

# The Kentucky Advertiser.

WINCHESTER, (Kentucky)--Printed by NATHANIEL PATTEN, Jr.

NUM. 138.]

SATURDAY MORNING, MARCH 22, 1817.

[Vol. III.]

## CONDITIONS.

TWO DOLLARS if paid in advance—TWO DOLLARS & FIFTY CENTS in six months, or THREE DOLLARS at the expiration of the year.

No paper will be discontinued until all arrearages have been paid.

Those who do not direct their papers to be discontinued at the end of the year will be considered as engaged for the next.

Subscribers at a distance whose papers are sent at our expense, will be charged 25 cents per annum in addition.

ADVERTISEMENTS, not exceeding a square, will be inserted for 50 Cents the first insertion, and 25 cents for each continuance. Those coming from the country must be accompanied by the CASH, or they will not be attended to.

FROM THE FRANKFORT ARGUS.

## NEW ELECTION OF GOVERNOR.

Mr. Breckenridge submitted the following resolution, viz:

Resolved, That the general assembly of the commonwealth of Kentucky, provide by law for electing a governor to fill the vacancy occasioned by the death of our late governor;

Which being read, was committed to the committee of the whole house, and discussed the succeeding days. The following is a sketch of the debate:

Speech of J. C. Breckenridge, Esq.

Mr. BRECKENRIDGE. Having submitted to the house the resolution now under consideration, I have taken upon myself a high responsibility—of the most important, interesting and delicate nature. The committee have therefore, a right to expect, that I should give my reasons for the step I have taken. This duty I shall attempt to discharge, with as much brevity as the nature of the subject will admit.—The question is of primary importance, and cannot be so uninteresting to the committee, as to require any apology for the remarks which I shall submit.

There is among the people a diversity of opinion, a solicitude and sensibility which demand a determination. Its very importance is an argument for decision, and conflicting sentiment is no ground for delay.

The provisions of the constitution should be so plain, that when appeals are made to that instrument, all its powers should be so clear and definite, so manifest to the understanding, that every man can distinctly see his rights and the prohibitions by which they are guarded from violation. I declare to you Mr. Chairman, that my solicitude is not so much how this question may be decided, as that there should be a decision. Public repose requires it—it is due to ourselves—it is due to the constitution.

It is a question which involves a grant of power. We are to say whether an officer of inferior grade, provided by the constitution to discharge the duties of an office left vacant by the death of an officer of more ample powers, & higher responsibilities, shall on the happening of that contingency fill the seat of the superior officer during the whole time for which he was elected, or shall exercise its powers only until the vacancy can be filled by an election. Before it shall be determined that he can so fill the superior office; let us look well to the constitution and see if there be any such delegation of powers, the most extensive and important.

I lay it down as a general principle, that all power is inherent in the people. Government is instituted for their benefit. For the purpose of promoting peace and harmony in civil society, they surrender a portion of their natural liberty to preserve the residuum. As all power is thus inherent in the people, their public officers can exercise it only as derived immediately from the people or immediately through the constitution. The conclusion then is irresistible, that no servant of the people can exercise any powers which are not given by a clear and explicit declaration. This is a fundamental principle in a free government, which none will gainsay or dare to resist.—There is another principle equally strong and equally undeniable. All delegated power must be interpreted strictly against the person to whom it is delegated. We are not to presume that he has greater powers than those expressly given.—Whenever doubts arise, it is right and fair to interpret it in favor of those who gave it, and extend to the agent no more than is granted by a strict construction. These are broad principles, universally known and admitted.

The question now before us is not extended—it depends on a few sections, on a few words of the constitution. But in order to have a full view of the subject, it is necessary to take a general survey of the whole constitution, and examining its nature and analogy, with the distribution of powers. Government is divided into three

powers, the legislative, judicial and executive. The experience of ages, the opinion of sages and wise men, have determined this distribution to be most convenient in itself and most conducive to public liberty. Such is the system which has been adopted by the people of the United States. In their constitutions they have established these three branches of power, primary, co-ordinate and independent. But wherever centers in one man or body of men the power to make laws, decide and execute, there exists the essence of arbitrary power, of despotism unlimited, illegitimate, and uncontrolled. Hence the necessity that one should enact, another interpret, and a third execute. When the duties of each are so marked out, when each moves forward in the due performance of its duties, without passing those barriers which the constitution has prescribed, the result is a due administration of Justice, and the guardianship of public liberty. But when either of these departments shall pass its constitutional limits, and shall by combination or force, by artifice or corruption, weaken or impair the powers of the others, the balance of the constitution is destroyed, its structure is deranged, and the edifice of freedom crumbles at the touch of anarchical fury or tyrannical force.—When this equipoise is once destroyed, the principle of the government is corrupted and the whole system sinks into the confusion of anarchy, or the calm of despotism.

Let us inquire into the aptitude for encroachment in the different branches of government—which is most likely to accumulate, to gain a preponderance and become dangerous to liberty. In a republic little danger of usurpation is to be apprehended from the judiciary. In every country from which liberty has been banished, we behold her making her last stand in the ranks of the venerable disciples of jurisprudence. She may be cloven down in some disastrous field, may be driven into exile, but in the integrity and information of the judiciary, she finds a true friend, a rock of adamantine firmness. When military power stalks abroad over the land of freedom, when liberty lies expiring in the dust, the judiciary is the last to give up the struggle and preserves with holy devotion the least fragment of her ruined temple. Those who love study, who are learned in the laws and constitution, best know the value of their provisions. When Philip, by gold, by arms, and by artifice was attempting to batter down the bulwark of Grecian liberty, a Demosthenes thundered in the ears of a deluded people and suspended the dreadful blow. When Cæsar had extinguished Roman liberty, a Cicero was found who, before the tyrant himself, defended the majesty of the laws. When the whole world had fallen under the authority of that empire, from the bar and the bench emanated that code called the civil law, which reclaimed mankind, gave a degree of liberty to the civilized world, and forms at this day the basis of the codes of some of the most learned and civilized nations of the earth.

In proportion to men's knowledge of the value of a possession, is the zeal & success with which they defend it. It is probable, therefore, that those who best understand good laws, will be the last to abandon and surrender them.—Nay, where is the enforcing power to aid in the establishment of judicial usurpation? The judge can enact no rule of right; he can vary no principle of law; the circle of his discretion is a sound construction of the code he interprets. If he would undermine the constitution, and subvert the liberties of the people, he has no power to enforce his usurpation; but falls an easy victim. When he attempts to destroy the rights of the community, he destroys himself. But on the other hand, how inviting, how desirable is it in other branches of government to usurp & accumulate power! The judge cannot indulge in corruption and injustice, without being amenable to punishment—but if the legislature, through folly or intemperance, violate the constitution, he can annul its acts and triumph over every thing but justice and that constitution. I have not read or heard that the judiciary ever originated usurpation, except under the auspices of executive corruption; but it has often been used to defeat it. I will mention two instances: Ancient Egypt, the parent of arts and sciences, was the most powerful of nations and the storehouse of the world.—But she gave to her kings an absolute and tyrannical power. This was resisted and restrained by the judicial authority aided by the influence of superstition.—They had the power of sitting in judgment on the dead and considering the acts of their entire life, and not even a king could be embalmed until the judicial

priesthood had approved the purity of his existence.

Look at England with a venal parliament, with a ministry corrupt and debased, the mere tools of arbitrary power! There stands the judiciary alone, and upholds the constitution against the united power of the lords, the commons and the monarch.

Let us now enquire what is to be apprehended from the legislative power. It is not probable that in a representative democracy, the representatives of the people should concert schemes for the subversion of their liberties. They come from the mass of the people, and bring with them the opinions and feelings, or if you please, the prejudices of their constituents. It is not probable, then, that they would adopt a course in opposition to those feelings, when they must so soon return and mingle with the original mass. Should they pervert the powers with which they are entrusted, or misjudge the wants & wishes of the people, what is the result? Public displeasure, exclusion from office; the cradle of their hopes would be the grave of their ambition. Another reason why such an event would not be probable from the legislative power, is, because they are governed by the very laws which they enact; they have as strong an interest in their perfection as the people themselves, and will not impair the rights of others, because they would impair their own, and become the victims of their own corruption. There is another reason. They are numerous. In proportion as you increase the numbers of any body of men you diminish their power to act in concert. The more there are together, the less will they agree.

Let us appeal to experience, and what is the fact? Many governments of ancient times were extremely democratic. The representative principle and the use of checks and balances were unknown, and we find frequent usurpations by the people, even on their own rights. But look to modern times to the democracy of Europe mixed with aristocracy and monarchy. How often in England has the king triumphed over the aristocracy and democracy combined? Almost perpetually. How often in England has the representative body triumphed over the crown and the nobles? Only once. Then were they still devoted to the people's rights—still considering themselves the people by a gradual increase of power, they subverted the throne & triumphed over the aristocracy. Spain in her Cortes affords another example equally striking, where the power of the executive has swallowed up that of the legislature. Little danger, therefore, to be apprehended, either from the judicial or legislative departments.

But it is from the executive department, both in a monarchy and republic, whence there is the most danger; and for the following reasons: The individuality of the person who exercises it gives a unity of design and decision of action, which is not attainable in a numerous body where there are a multitude of conflicting interests and opinions. An individual too can unite with all these advantages a secrecy which cannot be maintained by a popular assembly. From this unity and secrecy result that promptitude and energy which are essential to success. This officer has at his command more means of influence; he has an extensive patronage, the bestowing of honors and offices. He may neutralize those who are opposed to him; keep expectants in suspense; reward those who are ardent in his designs; influence families through individuals belonging to them, and thus organize a party devoted to his will. Such has been the progress of government in the old world. As countries increase, the patronage of the executive extends itself. Ever understanding its own objects, it acts with promptness, decision and efficiency.

The legislature will not usurp the power of the people, because it is itself a part of the community, and must suffer by its own wrong. But if the executive can usurp a right, he enjoys it himself, and loses nothing as an individual. This is the difference between a law and a prerogative. A law operates as well on the makers as on the people; but a prerogative is not felt by the officer who exercises it. If the legislature pass a law, themselves and their friends are the victims; but in the exercise of a prerogative the people are the losers, but the officer is the gainer. To extend favor is one thing, and to take away rights another.

In all countries the executive power has sooner or later swallowed up all others. There may have been demagogues who for a moment have led the people astray and extended the legislative power; but at last the executive has risen superior to all the rest. In the history of past ages we do not read of assemblies trampling down the

rights of the people, but individuals.—

The result has been the same in modern times.—Take an instance in the feudal system. In France, and almost every other country in Europe, the turbulent spirit of the aristocratic Barons long domineered over both the king and the people. But it was for a time only that they could resist the encroachments of the monarchical power. All history proves that wherever there has been a single executive, he has by continual efforts and unremitting exertion accumulated power in his hands till he has at length destroyed the liberties of the people and every other department of the government.

So much for the tendency of power and the department whence danger is most to be apprehended. It is not to be supposed that the framers of our constitution were ignorant of truths so important. Let us then investigate the principles of this constitution and endeavor to ascertain the intention of its framers.

Previous to the adoption of the constitution under which Kentucky is now governed, this state had another. Let us examine the principles of that; for it is presumed the people would not have made a change unless they had disapproved of the old one. Let us see what amendments were made—see what was the evil of which the people complained, and what was the remedy applied by the convention. The first idea which strikes us is, that the old constitution was not so democratic as the new. As an instance: the governor according to the old was chosen by electors; not by the people. Again; his vote could be obviated only by a vote of two thirds of both houses; now a law may pass by a simple majority, the governor's objections notwithstanding. These are two important features in which the old constitution was less favorable to the liberties of the people than the new.

The senators afford another instance. They were also elected by electors, and held their office for four years. If vacancies happened in their own body they had power to fill them. Under the old constitution the judiciary had a decided advantage—it had more independence and was less subject to the favor and power of the people than the present.—It was the object of the people and the framers of the new constitution to take away these aristocratic features and make popular elections more frequent. Now look at the intention of the convention, the spirit of the constitution, the end which they had in view and the means which they took to attain it.

Under the present constitution, in case of the death, impeachment, removal from office, absence from the state or resignation of the governor, there is an interregnum which is supplied by the stepping in of the lieutenant governor. The only question which we have to decide is whether he must exercise the duties of the office during the residue of the term for which the governor was elected, or only till the return of the governor, his acquittal, or in case of his death till the people can hold a new election. Now the lieutenant governor has a right to the office or he has not.—No executive or other officer, under the constitution, has a right to exercise any power which is not expressly given him by that instrument: for it is from that alone their power is derived. Is there then any such grant? If the enemies of a new election can point out any such clause, the argument is closed. If not, it still remains with the people who may exercise it if they please. If there be any such power, it must be contained in the 18th or 29th sections of the 3rd article of the constitution. The lieutenant governor and speaker of the senate are here authorized, on certain contingencies to exercise the duties of governor. The object of these provisions is obvious. Human life is uncertain—the governor who is the choice of the people, may die, and it becomes necessary to preserve the state from an interregnum by placing some other individual in his place till the people shall have time for a new election. But the constitution does not stop here.—The ravages of death may extend further, and may take off about the same time both the governor and lieutenant governor. In that case the constitution provides against an interregnum by assigning the duties of governor to the speaker of the senate. It does not stop even there, but goes on to provide against bare possibilities. It provides that if the lieutenant governor while discharging the duties of governor during the recess of the general assembly, shall die, then the secretary shall convene the senate for the purpose of choosing a speaker, who shall exercise the duties of governor. But it goes no further. There may be a time by the constitution when the state would have

no executive head. Is it to be presumed that the framers of the constitution intended a construction should be put upon that instrument which under any possibility would lead to this result? If then, after the failure of all these provisions, there may be a case in which there must be a complete interregnum or a new election by the people, is it not absurd to pretend that the convention intended entirely to cut off a new election for four years, by the interposition of insufficient remedies? According to the doctrine advanced in opposition to this resolution, a new election would then be as unconstitutional as it is now. But it cannot be presumed that the convention intended in any contingency the state should be without a governor. If so, they must have meant by the interposition of other officers to supply the place of the governor until he should return, be acquitted, or until another could be elected.

Much stress is laid on the words *duty qualified*—“until another be duly qualified.” It has been said that those words give to the lieutenant governor the power contended for. Let us direct our attention to the same words in the old constitution and see what was their meaning there; for they are here intended to convey the same idea as in the place from whence they were taken. The 15th section of the third article of the old constitution is as follows: “In case of the death or the resignation of the governor, or of his removal from office, the speaker of the senate shall exercise the office of governor, *until another shall be duly qualified*.” Here are the same words in both constitutions.—Under the old there was no lieutenant governor; but in case of the death of the governor the speaker of the senate filled his office. If the construction now contended for were admitted, a governor might have been imposed upon the people for years, who had been elected by the senate themselves to fill some vacancy in their body. Thus a set of men partly self-created and the residue not elected directly by the people, would have had the power to select the man who should discharge the duties of that important office. Could you more insult the framers of that constitution, than by telling them such was its meaning?—that it was their intention that a man selected by these few individuals, thus partially self-created, should govern the state for four years? I think no man can contend so: Then if this interpretation of those words would have led to consequences so dangerous and so ruinous, will gentlemen deny that the words have the same meaning when transferred, and say that they guarantee a power in the new constitution which they did not in the old?

I call gentlemen to shew me the clause which takes away one of the dearest and most precious rights of the people and vests it in one individual. If the convention meant that the lieutenant governor should exercise the office during the whole time for which the governor was elected, why have they not said so? To take the expression as it is, it admits of a doubt at least; and whenever there is a doubt, it is our duty to decide in favor of the people.—Gentlemen will not say that “until duly qualified,” means till another election, for then there would be an interregnum during the time of the election and that of taking the oath of office. They will not say that it means any certain term of years, for mark the word *until*—it is indefinite, it alludes to no precise specified time. If the convention had intended that the lieutenant governor should hold out the balance of the term for which the governor was elected, why did they not say so? It would have been more easy than the present form of expression.

Can any magistrate under this government exercise any power not expressly given him by the constitution and the laws? Will you permit him to infer his powers from doubtful implications and trust your liberties to so capricious a tribunal? If you say that one not elected by the free and full suffrages of his fellow citizens is to hold an office for which he was not chosen, you take away the very principle and foundation of our government, without which we should not sit in this house. Before you take this step, so important, so fraught with doubtful, if not hurtful consequences, you should not talk of construction, but shew the express provisions in the constitution by which it is authorized. But let us again refer to the constitution.—The 4th section of the sixth article of the constitution states: “That the privilege of free suffrage shall be supported by laws regulating elections,” &c. Yes, sir; too anxious were the framers of the constitution to put down every thing which had even a smattering of aristocracy, so anxious were they to guard the right of free suffrage, that they say in express words that free suffrage shall be

supported by laws regulating elections, &c. Yes, sir; too anxious were the framers of the constitution to put down every thing which had even a smattering of aristocracy, so anxious were they to guard the right of free suffrage, that they say in express words that free suffrage shall be