

# MARYLAND GAZETTE, AND POLITICAL INTELLIGENCER.

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MR. KILGOUR'S SPEECH

On the special report of the Committee of Elections, relative to the Allegany Election.

[REPORTED FOR THE MARYLAND GAZETTE.]

Mr. Speaker,

I have nothing to fear from an exclusion from the discussion and decision of this question of all party feeling and prejudice, for which purpose the gentleman from the city of Baltimore has so earnestly appealed to this house. I am ready to meet gentlemen in a calm and temperate investigation of this subject, as to the best mode by which its merits can be fairly brought into the view of this honorable body.— This it has commenced, and so I am willing it should terminate. But this subject has taken a very different course out of doors; since the issue of the Allegany election, such has been the tempest into which the public mind has been thrown for purposes, in which regard to the welfare or interest of the state has no share, that it seemed to threaten a revolution and convulsion in the state. Who are the persons, sir, who have been busied in creating these alarms? in carrying their appeals from the judgment to the fears of their adversaries, to secure a decision of this question favorable to their views & interests; who have echoed this outcry against usurpation, through the state? not the voters of the 4th district of Allegany, whose votes have been set aside, for they have hitherto remained silent, not those who labouring under the feelings of violated right, by a firm and dignified effort are resolved to maintain them, but they are political tide-waiters, candidates for some species of party notice and distinction, who are to be met with at every corner, proclaiming popular vengeance upon those who dare freely to exercise their judgments, and who when the hour arrives for the execution of their sanguinary threats, seek to their holes and hiding places, to seek refuge from the eye of disdain and finger of scorn pointed at them by those whose perseverance in their duty have caused their base and shallow artifices to recoil upon themselves. Conscious relictude, Mr. Speaker, is the safest guide, when real calamities threaten, and when real dangers environ us in politics as well as private life. What a mortifying & degrading reflection then must it be to those who shall ignominiously abandon their rights, yielding to the empty threats of these vile minions of faction, when they shall afterwards see that even a show of resistance would exhibit them in their true character of infamy and cowardice. I will not, Sir, harbour a suspicion that such attempts to fetter the free exercise of judgment can have any influence within these walls; for myself, Sir, I can say, that if in the laws of my country, nor in myself, I can find protection in the enjoyment of this privilege, I shall have the consolation, though a melancholy one, of not having surrendered it without an effort to maintain it. Peculiar circumstances have given rise to the extraordinary pains which have been made use of to clog and embarrass this question, (in itself plain, and not calculated to produce any great degree of interest or feeling) with difficulties which quickly vanish before a close and impartial view of the subject.— Questions similar in their nature have before occurred in this state without scarcely a murmur of discontent or remonstrance being heard; its importance then is entirely fictitious & deceptive, growing out of the sinister and insidious designs of the unprincipled scramblers for place and notice.

The Gentleman from the city of Baltimore has said, if the report of the committee is adopted, the people of the state of Maryland had better select for their representatives patriots and sophists to form and construe their laws, if such a state of things should ever arrive, the people of our state government rest in the same way, upon common usage, common construction, and the nature of the thing; yet, sir, the returns from the presiding judges in the different counties, which return is liable to be altered and corrected immediately by a superior tribunal, we are told requires an unanimous consent, which certainly produces endless delays, and defeat entirely the object of the election law, which seemed to have been to secure an election, which could not be the case unless there was a regular return. That a majority of any body is competent to exercise any power vested in them, unless particularly restricted, grows out of the nature of society; a principle which grows out of the form of our government; and diffuses itself through every branch of it, inherent in and incorporated in the possession of every power. And, sir, it must not only be for important purposes of wisdom and justice, that this right is to be taken away, but by the most express specific words. Instances are not wanting in our state constitution, as well as the constitution of the U. States, which will shew, that where a power is to be used in any other way than by a majority, the mode is specifically prescribed. To give a different construction to the 15th section of the law, according to which, gentlemen say, the judges there mentioned are mere ministerial officers, would be not only an absurdity in itself, but directly at variance with the 6th section of the law, which by extending the power to hold the election to a variety of persons, seems to have intended, with the utmost circumspection, to guard against a failure of the election in the county—directly then in the teeth of this provision is this construction, which places it within the power of a single presiding judge in the county to entirely by delay defeat the whole election by refusing to give his signature to the return.

This brings me to my second position, to wit: that the presiding judges have a right to enquire into the qualifications of their associates. There is no part of the election law which enables the presiding judges to fix, with any certainty, upon the persons who held the election, because of the number of persons to whom the right of holding them is extended under the 6th section of the law. Nothing then, sir, can be more clear, than that from the numberless modes by which fraud and imposition might be practised upon them, by too easy a recognition of a person as a judge, who might present himself as such, then that it was intended to give all its provisions full effect, to give to the majority of the presiding judges an extensive discretion, to make use of those reasonable sources of information furnished by the time and circumstances attending the election, to ascertain with that certainty required by such an occasion, who were the legally qualified judges.

The leading object of the law was to secure an election certainly in every county; hence the particularity with which it has guarded against a defeat of that object; by the negligence or incapacity of any one set of judges to hold the election, so that the people can not be deprived of their right to the elective franchise, unless they pleased to deprive themselves of it. That security, then, of having an election is virtually destroyed, if the judges in the several districts are only amenable to this house, for their errors or their crimes; because a manifestly illegal return of a presiding judge in one district, might give to members a seat here to do acts affecting the general interest of the state, which might have been easily rectified.— The body of presiding judges, would gentlemen concede to them common sense, which really, according to their account of them, they do not seem to do: the making the election so certain, was to the end that the people should be represented from the commencement of the sitting of the legislature, by their rightful agents. If the inferences drawn from the law by the gentlemen of the other side of the house, the certainty of elections & a fair representation of

the people, would bear opposite points with each other, which never could have been anticipated by the framers of the law. If the presiding judges, being these mere ministerial officers, were bound to receive a statement of polls from any person who bore the exterior or ostensible marks of his office, or from any person who might please to call himself a judge, having no judicial authority, having no power to consider him in any other point of view than that in which he presents himself, with what he might call a statement of the polls, it would be an even chance, if a correct return of the members legally elected by a majority of the votes would be made once in three elections; because it is not only in the power of any person, who has only a colourable pretension to the office of judge, according to this interpretation of the law, but of every other person, to falsify or vitiate a return, and give to the whole state, at least for a time, a different political complexion from the one the law would give. Suppose a presiding judge in any district should attend at the time and place appointed by law, with a statement of the polls differing from both of his associates, and they were to accompany him, protesting against the legality of his return, why these ministerial officers, according to the construction placed upon the law by gentlemen on the other side of the house, have no power to reject the polls off red by the said presiding judge, because they can do no judicial act it is sufficient that he is *prima facie* a presiding judge. Or suppose, sir, a person should meet the presiding judges, who according to his own account of himself, had concluded the election illegally, & on an inspection of the law, discovered that he and his associates were totally unqualified to hold the election, still his return must be included, because, say gentlemen, without it all the votes which had been given in the county were not returned, and because the presiding judges had no right to exclude any return that is handed to them. If I am asked why these difficulties do not often occur, I answer, because this exposition of the law has not yet received legislative sanction, because many who are to be met with every where in society, disposed to create confusion, have no expectation that they can find refuge in the law for their follies or their crimes. If the election law had confined the appointment of judges to the levy court, then the position that the presiding judges are mere ministerial officers, might have some small share of plausibility; but the law should have gone no farther, their commissions should be their entire qualification. The idea of their being ministerial officers even on this ground, is barely plausible, for tho' the records of the levy court would be conclusive evidence of their appointment and competency to act, yet the presiding judges in this case would be frequently reduced to the dilemma of including in their return the polls of an election in the face of the most glaring error or illegality in the holding it; but the law has not only not confined the appointment of judges to the levy court, but rendered certain qualifications necessary before they enter upon the duties of their office.

It must have been a primary object of the election law, that elections should be attended with as little expence as possible, and that the necessity of new elections should recur as seldom as possible, for nothing is so calculated to produce an excitement in the public mind; hostile to the purposes of justice, as late circumstances have evinced, as the agitation of subjects concerning elections; for had there been a new election in Allegany, there would have been more bitterness of contention, more attempts at unfairness and fraud, than have been in any election since the adoption of the constitution. This object would be entirely defeated by denying to the presiding judges judicial authority; for as any decision is likely to be more correct which has received the sanction of two tribunals even ceding to both the same share of wisdom; much stronger is this case

much more is it consistent with reason and justice, that the body constituted by the presiding judges in a district should have a controuling jurisdiction over the decisions of the judges in the several districts, who are presumed to carry to the judgment seat the collected knowledge and experience of the whole of the judges of election in the county. Though this house has reserved to itself the controul of their elections, yet in making that reservation, they must have contemplated that the exercise of the power would but seldom devolve upon them, not at all consistent with that frequent interference which must grow out of an interpretation of this law different from the one given by the report of your committee. If the danger and temptation of the abuse of judicial power in the presiding judges, is talked about, is not the danger and temptation greater in the judges of the several districts in a county; so that I conceive, the position of the gentleman cannot be sustained in any view.

The next question presented for the consideration of the house by the report of the committee is, does an exclusion of the polls of any one district in a county from the return, vitiate and set aside the whole election? That the right of the majority to govern, is the basis which supports all our institutions, no one will deny, and that the voice of the majority, when legally & properly declared, ought to be listened to and obeyed, is equally true. For the security of this right of the majority to govern, laws and modes were necessary to be established, for without them the majority would not rule, unless they were at the same time the most strong, the most artful, intriguing, and cunning. These laws could be of no effect unless they were strictly enforced and adhered to; nothing can so completely counteract the object of the law, as the dispensing with any the slightest of its requisites, on the score of its unpopularity, its expediency or justice; for one concession will certainly lead to another, until the substance of the law is entirely vitiated away. Even if a strict adherence to the law in this case has silenced the majority of the votes intended to be given, it is no unusual thing in our jurisprudence; it is to be seen every day in common life, that individuals and bodies of men have rights to which they forfeit their claim by not pursuing the proper mode to secure the enjoyment of them; and yet no one was ever mad enough to contend, that the laws which were intended to protect such rights should be so modified as to respectively to meet such cases. Even, I say, sir, if the voice of the majority is silenced for a year, the evil lies in the law, and not in the judges.—That law must govern until it is altered and changed by the proper authority. The operation of the election law in this case, even if it has silenced the voice of the majority, may be like many other laws, the strict and uniform enforcement of which is for the public weal, and which may work injustice in some cases. No human system can be free from error; the best we can have are those whose utility to society far outweighs and counterbalances the mischief they sometimes will produce. I would ask these bold declaimers for the rights of the people, how happens it that their patriotism sleeps over the wrongs they are suffering in the conduct of the senate? How is it that in their zeal for submission to the voice of the majority their attention is never directed towards that honourable body? Two years now will it have, been that they have arrayed themselves in opposition to the wishes of an overwhelming majority of the people, resisting and defeating all their plans and projects of reformation; and yet, sir, this course upon the body politic, which if not cut out must eat away the vital principle of its existence, is seldom even complained of even in the calm unimpassioned language of remonstrance, while this return from a single county in the state, has kindled a flame which threatened to consume every thing around it—a return supported by the law and constitution

(For remainder see last page.)

ple of the city of Baltimore could not be better represented than they are in their present member.

The first question presented by the report of the committee for the consideration of this house, is—

Have a majority of the presiding judges the power to make a return under the 15th clause of the election law? If in the delegation of any power to a body, that power must be exercised by unanimous consent, unless words of restriction particularly prescribing the mode of its exercise are added, we at one blow cut up by the roots all those rules of construction which have guided mankind for ages past, and remove the main pillar which supports all republican institutions. In looking over our jurisprudence, the case of a jury forcibly arrests the attention of every one, from its singularity. This institution which has been justly considered one of the safest strong-holds of freedom, an asylum where injured innocence and violated right, in a country not sunk low in depravity, may always find a refuge from persecution, oppression or injustice, the law requires an unanimous consent. From the nature and principles of this institution it will be seen, that the authors of it thought it necessary to guard against, as far as they could, the difficulties necessarily consequent upon this mode of decision, which arises from the great variety of sentiment which is apt to pervade all ranks of mankind, on all subjects whose principles are not immutable and unchangeably fixed; either from the nature of things or universal consent; for here, sir, where an unanimous consent is required, the law, that the object of it might not be defeated, seems in some measure to have taken away the free exercise of the judgment, the loss of nourishment and comfort being the penalty of a long perseverance in an opinion different from that of any one of his associates. The reasons of this principle in this institution are obvious—it is the *Aegis* which protects the life, liberty and property of the citizen; it is a tribunal from which there is no appeal, unless you listen upon the jurors the blackest crimes which can stigmatise the character of man; crimes which, except in few instances, can only be known to the Searcher of Hearts.

What analogy then, sir, is there between this tribunal and the one composed of the presiding judges in a county, arguing upon the reason of the thing, excluding from our view the positive restrictive words by which the powers of a jury are regulated, and which are not to be found in the election law; there is no-one principle common to both these tribunals; from the one, in most instances, there is no appeal; in the case of the other, remedy treads upon the heels of wrong in quick succession. The rights entrusted to the care of the former are more numerous and important, and if violated with its sanction, are in most cases remediless; and those entrusted to the care of the latter of comparatively no moment, and if violated with its sanction, the injury is only temporary, the remedy is always at hand.

We are yet to be informed, sir, for what important object construction and interpretation of language is to be turned from its usual channel to make an unanimous consent necessary in the returning judges; why a variance of opinion among them would work such great injury to the state, for I can see no consequence of the kind which would flow from it. In the constitution of the United States as well as that of the state of Maryland, in granting and reserving powers, words by restriction or qualification are seldom added, unless where those powers are to be exercised in a different way than by a majority. By looking at the constitution it will be seen, that all the higher and most important powers of government are exercised in this way, without any restrictive words or powers, the use of which may involve the destiny or existence of our republic. The power given to congress to declare war, to lay taxes, &c. are given only in general terms, & yet it is well known that a majority is competent to their exercise, and all the higher powers

of our state government rest in the same way, upon common usage, common construction, and the nature of the thing; yet, sir, the returns from the presiding judges in the different counties, which return is liable to be altered and corrected immediately by a superior tribunal, we are told requires an unanimous consent, which certainly produces endless delays, and defeat entirely the object of the election law, which seemed to have been to secure an election, which could not be the case unless there was a regular return. That a majority of any body is competent to exercise any power vested in them, unless particularly restricted, grows out of the nature of society; a principle which grows out of the form of our government; and diffuses itself through every branch of it, inherent in and incorporated in the possession of every power. And, sir, it must not only be for important purposes of wisdom and justice, that this right is to be taken away, but by the most express specific words. Instances are not wanting in our state constitution, as well as the constitution of the U. States, which will shew, that where a power is to be used in any other way than by a majority, the mode is specifically prescribed. To give a different construction to the 15th section of the law, according to which, gentlemen say, the judges there mentioned are mere ministerial officers, would be not only an absurdity in itself, but directly at variance with the 6th section of the law, which by extending the power to hold the election to a variety of persons, seems to have intended, with the utmost circumspection, to guard against a failure of the election in the county—directly then in the teeth of this provision is this construction, which places it within the power of a single presiding judge in the county to entirely by delay defeat the whole election by refusing to give his signature to the return.

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## NEW GOODS.

H. G. MUNROE,

Has just received an assortment of SEASONABLE GOODS, CONSISTING OF American and London Superfine second and Choice Cloths, Cassimeres, Velvets and Cord, Flannels, Moleskin and Coatings, Rose Blankets from 7-4 to 12-4, Striped do, Carpets and Carpeting, Russia and Irish sheeting, Marseilles, Quilts, 3-4 7-4, and 9-4 Irish Diaper, Shirting Cotton, Irish and German Linen, Silk, Cotton, Worsted, and Hosiery, Silk, Kid, and Beaver Gloves Ribbons, White and Coloured Florence, White Satin, Together with many other articles in the Dry Good line.

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I forewarn all persons from hunting with dog or gun on my farm, on the north side of Severn, or in any manner trespassing on the same, as I am determined to put the law in force against all offenders.

FREDERICK MACKUBIN, Member 1.

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The proprietors are determined to spare neither pains nor expence in this establishment, and respectfully solicit encouragement from the public.

Fare of passengers, four dollars, with the usual allowance of baggage. All baggage at the risk of the owners.

WM. CRAWFORD, ISAAC PARKER, Oct. 21, 1813.

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Of the Committee of Orphans to the Courts of Justice relative to the Riot and Mob in the City of Baltimore. Taken before the said Committee.

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