

the legislature. It has become burdensome and onerous to the people, from the very fact that it tied the hands of the authorities of the State so that the people could not get rid of abuses when they wanted to get rid of them. I could mention as many instances of this as I have fingers. Allow me to mention one—the system of public roads. The public road system was established in the constitution itself. The result has been that in my county we have had no roads since the constitution was adopted. We were tied up to this particular system, and it was impossible to have a change without a change in the constitution itself. If it had been left to the legislature, we should have quickly substituted for the system we have to-day, a more acceptable one, the very moment we found that the system established in the constitution did not work in our own and a great many other counties.

I hold that the proper function and duty of a constitutional convention is to lay down the organic law, and the constitution should be the mere framework of organic law, the foundation principles upon which political society is to rest. Separating the committees for the different departments, it would be the duty of the executive, legislative and judiciary committees to establish these and other merely primary and elementary principles which under the American system are held to be necessary to a republican form of government, and there to stop. Invest the legislature with full primary functions, and let them meet every year, and you will find that we shall be a more prosperous and a happier people: for the reason that we should have here, as the people intended to have, in the popular branch of the legislature, the right so to shape their laws in almost all particulars, as would have advanced all our interests under circumstances constantly occurring of a different character.

I shall therefore, when this thing comes to the ultimate test, vote for that proposition which will decline to impose any particular duty upon the legislature, either in reference to this or any other particular subject, leaving the legislature free to act as time and occasion may demand. But as we are upon this, as a broad proposition, there is an amendment which I shall propose to attach to it, which I will read:

“Provided however, that the general assembly shall not pass any law requiring the intervention of any minister of the gospel, or of any civil officer, or any registration as being necessary to the validity of any marriage which would otherwise be valid at common law, or under the existing laws of this State.”

Whatever may be the prevalent impression among a great many moral people as to the sanctity and christian authority of the institution of marriage, there can be no doubt

that the law in this State is that the consent of the parties, acknowledgment of children, and the fact of living together as man and wife, are received in the courts of justice as evidence of marriage; nay, as marriage itself. Not in England, from which we derive the institution, not anywhere upon the face of the earth, is the doctrine that marriage is a merely civil contract more prevalent than it is in Maryland, at this very day. All the decisions, so far as they have gone, point in that direction. It is here recognized in no sense as a religious rite. In the eye of the law it is a civil contract, to the same extent as any other contract that is made and allowed to subsist between individuals.

As to the question of morality, are we to say that the perpetuation of what is now public law among us, will work immorality, because it has a tendency to shut out ministers of the gospel from performing marriage?—Take the other view of it. We know that so long as society shall last, although the great bulk of the people may always regard marriage as connected with a religious ceremony, yet there will be many cases, in which there will be no such connection; but there will be marriage by consent and all the consequences of it. What shall we say then of the morality of illegitimizing the offspring of such marriages, seeing that they are bound to occur? I hold that morality is promoted, that the highest interests of the church and of religion are promoted, and that public decency is promoted by the public law of this State recognizing those marriages by consent, followed by the fact of living together as man and wife, as valid marriages within the meaning of the law. But I do not suppose that the adoption of any of these propositions would cause that law to be differently interpreted.

Mr. STIRLING. I have heard that statement made before. I recollect that my friend tried a very important case, in which that principle was sought to be established; and I think it was vehemently denied by the counsel upon the other side; although I believe the court did sustain the views of the gentleman from Prince George's (Mr. Belt.) But I would ask him whether that question is settled; whether there is not great doubt whether that is so? That is a matter of some importance. I ask whether it is not a fact that whenever a man sets up his own marriage, he must prove that he actually was married; and when an attempt is made to hold him criminally responsible, whether you are not bound to prove actual marriage? Is not the decision merely that long continuance of living together as man and wife shall be received as evidence of marriage; instead of being sufficient to constitute marriage?

Mr. BELT. The only answer requisite for me to make is that after the investigation that the circumstances required me to make upon