

# MARYLAND GAZETTE.

THURSDAY, NOVEMBER 27, 1781.

For the MARYLAND GAZETTE.

**A** late event may create various conjectures, and afford an opportunity for the ignorant and uninformed to doubt, or for the depraved or disaffected to cavil. I think it may not be improper to lay a state of the fact, and the conduct of the general assembly, before the public. The constitution and form of government directs, "that a governor be elected annually on the second Monday of November; and that the council to the governor be also elected annually on the second Tuesday of the same month, by the joint ballot of the senate and house of delegates." A sufficient number of members did not attend on last Monday or Tuesday week, to compose either branch of the legislature, and consequently an election of the governor or council was not made on those days. As soon as the number of members required by the constitution to compose a senate and house of delegates appeared, they proceeded to an election of a governor and council, by joint ballot. A question arose, whether the senate and house of delegates, by joint ballot, could elect a governor and council on a day different from the day appointed by the form of government. I conceive, that the election was properly made, and agreeable to the constitution, and that it was the indispensable duty of the assembly to make it.

The question depends on the principles of government, and our constitution, established by the convention in 1776. Our bill of rights declares, "that all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole." Before the revolution, the inhabitants of this state lived under a mode of government, in the knowledge and memory of every man. The king of Great-Britain, by breaking the original compact, subverting the constitution, and violating the fundamental laws of the empire of Great-Britain, and by declaring the people of this and the other states out of his protection, compelled them to renounce their allegiance, and to assume government under the authority of the people.

The framers of our present form of government did not consider, that the constitution, or compact, under which they and their constituents had lived, was dissolved or annihilated, by the wicked and tyrannical conduct of the king of Great Britain, and his parliament; but as he had renounced, or abdicated the government, by his open, wanton, and repeated violations of his part of the original compact, recognised, and confirmed at the revolution in 1688, and secured by his coronation oath; and as the British parliament had assumed a right to make laws to bind them in all cases; and as force was employed to compel submission; they conceived themselves justified, and required, for the preservation of the liberty, safety, and happiness of the people, to renounce any connection with, or obedience to, either the British king or parliament. Such parts therefore of the constitution, as established a government by a king and parliament, was annihilated; but other parts, which gave a right to a free government, under laws made by the consent of the people, and secured the right of personal liberty and property, remained. The essentials of the compact were preserved, the form only was abolished. The idea was admissible, that the ancient constitution, or compact of the society was dissolved, and that all government, and municipal laws ceased, and that the people returned to a state of nature. The consequences were obvious and destructive of the object intended, the preservation of liberty and property. The common law of England, and the statutes of England and Great-Britain, applicable to our local circumstances, or introduced into our system of jurisdiction, and the acts of assembly in force before the revolution, were considered as the inherent right of the people, and all property acquired, agreeable to the former laws, was secured to the proprietors. Our constitution can only be considered as a compact, or agreement, by which the people collectively determined, and established the form of government, limited the supreme authority, and regulated the manner by which they would be governed. The government is divided into three separate and distinct parts, legislative, executive, and judicial. The supreme power is vested in the legislature, consisting of two branches, the senate and house of delegates. The executive power is to be elected by the legislature; and the judicial is to be appointed

by the executive. They all derive their existence from the compact, and are consequently the creatures of it, and being created by the constitution, they are inferior to it, and any act of the legislative, executive, or judicial, subversive of, or contrary to, the form of government, is, *ipso facto*, void; and a million of precedents of acts by the legislature (though called laws, and clothed with the usual forms) repugnant to the constitution, can avail nothing, or affect it in the least degree.

Our form of government cannot be altered, changed, or abolished, but must for ever remain unimpaired and inviolate, unless altered, changed, or abolished, by the same power, by which it was created, to wit, the power and consent of the people. The constitution has pointed out the mode, by which such authority and consent is to be obtained. The political existence of our government is perpetual, unless determined by the will of the majority of the people. No external force, or internal divisions or commotions, no negligence, or artifice, can impair, dissolve, or destroy it. The tenure, by which every citizen holds his share in the benefits and advantages derived from, or secured by the constitution, is the voice of a majority; and they, and they alone can, in any the least degree, change or annihilate any part of it. No greater solecism in government can be maintained, than that any act of commission, or omission, can dissolve or affect the constitution or compact made by the people. If such an opinion could be supported, this consequence must necessarily follow, that though our constitution was formed to secure personal liberty, and civil and religious rights, and the right of acquiring and holding property, the wickedness, folly, or negligence, of a very small part of the community, could destroy the compact made by the whole, introduce the wildest anarchy, annihilate all laws, and force us into a state of nature. The absurdity of such a doctrine is so self-evident, that the man, who is not convinced by barely stating the consequences of it, is not worthy of more trouble.

The limited wisdom of man cannot frame a government, or laws, which can provide for the many unforeseen events, which may afterwards occur. Omiscience alone can penetrate into futurity, and guard against all possible inconveniences. The essence or substance of our constitution, ought to be sacredly observed. It was introduced and framed to maintain the people in the enjoyment of the rights and privileges of free citizens, and for that purpose, to secure a government by laws made by the consent of the people. These principles being kept in view, the question will admit of easy discussion.

The constitution directs, "that the governor, and the council, be elected, by the general assembly; and appoints a particular day for the choice." The substance is, that the legislature be invested with the power to create the executive; the time is only directory, and not substantive, but form. From accident (as in the present case, the unexpected and extreme severity of the weather) a sufficient number of persons, to compose the legislature, did not meet, and elect on the days mentioned in the form of government. If the choice cannot be made on any other day, one of three consequences must follow; the whole government must be dissolved; or we must remain, for a year; without an executive composed of a governor and council, constitutionally elected; or the assembly must invest some other persons with the executive power, until the days of the next annual election, or for a shorter period. The two first are inadmissible, for the reasons before urged; and the third is contrary to the substance of the constitution, and therefore the appointment would be void. The executive powers of government can only be exercised by a governor and council, constitutionally elected, and their powers, or the duration of them, cannot be abridged. Many cases may be suggested, which would prevent a choice on the days appointed. In times of war, the enemy may acquire possession of the state, and it might be impossible for the legislature to assemble, (as lately in Georgia and South Carolina) or so many of the members of the assembly may be captured, as not to leave a sufficient number to compose a legislature; these events are not improbable, because the constitution has not made provision, and declared what shall be done, in such cases, it is reasonable that the whole government should be dissolved; if may happen, that a majority of one, or both branches of the assembly, may remove out of the state, decline to sit, or die either, or

all of these events might reduce the number, and render an election impossible.

The constitution directs "an annual election of delegates, in each county, on the first Monday of October." If ten of the eighteen counties should refuse, or be prevented by the enemy from electing representatives; or if forty of the persons chosen should remove out of the state, decline to sit, or die; must the government be dissolved? The constitution directs, "that annually on the first Monday in September, in every fifth year, electors of the senate be chosen." If the election be prevented by the enemy; or if fifteen of the electors remove, decline, or die, must our constitution lose its existence? By the constitution, "not less than a majority of the senate can constitute a house, and in case of refusal, death, resignation, disqualification, or removal out of the state, such majority (being eight) may fill up the vacancy." If eight senators should remove out of the state, decline to sit, or die, must our government be dissolved? The constitution directs, that the legislature meet annually on the first Monday of November. If prevented by the enemy (as lately in Georgia and Carolina) or by any other cause, must our government suffer a political death? The constitution directs, "that sheriffs be elected, on the first Monday in October, in every third year;" and "that all civil officers of the appointment of the governor and council (who do not hold commissions during good behaviour) be appointed, annually, in the third week of November;" if the election, or appointment, be not made, from any cause, must it follow that the constitution is dissolved? The constitution directs, "that on the refusal, death, resignation, &c. &c. of any member of the senate, or council, that the senate or council, immediately thereupon, or at their next meeting thereafter, fill up such vacancy, by ballot, &c." If a vacancy should happen in the recess, or adjournment, and the senate, or council, should neglect to elect at their next meeting after such vacancy, cannot an election be made at any other time? No provision is made by the form of government, in case the governor, or the council, or the members of the legislature, should be incapacitated by some natural and involuntary defect, as sickness, lunacy, or the like, from exercising the office, or trust reposed in them, or in case the legislature, when met to elect a governor or council, should be prevented by the secession of so many of the members, as not to leave the number required by the constitution, to compose each branch of the legislature. It has frequently happened, that one member of either branch, by departing, would break up the assembly. Many other cases may happen in a succession of ages, and is it not evident, that a power does, and must exist, in and by the constitution, or compact, to provide in all the cases supposed, and similar exigences? The

By the constitution of Great-Britain, writs of election could only issue in the name of the king, and under the great seal. King James II, having attempted to destroy the civil and religious rights of the nation, on the arrival of the prince of Orange, fled to France, having destroyed the writs of election, and thrown away or destroyed the great seal. In this emergency, by the advice of the house of commons, and the members of the parliament in the reign of Charles II. and the Aldermen and deputies of the common-council of London, the prince of Orange wrote letters to the counties, cities, &c. to elect representatives to meet in convention. If any of the cases supposed should ever happen, similar measures should be adopted.

The constitution directed an election of delegates for the city of Annapolis on the 21st of December, 1776. The citizens, from an opinion that the constitution had deprived them of certain privileges, refused to make any choice, and so universal was their discontent, that neither candidates or voters appeared. The house of delegates issued a warrant for an election, and a choice was made.

The constitution makes no provision, in case an election for sheriffs be unjustly or unadvisedly made, and no power is created by the constitution, to determine the validity of such elections. An act passed in the first session held under the constitution, by which the governor and council were empowered to judge of, and determine the validity of all elections for sheriffs, and if not made fairly and freely, and agreeable to the constitution, to issue new writs of election.

It is said that the senate, in several instances, omitted to elect, at the next session after the vacancy happened, and that at a subsequent session they filled up the vacancy.