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The Governor of Kentucky's dissent to the enrolled bill providing for the choosing Electors to elect a President and Vice President of the U. States.

(Concluded.)

But if no such power be expressly given, if indeed, there be merely any doubt concerning it; surely it is the most prudent as well as the most republican course of conduct, not to assume this power. The Senate and House of Representatives are not the state of Kentucky:—they are only one of those three distinct departments of government which are called into existence by the constitution, and possessed of certain definite powers therein delineated.

The assumption of this power by the two houses,—a power which has hitherto been exercised by the people: can be productive of no good effect sufficient to counterbalance the evils of that jealousy and distrust of their Representatives which it will excite in the minds of the people. Whatever pleas of policy may be suggested on the present occasion; let it be considered that the precedent of assuming power, heretofore exercised by the people, being once established;—future legislatures and even future executives and judiciary bodies, being supported by our example, will on still feebler pleas, make farther encroachments on the privileges of the people.

In fact, almost all corruptions in government originate in good motives or at least in the affectation of them:—but how much soever we may conceive that this new mode of appointing electors will serve the cause of republicanism, or strengthen the republican party;—it will be well to reflect, that the cause never can be effectually served by a deviation from republican principles—and that even the republican party, may by the introduction of anti-republican measures of supporting it, be converted into a dishonorable and dangerous faction.

If notwithstanding the observations which have been afforded, it should still be thought that the appointment of electors is not confirmed to the people, but that the constitution, in saying "each state shall appoint," authorises the appointment of them either by the people or by any legitimate organ of the people; still it is to be observed, that the appointment must be made by a body so authorised, that their act shall be considered as the act of the state. Now the determining what shall be considered the act of the state, in a case like the present, is an affair not of legislative but of constitutional cognizance. As to what shall be deemed an appointment by the state, unless it be simply by the people, must depend on the state constitution, as (for the federal constitution is silent on the subject) it must depend either on its express confessions, or on its general spirit. If the legislature can direct that the electors shall be appointed by a joint vote of the two houses, and that this appointment shall be regarded as an act of the state; they can direct that they shall be appointed in any other way, or by any other man or body of men:—for the constitution knows nothing of the two houses, but whilst acting in the way in which it has prescribed:—and if instead of acting as a legislative body; they can convert themselves into an electoral body; they may upon the same principles transfer the electoral rights of the people, to any man or description of men they may think proper. In some instances, it is true, they are authorised by express provisions of the constitution to exercise electoral powers as in the choice of their own officers, and the appointment of a state printer and treasurer:—but if an express provision in the constitution was necessary to enable them to deviate so little out of the line of legislative functions, as even to appoint their own officers; surely some authority is requisite for their appointing electors of a President and Vice-President, by a mere joint vote of the two Houses of the assembly. In the federal constitution, it is true, sundry legislative acts are spoken of as the acts of the state—because performed by the legislature, acting in a legislative capacity, and under the authority of the state constitution. But the right of the general assembly to represent the state, and to declare the will of the people of Kentucky by a joint vote of the two houses, is no where recognized in our state constitution unless in especial cases, particularly pointed out as exceptions to their general order of proceeding as a public body.

3. Nor is there any moral certainty that a joint vote of the houses would in its effect, be at all times coincident with a popular election. The senate equally representing the people with the other house, must have an equal right to be regarded as the depository of the public will. But let it be supposed, that the senators are unanimous in their vote, and that they have one-fourth of the other house voting with them. There will then be the vote of the representatives of the whole people in one house, and the vote of the representatives of one-fourth of the people in the other house; and yet the representatives of the other three-fourths of the people will, on a joint vote, constitute the majority.—Can this, then be considered as an accurate mode of ascertaining the will of the people? If it be said, that the house of representatives, being more recently elected, will more clearly express the public sentiment; this ought to exclude the senate from having any concern in the transaction, since on this principle their votes can only tend to perplex and confound this method of ascertaining the voice of the country, but can afford to it no additional clearness and certainty.

These are the principal reasons on which the governor considers it necessary to insist, for submitting the bill to the re-consideration of the legislature. He might have taken notice of the opportunity which the various other subjects on which the public mind is fixed when the members of assembly are elected, afforded to those who have federal objects only in view, to intrigue at elections, and to produce a false expression of the public will: he might have spoken of the greater opening which is afforded to the ambitious and intriguing, by the intervention of an intermediate body of electors, between the people and the constitutional electors, of the unreasonable jealousy which it discovers of the people of Kentucky and of the extraordinary tendency which elections by legislative bodies have to interfere with legislative business—to absorb the mind, to irritate the passions, to engender parties, and indeed, to disqualify the representatives of the people, for discharging the more essential duties of their station.

Enough, however, he trusts has been said to induce the senate to weigh well the necessity and propriety of thus deviating from the ancient, constitutional, and truly republican plan of appointing electors by the general suffrage of the people of this commonwealth.

JAMES GARRARD,

By the Governor,

HARRY TOULMIN, secretary.

15th Dec. 1803.

And the same being read and also the bill, entitled "An act providing for choosing electors to elect a President and Vice-President of the United States," as followeth:

AN ACT

To provide for choosing Electors to elect a President and Vice-President of the United States.

SEC. 1. Be it enacted by the general assembly, That the Senate and House of Representatives of this commonwealth, shall within ten days after the first Monday in November, in the year one thousand eight hundred and four, choose by a joint vote eight electors, residents of this state, and not being a senator or representative, or persons holding an office of trust or profit under the United States, who shall vote for a President and Vice-President of the United States. But no person shall be declared elected an elector, who shall not obtain a majority of the votes given in both houses in his favor; and for want of such majority, both houses shall immediately proceed to a second vote, and so on, by leaving out the person upon each vote, who shall have the fewest number upon the next preceding vote until each elector shall have a majority of votes in his favor as aforesaid, and upon every such vote the votes of both houses shall be confined to persons in the nomination; and each vote otherwise given shall be considered as thrown away, and the voter deemed as an absentee.

SEC. 2. *Be it further enacted,* That the clerk of the house of representatives shall certify to the governor as soon as may be, the persons elected as aforesaid, and the govenor upon the receipt of such notification, shall cause it to be advertised and made known in the public papers of this state, and such other papers as he may deem proper, the persons so elected, in addition to the duties required of him by the laws of the United States.

SEC. 3. *Be it further enacted,* That the electors shall meet in the town of Frankfort, on the first Wednesday in December, in the year one thousand eight hundred and four, unless otherwise directed by an act of congress, and shall proceed to vote for president and vice-president agreeable to the constitution and laws of the United States.

SEC. 4. *And be it further enacted,* That if any elector shall fail to attend as aforesaid, That both houses of the general assembly, if in session shall by joint vote as aforesaid, immediately proceed to choose an elector under the same restrictions as aforesaid, in the place of such absentee; and if the general assembly is not then in session, the said electors so met shall immediately choose persons instead of absentees: provided five of them shall be present and in case that number shall not meet as aforesaid, the governor shall thereupon immediately appoint persons in the place of such absentees.

SEC. 5. *And be it further enacted,* That each elector shall be allowed six cents per mile for coming to and returning from Frankfort as aforesaid, and two dollars per day for their attendance, to be paid out of any money in the treasury; and the auditor shall issue a warrant for the same. The electors shall be entitled to the same privileges from arrests as members of the general assembly are. And all laws coming with in the purview of this act shall be and the same are hereby repealed.

This act shall be in force from its passage.

Samuel Hopkins, S. H. R. P. T.

John Caldwell, S. S. P. T.

After the debate thereon, the question, That the Senate, on reconsideration, do agree to pass the bill; it was determined in the mode prescribed by the constitution, and passed in the negative. Yeas 11—Nays 12.

STATE OF DELAWARE.

GOVERNOR's SPEECH.

Gentlemen of the Senate, and Gentlemen of the House of Representatives,

The constitutional time of the annual meeting of the General Assembly of this state has again returned; the blessings of peace, tranquility and order, still prevail throughout the union; an uniform desire for the public good manifesting itself by the utmost vigilance, and directed by matured experience and cautious wisdom, seem to characterise our present happy administration of the general government; economy pervades the whole system; no unnecessary burthens are imposed on the people; no laws oppressive of the industrious citizen are enacted; but liberty, peace and equal distribution of justice, the safe enjoyment of the fruits of honest industry, and plenty with her full horn are among the blessings bestowed on the people of this land. When we reflect on the present situation of the European world, involved in wars and difficulties, oppressed with heavy and almost intolerable taxes, with what gratitude should we bow before the throne of the Most High for his superintending providence which has hitherto preserved us from a coalition with foreign powers, and directed our steps in peace and tranquility.

Give me leave, gentlemen, to congratulate you on the acquisition of the extensive and fertile territory of Louisiana, which has lately been ceded to the United States by the government of France. This acquisition by a fair and honest purchase has been made for a consideration which will bear no comparison with the millions that must have been expended in taking an unjust possession by force. The advantages arising to the union from the cession of this country, which includes the free navigation of the Mississippi, are incalculable not only as securing the trade for our western states and the adjacent territories, but in a particular manner as a security to the United States against the wars and tumults of the old world.

I again call your attention to the militia law of this state; this is rendered more particularly necessary, as by a provision in the act of Congress of the second March last, among other things the appointment of staff officers and regimental chaplains is prescribed, whose appointments are not contemplated by the present laws of this state.

An amendment to the constitution of the United States as proposed by Congress, respecting the election of President and Vice-President will be laid before you for your ratification. I trust you will see it in its proper point of view as a measure indispensible to the future peace and happiness of the union. A recent instance ought to convince us of the propriety of the proposed amendment. This alteration appears calculated to prevent intrigue and corruption: and as it is conceded that in a republican government the voice of the majority should prevail, by this means it seems impossible that their intentions should be eluded.

Gentlemen,

Since the last meeting of the Legislature nothing has occurred in the execution of the constitution and laws of the state which seems to merit any special recommendation to your notice. I can only observe that should any grievances exist which may have come to your knowledge, there is no doubt but that your patriotism and wishes for the public welfare will prompt you to assign the remedy. I shall occasionally communicate by message such other matters as may appear to deserve your attention without detaining you any longer, at the present than to give you an assurance of my best endeavors to render your Session agreeable, and that I shall always consider a cheerful co-operation with the Legislature in every measure calculated to promote the welfare and happiness of my fellow-citizens as among the first and most pleasing of my duties.

DAVID HALL.

Dover, January 6, 1804.

SPEECH OF THE GOVERNOR OF MASSACHUSETTS.

Gentlemen of the Senate, and Gentlemen of the House of Representatives,

AT your former session, the season of the year prevented your prosecuting the consideration of divers subjects which you thought worthy of your notice; in particular the state of the Judicial Department. I presume that those subjects will now be taken up, and receive the degree of attention they respectively deserve; and I trust that your deliberations on these and other matters that may come before you, will terminate in such measures as shall tend to promote the ease and happiness of the people.

Since our last meeting the situation of affairs in Europe is materially changed. A new war has been kindled between those nations with whom we have the greatest intercourse; and we are again constrained by the principles both of humanity and religion, to lament the misery it must occasion; even if our own pecuniary interest is promoted by it. Indeed there may be a rapid increase of wealth without any addition to the public happiness, for riches, by their influence on the manners of the people, have sometimes proved extremely injurious to their virtue and safety. So long, however, as we claim and possess the advantages of a neutral character, it is our duty to abstain from all contraband commerce with the belligerent nations. If we attempt to convey warlike stores to either of them, or stores of any kind to a besieged place, we falsify the character we assume, and have no reason to complain if our property is seized and considered as lawful prize.

But in whatever manner our interest or private feelings may be affected by the events that take place in Europe, the national government is exclusively authorized to regulate our foreign affairs, and guard against those projects of other nations which may be thought injurious to the honor, or dangerous to the safety of the United States. We are therefore at liberty, as members of this government, to direct our whole attention to those points which concern the internal welfare and prosperity of the Commonwealth.

The respective states are indeed authorized by the constitution to appoint officers, and train the militia according to the discipline prescribed by Congress; and the faithful execution of this trust in each state is important, not only to itself, but to every other; it is particularly so when the great powers of Europe are at war. This subject was suggested at the former session, and you will now have more leisure to attend to it. A law of Congress requires, that there shall be one Brigade Quarter-Master to each brigade, and one Chaplain to each regiment of the militia; but no directions have been given in what manner they shall be appointed. Nor is there any express provision by our militia law for the removal of a non-commissioned officer who is guilty of misbehaviour, or is incapable of performing his duty, excepting in the case of his receiving orders to warn a meeting of the company, and neglecting to do it; he is then subject upon conviction to pay a fine, and to be reduced to the ranks. The silence of the statute concerning any other mode or cause of removal, has, I am informed, occasioned disagreeable disputes, which you will probably think it expedient to prevent in future. There has also, in some instances, been much difficulty in obtaining the service of a suitable person as Judge Advocate in trials before Court Martials, as the disputes in those cases are often between officers, and of a delicate nature, and the appointments are occasional, and the service voluntary. Perhaps you will deem it proper to remedy this inconvenience, by making provision by law for the appointment of a Judge Advocate, as a permanent officer in each division. Other amendments of the system may occur to you, gentlemen, which are of greater importance, and would more essentially tend to advance the reputation and good order of the militia.

Such progress has been made in building the State prison, that you may think fit in the course of the present session, to assign it as the place for the reception and confinement of convicts who are sentenced to hard labor; and to establish regulations concerning the appointment and conduct of the keeper, and the manner in which prisoners shall be restrained and supported. In almost every county there have been complaints, that the confinement of prisoners has been attended with unnecessary rigour. That the jailors have been chargeable with severity and extortion, and that the want of cleanliness has rendered the prisons so unhealthy as to endanger the lives of persons confined in them. But as the management of the State Prison, and the conduct of the superintendant, will be always under the immediate inspection of the government, I hope there will never be any cause for such complaints, from the manner in which this establishment shall be conducted.

It seems to be agreed, that the power of pardoning offences after conviction, includes the right of granting pardons upon condition that the offenders shall be confined to hard labor during a specified term. This power has therefore been so exercised from the commencement of the government under the constitution, and in some cases has been found highly useful, in order that justice might be administered in mercy. It is impossible for the wisdom of man to make general laws so perfect, as to suit every particular case. A few crimes only are made capital by our laws, but the degrees of guilt in persons convicted of the same crime, may be so different as to render it fit and necessary to make a difference in the punishment, and to soften the rigour of the law when favorable circumstances appear in the criminal's case. The man who enters unarmed into a dwelling-house in the night time, and steals to satisfy his hunger, is obviously less criminal than he, who breaks it for the purpose of rifling the house, and arms himself with design to destroy the life of the owner if he obstructs him. In the first case the offence seems to be little more than simple larceny, and the punishment of death would only excite compassion for the delinquent; in the latter, the offender discovers a most depraved and malignant spirit, and his life would be thought dangerous to society.

While the Castle remained in possession of the State it was employed for the confinement of convicts, who at their own request had received a conditional pardon. If it shall be thought proper to make use of the State prison for the same purpose, it may be necessary by a legislative act to authorize and direct the Sheriff who has an offender in his custody, upon receiving a certificate in writing from the Secretary, that such offender is allowed the benefit of a pardon upon condition of his confinement to labour at the state prison, to remove him hither, and to direct the superintendant to receive and retain him in prison under such regulations as shall be prescribed for the restraint and employment of Convicts, until the term of imprisonment shall expire, or until he shall be otherwise entituled to his liberty.

The robberies that have been lately committed in this neighbourhood, have caused great anxiety and alarm to the good people; and seem to require that some further measures should be taken by the government to prevent the repetition of such high crimes, or to bring the perpetrators of them to punishment. Permit me to suggest to your consideration, whether it will not be expedient by an act of the Legislature, to offer a reward to any person who shall apprehend any robber, and prosecute him until he be convicted of the robbery. And also to declare, that if any person has committed or shall hereafter commit a robbery, and being out of prison shall