Legislature of Maryland,

EXTRA SESSION.

SATURDAY, Nov. 26.

The clerk of the Council delivered the following communications from the Executive—

Executive Department,
Annapolis, November 25th, 1836.

Gentlemen of the House of Delegates;

In reply to your message by a committee, that you were organized and ready to receive any communication which we may have to make, we herewith submit a communication which we had prepared to lay before both Houses of the General Assembly, stating the objects of calling them together, at this time, and our views of the crisis and of the business proper to engage their attention.

With the highest consideration,
We have the honor to be,
Your obedient humble servants,
THOMAS W. VEAZEY.

EXECUTIVE DEPARTMENT,
ANNAPOLIS, Nov. 25, 1836.

Gentlemen of the Senate, and
Of the House of Delegates.

The extraordinary occurrences, which, in our judgment, rendered it proper and necessary that you should meet in General Assembly at this time, having been briefly detailed in the Proclamation calling you together, a copy of which is herewith submitted, we proceed to state to you, more at large, the views by which we were influenced, and the objects sought to be accomplished by calling for the exertion of your authority, in the unprecedented crisis in our affairs, so faithlessly and wantonly brought about.

It was with deep regret, that we felt ourselves called upon to expose to the world conduct of *Marylanders*, so utterly unworthy of the name, and so little to have been expected of descendants from, and partakers in the honor and fame of ancestors of such unsullied purity and glorious memory, as every Son of the State sould be proud of and strive to emulate. But, after waiting in vain, with painful anxiety and deep solicitude, in hopes that a returning sense of duty, moral and political, would cause at least a sufficient number of the recusant Electors, to attend the College, and with those who had qualified, elect a Senate, until after the last of the exciting elections of the season was over, but not until its result was ascertained, when there could be no suspicion of partizan design or political motive for our action, we felt that we could no longer forbear, in duty to the people of the State and justice to ourselves, to take a firm and determined stand in support of the Constitution and authority of the Government, against the designs and proceedings intended to effect their overthrow.

It is believed that the annals of party contention, and political errors and aberations from duty, to which all party spirit naturally leads, would be searched in vain for a case of such plain and palpable violation of Constitutional duty and moral obligation, as the conduct of the recusant Electors of the Senate of Maryland exhibits; and although all who have approved of their unholy designs, and lent their aid and assistance to carry them into effect, have been guilty of gross derilicion and violation of the duty of good citizens, it is only those who counseled, beguiled and misled them to the course they pursued, that equal them in degree of guilt.

A painful sense of duty having required of us to denounce the conduct of the recusant electors and their abettors, in terms suited to the nature and design of their offences, it is with the greatest satisfaction that we turn from them to do justice to the patriotic and noble conduct of many of their political partizans. In some parts of the State, and particularly in Allegany county, the party to which they belong, almost with one voice condemned, and, from the first, reprobated their conduct, with as much severity as their political opponents have done; and we believe this has been the case with a very respectable portion of their political friends in every part of the State. Such patriotic conduct, breaking and rising above all party trammels, when the constitution and government—the tranquility and welfare of the State was endangered, merits all praise, and meets our unqualified admiration. And we have great gratification in expressing the highest confidence, inspired by manifestations and evidences in every quarter of the State, that when the recent excitements shall have passed away, and reason shall have triumphed over the madness of party, and resumed her empire, that the number even of the political partizans of the recusant electors, who will continue to countenance and support them in their delinquency and revolutionary designs and proceedings, will be comparatively very few, and will be confined to such of their prominent counsellors and principal abettors as will have no hope of re-establishing themselves in the good opinion and confidence of the community. We will not allow ourselves to doubt, that even among the recusants themselves, there will be found some, whose honesty and patriotism will finally triumph over their misguided passions, and cause them to look back upon their late conduct with mingled astonishment and shame, and the most profound abhorrence of the wily, evil advisers by whom they were led estray.

As soon as the recusant electors had taken their course, it became the duty of the Executive, and indeed of all good citizens, to inform themselves of the constitutional and best means of defeating their designs, and supporting the constitution and government, and providing remedy for their dereliction of duty. Upon examination of the constitution and form of government with this view, we found cause of increased admiration of the wisdom and forecast of the patriotic and eminent statesmen by whom it was framed. We found that they had not left it in the power of any unfaithful agents of the people, to destroy this work of their wise heads and pure hearts. They provided that 'the General Assembly of Maryland' should consist of a Senate and House of Delegates, and for periodical elections of the members of each branch without otherwise limiting the term of service of either. But although they had the forecast so to frame the provisions in relation to the elections of members of the Senate and House of Delegates, as to guard against the effects of improper conduct, or omissions of unfaithful agents, being to leave the state without a General Assembly, by leaving the term of service of the members of each House unlimited, otherwise than by the election of successors, yet it is manifest that they intended the people should have the power and means, and expected they would be exercised, of terminating the service of the members of the Senate every fifth year, and of the members of the House of Delegates every year. It was in this view, undoubtedly, that they provided for elections to fill vacancies in the Senate, 'for the residue of the said term of five years.'

If any support were necessary to this plain view of the provisions of the constitution, it is abundantly supplied by numerous judicial authorities and decisions, both English and American, in cases directly in point. In *Foote vs. Prowse, mayor of the town of Truro, reported in Strange, page* 625, it was held, that the words, *annatim eligende* (to be chosen annually,) were only directory, and that an annual election of them was not necessary to make an election in their presence good; and King, C. J., who delivered the opinion of the court, compared it to the case of constables and other *annual officers, who are good officers after the year is out, until another is elected and sworn.*" In this case, the charter of the town directed, that the election of Aldermen should be made annually, and that the election of Mayor should be held in the presence of the Aldermen. The Aldermen, by whose presence Prowse had been elected Mayor, had not been elected annually, but held their offices of Aldermen in virtue of an election held some years before. Prowse's election was held to be valid. To the same effect, substantially, are the following decisions, viz: Hicks *vs.* Town of Launceston, 1 Rolle's Abridgment, page 513. Queen *vs.* The Corporation of Durham, 10th Modern Reports, page 146. Smith *vs.* Smith, 3d Equity Reports of South Carolina, and The People *vs.* Runkles, 9th Johnson's New York Reports, page 147, in which all the other cases here mentioned, and several Text Books, are cited as authorities.

The continuance of the Senate, until superceded by the election of successors being thus settled in our minds beyond a doubt, we should at once have called the General Assembly together, with a view of their making provision for the election of other electors in the place of those who had refused and neglected to attend the College and perform the duty, but for the additional excitement and misconstruction of motive, which we apprehended would be produced in the public mind by such a step, during the pendency of the recent election of electors of President and Vice President of the United States; and we determined to call the General Assembly for that purpose, immediately after that election should be over, without regard to, or intention to be influenced in the least by, what might be the result of that election.

Considering that the spirit of the Constitution, and the plain intent of its framers require that the term of Senators shall be terminated by the election of successors every five years, or as soon thereafter as circumstances may admit of, our first object in convening the General Assembly was, that they might pass a law providing for the election of Electors of the Senate, in the place of those who had refused or neglected to attend the College and perform their duty That the General Assembly have the authority to provide by law for a new election in such a case, is a proposition so clear of rational doubt, that, but for the lawless and anarchical spirit of the day, which calls in question the most venerable and best settled doctrines of Constitutional law, and embraces in their stead the most wild and monstrous absurdities, no argument or authority would be necessary or even proper to sustain it. Even if the original constitutional provision on the subject remained entire and unchanged, the power to provide for the election in such a case, would be ample, but all such parts of that Constitutional provision, as relates to the *judges, time, place* and *manner* of holding elections, having been abolished at the November Sessions 1798 & 1799, and left thereafter to be regulated by law, it would seem impossible that doubt could be raised on the subject. Yet being aware that the authority of the General Assembly in this respect, has been not only questioned but strenuously denied, we deem it proper to refer to a few conclusive authorities in support of it. That eminent Jurist, James Kent, late Chancellor of New York, in the 2nd volume of his commentaries, says —that "the power of election, or the supplying of members in the room of such as are removed by death or *otherwise*, is said to be a power incident to, and necessarily implied in every aggregate corporation, *from the principle of self preservation*," that "it was decided in the case of *Newling, vs. Francis, 3d Term Reports*, 189," that "when the mode of electing corporate officers, was not regulated by charter or prescription, the corporation might make by-laws to regulate the election, provided they did not infringe the charter." And he refers to various other authorities in support of his position. Such power being "an incident to, and necessarily implied in every aggregate corporation" how can it be doubted that the Legislative authority, which grant charters of incorporation, possess at least equal powers of "self preservation?"

That there is no existing legal provision for an election to supply vacancies in the Senatorial Electoral College, it is presumed, is for the same reason, that the punishment of the crime of Parricide, when first committed in the Athenian Commonwealth, was found to be unprovided for: because it had never entered into the conceptions of the Framers of the Constitution or Laws, that such a provision was, or would become necessary.

A sufficient number of the recusant Electors having, since the issuing of our Proclamation and before the day assigned for the meeting of the General Assembly, attended the electoral college, qualified and joined with those faithful electors who had from the first been ready to perform their duty, and a new Senate having been elected, it will now only be necessary, in reference to the conduct of the recusants and their abettors, to provide appropriate remedies to meet any future like conduct or occurrences. And for this purpose, we respectfully recommend an amendment of our election laws, providing for new elections to fill any vacancies which may occur in any future electoral college, by death or resignation, or by refusal or neglect to attend and qualify within specified time; and we also recommend an amendment of our criminal laws, providing for suitable and adequate punishment of any agents of the people who may hereafter solicit and receive, or accept of any public trust, and refuse or wilfully neglect to perform the duties enjoined by the constitution or laws.

Supposing that you will concur with us in the opinion, that at this extraordinary session your attention and labors ought to be confined to the special objects of calling you together, and such other business of importance as the welfare of the state requires to be acted upon without delay, we shall forbear to call your notice or attention to any other subjects of interest to the State. Among these, we esteem the passage of such laws as you may deem necessary and proper for suppressing all revolutionary designs and proceedings, for the better support of the constitution and government, and for bringing to justice and deserved punishment their future violators. As the constitution provides that no part thereof shall be altered, changed or abolished, unless a bill so to alter, change or abolish the same shall pass the General Assembly, and be published at least three months before a new election, and shall be confirmed by the General Assembly, after a new election of delegates, in the *first session* after such new election; and as several bills for alteration of the constitution were passed by the last General Assembly, it is necessary to their confirmation as a part of the Constitution, that you should act upon them at the present session.

And as the act of Congress, providing for the deposite with the States of the Surplus Revenue of the United States, requires that legal provision shall be made by each State for receiving her proportion thereof, and giving the required obligation for its return when legally called for, before receiving any part of said surplus, and as the distribution is to commence on, or soon after the first day of January next, we recommend the passage of a law in conformity to the requirements of the act of Congress: a copy of which, with a circular from the Secretary of the Treasury of the United States, we herewith submit for your consideration.

Reform of the Constitution, having been held forth by the recusant Electors as their *ostensible* object in the course of conduct pursued by them and their abettors, our views upon that subject are perhaps justly and properly expected.

In an address to the people of the State, the recusant Electors undertook to defend their attempt to subvert the Constitution by Revolutionary means, upon the unfounded assumption that all hope of adequate amendment, or, in the cant, various meaning, and undefined phrase of the day—*Reform*, by the Constitutional method, are vain and illusory; and they quoted, with a view to support their assumption of right to pursue the course they had adopted and recommended to their co-adjutors, from our Bill of Rights, the unquestionable truth "that whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old or establish a new Government." But they omitted all attempt to show that these circumstances had occurred, or, that they were the *People*, or even the Representatives of any part of them, *for such a purpose.*

What are *the ends of Government?* The security of life, liberty and property, may be the brief but comprehensive answer; and we state with honest pride, and in the fullest confidence, that in no community have these *ends* been more effectually provided for, or more amply enjoyed, and that an instance cannot be cited from our history, under the Constitution, in which any of them have been violated, by colour of law. "When public liberty is manifestly endangered?" As it is notoriously felt by all, so it needs no argument to prove, that public liberty has never been endangered, or even threatened here, save by the rash or misguided men and their abettors, whose conduct is now under review. But, were it otherwise, and had these events occurred, can it be said, with the least semblance of truth, "that all other means of redress" have been tried and found "ineffectual?" No other Constitution or Form of Government has provided more amply for its amendment, or a mode more ready, easy, safe and judicious for that purpose than ours; nor has there ever occurred, since its adoption, a time when the assumption or assertion that there is no hope of reform under it; was so evidently untrue, as at the present.

In the lapse of sixty years, the position of society has materially varied, so that the provisions of the Constitution are less perfect in theory, and less adapted to the ideas of right, and to the present condition, wishes and interests of the people, than at the time of its establishment. There are several parts of the instrument which it is generally believed might be beneficially changed. The establishment of a different basis and apportionment of representation is required by a just regard to the rights, interests and wishes of the people of the more populous sections of the state, and there is every reason to believe that such a change, in this respect, as ought to satisfy the large and populous sections, and can be safely conceded by the smaller and less populous, can and will be obtained, in the Constitutional manner, and with general consent. The comparative inequality of the representation of different sections of the State, with reference to population, taxation and business, has been pressed upon the attention of the people and the Legislature for several years past, and, as evidence of the impression which had been made in favor of conceding to the more populous sections, an increase of representation and political power, or, in other words, of the advance of the principal cause of reform, the General Assembly, at the last annual Session, and but just before it has been so boldly, but untruly asserted or assumed, that all hope of obtaining reform in the Constitutional mode, was vain and illusory, passed two bills, such as had frequently before been rejected, which, when confirmed, will give an increase of six Representatives to the *most populous* sections:—two to the city of Baltimore, and four to the people who now compose the counties of Baltimore and Frederick!

Can any sane mind believe, under these circumstances, that the *real*, and *main object* of the recusant Electors and their abettors, in the course they have pursued, was reform in the Constitution? But one answer, in substance and truth, can be given to this question. It is as manifest that the *ostensible* was not the *real* and *main object*, as that the assumptions upon which their measures were predicated, were, and are utterly destitute of foundation, untrue, and have been disproved by unquestionable facts.

We feel warranted by the facts which we have stated, and by the evidences of public sentiment in every quarter of the state, in expressing the fullest confidence, that whenever, and in whatever peaceable and orderly manner, the people of the state shall have clearly indicated the *kind* and *extent* of further just, reasonable and proper amendments desired by them, that their wishes will be carried into effect, in the regular manner, and with as little delay as a just and prudent consideration of, and the necessary action upon them, will admit of.

As a change in the basis of representation, is the great question of reform most generally desired and justly insisted upon, we beg leave to suggest on consideration, as a fair compromise of the conflicting views and interests in relation to the nature and proper extent of such change, and as suited to our condition and local circumstances, that our constitution, in this respect, be altered so as to conform, as nearly as our circumstances will justify, to that of the United States: that the representation in the House of Delegates be based on population of Federal numbers, limited however, by a maximum for the larger counties, and the City of Baltimore, and by a minimum for the smaller counties and the City of Annapolis, and that a Senator be allowed to each county, and the City of Baltimore.

And lastly,

Gentlemen of the House of Delegates.

It is with you to consider of the necessity or expediency of exerting the powers with which you are clothed by the constitution, "as the grand inquest of the state, to enquire into the complaints, grievances and offences," which have occasioned you to be called together.

With humble supplication to Divine Providence, that all our labors may be directed and controled by virtue and wisdom, and result in the promotion of the welfare and prosperity of the state.

We remain,
With the highest consideration and respect,
Your Obedient Servants,
THOMAS W. VEAZEY.

Executive Department,
Annapolis, November 25th 1836.

Gentlemen of the House of Delegates,

In compliance with your order of the 23d instant, we herewith transmit an account of the amount paid by the Executive, in the years 1835 and 1836. on account of printing, with the amount paid to each printer, and the several items of the accounts of said printers.

With the highest consideration,
We have the honor to be,
Your obedient servants,
THOS. W. VEAZEY.

From the Annapolis Republican.

THE SESSION OF A WEEK.

The House of Delegates, nearly every member of which, obeying to the Governor's Proclamation, attended at the seat of Government on Monday last, found themselves in a *position* entirely new, and not without its difficulties.

The Electors had failed to provide a new Senate. The wisdom and foresight of the enlightened framers of our State Constitution was made strikingly manifest, as we evidenced the importance of that arrangement therein, whereby the term for which either branch of the legislature as well as some of the other most important offices are elected is made to depend not upon a specified time, but upon the fact of successors being provided to assume their duties. The time wherein new elections shall take place, is fixed, but if from any cause an election fails to be effected, the government is not thereby allowed to expire, as the Recusant Electors imagined, but is continued in the hands of those last elected, until a new election is effected. The people of this State have been perfectly familiar with this valuable trait in their Constitution, as it operated upon these most important officers, the Sheriffs of the several counties, the tenor of whose appointments is arranged in this respect similar to that of the Senate and House of Delegates. The authority of a Sheriff does not cease upon a specified day, but upon the election and qualification of a person to assume his duties. The value of this arrangement has long been obvious in his case. Its still greater value in regard to legislative bodies has just been tested, though it is quite likely that few Constitution makers of the present day would have duly estimated its importance.

The Governor accordingly in his Proclamation convening the General Assembly, intimated in the preamble, that the Senate elected in 1831, continued to be the Senate of Maryland, and the inference was that *their* attendance was required by the Proclamation.

On the very eve of the day when their attendance was required, and after several of them had actually reached the spot, a new Senate is elected, and thereby *their* term of service terminated.

Several technical questions immediately arose.—The Executive Proclamation had in due form summoned "*The General assembly of Maryland,*" to meet on a given day, allowing them, as the Constitution requires "*at least ten days' notice.*" It was strenuously contended on one hand, that though the *General Assembly* had had ten days' notice, yet that the new members now elected to constitute one branch thereof, had not had ten days' notice, nor had any Proclamation been issued that *they* could recognize as embracing themselves—and further, some maintained that even if they or a quorum of them should attend, in consequence of informal notification, the legality of holding a session with them. would be contested on the ground of their not having had the notice which the Constitution stipulated. The members who entertained these opinions, most if not all of them, objected to forming a House of Delegates, and proposed that the members should return home without forming a quorum.

This was objected to by a majority of the body, upon the ground, that as they had been summoned by the Executive, according to the provisions of the Constitution they were compelled to obey.—The Executive power in this respect is of the very last importance, and an evasion. even though unimportant at the time: might furnish a precedent of most disastrous effect.'

The idea that the Executive might countermand their own proclamation, was started, and gravely considered. Though not forbidden expressly by the Constitution, yet such a measure would be treading very closely indeed upon the margin of sacred ground. Of nothing were the framers of the Constitution of Maryland more jealous, than of the Executive power to prorogue the Legislature. under an exercise of which the previous Province had so severely smarted from the very first settlement of the country, This would not exactly be *proroguing*, but it would be so near it, that any future Governor who might summon a Legislature, if he ascertained upon their reaching the seat of Government, that his own or his party's views would be thwarted by the body, would not hesitate to plead as precedent the present exercise of the power to issue a counter-proclamation, and thereby send the members home again. This view of the subject we presume operated with the Executive to reject the idea.

On the other hand as the Constitution forbids one branch to adjourn a session without the concurrence of the other,—it was questioned whether one branch having convened and the other not, the one could rightfully adjourn without waiting for the other. The Constitution not having contemplated such a case, is silent thereon.

Debates arose on several occasions, upon motions to adjourn, in which not only these difficulties were discussed, but others of somewhat similar complexion. Two of the Electors elect of President and Vice President, are also members elect of the new Senate, and it was insisted upon by Col. ELY and some others, that those gentlemen could not constitutionally fulfil the duties of Electors, if they previously qualified as Sentors, because the Constitution of Maryland forbids members of the State Senate to hold any office of trust or profit under the United States Government,

Another difficulty was still more embarrassing. There were four or five bills which passed the last Legislature, for amending the Constitution—two of them involving the great question of *Reform*—one for creating a new county upon the Western Shore, (Carroll county) and the other for increasing the delegation of the city of Baltimore. If both houses assembled, and a session of the General Assembly was convened under the Proclamation, it was maintained by some gentlemen of high legal attainments, that those laws must be *confirmed* at this extra session, or they could not be constitutionally confirmed by the subsequent annual session, the Constitution requiring that such proposed alterations must be confirmed "by the next succeeding General Assembly, and *at the first session thereof.*"

Other legal gentlemen standing equally high, gave it as their decided opinion, that those laws might be confirmed at the annual session, and *their* only doubt was, whether they could constitutionally be confirmed at an extra session held *previous* to the period fixed by the Constitution for holding the annual session.

To obviate those difficulties, the idea was suggested of adjourning this extra session over to the very day before the annual session commences, and thereby, by letting the one run into the other, both would be in fact "the first session." Upon examining this proposition, it was found also full of difficulties. The practice of the Legislature of Maryland was found to have afforded two or three precedents in favor, but Jefferson's manual of Parliamentary or Congress usage was directly to the contrary. He lays it down, and apparently with good reason, that a session convened by executive authority, can by no means supersede the constitutional requisition, that a session must commence at the period fixed by the constitution, and any session commenced previously, must cease before that commences.

There were serious difficulties in all these questions. To take up the constitutional subjects, and give to them the deliberation which their importance demanded, would consume much more time than it was desirable or convenient to appropriate to the extra session; to have them defeated by refusing to consider them "*at the first session after such new election,*" would be treating their advocates ungenerously—and yet, to pass upon them at a session whose legality of decesion would be matter of great doubt, ought to be avoided if possible.

The best way in the opinion of many, of avoiding these embarrassments, was for the House to adjourn, without waiting for the Senate to form a quorum, and thereby leaving the annual session to be undisputably "*the first session*" of this General Assembly.

The general expectation that a sufficiency of the new Senators would attend within the week, to form a quorum, and enable the two branches to attend to one or two of the most urgent subjects requiring legislative action, particularly the election of a Senator of the United States, in the place of the lamented Goldsborough, and an act to authorise the Treasurer to receive the State's portion of the Surplus Revenue, induced a majority of the House to remain in session for some days. Saturday arrived however without bringing a quorum of the Senate, whereupon the House determined to adjourn.

THE ADJOURNMENT.

Col. Maulsby, during the session on Saturday, proposed an order, contemplating an adjournment only until Monday, and with the view if we understand rightly of continuing the extra session without adjourning, progressing with the usual business of legislation; and thereby terminating the annual session so much the earlier. It would, he urged, be a great saving, at least of itinerant charges.

During the remarks by Col. Maulsby on this subject, he took occasion to express his gratification that a Senate had been elected, and his hope that harmony would thereby be restored, and confidence reassured, and the prosperity and happiness of the State, be the object of all parties. He considered the general attendance of the members of this House, no less than that of the former Senate, as expressive of their approbation of the proclamation which had summoned them there.

Mr. Perry, Mr. Worthington and Mr. Ristead, each addressed the chair in opposition to the course proposed by Col. Maulsby and urged the immediate adjournment of the session.

Pending this debate the Steam Boat arrived, by which it was thought probable sufficient of the Senators elect might arrive to form a quorum. None however came by her —and the delegates almost unanimously decided to adjourn, not however without an expression of disapprobation of the conduct of the recusant electors, and approbation of the measures adopted by the Executive, and especially of the Governor's Proclamation.

Suicide has reached a horrid height at Paris, no less than 44 having destroyed themselves at their own house within the month preceding October 8th, besides 22 taken out of the Seine to the House or Morgue —these latter chiefly also victims to self destruction. There must be the conflagration of some general war for men's passions to feed on, or, there will be yet more who will fly to the deplorable outlet of human life so fashionable in Paris, where much of the frequency of this crime must be imputed to the restless mercurial mobility and phrenetic exaltation of the French temperament.

Mexico.—The schooner Cora, at New Orleans from Matamoros, brings information to the editor of the New Orleans Courier that the idea of invading Texas has been almost abandoned by the Mexicans. The whole number of the invading army was estimated to be only 1400—the troops destitute of clothing and provisions.