty. What would be the consequences of such a state of things? The hand of every man would be raised against the throat of his fellow; our free institutions would crumble at the touch of anarchy, and despotism would ensue. These might be the consequences of a violation of the constitution, of a course so fraught with evil and danger.

But in the present state of things there is no danger. All is now right; we have an officer in the place of governor, whose acts will be constitutional; till another be duly qualified. Let him remain for the balance of the term as the constitution intended, and all will be harmony and peace. But adopt a different course and we expose ourselves to ruin and anarchy. Do you suppose, that if we pass the law, the public mind will be at rest? No; it will be a topic of electioneering, and

keep the country in confusion for the four succeeding years. It will set us afloat on a sea of doubt and uncertainty. But let us rather pursue the path of order and peace. If I believed it right, I would not vote for a measure so fraught with mischief. I would rather suffer a few years of illegitimate rule, than hazard so great evils.—Then let it remain.—Both the constitution and sound policy forbid us to interfere.

One gentleman yesterday thought a case might occur, when it would be absolutely necessary for the legislature to interfere, but he carried his suppositions, almost to impossibility. If the government were really without a head, it would certainly be necessary that some thing should be done. The gentleman must suppose the death of governor, lieutenant governor, and all the senate; for until they are all gone, we should not find ourselves without a governor. If the governor die, the lieutenant governor supplies his place; if the lieutenant governor die, the speaker of the senate; if the speaker of the senate die, the secretary must call the senate together, to choose another; so that it seems hardly possible for this office to be destitute of an incumbent.—The argument thus far proves nothing.—It is all possible—it is possible, that the governor, lieutenant governor and senate may all die, and even the whole state lie without them.

Mr. BLACKBURN. I acknowledge Mr. Chairman, that I feel a greater degree of solemnity on this occasion than ever before in my political life.—Never has a question created on my mind so great an embarrassment and alarm.—When I review my political course, and behold the friend with whom I have so often acted, who has deserved so much from his countrymen, lost to me on this occasion. I am appalled and almost deterred from taking part in this debate. But while I view this as the greatest of evils to myself and the government, I am still more appalled, when I hear a gentleman in whom I have so much confidence, tell us, we are not to regard the letter of the constitution; that he who sticks in the letter, sticks in the bark. When you set such an example if men of different politics should profit by it, you cannot complain—you dare not complain.

Mr. Chairman, I acknowledge the subject is greater than I can manage. But I feel it a duty which I owe to my constituents and my country, to express my opinion.

The first question is whether the office of governor is constitutionally filled? If it is, we have no power to fill it. We should here keep out of sight the man who is now in the chair, and not be influenced by feelings of dislike or respect.

Let us examine the charter of our rights. When the governor dies, his absence &c. what is the consequence? The lieutenant governor shall come into his office, discharge all its duties, and receive all its emoluments. How long? Until another be duly qualified? How duly qualified? He must be elected by the people and must take the oaths of office, before the incumbent can be turned out. Gentlemen tell us, that unless there is a new election the lieutenant governor may hold the office for four years and be eligible for the next four. I will propose a case which would produce a similar result, and let them refute it if they can. The constitution provides, that the incumbent in that office, shall hold it until another has been duly qualified. Suppose the governor elect were to refuse to qualify, by taking the oaths could you say to him, that he should qualify? Or could you in this case issue a writ of election, and compel the incumbent to quit the office? The constitution gives the legislature no such power. Unless the governor elect should consent to qualify, the former governor would continue to hold the office for four years more.

Let us examine what powers are really given to the legislature by the constitution. It gives us power to make laws and rules; but when we undertake to exercise any of these powers, we look to the constitution to see whether we keep within its bounds. If we pass the prescribed barrier and violate the constitution, we come within the province of the judiciary. Appeals are made to that branch of the government and the error corrected.—Now let us look into the constitution, and see whether in this case we should not transcend our powers.

But I will take another position and see how the gentlemen will answer it.—Governor Shelby left the state during his administration, and the lieutenant governor discharged the duties of his office. Suppose he had been absent three or four years, could we have