

a revolution, where numbers were not all powerful to shape the movement to their own purposes.

But it will be said, that the act of Assembly calling this Convention, expressly qualifies all State officers, as it certainly does undertake to do,—but regarded as an act of legislation, it is null and void, so far as inconsistent with the fundamental organic law, to which all acts of the Legislature must conform. This is a well settled and familiar principle, and was expressly ruled by our Court of Appeals, in *Dashiell vs. the State*, 6 *Harris & Johnson*, 269.

Unless, therefore, it can be shown that the people in their sovereign capacity, have decided to have the Convention on the terms prescribed by the act of Assembly, it is clear that no one can come here claiming his seat against an organic law, which the sovereign people have decreed.

The question, therefore, is simply [this: “Have the people, by any vote of theirs, determined to adopt the act of 1849, in all its clauses?”] If they have so decided, it will follow, that this act of Assembly is now the *organic law*, and supersedes the old law, wherever repugnant, because the undersigned places himself on the supremacy of that law, which the people have last promulgated as their will. There have been two elections under the act of 1849, and in those elections, if any where, must be found the popular authority for judicial officers to be qualified as delegates in this Convention. The first election was in the very words of the act “for the purpose of ascertaining the sense of the people of this State, as to the expediency of calling a Convention, &c.”

The issue submitted at the ballot box, was a *single one*, “for or against a Convention.” By that vote, the people determined nothing but their desire for a Convention. The Legislature, then, go on to prescribe the terms on which the Convention may be held, and in fact take the whole subject into their own hands. Practically, the people are denied the right of fixing the basis and terms of the Convention. So far as the preliminary election is involved, it was wholly unnecessary, except as a moral justification to the Legislature for calling a Convention at all.

An act calling a Convention and laying down its terms and basis would be just as valid without the preliminary popular vote, as with it; and it is believed, that in several States Conventions have been called without such popular sanctions, as was certainly done in Kentucky in 1849. And it is submitted, that the question stands now the same as if the Legislature had undertaken to call a Convention, without previously ascertaining the sense of the people.

Therefore, it will result that there is nothing in the first election, by which we would be warranted in assuming, that the people, in responding to a single question, meant to affirm clauses in the act of 1849, which were intrinsically void as against the Bill of Rights. Nor is there anything in the second election for delegates in September last, to establish the disputed proposition that the