From the Maryland Republican, Dec. 31.

GOVERNOR.

The resolution submitted by Mr. Ridout on Wednesday last, in the House of Delegates, respecting the qualification of Governor, was prefaced by a few remarks from that gentleman, explaining the reasons which induced him to offer it; in which he took occasion to state the very high estimation in which he held the gentleman who had been held up as a candidate, so far as he had been able to judge, contrary to the spirit of that constitution, which his lips were yet warm in swearing to support. He had not, however, given the subject that mature consideration which he conceived it deserved. He thought it should be candidly discussed, and should indeed, be glad if the friends of the gentleman alluded to, could produce such arguments in support of the views which many certainly entertained, as would convince him and the house, that there was no serious obstacle in the constitution to the election of a gentleman so every way qualified to fill the station of Governor.

On second reading of the resolution according to order yesterday,

Mr. Kennedy proposed a substitute, which was negatived.

The question recurring upon Mr. Ridout's resolution, that gentleman rose and delivered an argument of some length, in support of the views it expressed, and which he said corresponded with the best judgment he had been able to form upon the subject. He was too well aware, however, of his own liability to err, not to be distrustful on this occasion of his own opinion—and he professed to be open to conviction.

He read the 37th section of the constitution, which says that 'No Senator, or Delegate, if he shall qualify as such, shall hold or execute any office of profit, during the time for which he shall be elected.'—And asked what would be the natural and obvious conclusion which any member must draw upon reading this section of the Constitution? Would not every one of us conclude that by its provisions, a member of the Senate was excluded from holding any office of profit for the time for which he had been elected? In all cases of construction, he thought it was safest to assume that which to common sense, seemed the most obvious. Upon this subject he referred to the practice of a very learned and judicious judge of an orphan's court, in a neighboring state, who always made it a rule, on receiving a will, to hand it to his wife, a woman of plain common sense, and ask her judgment upon its construction—a judgment which he found seldom erred. The constitution of Maryland was not a technical instrument. It was the offspring of plain practical wisdom, designed for the government of plain practical man. And with regard to the 37th section, if he had not been told that there had been doubts expressed, he should never have conceived that a doubt could have arisen as to the ineligibility of Senators. A doubt had been expressed whether the office of Governor was in the views of the Constitution, 'an office of profit.' An office of profit, he conceived, in the view of common sense, as well as in the view of the constitution, was an office to which pecuniary emoluments were attached. After all our learned distinctions and refinement on the question, this must be the conclusion of common sense at last.

He had thus given his idea of the prohibitary section, under the influence of which he had presented the resolution.—He would not willingly anticipate arguments and objections of gentlemen who entertained different views; when they were offered, he would candidly examine them. He would, however, advert to two other sections of the constitution, which were supposed to bear upon the question. He alluded to the 7th and 19th sections, which by *implication*, were supposed to recognize the eligibility of a senator.—They read, 'that on refusal, death, disqualification, resignation, or removal out of the state of any delegate or senator, *or on his becoming governor*, or member of the council, &c.—which implied, that in the view of the framers of the constitution, such a circumstance was admissable as a senator becoming governor.

If, indeed, said Mr. R. those two sections were directly repugnant to the 37th section, if they said in plain terms that whether qualified or not, a delegate or senator should be eligible, then indeed we could not give effect both to those two articles, and to the 37th, which plainly and positively forbids their eligibility. Even in this case he contended that the house would be bound by the 37th section, because on examination it would be found, that when the convention were forming the 7th and the 19th sections, they were attending, not to the circumstances which determine eligibility, but to the simple object of how vacancies should be obviated in the senate and in the house of delegates. The 7th and 19th sections were most obviously framed for these exclusive purposes. The 37th section on the contrary was as obviously framed to determine what circumstances should exclude from offices of profit. On this subject, that article expresses the mind and intention of the framers of the instrument, and in that article senators and delegates, 'if they shall qualify as such' are clearly inhibited.

But is there in fact this *direct* repugnance between the clauses of the constitution? The most that can be said is, that they are so by implication. From one clause we may *infer*, that a senator is eligible. From another we learn, that they are most distinctly and emphatically prohibited. We are obliged to exclude the inference, because it contradicts the positive declaration.

But, he contended that the constitution contained in fact, no such contradiction at all—neither by implication or otherwise; and he could not help thinking, that persons must be strangely bent upon setting those articles by the ears, when, instead of adopting a plain common sense construction, whereby their provisions would be found fairly reconcilable with each other, they would insist that those articles should not be reconciled, but should fight—He thought in short, that it was straining a construction which would stigmatize the framers of the constitution with palpable absurdity, by making them say in one clause in as positive language as could be framed, that delegates and senators should not be eligible, and yet, in other clauses, admit by implication, that they were eligible.

He then proceeded to shew that senators and delegates were eligible before they 'qualified as such,' to other offices of profit, and to shew that they were delegates and senators from the time of their being chosen: were entitled to the privileges, were not subject to arrest, &c. but they could not exercise the duties of the office until they did qualify. In case of being chosen, and before qualifying as such, the 7th and 19th articles applied to them.—They were senators and delegates, and yet were clearly eligible to receive any other office of profit; but 'if they shall qualify as such,' brings in the prohibitary provision of the 37th article, and they are no longer eligible. Thus to his view, the provisions of the constitution were not only reconcilable with each other, but were worthy of the venerable framers of that instrument.

He had heard it objected that the reasons for prohibiting could not operate in the case of the legislature choosing one of their own body to the executive office.—He considered it very perilous to substitute our conjectures of their reasons, for plain constitutional enactments. It was a dangerous course to propose, that if we do not perceive *reasons* for enactments, we are not to be bound by them. In this case we might as well tear up the constitution at once, and substitute the judgment of this house in its place.

Mr. R. then argued at some length, the wisdom of such a construction of the constitution as he contended for—the reasons which ought to operate to exclude members of the legislature from the privilege of electing one of their own body to the chief magistracy of the state—and the danger which would probably follow a contrary course. He concluded by adverting to the responsibility under which he felt himself called to act upon the occasion.

Mr. Semmes, Speaker, called upon the gentleman to answer one enquiry—he had understood him to say, during his first observations, that if the expression of this house should be against the eligibility of a senator, that then no gentleman would 'dare' to nominate a person under that objection?

Mr. Ridout replied, that he had not used the language that no one would 'dare' but that no person *would* in such a case nominate a senator.

Mr. S. then proposed a second question to the gentleman—whether, if the question were decided in favor of the eligibility of a senator by a majority of the house *he* would consider himself bound by the decision, and at liberty to vote for a senator?

Mr. R. replied that he should not.

The Speaker resumed—He had not dreamed that the question would come up in this form for discussion, and if he had his physical and intellectual powers, labouring as he was under debility, both forbade his undertaking the debate at large, nothing would have induced him to trouble the house under such circumstances, but a sense of duty which he considered to call upon him to make an effort to save the constitution—yes, to save the constitution from such a construction as the gentleman's position implied. Pass this resolution, I repeat it Sir, and you dig the grave of your constitution. You propose on the one hand to bind the minority by your construction, if you have a majority but if you are in the minority, you are still free and unconstrained by the decision. By this process, you bring your legislation to bear upon a particular candidate—and you contrive to make a governor by legislation. He appealed to gentlemen if this would not be the inevitable course and consequence of such a proceeding?

Again, what sort of resolution is this to be? Is it designed to be a joint resolution—do you design by a small majority in this house to controul the larger majority which might be of a contrary opinion in the other branch, who, by the constitution are to join us in the decision of the final question?

He had admired the remarks of the gentleman from Talbot, (Mr. Goldsborough) when speaking of the manner in which this question should be treated—as a cold, frozen question of constitutional construction; that it ought to be a liberal and not a technical construction—and he was particularly pleased with the instance adduced by the gentleman from Annapolis of the lawyer and his wife—but alas! here my admiration ends—the argument which succeeded he conceived was strictly technical.

But let us come to a fair and liberal construction, and though no lawyer, yet on the gentleman's own ground, even let us come to a *legal* construction. I admit we may not have the intellectual powers of the body who composed the convention that framed the constitution, but we have what they had not—experience under its operation. We have a positive and unconditional provision in the 19th section, authorising a Senator to serve as Governor—the 37th section, being part of one and the same instrument, must be construed to read 'excepting as before excepted, or provided for' as in the 7th and 19th sections, in which a Senator is clearly authorised to serve. This he took to be not only the liberal but also the legal construction of the provisions, and by this construction, every difficulty and apparent contrariety is reconciled. He referred to the construction given to wills, as proof in point in which it was a rule, that a positive provision in an early part of the instrument, could not be destroyed by inference, in any subsequent part of the instrument. In wills—deeds, and above all, in Constitutions, he conceived the prior provision ought to have superior authority. Such he maintained, had been the practice—such was the course in the case of Mr. Butcher, when he, a member of the Council, notwithstanding the prohibition of the 37th section, did officiate as Governor of the state. Such, he had no doubt, could have been again the course, had Governor Stevens been called to another and a better world, Mr. Chew, as first named of the Council, would have succeeded to his duties, the prohibition of the 37th section to the contrary, notwithstanding He argued at some length to show, that no ingenuity or logical argument could prevent the prior clause of the Constitution from having its authority.

Admonished by a failure of his strength, he would only add, that most of the gentleman's remarks, instead of being confined to the cold constitutional question, had dwelt upon the *expediency* of the measure. He had conjured up an apprehension of a barter for place and profit.—'Gratify me and I will serve you.' He was persuaded if the ground of the adherents, of the unconstitutionality was not trembling under their feet, they would never have resorted to arguments calculated to alarm our fears and jealousies, by painting the dangers and inconveniences which they fancy would result from admitting the eligibility of Senators.

Mr. Goldsborough followed in an argument of some length, on the same side of the question. He took occasion to express a decided preference for the gentleman whom he considered excluded by the constitutional clause, if he had not conceived that the clause went to his exclusion.

Mr. Williams made a few remarks upon the evils that might flow from the case of having the validity of laws and appointments made under a governor chosen in contradiction to the constitution contested.

Mr. Maxcy argued at some length in favor of the eligibility of senators. Mr. Perry against it—Mr. Duvall made a few remarks—Mr. Ridout replied—Mr. McCulloch followed in a very ingenious & lucid argument against the eligibility, and Mr. Tyson, in a speech of considerable length advocated the eligibility, when the house adjourned to resume the discussion this day. It being nearly four in the evening, to give the leading features of the remarks made by a few of the first speakers, as above, was the utmost that could be expected of us this morning, even on this interesting subject. Before our next paper is issued, much of the interest of the case will have passed away. The Governor is to be chosen on Monday next.

From the Maryland Republican, Jan 3.

Continuation of the Debate in the House of Delegates on

MR. RIDOUT'S RESOLUTIONS

Mr. Goldsborough rose, and commenced with remarks somewhat to this effect: that however reluctant he was, that the house should be called upon to vote upon a question which he thought at this stage of it, at least had better have been avoided, yet as they were brought to the vote it became them to endeavor to understand the question as distinctly as possible and to divest it of extranious matter. He would not say how far the decision would be binding on the minority. He viewed it only as designed for an expression of their own sentiments, upon the constitutional question.

In framing the constitution, it was obvious that the statesmen who performed that duty had proceeded upon a well methodised plan; it was an instrument distinguished for its method, as well as its wisdom. Hence when treating of any one head into which the general subject was divided, they had provided as completely as possible, for that particular object Such was the case in regard to the 7th and 19th sections of the constitution. In the 7th they designed to enumerate all the possible cases in which vacancies could arise in the house of delegates—to that one subject was that section of the constitution exclusively devoted; and in like manner the 19th section was exclusively devoted to an enumeration of vacancies in the senate, and providing for the mode of filling them. This was a methodical course of proceeding, and such as wise men performing such a task would always resort to. In neither of the articles referred to, was it the design of the convention to provide for eligibility or ineligibility to office. It was manifest, that when they came to the subject of disqualification, what should render a man ineligible to office, they made that also a distinct article of the constitution. It is to the 37th section to which we are to turn, when we wish to ascertain the intentions of the framers of the instrument, as to disqualification; that article was framed to meet that individual subject, and expressly provided for the disqualification of members. He considered it right, therefore, when looking for directions upon this subject, to give far greater weight to the expressions of the article in relation to the subject in hand, than to those which by force of construction alone, seemed to impart the power contended for.

In conformity with this view, Mr. G. maintained that there was not one title in the constitution, which directly treated of disqualification of members, except the 37th section—and in that article, it is stated that no delegate or senator 'if he shall qualify as such,' shall hold any office of profit during the time for which he was elected. He saw none of the conflicts in these articles of the constitution which gentlemen supposed. By the constructions he contended for, a perfect reconciliation was produced. Previous to the qualification, a delegate or senator was at large as other citizens, equally eligible to office, and to such case the words in the 7th and 19th sections contemplating the possibility of their becoming governor, could alone be applicable But when in fact a senator or delegate had qualified as such, then the disqualifying clause in the 37th section meets the case and concludes it. And Mr. G. thought it right it should be so; this he considered the safe and the established doctrine.

He then took occasion to digress upon the importance of the stability and permanency of laws, and especially of constitutions, which he said should be firm as the mountains base.

I regret the impossibility of giving his language and arguments upon this topic. I will not do it the injustice of an attempt; the conclusion to be drawn from the whole was, "*Let the laws be written and be revered.*" Fifty years have gone by, he said, without this construction of the constitution being doubted, and that has rendered it sacred in the eyes of the people.

Mr. G. then went into some illustrations deduced from the history of our country, to shew that in the highest questions of most litigated doctrines, time and experience had established them—and long settled public opinion constituted a tribunal from which there was no appeal. He concluded with some remarks in reply to the arguments of the honorable Speaker.

Mr Tyson disavowed any design by opposing the resolution to aid the cause of any one particular and favorite candidate.

The house, however, had nothing to do with his motives, all they had to do, was with his arguments, and they might do with that, what they pleased. An equal chance should be given to all the competitors in this race of honor, so that none should be burdened with a greater weight, than the rules of the course required.

The gentleman from Washington, (Mr. Kennedy,) though he had not spoken to the merits of the resolutions, had inadvertently offered what would prove the most effective argument in favor of them. This (said the gentleman) is a case of doubt. In all such cases we should lean to the safe side—the safe side, is the side opposed to the claims of the senatorial candidates; because by voting for them, you might possibly violate the constitution, by voting against them, you would not violate it. The saying of the Apostle had been quoted "he that doubteth is damn'd if he eat."

This would do very well in religion but does very ill in politics; *there* all doubts should be settled as fast as they arise, else they will be ever recurring. Doubts will beget doubts, and they will go on to increase in a geometrical proportion, until the very wheels of government will be clogged by them. The decision on this subject after solemn discussion, will be established into a precedent and settle the question forever.

If such a disqualifying clause as that contended for exists, where would we most naturally seek for it? In those parts of the constitution which speak of the office of governor, its duties and responsibilities. But you do not find it there; and when asked where it is, the gentlemen on the other side refer us to a clause which speak of members of assembly and members of the council. This is very strange! So strange that I cannot believe, unless it be made as clear to my comprehension as the light of day.

Let us look at this 37th article, this gordian knot of controversy, which must be untied and cut asunder, before these Alexanders can attain the summit of their ambition.

Being penal in its consequences, it should be strictly construed, in favor of those whose rights it is intended to restrain.

'No Senator.' The word senator is qualified by the words 'of assembly'—'no senator or delegate of assembly;' what is a delegate of assembly? There are two kinds of delegates known to our state constitution Delegates elect, or to the assembly. Of the assembly means of the general assembly; the general assembly is composed of senators and delegates assembled in a legislative capacity. A delegate of assembly is a delegate elect, who has taken his seat as a qualified member of this body of senators and delegates, so of senators of assembly, and so *mutandis* of members of council.

"Shall hold and execute any office of profit." There is nothing here to prevent our choosing for the office of governor a member of the assembly or the council. The right to choose, and the right to be chosen are reciprocal terms, the right to be chosen implies the right to hold and execute. It is true the person thus elected may be subject to a condition on the performance of which, his right to hold the office may be made dependent, but on the performance of that, his right to hold the offices never can be shaken. There is a condition imposed upon a member of the assembly or the council elected to the office of governor, on the performance of which he may hold the office of governor. The condition is, that he resign his seat as member of assembly or of the council. For in order to bring the 37th article to bear upon him, you must shew that he is at the same time member of the assembly or council, and governor.

An indictment for a violation of this clause, were it penal, would not be sustained if it did not state, that the person indicted were governor and member of the assembly or council at the same time.

Mr. T. here cited the cases of Judge Paca and Judge Thomas, both of whom were taken from the assembly and placed upon the bench.

Two extracts from the proceedings of the convention, contained in the appendix to Hebb's compilation of the constitution of Maryland had been quoted. Mr. Tyson would thank any gentleman to say for what purpose. He protested against the introduction of all matter *aliundi*. By allowing any weight to these extracts you virtually make them a part of the constitution, you open the door for the admission of all others of a like kind, nay, the whole immense folio of votes and proceedings, and make it also a part of the constitution.

Supposing he failed in this first branch of his argument, (said M. T.) yet it can be shewn, that the 37th article, when it speaks of offices of profit does not allude to the office of governor.

If the office of governor be an office of profit, it must be so by the constitution or the law.

The constitution does not make it so, it does not speak of it as such—it does not provide a salary for it, or guarantee the future provision of salary by law. But it does this of other offices. For instance, the 30th article of the bill of rights, provides that 'salaries, liberal, but not profuse, shall be provided for the chancellor and judges during their continuance in office.' Why did it not do this in relation to the office of governor—a higher office, more responsible, and more worthy of particular regard? Because of that very high and responsible character, which forbid it to consider the office of chief magistrate of Maryland, as a matter for speculation—as an office of profit:

If the constitution does not regard the office of governor as an office of profit, I do not see what power any legislature, by a single act of assembly possesses of declaring it to be so. Nor does any act of assembly do this. To be sure a compensation is provided by law for the loss he may sustain by the sacrifice of his private business to the business of the public; but compensation for loss is one thing, and profit is another. We, the members of this house of delegates are salary members, but no one ever dreamed that our stations were offices of profit. And yet if the office of governor be an office of profit, ours is much more so, for we are *hired* by the day, whereas the governor of Maryland is only hired by the year.

Neither the station of delegate, nor that of governor is in fact an office of profit, and the constitution or the law would not declare that *to be*, constitutionally or legally which in fact *was not*.

To talk of the office of delegate as an office of profit would be ludicrous. The same remark will apply to the office of governor. Name me (said Mr. Tyson,) the man, who, under the circumstances in which the governor of Maryland is necessarily placed, will be able to shew at the end of his term, a single dollar on the credit side of his account, and I will pronounce him a prodigy of parsimony. Is it not notorious that the legislature of Maryland choose their governor as the ladies and gentlemen of the present age do partners for life? They are preferred if they are handsome, intelligent and rich, they will do tolerably well, if they are handsome and rich, or intelligent and rich, but it is indispensably necessary, that they should be rich; and rich alone is better than wise and beautiful together. Why? because the burdens of government, like those of matrimony are not to be maintained, but by a competent exchequer, which is indeed the *one thing needful*.

But allow for the sake of argument that the office of governor is an office of profit giving the utmost possible latitude to the 37th article—one resource is left, and that is to shew, that the office of governor is made an exception out of the general list of offices of profit.

The 37th article of the constitution declares that no member of the council, delegate of assembly or senator, shall hold or execute any office of profit, during the time for which he shall be elected. The 22d article declares, that on the death, resignation or removal, out of the state of the governor, the first named of the council, shall act as governor. What follows? The inevitable conclusion, that the office of governor is an exception from those offices which by the 37th article a member of the council may not hold.

The 7th article of the constitution declares, that on the death, disqualification or removal out of the state, of any delegate, or *on his becoming governor* or member of the council, the speaker shall issue a warrant for a new election.

What follows? the inevitable conclusion that the office of governor is an exception from those offices which by the 37th article a delegate may not hold.

The 19th section declares of senators, as the 7th does of delegates, what follows? The inevitable conclusion that the office of governor is an exception from those offices which by the 37th article a senator may not hold.

It has been said that the meaning which has been gathered by us from the 7th and 19th articles is only inferential, or at least indirect. Be it so, yet it is as strong as if it were positive. It has been said that the words delegate and senator in these two sections, mean no other than delegate elect and not qualified. The constitution does not say so; the terms are plain, and I know not by what rule of construction you can alter the plain unequivocal meaning of words. But to make the matter certain, the word any, is prefixed to the word delegate and the word senator. Any, means every, any senator, every senator.

If the construction of the 37th article be what this resolution would give, it stands diametrically opposed to the 7th, 19th and 32d articles. In all cases where contradictory clauses are equal in number on each side, the rule is to retain the most important. When there is a plurality on one side to reject the other. Admitting there-

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