ernor, that he might commission the requisite number of persons for the trial and determination of the case.

The court then proposed, with the consent of counsel who were present as *amici curiæ*—the governor having declined to appear by counsel—to take up and dispose of the application for a *mandamus*. To this, that the question might be adjudicated, the counsel agreed. The argument proceeded upon the appeal from the superior court of Baltimore city, and the principles involved were discussed at length by I. N. Steele, Wm. Schley and T. S. Alexander, Esqs., on behalf of the appellants, and by Hon. Henry Stockbridge—who was chairman of the judiciary committee in the convention—and Hon. H. Winter Davis, of Baltimore, on the other side. On the 29th of October the court, through Hon. Richard J. Bowie, chief justice, gave its decision, and unanimously affirmed the order of Judge Martin. The chief justice said:

The peculiar circumstances surrounding this case requiring it should be promptly decided, we have only time to announce the conclusions arrived at, and refer to a few of the leading authorities on which these are based.

The case has been argued with an admirable spirit of courtesy and moderation, and much eloquence and learning.

The brief of the relator's counsel states: "The object of the proceedings is to obtain an exposition of the rule of law which ought to guide the *discretion* of the governor in his ascertainment of the result of the late election had for the adoption or rejection of the new constitution."

The relator's prayer substantially is, that the governor of Maryland show cause "why a writ of mandamus ought not to be issued, *commanding* him in ascertaining the number of votes cast at the said late election held as aforesaid," to count certain votes which were tendered and rejected, and to exclude certain votes which shall appear to have been cast at any other place than the election precinct at which the person voting was qualified to vote.

From this brief analysis it appears the proceeding is one of the most momentous consequence, and should be treated with the greatest deliberation. Our first duty is to inquire whether it is a proper subject for judicial interpretation and interposition.

By our organic law, the powers of government are distributed into legislative, executive and judicial. We are admonished by the declaration of rights that these powers "ought to be forever separate and distinct from each other; and no person exercising the functions of one of said departments shall assume or discharge the duties of any other."

The second article of the constitution is, "The executive power of the State shall be vested in a governor."

"He shall take care that the laws be faithfully executed."

The sixth section of the convention law required the constitution and form of government adopted by the convention to be submitted to the legal and qualified voters of the State for their adoption or rejection, at such time, in such manner, and subject to such rules and regulations as said convention may prescribe; and the provisions thereinbefore contained, for the qualification of voters and the holding of elections, provided in the previous sections of the act, were made applicable to the election to be held under that section.

The eighth section further enacts that when the governor shall receive the returns of the number of ballots cast in this State for the adoption or rejection of the constitution submitted by the convention to the people, if, upon counting and casting up the returns as made to him, as hereinbefore prescribed, it shall appear that a majority of the legal votes cast at said election are in favor of the adoption of the said constitution, he shall issue his proclamation to the people of the State, declaring the fact, and he shall take such steps as shall be required by the said constitution to carry the same into full operation and to supersede the old constitution of this State.

Is the power and authority conferred on the governor by this act, a political or judicial power?

A late eminent jurist, whose recent death has been lamented as a national calamity, in the case of Luther *vs.* Borders, *et. al.*, 7 Howard, 39, expressed himself thus strongly: "Certainly the question which the plaintiff proposed to raise by the testimony he offered, has not heretofore been recognized as a judicial one in any of the State courts. In forming the constitution of the different States, after the declaration of independence and in the various changes and alterations which have since been made, the *political department has always* determined whether the proposed constitution or amendment was ratified or not by the people of the State, and the judicial power has followed its decision."

Courts of law will not interfere with the exercise of high *discretionary* powers vested in the chief magistrate of the State, for obvious political reasons:

Among others, "Because, as Governor of the State, deriving his powers from the constitution thereof, he has been made a co-ordinate, separate, distinct and independent department of the government."

In the case of Low *vs.* Towns, governor of Georgia, the supreme court of that State said: "The ultimate effect of this remedy, (mandamus,) in case of refusal by the governor to obey the laws of the land, would be to deprive the people of the State of the head of one of the departments of the government." (8 Geo., 372.)