

more force and shock the judgment; but analyzed, are they greater violations than the other? They all violate the letter and spirit of the constitution and the genius of our government, and undermine its foundation.

You refer to the language of the act of 1864, which, in providing for the submission of the constitution to the people, declares that it shall be submitted "at such time and in such manner and subject to such *rules and regulations* as said convention may prescribe."— You do not, however, contend that these expressions, quoted and italicised, give to the convention the power they have assumed. The fixing of the time for holding the election should of course be given to the convention, because it was uncertain when they would adjourn, and also of the manner, &c.; these minor or inferior powers were intended to subserve the great object of calling the convention; that is, to form a constitution and obtain in a manner most convenient and agreeable to the people their true sentiments upon it.

The same act required it to be submitted to the people, by its sixth section, in these words: "That the constitution and form of government adopted by the said convention shall be submitted to the legal and qualified voters of the State, for their adoption or rejection," &c. Who were the legal and qualified voters of the State? Were they not such as elected the legislature? "White male persons of twenty-one years of age?" &c. The constitution being the supreme law, the "legal and qualified voters of the State" are such as have the constitutional qualifications. Can there be any other? But when we read the whole section from which you quote, I find immediately following the words "rules and regulations as said convention may prescribe," these words, "and the provisions hereinbefore contained for the qualification of the voters and the holding of the elections provided in the previous sections of this act, shall be applicable to the election to be held under this section." The convention has not only overstepped the constitution, but the very charter under which they received their legal existence from the people. The rules and regulations must be in accordance and not in conflict with the words that follow them, which confine and restrict them to such form, &c., as may be necessary and proper to execute the purposes of the law by which they are commanded not to go beyond them, and yet they have transcended them.

You decline to interfere to protect the elective franchise, for the reasons indicated in your letter, that it is a judicial question and that it might produce agitation and excitement, and the "effect would be to allow those to vote who could not conscientiously swear, &c., and to deny that franchise to those who are daily shedding their blood that the rebellion may be subdued." I do

not understand you to say that the "effect" of a measure is to determine its legality, and that the consequences of the exercise of a constitutional power by the executive to protect a portion of the people of the State in their rights are to be weighed in the scales of expediency, and made to cast a shadow of doubt upon the power itself. If the convention has violated the constitution and the act of 1864, and the executive has the power to correct the abuse, the effects that may follow such correction should not I think weigh a feather against the exercise of it, although I think they would redound to your advantage. The last legislature refused to pass a law to allow soldiers distant from home and beyond the limits of their county and State, to vote abroad; that body was largely and eminently Union, and no suspicion was ever entertained of the character of its loyalty. They must have believed the measure repugnant to the constitution; they refused to clothe the convention with that power, and the clause embracing the "rules and regulations" will not aid the argument for it.

The first section of the act of 1864 provides that "on the first Wednesday of April next, at the same places where the polls are by law held in the several counties and city of Baltimore for the election of delegates to the general assembly, shall vote, &c.;" and in the sixth section it is said "that the provisions hereinbefore contained for the qualification of voters and the holding of the elections provided in the previous sections of this act, shall be applicable to the election to be held under this section." The election law provides (1 Code, 258,) that the judges of election shall be residents of the election districts; that if they remove out of the district others are to be appointed—warrants to be delivered to them in five days by the sheriff. If a judge shall not attend at the time appointed, in his district, he shall forfeit fifty dollars. If they fail to attend, the justices of the peace, present at the place of election, to open polls, &c.; all pointing to the locality of election districts as the place for holding the election; and the constitution, in its first article, declares that a person shall be "entitled to vote in the ward or election district in which he resides."

If it be lawful to take votes in the army, why not in the navy? Are the marines not as gallant as the soldiers? If votes may be taken in Virginia, South Carolina, &c., why not on board the national ships under Farragut, Porter, &c.? and why not in foreign as in domestic waters? Is not every illegal and improper vote given a fraud upon the legal voters? Are not the election laws framed to protect the ballot-box, and throw around it all possible safeguards? Would army elections promote these ends? I would have every soldier and sailor to vote if he could do so legally and constitutionally, and I would