

that convention and ours was in the fact that there was no ambiguity in the terms of the act of assembly providing for its exercise. The act directed that they should submit the constitution either to those whom the convention might authorize to vote for members of the legislature, or upon the ratification of the constitution. But this clause of the act of assembly cannot, from the whole tenor of your argument, make any distinction between the cases; for, certainly, I do not understand you as in any respect admitting that had our act of assembly, in terms ever so unequivocal, prescribed a new oath for the voters, and made provision for the soldier's vote, or had explicitly authorized the convention to do so, that the constitutional provisions could be put aside by such legislation. Nor was any peculiar power claimed by the Virginia convention on such ground; on the contrary, Mr. Thompson, one of the most prominent debaters in behalf of the power claimed, in effect repudiated such a derivative authority.

Referring to that clause of the act, he said, "the whole object of this provision was to declare *what it was supererogatory to affirm*, that if it should be the pleasure of this body to designate the persons to whom our work should be submitted *we had the power to do so*, and in the event of our silence on this subject, the sheriffs should on question of ratification or rejection take the votes of all qualified under the new constitution." Nor were those who opposed the exercise of the power less confident in their denunciation of the measure as a usurpation than yourself.

They pursued the same line of argument. Mr. Nicholas, who was one of these opponents, after declaring that as a general principle there were two ways by which a government could be changed—the one by revolution, and the other by those from whom the powers of government are derived, agreeing to modify its existing institutions, says: "If it be admitted that the change in the government can only be made with the assent of those who possess the power, the reference of the question to those not now entitled to vote would present a curious political anomaly. In the first place, on a question whether the constitution is to be adopted, we are to anticipate that it will be so adopted, and give the decision to those who possess no political power until after the event takes place, instead of obtaining the assent of those in whose hands the power of government is, we are to unite in the decision numerous classes who constitute no part of the actual government."

He then puts the case of the majority of the freeholders voting one way, and of the new voters the other, and in which case the form of government, instead of being altered with the assent of the existing authorities, would be so altered in defiance of them.

Mr. Randolph, another opponent of the proposed submission of the constitution to those who were not allowed to vote under the existing one, denounces the proposition still more emphatically. He says:

"I consider this as the greatest question which has been presented to this body since it assembled. Is it not obvious that if the commonwealth consists of freeholders and non-freeholders, and the non-freeholders are—as we are told they are—the most numerous of the two, that the worst of constitutions might have been imposed upon the commonwealth by those who, in the language of a gentleman on this floor, are out of the constitution, against the voice of every freeholder in the county? Sir, what sort of a tribunal do you elect when you admit those who have no part or lot in our acts to pass judgment upon them? Sir, you might as well refer the constitution to the people of Ohio, or the people of Kentucky, or, I will go further, to the people of Japan. Yes, sir, they have just as good a right to decide upon it."

Mr. Randolph then moved the following resolution:

"Resolved, That the amended constitution adopted by this convention be submitted on the respective election days in the month of April next to the persons qualified to vote under the existing constitution for members of the general assembly."

The ayes and nays were taken upon the adoption of the resolution, and it was defeated by a vote of more than two to one. The new constitution was submitted to voters who were not qualified under the existing one, and among those voting with the majority were Ex-President Madison, Chief Justice Marshall, Chapman Johnson, Philip P. Barbour, and others of scarcely inferior celebrity.

Now, my dear sir, whatever opinion you may still entertain of the proceeding of our convention, I hope and think that with such a precedent before us you will no longer press me to interpose the executive arm to arrest it upon the ground of its being a palpable violation of constitutional rights, "having no parallel in our State or any other."

In regard to the query propounded by one of your judges of election, and mentioned in your postscript, as to whether I would refuse to count the votes of a district where the judges did not certify that the oath required by the convention had been administered, I would say, what you are, of course, aware of, that by another clause in the constitution proposed I am expressly enjoined not to count such votes. That for the reasons already given I hold myself bound by that requirement, and were I to disregard it, it would be as effectually to annul the action of the convention as if I had acceded to your re-