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CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, December 9.

Debate on the AMENDMENT to the CONSTITUTION.

[CONCLUDED.]

Mr. J. RANDOLPH said, that they had been told the other night, by the gentleman from Connecticut, (Mr. Griswold) that it was necessary to procrastinate this decision in order to give time for that thorough investigation, which it was then contended had not taken place. From the promise which was held out on that occasion, and from the time which had intervened, his expectations, had been wound up to a very high pitch—whether they had been gratified or not he would leave the House to determine. Since the gentleman had expressed a desire, and the House had affirmed it, that this discussion should be protracted, Mr. R. hoped that he, on this subject (whatever might be the case on others, where he was compelled to defend what it was his duty to originate) had occupied as little of their time as most of those who had discussed it, might be permitted to make a few remarks in reply to those which had fallen from gentlemen.

He would begin with those of the worthy member from Massachusetts, (Dr. Eustis.) He has stated that this amendment embraces three objects. The designation of the persons voted for as President and Vice-President;—The mode in which the choice of President should be made by that House, in case of no election by the electors, in the first instance; and the provision that the duties of President should be exercised by the Vice President, if the House of Representatives should also fail to make an election. To the first of these provisions the gentleman from Massachusetts professed himself warmly attached, but could not be brought to adopt it, when combined with the other two. On the first objection which he had taken, the gentleman had dwelt so short a time, and with so little force,—and the difference between electing out of "the five highest," or out of those "having the highest numbers not exceeding three," was, in itself, so trivial, that little reliance seemed placed upon it. The possible succession of the Vice President to the Presidency appeared to form the chief obstacle, and because he conceived it calculated to defeat the discriminating principle he could not be prevailed upon to assent to any amendment into which it was incorporated. And yet against this very principle of designation the gentleman from Connecticut (Mr. R. Griswold,) has made his utmost exertions, as subversive of the original ground of compact between the states. Let me ask, said Mr. Randolph, upon what ground these gentlemen will vote together against this amendment, when their views of its tendency are so entirely opposite, and when they are equally opposed in opinion, as to what ought to be effected by us. I beg, sir, this enquiry may be understood to proceed from the high respect in which I hold the gentleman from Massachusetts, and from the regret which I must always feel in being compelled to act against him. It is dictated only by my anxiety to add the sanction of his character and his talents to every measure in which I may be concerned. The gentleman from Massachusetts advocates the discriminating between the persons voted for as President and Vice President; the gentleman from Connecticut deprecates it:—The first gentleman is opposed to the amendment because it is calculated to defeat this principle of discrimination; the second because it contains it. When these gentleman assigned such opposite and irreconcilable objections, I hoped they would not unite their votes against the amendment—That one of them would become a convert to the other, and that we should derive some support from them on the question. But there is one point on which they agree. They contend that it does not become us to suppose that the House of Representatives can refuse to obey the imperative voice of the constitution, which commands them to elect a President, and that the provision of the Senate for such an emergency contains at once an unwarranted imputation on that branch of the legislature, and an inducement to them to swerve from their duty. The supposition that this House will refuse to make an election, when it is enjoined upon them by the constitution, is said to be degrading, and therefore inadmissible. We are exhorted not to libel ourselves on our own statute book, and a late case is adduced to prove that all fears on that head are groundless. From that case I draw directly a opposite inference. Gentlemen then told us, we are highly averse to both the persons from whom we are to select a President—but there are shades in our dislike—we conceive we have a right to be indulged with the candidate whom we conceive least obnoxious to our principles and views. If a mere shade of dislike between two persons whom they highly disapproved would warrant such an opposition as we then saw, what would have been the struggle if the choice had been to be made between the gentleman who succeeded to the Presidency and either of those who were held up for that office from Massachusetts, or South Carolina? Does any man believe that we should have succeeded in an election under such circumstances? Would the gentleman from Connecticut have abandoned his principles in that case—or does he expect that we should have surrendered ours.

I put it to the gentleman himself whether he could, under such circumstances, have relinquished his own judgement and principles. I ask, if he could have justified to himself the giving of such a vote. I answer for him that he could not. I take upon me to say so, because I could not have justified it in myself. I never could have justified myself, because the House of Representatives are directed to choose a President, in abandoning a candidate for whom I had the highest confidence, and voting for one of whom I felt the greatest diffidence. The constitution enjoins it upon this House to make an election, but it cannot enjoin upon any man an abandonment of his judgment and his principles. When we have conscientiously given our votes we have discharged our duty. It is equally our business to pass laws and to perform other important functions. But does that imply an obligation on any man to vote for laws which he believes impolitic, oppressive, or unjust? If the case which I have put had actually occurred, I presume we should have broken up without an election. For one, I do not hesitate to say, that I would have continued balloting till the 4th of March, and let things take their course.

Let us suppose such a case to have happened. The gentleman from Massachusetts objects that the provision discriminating between the President and Vice-President will be totally defeated—since the Vice-President, chosen either by the electors, or the Senate, will succeed to the Presidency. Is it not better that a person selected by the electors, who are apprized of this contingency, or by the Senate out of two presented to their choice should succeed to the presidency, than that anarchy should ensue, or desperate measures be resorted to for carrying on the government? Will it not serve to diminish the violence of the conflict here, when this House is apprized that it does not rest with a party within its walls to defeat the election of President altogether. But this we are told will give rise to endless intrigue. The Vice-President, if any, or candidates for that office, will use every means to prevent an election, in hopes of succeeding to the executive power. Do gentlemen reflect that this argument equally applies to every case of election by the House, as the constitution now stands? Is it not as easy for a candidate for the Presidency to intrigue, in order to effect an election, as for a Vice-President to intrigue to defeat one. When two, or more men come into this House as candidates for the office of President, are not their inducements to intrigue as strong as any which can exist under the proposed amendment, and is not the event of an election by the House of Representatives, much more probable under the present than under the proposed amendment?

To vote for two persons, without designating which is intended for the President and which for Vice-President, is, we are told by the gentleman from Connecticut to ensure the selection of the two most capable men in the United States, for those offices, respectively—but if a discrimination be made, combinations will take place between the states, and the Vice President will become a make-weight to secure the election of President—that he will be selected rather with a view to the state of which he is a citizen, or to his influence with particular electors, than to his worth, or abilities. So far is this from being true, in my opinion, that a designation is absolutely necessary to secure the election of a fit person for the office of Vice-President. When the electors designate the offices and persons, respectively, for whom they vote, after choosing the person highest in their confidence for President, they will, naturally, make choice of him who stands next in their esteem for Vice-President—but where they are not permitted to make this discrimination they will, to secure the most important election, give all their votes to him whom they wish to be President, and scatter the other votes: thus leaving it to chance to decide who shall be Vice President. Where a discrimination takes place the Vice-President will, necessarily, be a man standing high in the public confidence. Where it does not take place it is more than probable that he will be a secondary character. But we are told that it is degrading in the lowest degree to suppose that there is but one person in the United States equal to the Presidency. Far be this idea from me. Were I of this opinion, weak as I am, I should expect to survive the constitution—since I may reasonably expect to survive the term of the present chief magistrate. But whilst I admit that there are hundreds capable of filling the office, I do not believe it possible to present to the public, or to an individual, two candidates between whom there will not exist a preference. This is the nature of man—and it is the nature of free government to gratify this preference.

But the gentleman from Connecticut has gone into a wide field. He takes a view of the elementary principles of our government, which he states to be consolidating and federal, and he declares that the discrimination attempted to be introduced will violate the last of these principles, to which he professes himself particularly attached. It is a matter of some surprize to me that agreeing so nearly as we do in general principles, we should differ so widely in our conclusions. With some variation of expression (perhaps of idea) I subscribe to his general doctrine. With him I consider this as a government of states;—as a federal government. Inasmuch as it tends to consolidation, by so much is it objectionable to me. With him I prize the federal principles on which it is founded, and I will join that gentleman, or any other, in heightening every federal feature of the constitution. I consider it, too, not only as a government of states, but as a compromise between states of various dimensions and interests. When embarked in one common bottom, with a common sword and common treasury, it became necessary to give the large states a superior degree of influence, to induce them to put their superior wealth and population at the disposal of the confederacy; whilst the small states were to be secured against encroachment. While therefore they are equal in the Senate, on this floor the states are represented in proportion to their population and wealth—their influence in the choice of President is compounded of their influence in both branches of the legislature. This is the basis of the constitution, and carries compromise in every feature. I will venture to say that even this House is not organized on the principle of a consolidated government—because the representation on this floor is not of the whole mass of the people of the United States, but it is a representation of each state. The United States are not divided into as many districts as there are members, nor is there a general election, but each state sends its own delegation—and the rule of apportionment of representatives is an additional proof that this is a federative government and a government of compromise. If I were to point out the part of this constitution which tends most to consolidation, I should lay my hand on the judiciary. The giving to that department jurisdiction not only under federal laws, but in cases between man and man, arising under the laws of a state, where one of the parties is a foreigner, or citizen of another state,—and even between citizens of the same state under the bankrupt system,—is the strongest feature of consolidation in this government. I will go all lengths with gentlemen in abrogating this jurisdiction—in restoring the federal principle to this department of government. I wish to see the day when the jurisdiction of the federal courts shall be confined to cases arising under federal laws. Mr. Randolph apologized for the digression into which he had been carried by the view which the gentleman from Connecticut had taken of the principles of our government. It is contended that the discriminating principle of this amendment goes to destroy the compromise between the states since it will annihilate the power of the small states. To this I conceive it is an unanswerable reply that if such be its effect it can never become a part of the constitution. Five states may put their veto upon it.—Rhode-Island, Delaware, Ohio, Tennessee and Georgia are five as small states as can be found in the union. They belong to the great subdivisions of the country, eastern, middle, western and southern. These five states, judging from their representation, contain less than one twelfth of the population of the United States—eleven twelfths of the union may be forbidden by these states from adding this amendment to the constitution. An additional proof that this proposition is not injurious to the smaller states is that the representation of those very states have expressed their approbation of it. If on the contrary, as has been contended by other gentlemen, this amendment impairs the influence of the large states, Massachusetts, New-York, Pennsylvania, Virginia and North-Carolina will reject it. But a strong proof that it neither affects the interest of the one, or the other, is, that objections have been made to it on both these grounds. Whilst however the gentleman from Connecticut combats this discrimination as subversive of the rights of the small states his friend from Maryland (Mr. Dennis) objects to it because the last provision, renders nugatory the discriminating principle. Does the gentleman mean to disarm his friends of their objections to the amendment and induce them to support it, or does he, relying on their stability, expect to excite alarm in its friends and thereby defeat it? The gentleman and his friends have uniformly opposed all discrimination, and now, it seems, he objects because that object is likely to be defeated. This objection the gentleman from Connecticut had, with his usual clear sightedness, cautiously avoided. He knew better the real bearing of the amendment, and if such had been the effect of the last provision, the amendment would never have received so strenuous an opposition from him. No, Sir, it is because he sees this principle, so obnoxious to him, existing unimpaired in this amendment, that he has thrown every obstacle in his power against it. He has indeed taken the objection that it will open the door to intrigue: for so soon as any man is put in reach of the Presidency you arm him with the power, whilst you give him the disposition to corrupt the electors. It will therefore be the interest of the Vice-President to defeat an election by this House. But will not the disposition and power to intrigue be equally brought into action, as the constitution now stands, when two or more candidates shall be presented to that House for their selection? And is not the probability of such an event diminished by discriminating between the officers. I conceive this provision by lessening the chance of an election by this House has done much. It will remove those heart burnings of which gentlemen complain. It will tend in a great degree to strengthen the union of these states which never was more endangered than at the last election. The gentleman from Connecticut complains that the events of that period have been grossly misrepresented. Whether that be the case, or not, I have no hesitation to state that it was, in my opinion, a period of imminent danger to this country. It was a crisis such as I hope we shall never again be exposed to, and to avoid its recurrence is my motive for advocating the amendment which has been sent us and which is as unexceptionable as any which I believe at this time attainable. The worst that can befall us will be the exercise of the duties of President by the same person who would be called upon to discharge them in case of his death, resignation, or removal from office.

Dr. EUSTIS. If at this late hour I could expect the attention of the House, I should derive a peculiar satisfaction in replying to the observations of my friend from Virginia; and as from present indications I have a right to experience that indulgence, I shall proceed with the same candor which has distinguished the remarks of that gentleman, with whom it would be my pleasure to act on this as on other occasions.

That gentleman expresses his hope, as the resolution under consideration embraces the great object had in view, that those who are desirous of attaining this object will not refuse their assent to it because the resolution contains other provisions which he terms of an inferior or secondary nature.

It is necessary to review the resolution, and I must repeat the objections which were made when it first came under consideration. I stated at that time that it differed widely and materially from the resolution sent up by this House to the Senate, and on which it does not appear that the Senate have acted. That resolution contemplated a single object, viz. a designation of the persons voted for as President and Vice-President. The resolution of the Senate, I also stated to consist of three distinct and separate propositions. The first containing what has been termed the designating principle—the second reducing the constitutional number of candidates, from whom the House of Representatives are to choose a President in case there be no choice by the electors, from 5 to 3—the third providing in case there shall be no choice by the House of Representatives, that the Vice-President shall be President of the United States.

The first provision, that of designating, appears to me, and the House will recollect and the gentleman from Virginia will also recollect, that I then stated this to be a modification rather than a change of a constitutional rule or principle, by which the votes of the electors given in that case as they are now given under the constitution, will be subject only to this alteration, that the person voted for as President and the person voted for as Vice President, will be respectively designated in distinct ballots.

This is the alteration contemplated in the resolution which passed the House—this embraces the whole of the change contemplated by the House and by the public—this is the amendment which I continue to approve, and against which I have heard no substantial objection.

The second amendment proposed by the Senate, it may also be recollected, was objected to on two grounds—first, that it contemplated another important alteration in the constitution in a point where no evil had resulted and no inconvenience had been experienced. Without any reason, it proposed to narrow the choice of the House from five to three. It has been contended, and I beg the gentleman from North-Carolina will take this as an answer to his observations, it has been contended by that gentleman as well as others, and with some ingenuity, that the President and Vice-President are to be chosen from the five highest candidates, by the constitution—and as by the resolution the President is to be chosen from the three highest, and the Vice-President from the two highest, that the three and the two make five, and of course there is no difference, and the gentleman therefore does not see how the resolution can be objected to on this ground. But it will be seen that at present and under the constitution, the President is chosen from five—if the proposed amendment be adopted, he must be chosen from three candidates—making a change and narrowing the choice from among the candidates from five to three. The election of Vice President by this amendment is totally changed: he is to be chosen at another time and in another place, and gentlemen must see that his election bears no relation to and cannot be coupled with that of the President.

The second objection to this amendment was grounded on the indefinite mode of expression, "from the persons "having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately "by ballot." There is a want of precision in these words. Some gentlemen understand it as limiting the choice to the three highest candidates, while others suppose them intended to embrace five, ten or fifteen, if there be so many having an equal number of votes in the three highest grades—and if gentlemen on this floor differ in their construction, is it not to be expected that the state legislatures, when they come to consider, and the House of Representatives of the United States when they come to act under it, will also differ?

The third proposition provides that if the House of Representatives shall not choose a President before the fourth of March following, the Vice-President shall act as President, as in case of his resignation or death: another and a still more important change in the constitution. To this I did object, and I do still object, because it is predicated on a concession which I am not willing to have engrafted in that instrument. It is predicated on a presumption that the House of Representatives may refuse to carry into effect the public will—that they will refuse to obey the imperative language of the constitution which ordains that in case there be no choice by the electors *they shall immediately proceed to a choice*, because it assails a first and fundamental principle—it presumes