

election returns, filed as they are annually or biennially in this department, have ever been subjected to a legal scrutiny as a preliminary to executive action, I did not feel at liberty to refuse the request, and at once agreed that counsel should have full access to these returns, stipulating only that, as according to the view I took of the case, there were no facts about which I could inquire except such as were suggested on the face of the returns; that all objections or discussion should be limited accordingly, and that the friends of the constitution should be advised of the proceeding and allowed the opportunity of answering these objections, as well as making any other to the home vote that might occur to them.

The past two or three days have been devoted to this examination, and a great number of exceptions have been taken to these returns, and argued with the ability that distinguishes the learned counsel who conducted the examination. He had been already apprised that my previous examination of that subject had brought my mind to the conclusion, several times expressed, that so far as my action was concerned I was bound by the provisions of the constitution which the convention had adopted, and whilst we differed widely as to its authority, he very courteously waived all discussion upon that subject, and confined his argument to exceptions taken to the sufficiency or correctness of the military returns, and those I now propose to consider.

The first point raised in the argument is that the oath required by the constitution to be taken by voters was required of the soldiers voting under its special provision as well as of the citizen voting at the county polls, and as the returns of the soldiers' vote, except in two or three cases, fail to show that such oath was administered, that their vote must be rejected. The requirements of the constitution in this respect seem to me very plain. In directing the manner of voting on the constitution, provision is first made for the vote in the counties of the State, and afterwards, and under a distinct heading entitled "Soldiers' Vote" special provision is made for the vote of those in the military service. In the former, and the former only, is anything said about the oath. After directing on what days in the counties and city of Baltimore the election is to take place, the section proceeds to require that the judges of the said city and the several counties of the State "shall receive at said election the votes only of such electors as are qualified according to the provisions of this constitution,"—thus expressly showing that the limitation upon the elective franchise thus imposed was confined to those voting before the ordinary judges of election appointed by the county and city authorities. And when in a subsequent clause—still however on the subject of the home vote, and before reaching the article

relating to the soldiers—it is said that "the judges of election shall administer to every person offering to vote the oath," &c., the same judges of election previously indicated are manifestly referred to, a conclusion confirmed by the tenor of the succeeding section on the same subject, wherein the governor is required to exclude from count the votes of "any county or city" where the judges fail to certify that the oath has been taken.

When in the subsequent part of the same article the special provision is made for the vote of the soldiers, although it is minute in its directions as to the course they are to pursue, not a word is said on the subject of any oath to be taken by them. Indeed, I understand the learned counsel in making this objection to admit that, looking only to the language of the constitution, the oath is not required of the soldiers, but he thinks they come within the spirit and purview of that instrument and should take the oath required of all others. It seems to me that the very contrary is the unavoidable inference, and that the whole scope and spirit of the constitution show that it was not intended that the soldiers should take the oath. In providing as it does in the fourth article that no person who has ever been in armed hostility to the United States, or has given aid or comfort to those who have, &c., &c., shall exercise the right of suffrage, it expressly excepts from the operation of that disqualifying provision those who have "since such unlawful acts voluntarily entered into the military service of the United States," &c., or "shall be on the day of election actually and voluntarily in such service." So far, therefore, from the soldiers being required either by the words or spirit of the constitution to take the oath in question, although a man may have committed all the acts denied by the terms of the oath, his employment in the military service at the time he offers his vote completely condones his past offence and entitles him to vote. And an examination of the returns of the soldiers' vote will show that in every instance they certify affirmatively that the persons voting were in the military service of the United States.

The next of the objections, reviewing them according to what I consider the order of their importance, is that founded on the assumption that no soldier belonging to any company of Maryland volunteers can vote unless such company is attached to a Maryland regiment; and therefore that the members of the different batteries of artillery, of the four companies of the late third regiment of infantry, now reduced to a battalion, the four independent cavalry companies (not a part of any regiment,) and the independent company of infantry known as the Patapsco Guards, are, by the terms of the constitution, all excluded from the right of suffrage, and the counsel cordingly insists that their votes should not