Chief Justice Marshall, in the case of Marbury & Madison, (1 Cranch,) says "that the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country, in his political character, and to his own conscience."

The chief magistrate or governor of the State bears the same relation to the State that the President does to the United States, and in the discharge of his political duties is entitled to the same immunities, privileges and exemptions—*vide* Hawkins *vs.* the Governor, 1 Ark. Rep. 586.

Independently of all political considerations, if the question was a purely judicial one, this court could not consistently with decisions in other States and in our own, grant the prayer of the relator.

The general principle laid down in all these, almost without exception, is, that where the act to be done requires the exercise of judgment and discretion in the officer against whom the mandamus is prayed, it will be refused. *Vide* cases collected 12 Md., Purnell *vs.* Green, 336; 17 Howard, 230. The result of these decisions is, that the duty and power to decide the questions which we are asked to determine are devolved upon the officer, or governor, without appeal, over whom, in that respect, the judiciary have no control or revisory power.

We have thus succinctly announced the general principles which lead us to the adoption of the conclusion that the order of the superior court in this case should be affirmed.

The court has been invoked to enter into the constitutional powers of the convention and express opinions upon the validity of their acts even if they should hold that the right to issue a mandamus did not exist, and they have been referred to the eminent examples of the supreme court, through their chief justices in some cases, where they declared the law although they could not enforce it. Without dwelling on the immense moral, political and legal influence of that tribunal, to which we cannot pretend, we respectfully suggest there is no parallel between the cases. Those cases in which the supreme court adopted that course, with one notable exception, were not cases in which society was shaken to its foundations by civil discord, and parties arrayed against each other with intense bitterness. If we cannot subdue the strife, we will not add fuel to the flame. All that we can do is to show such reverence for constitutional government, by confining ourselves to the strict limits of our authority, as may induce others, who love "liberty regulated by law," to cherish all its muniments and observe all their obligations.

Test: GEORGE EARLE,
Clerk Court of Appeals of Maryland.

Justice Bartol delivered the following separate opinion:

I assent to that part of the opinion of a majority of the court which denies the mandamus asked for, on the ground that the duties devolved upon the governor, by the act of 1864, chapter 5, in ascertaining and announcing the legal votes upon the adoption or rejection of the proposed new constitution are not purely ministerial in their character, but that they require the exercise of judgment and discretion on his part, necessarily devolving upon him the duty of passing upon and deciding the various questions argued before us, and upon which we have been called upon to pass. In such case the law is well established that a writ of mandamus will not be granted.

Green *vs.* Purnell, 12th Maryland, 329, and the cases there referred to and many other cases might be cited.

I do not agree, however, with my brothers in thinking the power devolved upon the governor, now under consideration, is in any sense a political-executive power belonging to him *virtute officii*, and not a proper subject for judicial investigation. That subject, however, having been submitted by law to the decision of the governor, I forbear the expression of any opinion upon it.

Test: GEORGE EARLE,
Clerk Court of Appeals of Maryland.

While these proceedings were in progress an application was made to the governor for permission to canvass the returns made to him of the soldiers' votes, and to show cause why certain of these votes should be rejected in the count. This privilege was accorded by the governor; the votes and returns were canvassed in detail, and the questions raised upon such canvass were argued at length by William Schley, Esq., against the admissibility of the votes, and by Hons. Alexander Randall and Archibald Stirling, Jr., on behalf of their admissibility. The points thus presented to the governor were disposed of by him in the subjoined

OPINION OF THE GOVERNOR.

STATE OF MARYLAND, EXECUTIVE DEP'T.,
ANNAPOLIS, October 28, 1864.

In the matter of objections made to the sufficiency and correctness of returns of soldiers' vote:

A request was made of me recently by a committee of gentlemen representing, as I understood, those opposed to the adoption of the new constitution, that before issuing any proclamation, as required by its terms, I would allow counsel to inspect the returns of the soldiers' vote, provided for by that instrument, and submit to me such objections thereto as they thought could be made. Although the proposition was a novel one, and I believe no other instance exists in which