

VOL. LXXVIII

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APPEAL The People of Maryland on the subject of the proceedings of the House of Delegates on the contested election of CALVERT COUNTY.

Concluded. James Mitchell, one of the voters who had been adjudged by the House to be an illegal voter for want of age, was called to the bar, and upon the question being put, "for whom did you vote at the late Calvert election?" he was objected, that he was not qualified to answer. (Vide Votes and Proceedings Jan 26.) The House determined that he was not qualified to answer. He answered that he voted for Messrs. Weems, Wilkinson, Beckett, and Kent, one federalist and three republicans. He was then asked if he was twenty one years of age; to which he replied in the affirmative. He then declared that he had sworn to the majority, upon this took the effect of the testimony upon the question, would, on the contrary, establish the right of the voters to vote. Three of them, to wit Joseph Wilson, John Robinson, and Henry Cochran, being sensible and intelligent men, who had attended diligently to the course taken by the majority, and observed, that it was calculated at once to degrade them, as men, and violate their rights, as citizens of this free state, refused to take the oath required of them. Three others, to wit, James I. Bowen, James Gray, and William Dossey, after being sworn, refused to tell the names of the persons for whom they voted. They seem to have understood their rights, and to have set upon them the price at which freemen always value their liberty—and although they were threatened by the resolutions of the house with all the horrors of a gaol, if they did not comply with their views, as freemen of Maryland they resolved to hazard every thing in defence of their liberty and constitutional privileges. (Vide Votes & Proceedings January 26.)

The majority stood mute and amazed when the witnesses refused to answer the question put to them, and for a long time there reigned in the house a "deathlike stillness, and a dread repose." At length the chairman of the committee of elections moved for an adjournment, to which nobody objected. The object now was to hold a caucus, where their deliberations would not be interrupted by any body who had manifested a regard for the constitution, for your rights, and to determine how far it would be safe to insist of their pretended right to compel the witnesses to disclose facts, which by the constitution they were authorized, as voters, to keep secret; and whether by the exercise of this new inquisitorial power, the people might not be roused to a sense of their danger, and on finding a number of their fellow citizens immured in a dungeon, contrary to the constitution, law and justice, hurl from power men who had been guilty of so daring an usurpation. That such were their apprehensions, is manifest from the result of their caucus, which was, that on the next day the following order was submitted by William Hayward, esq. one of the majority—"James I. Bowen, William Dossey and James Gray, witnesses produced at the bar, and sworn according to the form prescribed by the house, having refused to answer the questions put to them, as to who they voted for at the late Calvert election; and it appearing that the said witnesses are misguided and ill-advised, and that the constitutional right vested in this house, upon consideration, ought not to be exercised, and that the next best evidence ought to be received; therefore, "Ordered, that evidence will be received by this house of the admissions and acknowledgements of said witnesses, as to the persons for whom they

that it was correct? (Vide Votes & Proceedings January 26.)

When the question was put, it was stated by the member who proposed the question, that his object was to arrive at the truth, and to do this he must be suffered to try the credibility of the witness by the usual mode of cross examination. But the majority determined, that the question should not be put. It need not be concealed that, if the witness had been made to answer the question, and other legal testimony which could have been produced, had been admitted, this witness would have been shown to be altogether unworthy of credit. Indeed it is manifest from the testimony of his father, and Doctor Gantt, already cited; that he had either been guilty of perjury, when he swore before the judges of election to the record of his age, or of such an equivocation as would very nearly amount to it.

Notwithstanding all this, when the following order, so necessary to the attainment of truth, was moved by one of the undersigned, "that after a witness has declared for whom he voted, any question may be put to him, to try his credibility, provided they be such questions as are allowed on cross examinations in the courts of law in this state," it was rejected by the majority. (Vide Votes and Proceedings January 26.)

The other persons, determined by the house to be illegal voters had also been called to the bar to be sworn. Three of them, to wit Joseph Wilson, John Robinson, and Henry Cochran, being sensible and intelligent men, who had attended diligently to the course taken by the majority, and observed, that it was calculated at once to degrade them, as men, and violate their rights, as citizens of this free state, refused to take the oath required of them. Three others, to wit, James I. Bowen, James Gray, and William Dossey, after being sworn, refused to tell the names of the persons for whom they voted. They seem to have understood their rights, and to have set upon them the price at which freemen always value their liberty—and although they were threatened by the resolutions of the house with all the horrors of a gaol, if they did not comply with their views, as freemen of Maryland they resolved to hazard every thing in defence of their liberty and constitutional privileges. (Vide Votes & Proceedings January 26.)

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voted at the last Calvert election." (See Votes & Proceedings of House of Delegates on Thursday, Jan. 27.)

All the powers of the federal members were called into action in resisting this motion. They contended, that the hearsay testimony proposed to be received was illegal; that the house had no right to admit such testimony, or to act on it; that each inhabitant of Maryland was entitled to the benefit of the common law, as expressly recognized in our bill of rights; and that the most inestimable feature of the common law, is to be seen in the rules of evidence which have been matured by the wisdom of ages as the best security to the citizen for the enjoyment of his life, his liberty and his property. One of the first and most important of these rules is, "that the best evidence shall always be produced;" and another general rule is that "hearsay evidence shall not be admitted to prove a fact. These two rules cannot be denied to be a part of the law of the land, and as such binding on the house of delegates. If there be any one bold enough to refuse his assent to the truth of this proposition, the undersigned would inquire of him, where the house of delegates gets its authority to alter or abolish the law of the land? It is well known, that power is possessed only by the general assembly, composed of the senate and house of delegates. The existing law can only be changed by the joint act of both of those branches of the legislature. Until it be thus changed, it is binding not only upon individuals, but also upon all public bodies, and every department of the government.

In the scrutiny of the Calvert election, then, the people of Calvert, the sitting members, Messrs. Blake and Reynolds, and the undersigned, who were sitting as triers of a fact, were entitled to the benefit of the above mentioned rules of the common law. It is admitted that there are two exceptions to the last rule as acted upon in our courts: the one is in cases of pedigree; the other is the establishment of ancient boundaries; but even to prove either of these facts, hearsay evidence will not be received, unless the person, who made the declarations, be dead, and in these exceptions, it is received from the very nature and necessity of the case, and allowed from the circumstance, that the declarations are made at a time, when there is no case depending between the parties, and where it is presumable, that the person making them can feel no bias. Can the case of the contested election in Calvert be brought within either of the exceptions to this rule? It is neither a case of pedigree, nor of ancient boundaries. Then it cannot—and the consequence is irresistible, that Messrs. Beckett and Kent, Blake and Reynolds, the undersigned as triers of the fact, and the people of Calvert, were entitled to the full benefit of this rule of the common law, as it is settled and established.

If in this case hearsay was the best evidence that could be had, it was contended, that it could not legally be received; because, as it has been argued in a former part of this address, the fact, to which it was adduced, did not form a necessary part of the inquiry of the house of delegates, to wit, the names of the persons for whom the disqualified voters had balloted; but it was apparent, and admitted by the majority, nay expressly admitted in the terms of the particular order which is now under consideration, that the proof resorted to by them, was not the best evidence, of which the nature of the case admitted. They had asserted, and to the last insisted on their right to compel the illegal voters to disclose the names of the persons for whom they voted. It was in their power to procure their attendance; indeed most of them were in the lobby of the house at the time of the adoption of the order under consideration. They may answer, that the witnesses stood mute, and would not give testimony. But this cannot avail them, because they did not attempt to compel them, after determining that they had power to do so. They possessed the power, or they did not possess it. If they did possess it, and a witness was contumacious, and

would not give testimony, it was a duty which they owed to their own dignity, to you, to the immediate parties in this case, and to us, who were to render a verdict in the matter on our oaths, to inflict on the refractory witnesses such legal punishment as might bring them to a sense of their duty. What would have been the course of a court of justice in the case of a witness refusing to answer a question, which might legally and properly be put to him? He would be guilty of a contempt, and the court would commit him to prison. But the democratic majority in the house was placed in an embarrassing situation.— They well knew, that they had not the legal and constitutional power to compel these witnesses to disclose for whom they voted; that, if they attempted to exercise such a power, it would be a daring outrage upon the principles of the constitution and the laws, and that there still remained in the state of Maryland, if every other department of the government were corrupt, an upright, firm, and independent judiciary, to which the oppressed citizen may safely appeal for deliverance and protection. They were fully aware too, that your jealous sense of liberty would be justly alarmed by such a high handed act of violence and oppression, open and palpable to your senses; they were frightened back from their position by the prospect of the storm of your indignation, which such tyranny could not fail to raise; and they therefore determined, by resorting to unlawful hearsay evidence, to assail your liberties in a more covert, though not less fatal manner, and to undermine what they dared not openly attack. To ward off the evil, as far as in their power, the undersigned made various propositions—and amongst others, it was moved, that the following be added to the order to receive hearsay testimony as an amendment: "And the memorialists and sitting members may produce any testimony they may be able to obtain touching the matter in dispute." (Vide Votes & Proceedings January 27.)

This proposition so reasonable and just, was rejected by the majority, without their attempting to assign one reason why it should not be adopted. It was then proposed by one of the undersigned, that the following be added to the said order—"and any testimony may be produced touching the general character and credibility of witnesses to be examined." (Vide Votes and Proceedings January 27.)

We blush to tell the people of Maryland that a democratic majority in the house of delegates, rejected this proposition and then adopted, without qualification, the order to receive hearsay evidence with respect to the votes of James I. Bowen, William Dossey, and James Gray. Mr. Mausby, one of the democratic majority, then moved an order, to take hearsay evidence respecting the votes of the three witnesses, alleged to be illegal voters, who had refused to take the new-fangled oath, that had been adopted, to wit: Henry Cochran, Joseph Wilson and John Robinson; which order was also adopted by the majority. (Vide Votes and Proceedings January 27.)

One of the undersigned then proposed an order, that "none but legal testimony be received in the investigation about to be had respecting the Calvert election." On motion of one of the democratic majority, Kinsey Harrison, Esquire, the word "legal" was stricken out of this order, and the word "proper" inserted in lieu of it.—After which it was proposed by one of the undersigned, that the following be added to said order: "And said testimony shall be such as is allowable in the courts of common law in this state." This was rejected by the majority.

The question was then taken on the original order, amended as above stated by inserting the word "proper" in the place of "legal," so as to read that "none but proper testimony be received in the investigation about to be had respecting the Calvert election;" and decided in the negative by the majority, every democrat in the house voting against it.

After this outrageous decision was made, which not only violated all law and constitution, but manifested a disregard for all decent considerations of character, and an utter contempt for the opinion of mankind, and the common sense of the people of Maryland, a decision tantamount to this, "that testimony, which was neither "proper" nor "legal" might be received," it could excite no surprise, that another order, which was afterwards proposed by Mr. Mausby, with respect to the votes of John Hance, John Turner and William Beverly, persons who had never been brought to the bar of the house; and with respect to whom there was of course not even the pretended excuse for taking hearsay testimony, that they had refused to testify, was adopted—and adopted too after the federal members had been galled by "the previous question," and all debate prohibited. (Vide Votes & Proceedings Jan. 27.)

The federal members might now well despair of being able to do anything to check or arrest the torrent of party passion, that had already hurried on the democratic members to the perpetration of such violent acts—and might, without blame, have abandoned all further opposition as useless. Desperate however as the attempt might appear, they felt it their duty, before they gave up the struggle, to make one more effort—and as the evidence reported by the committee of elections, furnished good grounds for supposing, that some of the witnesses had been guilty of perjury, they resolved to make one more appeal to the consciences of their opponents, supposing that it might be hoped that some of them might still be roused to a recollection, that when they took their seats in the house, they had taken an oath, in the presence of the Great Governor of the Universe, that they would support the constitution and the laws of Maryland; by the following order, proposed by a federal member from Frederick:

"Ordered, That the sitting members, and the memorialists, be permitted to offer in evidence any record of conviction of perjury, or legal certified copy thereof, or any other legal testimony, to disqualify the witnesses produced and sworn in the contested election of Calvert county." (Vide Votes and Proceedings January 27.)

To the amazement of all the undersigned, even this order was rejected. All the democrats in the house voting against it—and thereby virtually saying by their acts, to the federalists, "offer whatever legal testimony you please to show, that our witnesses are unworthy of credit, produce even a record of perjury against them, and upon their testimony gain the object we have resolved on, that is, to turn out the federalists, which the people of Calvert have sent here, and put in our democratic friends, who have petitioned for their places."

All comment upon conduct like this is vain. Facts speak a language infinitely stronger than any words can supply, and the undersigned will conclude this part of the subject, in the words of one of the best and ablest judges that ever adorned the bench. Chief Justice Kenyon, in pronouncing an opinion, said "all questions upon the rules of evidence are of vast importance to all orders and degrees of men; our lives, our liberty, and our property, are all concerned in the support of these rules, which have been matured by the wisdom of ages, and are now revered from their antiquity, and the good sense in which they are founded; they are not rules depending on the technical refinements, but upon good sense, and the preservation of them is the first duty of judges." Such are the opinions, which have been pronounced by the highest judicial authority in the country, from which we have derived our laws; opinions, which have been sanctioned and acted upon by the courts of every state in the union, and by the courts of the United States from the first day we became a free people, until the present hour. When the undersigned witnessed the above detailed violent outrage upon these sacred principles, so venerable for their antiquity, and so dear to liberty, it became manifest, that the determination of the majority was to arrive at their object, with "the end or object to be obtained, sacrifice the means;" even if in its prosecution every principle interested in the constitution for the preservation of your rights should be sacrificed against it.

PROBALS... THE RELIGIOUS AND LITERARY REPOSITORY. To be edited by a society of Laymen members of the Protestant Episcopal Church.

The leading views of the Editors are stated in the following note, by one of the persons, who will be actively employed in the execution of the matter for publication. The Religious Magazine which have been heretofore published by members of the church, are, some of them, very useful as far as they go. My objection to them is, that they do not attempt to give us information, of which the laity, and indeed clergy, stand in much need, and which is with great difficulty to be obtained. In this country, we have a considerable participation in the affairs of the church, and a right to possess an intimate knowledge of its history, constitution and laws. As such wardens, and trustees or vestrymen, as well as delegates to the convention, they have important and very solemn duties to perform, and with a knowledge of these duties, it ought to be the business of these magazines to furnish them. The subjects usually discussed in them have already been explained and enforced by pious and learned divines, with as much ability as could be expected from magazine writers, and a knowledge of what we are to believe and do in order to be saved, may be communicated to our readers as well by election, as by any original matter which we might be able to offer to them. From the writings of approved divines, not always to be met with, even in possession of the clergy, we shall most frequently collect what it is deemed necessary to give on christian doctrine and duty. The magazine will aim to be useful, and desires no other reputation.

I am induced to hope that, besides furnishing the laity with useful information in regard to the duties which are imposed upon them, some hints, worthy of their attention, may occasionally be given to the clergy. While they act up to their ordination vows, endeavour to frame out a plan for their lives according to the doctrine of Christ, to make themselves wholesome examples of the flock of Christ, and reverently obey their Bishops, following with a glad mind and will, their edifying admonitions, they deserve, and there is in the laity of the church of Maryland generally, every disposition to honour and support them. It, however, at every time, any of them forget to pay due regard to their own solemn engagements, and instead of loving to dwell together in unity, a design should be manifested to introduce disorder and strife into the church, to oppose its legitimate authority, or to assume powers which do not belong to them, then it is not only the right, but becomes the imperative duty of the laity, to animadvert upon such conduct with unparagoning severity.

Approving entirely of the forms prescribed, and of the doctrines agreed to by our church, it will be no part of the business of the Magazine to recommend or even to censure any new inventions, whether in tenets, or discipline or worship.

TERMS. The Repository shall be published twice monthly, each number containing sixteen pages royal 8vo.—Price two dollars per annum, one half payable in advance, and the other half upon the delivery of the 12th number. The first number shall appear on the third Saturday in January next, should a sufficient number of subscribers be obtained to justify the expense. Subscriptions received at the office of the Maryland Gazette and at George Shaw's Store.

SUNDAY SCHOOL. The Subscribers to the Female Sunday School of Annapolis are respectfully informed that their annual subscription is now become due. The subscription paper is left at Mr. Shaw's Store for collection. May 4.

Public Sale. By virtue of an order of the orphans court of Anne Arundel county, the subscriber will sell at public sale, on Thursday the 25th day of May next, if fair, if not the first fair day, at the quarter farm of Matthias Hammond, deceased, near the head of Severn, part of the personal property of the deceased, consisting of cattle, sheep, hogs, farming utensils, household furniture, and other articles. Sale to commence at 10 o'clock. The terms of sale are, cash for all sums under twenty dollars, and for all sums over twenty dollars a credit of six months the purchaser giving bond, with good security, for the payment of the purchase money, with interest from the day of sale. REFIN HAMMOND, Exr. April 27.

Modern Characters. Just published and for Sale at Geo. Shaw's Store. Dec. 23.

At a Meeting Of the stockholders of the South River Bridge Company, held in the city of Annapolis on the 15th of May, 1820, at Mr. Williamson's Hotel, for the purpose of choosing nine directors to manage the affairs of the Company, the following gentlemen were elected—Lewis Duvall, Daniel Murray, Virgil Lawley, Henry Maynadier, Henry L. Davis, Richard Harwood, of Thos. Robert W. Keen, Francis M. Hall, and James Shaw. The directors are requested to meet in the city of Annapolis, on Wednesday the 7th day of June next, at Mr. Williamson's Hotel, at eleven o'clock, for the purpose of electing a President, and officers, as the law directs, and taking necessary measures to conduct the affairs of the company. Annapolis, May 25, 1820.

WANTED. The highest Cash price will be given for a Negro man, who is charged with the murder of a man. Enquire at this Office. April 13.

Prince-George's County Court. April Term, 1820. On the application of Alpha J. Hyatt, by petition in writing, to the judges of Prince-George's county court, for the benefit of the act of assembly for the relief of sundry insolvent debtors, and the supplements thereto, a schedule of his property, and a list of his creditors, on oath, as far as he can ascertain, being annexed to the said petition; and the court being fully satisfied that the said Alpha J. Hyatt has complied with all the requisites of the act of assembly, and that he is in actual confinement for debt, and is therewith adjudged by the court, that the petitioner be discharged from confinement, and the first Monday in September next is appointed for the said petitioner to deliver up his property, and to have a trustee appointed for the benefit of his creditors; and it is further ordered, that the said Alpha J. Hyatt, by causing a copy of the foregoing petition to be published once a week for three months successively, in the National Intelligencer or Maryland Gazette, or in the said first Monday in September next, give notice to his creditors, that they be and appear before the court on the said day, to recommend a trustee for their benefit. Test. AQUILLA FALL, C. J. May 11.

PRINTING. Of every description, neatly executed at this Office.