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## CONDITIONS.

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

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## NEW ELECTION OF GOVERNOR.

(DEBATE CONTINUED.)

When Mr. Beckenridge sat down, Mr. Mills rose and proposed the following as a substitute for his resolution:

The late honorable event, the death of his late excellency George Madison, may have excited in the minds of some the constitutional enquiry, whether the lieutenant governor must exercise the functions of governor during the whole gubernatorial term, or whether this legislature can provide by law for a re-election to fill the vacancy? It will be readily admitted that the right of free suffrage ought to be supported by this body, and that every door to the exercise of that right should be fully opened by statutory provisions. But at the same time a greater stretch at an unlimited exercise of that choice privilege than the constitution will justify, ought not to be made. By that character, the people in convention assembled, have seized upon, secured and provided for many of their rights and privileges, and restrained the departments of government, as if too jealous to trust them to the yearly provisions of this assembly; or have counted them too sacred to be exposed to the jeopardy and hazard of momentary feelings or party zeal. It will also be admitted, that when the voice of the people, expressed in that broad character of their liberties, has not restricted and forbidden the exercise of power, that power remains with them and may be exercised by their representatives.

But it must at the same time be acknowledged, that where the constitution has in constructing the machinery of government fixed any part of its organs, and provided the mode of appointing its officers, there we, as a legislative body, cannot derange its organization by substituting any thing in its place. It has said that elections shall be held on the first Monday of August annually. It has no where said that they shall not be held at any other period; yet the legislature could never fix upon any other day. It has said that senators shall be elected for years; it no where declares that they shall not be elected for a longer or shorter period. Yet a provision by law for a longer or shorter time of service to that branch of the legislature would be inoperative and void. It has said that the legislature shall direct the mode of issuing the writs or election to fill vacancies in either branch; and has not expressly restricted other modes of supplying vacancies; yet a legislature, it is presumed, could not be found hardy enough to fill a vacancy by its own vote or executive appointment. The governor by and with the advice and consent of the senate, must appoint and commission all officers, whose appointment is not otherwise provided for, while other modes of appointment are not expressly forbidden; yet an act of the assembly cannot create a judge or commission even a justice of the peace. In like manner the governor shall be elected at the end of every four years. Can we elect one in the intermediate space of time? The successor of the governor is pointed out, and even the successor to that successor. Can we substitute another successor unknown to the constitution? The officer assigned to fill the place of the governor, must be elected simultaneously with him; can we create one that is not elected with him? Such a conclusion must not only be preposterous but subversive of the instrument which we ought to support. If this body can, by legislation, or the people by election, create a governor to fill fractional periods, it must be only in those cases where the constitution is silent and has furnished no remedy. Such a case has not occurred—no such event has happened. Without therefore, further reasoning on this subject, this legislature does not hesitate to declare, that the present lieutenant governor, now acting, as governor, is the constitutional incumbent of that office until the next revolving period of four years has elapsed, when the right of free suffrage again will

recur. And they decidedly concur in the following resolution:

Resolved by the general assembly of the Commonwealth of Kentucky, That the present lieutenant governor is entitled to hold, by constitutional right, the office of governor, during the whole period of time for which his late excellency George Madison was elected, and that no provision can be made by law for holding an election to supply the vacancy.

After three days debate the foregoing preamble and resolution were adopted. The yeas and nays were as follows:

### AGAINST A NEW ELECTION.

YEAS—Messrs. Barrett, Birney, Blackburn, Booker, Bowman, Caldwell, Carlson, Cook, Cotton, Cox, Cummings, Cunningham, Davidson, Davis, Dollarhide, Duncan (of Lincoln), Eggleston, Ewing, Ford, Gaither, Garrison, Gilmore, Given, Goode, Grant, Green, Grundy, Harrison, Hawkins, Helm, Holman, Hornbeck, H. Jones, Logan, Love, Marshall, Mercer, Mills, Moorman, Monroe, M'Cool, M'Haven, M'Mahan, M'Millan, Reeves, Robertson, Rowan, Rudd, Shephard, Slaughter, Spillman, S. Stephenson, Stapp, T. Stevenson, Todd, Truss, Underwood, Ward, P. White, Wier, Wickliff, Woods, and Yantis—63.

### FOR A NEW ELECTION.

NAYS—Mr. Speaker, Messrs. Armstrong, Barbours, Beckenridge, Clarke, Caboun, Dillam, Davenport, Dancan, (of Davis), Fleming, Gaines, Hart, Hickman, Hopson, Hunter, Junison, J. Jones, Irvine, Lackey, Metcalfe, Owens, Parker, Rice, South, Trigg, Tupper, W. B. and D. White—28.

MR. UNDERWOOD. Mr. Chairman, I have no exordium, and shall make no apology. The silent attention with which the committee has listened to this debate, is a sufficient evidence of their disposition to bear all that can be said. I have no disposition to travel a distance, to analyze different constitutions in Europe, Asia, and Africa; but shall confine myself to the constitution of Kentucky. This charter, which I hold in my hand, is the only authority to which we ought to appeal. It is by this, we must decide the present question.

Our late governor is dead—he has gone to that bourne, whence no traveler returns." The lieutenant governor, according to the provisions of the constitution, has stepped into his place, & the only question now is, whether we have power to remove from him the office, and place there another in his stead? To decide this, we need read in no other book, or examine any other document but our constitution. This instrument provides for three distinct branches of government; the legislative, the judicial, and executive. If each of these branches is filled with its competent officers, we have no room for inquiry; if not, we must resort to the constitution, and examine whether it makes sufficient provision to fill those offices which have become vacant. If so, and if the office of governor is now filled by an officer constitutionally competent, then the great object of our political charter is complied with. In the investigation of this subject, I shall turn to some clauses of the constitution, not alluded to by the gentleman from Fayette. In filling offices under our government, there are two ways. The legislative and executive are filled by election, and the rest by appointment.

From comparing the provisions of the constitution, with respect to the other branches of government, we may discover a forcible analogy applicable to this case. The 22 section of the 2d article of the constitution provides, that the representatives shall be chosen for two years; and the 9th section of the same article, that the senators shall be elected for four. But in case of death or a vacancy by any other means in either of these bodies, the 30th section points out how such vacancies shall be filled. Let us presume that the 30th section had never been incorporated into the constitution; and then ask whether it would have been competent to the legislature, whether the two houses would have had power to provide for filling vacancies in themselves? Because if they would have had such a power, there was no necessity for this provision, there was no necessity for the convention to say, that they should have the power. Now apply this to the office of governor. Is it not equally plain, that in this case, as there is no such provision, the legislature has not the power? This is a strong argument, and one which my mind has not been able to get over.

There is another thing. If the convention intended the legislature should have any such power, why did they not give it expressly, as in the case of the legislature body? It is said there is no prohibition—I say there is no di-

rection; and as a mode is pointed out with respect to the legislative, and none with respect to the executive, its very absence is conclusive evidence that the convention did not intend to give any such power.

There is another part of the constitution which is receiving a daily construction, and will contribute to show, that the legislature has in this case no power. The 31st section of the 3d article of the constitution provides that when the time of a sheriff is about to expire, the county court in September, October, or November, shall recommend two justices to the governor, one of whom shall be commissioned and hold his office two years, and until another be duly qualified. Here the words "until another be duly qualified," are inserted in the same manner as with respect to the lieutenant governor. Now if I can show that the construction of these words, in this instance is such as to negative the principle contended for by the gentleman, it will go far to establish the construction for which I contend. Suppose that in the months of September, October, or November the county courts do not nominate a sheriff, as pointed out by the constitution, would they have power to do it afterwards? No; they have let slip their only opportunity. Could the legislature then interfere, and give them the power? I presume not. It then rests in the governor, who is required to make such appointments with the advice and consent of the senate. So in the case of the election for governor. A time is fixed in the constitution for that purpose, and the legislature have no right to fix on any other. That event can happen only once in four years, and if the legislature could interfere at all, they might change the time and fix it on other days.

But it has been contended that unless the legislature interferes, there may be a time when all the provisions of the constitution would fail and there would be a complete interregnum. A case is supposed, when the governor, lieutenant governor, and speaker of the senate should all die.—(Mr. Beckenridge explained. He said, when that speaker who was chosen to fill the vacancy on a call of the senate by the secretary, should die, there was no method pointed out in the constitution to prevent a complete interregnum.) Admitting that to be the true construction, and suppose the event should happen, then the constitution would no longer apply. It will have furnished no way, as it does in the present instance, by which the vacancy could be filled, and the legislature must of necessity apply the remedy. Then we might resort to the old maxim, *necessitas non habet legem*. Then there would be no incumbent, and one powerful constitutional objection would be entirely obviated. The election might then be for four years, and both governor and lieutenant governor might be elected at the same time. But if we authorize an election now, shall we do it for four years, or only for the residue of our late governor's time? If for four years, his term would not expire at the same time with that of the lieutenant governor. Hence would result confusion and a violation of the constitutional provision, that both governor and lieutenant governor shall be elected at the same time and hold their offices during the same term. If the case which has been supposed were to occur, you might then authorize an election without violating this provision; but can you in the present situation of that office? No; you violate an express provision and produce an inconsistency.

It has been contended, that in no case ought an officer be imposed upon the people who has not been chosen by them to fill such office. According to the constitution, if the people make a judicious choice, there is no danger. That instrument requires the same qualifications in a lieutenant governor as a governor, and of course if the people select such a person, there can be no danger in intrusting him with the office. By adopting the constitution in convention, the people agreed to permit themselves to be governed by the lieutenant governor, provided their governor should die.

It will be seen that there is an essential difference between our constitution and that of the United States. There is an express provision that Congress shall declare by law who shall fill the office, in case of the death of the president and vice president. If any argument can, therefore, be drawn from that source, it is, that as the convention formed our constitution on the model of that of the union, they intentionally omitted giving our legislature such power, and took it upon themselves to say who should fill that office in case of the death, both of the governor and lieutenant governor.

The gentleman from Fayette relies on the 4th section of the 6th article, which gives the legislature the general power of regulating elections by law. He thinks that section gives authority to provide for a new election. But that section can be intended to extend no further than that this privilege shall remain free. The legislature have a right to regulate the mode, to point out in what manner the polls shall be opened, and to provide, that every citizen shall exercise his privilege unmolested by the turbulence of others. Therefore, it does not apply.

I will subjoin one or two remarks on the words *duly qualified*. In this expression two things are implied; first, a proper election; secondly, the oath of office. When an officer has complied with these two particulars, he is duly qualified, and not before. But his election must be a regular one, such as is pointed out by the constitution, and we have not the power to say he shall be duly qualified by any other.

MR. BOOKER. I wish Mr. Chairman, particularly on this subject, to enter into discussion, divested of all party feelings. I wish, sir, to meet the question on the insulated point of constitutional right, independent of all personal considerations or attendant circumstances.

It is true, as the gentleman from Fayette has observed, that all power is inherent in the people—so true, that no man will gain say it. Though the principle in itself is true, it is far from me to assert that they cannot yield that power to others in whatever proportion and for whatever purposes they please. In a state of nature possession was the only title to property. Of my house, my cloak, or any valuable thing, I was the owner no longer than I kept possession, and the next man who came along had the same right as myself, if he pleased to take such possession. In that state, neither life nor character was secure, and man found it necessary to surrender a portion of his rights, that he might secure the rest. Thus were property, life, & character secured against the turbulence and violence of dishonest men.

If in this charter of our rights the people have surrendered any part of their privileges, it is not our business to interfere. I shall attempt to show from the constitution that they have relinquished for four years the privilege of choosing the man who should be their governor. The constitution says that in the month of August, at the time when representatives are chosen, the people shall elect a governor once in four years. When that act is performed, their right is gone for the four succeeding years, and the power of governing them, according to the constitution, is vested in the governor. But the convention in their wisdom foresaw that elevation would not secure man from the shafts of death, or feel the depravity of the human heart. What provision have they made in case of the governor's death or removal?—Have they said the people shall come together and hold another election?—No, sir; they have pointed out a different course. They have said that at every election of governor there shall likewise be elected a lieutenant governor, who shall possess the same qualifications as the governor, hold his office for the same time; and in case of death, removal, &c. step into his place. Then there can be no new election. Mark the word *every*—at every election of governor there shall be elected a lieutenant governor, who shall hold his office for the same time. How long? Why, four years. If then we issue a writ of election, what an absurdity we cause? We make the office of lieutenant governor depend on a contingency—it must cease on a new election; for we must elect both of these officers at the same time! We then make the office of lieutenant governor uncertain, liable to be taken away on the death of the governor, and thereby violate the plain meaning of the constitution. This argument I think conclusive; but there is another.

The constitution says the lieutenant governor shall discharge the duties of the office until another shall be duly qualified. But I contend that another cannot be duly qualified until he has been elected by a majority of votes, given once in four years, as the constitution has directed. Suppose the governor had gone beyond the bounds of the state; the lieutenant governor must discharge the duties of the office until his return. Suppose he remain without the bounds of the state during the balance of the time for which he was elected; can there be a new election? No; though he would be politically as dead as if he had suffered a natural death, gentlemen will not contend for any such thing. How then can they now advocate that principle?

But the gentleman from Fayette con-

tends that there may be an interregnum. I would tell that gentleman, it is no fair to argue from extreme cases. There must here be the death of three persons, before it would become necessary to convene the senate. When that body should be convened, they would elect one who would be governor; or if he should die then they would elect another. The constitution says, that if the lieutenant governor dies during the recess of the general assembly, the secretary shall convene the senate, who shall choose a speaker to fill the place of governor. It says he shall convene the senate, not both houses, for the purpose of issuing a writ of election. If the members of that instrument, intended any such thing, would they not have said so? Would they not have expressly provided for a new election, as in the case of vacancies in the legislature? The absence of such a provision is, with me a conclusive evidence against it.

But I will follow my friend from Fayette, and point out some of the dangers which may arise from the course which he advocates. If the legislature do not interfere, the present incumbent will remain in office for four years. It will not be pretended, that all his acts will not be as legal and binding, as if they had been done by the governor himself. But adopt the construction for which the gentleman contends, and it may lead to consequences the most mischievous and fatal. The county courts may make nominations of sheriffs, and the governor so elected issue commissions. All the necessary offices among the people may be filled with men holding commissions from him. They may go on, decide controversies, sell property under execution, and make conveyances. If the opinion of the gentleman should prevail; if an election should be held, when not authorized by the constitution, what will the judiciary say? If appeals should be made to them, how would they decide? They would boldly declare it unconstitutional, and every act of the new governor illegal and void. If the sheriff came to seize my property, I would tell him he was no sheriff, and bring him before the judge, who would declare his acts void, and the innocent sheriff would be the victim. In the passage of laws, it is necessary that they should be passed by both houses and approved by the governor. But if it should afterwards appear, that such governor held the office by an unconstitutional election, would not all the laws which he had approved be void? These will be the evils to which we shall be exposed by a new election. But on the ground for which I contend, all will be safe. Wherever there is doubt, it is always best to lean to the safe side.—But it appears to me there can be no doubt—the constitution is plain. If the governor die, his place is supplied by the lieutenant governor. It is manifest, from the qualifications required, that the convention intended he should be a man equal to the duties of governor. What are the qualifications of governor? He must be a citizen of the United States, have six years residence in this state, and be 30 years old. What are the qualifications of a lieutenant governor? The same. What are those of senators? The same.—The convention foresaw, that under the constitution they were framing, both the lieutenant governor and senator might become governor, and wisely required of them equal qualifications. All its sections guardedly provide, that none shall ascend to that office who are not ripened in age and in wisdom.

The gentleman says, that executive influence is great, and ought to be carefully restrained. In other governments it is great and dangerous; but in ours it is trifling and innocent. Ours is a system which has none like it.—What is the power of our governor when restrained in every act by the senate? Can he appoint a single officer without their approbation? No; he can only nominate and they must confirm or reject. He cannot make a judge, a justice of the peace, or a militia officer, not even his own secretary, without their consent. There is no power in him which should induce us to violate the constitution for the purpose of restraining it.

(It being nearly night, a motion was made that the committee rise, but failed.)

MR. CRITTENDEN. Mr. Chairman, it is with reluctance that I rise at this late hour to address you on this subject. My remarks will, therefore, be as brief as the circumstances of the case will admit. I am not satisfied to vote for the amendment offered by the gentleman from Bourbon.

The question before us is this: whether the lieutenant governor shall rule the state of Kentucky during the whole term for which George Madison was elected governor, or whether there