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VIVA VOCE VS. BALLOT.

Decision of the Supreme Court that the Constitution Requires a Joint Ballot of the General Assembly in the Election of Circuit Judges.

In the Supreme Court—The State of South Carolina against A. J. Shaw. Opinion by Haskell, A. J.

The question in this case is of the most serious character. It involves the construction of an important clause in the constitution of the State, and upon such construction depends the title to one of the highest and most honorable offices in the gift of the State. The court, impressed by the gravity as well as the magnitude of the matter which it has had under consideration, while there is division of opinion, has nevertheless arrived at a conclusion, concurred in by a majority of its members. The opinion of each Justice will be rendered separately, and I proceed to state some of the reasons by which my mind has reached that conclusion upon which the judgment of the court is based.

The action is brought in the name of the State by the Attorney General, and is against A. J. Shaw as occupant of the office of Judge of the Third Judicial Circuit of the State, claiming to have been elected thereto on the 12th day of February, 1875. The second and third allegations of the complaint, and upon which the questions hinge, are as follows:

"2. That the constitution of the State of South Carolina, article 4, section 13, provides that for each judicial circuit a judge shall be elected by joint ballot of the General Assembly.

"3. That said A. J. Shaw was not elected Judge of the Third Judicial Circuit by joint ballot of the General Assembly, as the constitution of the State requires, but was elected by the *viva voce* vote of the Senators and members of the House of Representatives met in joint assembly."

In the answer of the defendant it is alleged:

"That in accordance with the provisions of the constitution of this State, section 24, article 2, and section 11, article 4, he was elected to the office of Judge of the Third Judicial Circuit on the 12th day of February, A. D. 1875, by the joint vote of the General Assembly of South Carolina, the members thereof voting *viva voce*, and their votes thus given being entered upon the journal of the house to which they respectively belonged; and that by virtue of said election he now holds and lawfully is in the exercise of the said office, and has not intruded into the same."

Section 11, article 4, provides how vacancies shall be filled, and on this point there is no dispute.

Section 24, article 2, cited in the answer, is as follows: "In all elections by the General Assembly, or either House thereof, the members shall vote *viva voce*, and their votes thus given shall be entered upon the journal of the House to which they respectively belong."

And upon this the defendant rests his title to the office. The facts are admitted, and the question becomes one of law solely, and briefly stated is thus:

It is claimed by the State—1. That where the manner or mode of voting at an election is prescribed by the constitution, it must be observed, and that an election by any other mode of voting than the one prescribed is null and void; 2, that the constitution in section 13, article 4, does prescribe the manner of voting at the election of Circuit Judges; (*vide* above;) 3, that the said mode or manner of voting as prescribed by the constitution was not observed at the election by which defendant claims the office; 4, and that, therefore, the election is a nullity, and the defendant has no right to the office.

On the other hand, it is contended that the second proposition above set forth is, in law, not true; but that the mode of voting at the election of Circuit Judges is prescribed and fixed by section 24, article 2, as well as by section 13, article 4, of the constitution, and that the former section prevails as to the manner of voting, and that the latter section applies only to the manner in which the two houses shall assemble for the purpose of voting; 2, that the election of defendant was had in conformity to the requirements of both sections of the constitution, and that, therefore, the election is good in law, and the defendant lawfully holds his office.

The general proposition, that where the manner of voting is fixed by the constitution it must be observed and obeyed, is not controverted. It is reduced, then, to the naked inquiry, is the manner of voting at election of Circuit Judges fixed by the constitution? and if so, what is that prescribed manner, and has it been complied with in this case? Both sides agree that the mode of assembly of the two houses for the purpose of voting is prescribed by section 13, article 4, and that the mode is joint assembly. But, in behalf of the State, it is argued that after the two houses have met, the vote must be "by ballot;" whereas, the defendant claims that the vote must be "*viva voce*," in obedience to section 24, article 2, of the constitution. Which is the law?

The case was argued on both sides with ability, and did the time permit, I would avail myself much more than under the circumstances is possible of many of the suggestions and cited authorities, by which I would be aided in elaborating an opinion upon so grave a subject. But it is obvious that if the court has arrived at an unchangeable conclusion, it is its duty to render a decision promptly. While it is important that the reasons should be clearly set forth, it is some times more important that the conclusion be announced and uncertainty be removed.

Let us now put together the two sections in which the law of this case lies.

Section 24, article 2, legislative department, "In all elections by the General Assembly, or either house thereof, the members shall vote *viva voce*, and their votes thus given shall be entered upon the journal of the house to which they respectively belong."

Section 13, article 4, judicial department, "And for each circuit a judge shall be elected by joint ballot of the General Assembly."

Were the last section considered alone, there could be no doubt about its meaning. "Elected by the two houses of the General Assembly met in joint assembly—voting by ballot." The word "joint," of necessity, qualifies the "General Assembly," for were it made to qualify the word "ballot," it would lead to the absurdity of saying "vote by a joint ball or ticket," which is impossible. We are forced to adopt the plain meaning established by the common use of the words, by parliamentary usage and by legislative enactments, all concurring. Indeed, the phrases quoted by counsel, "by joint ballot," "by ballot jointly," "jointly by ballot," and "joint ballot," in connection with elections by the two houses of the General Assembly, have interchangeably been so used, and with undisputed and undoubted signification, from the time of the adoption of the constitution of 1788 to the time of the adoption of the constitution of 1865.

But it is said that while "ballot" and "vote" are not synonymous, yet that by usage it has become common to use the word "ballot" in the sense of "vote," or the "act of voting," without any reference to the manner of voting; or, in other words, that "to ballot" may mean "to vote *viva voce*" or "to vote by ballot," that the true meaning is to be derived not so much from the word itself as from the context and the object in view. If this be so, could not section 1, article 8, on the right of suffrage, which reads, "In all elections by the people the electors shall vote by ballot," be construed to mean "vote *viva voce*?"

It is argued, however, that the meaning of section 13, article 4, is limited by section 24 of article 2, which it is claimed is an universal rule, and controls *all* elections by the General Assembly, and annuls any subsequent provisions which may not be in accord with it. The proposition, then, is that the word "ballot" in section 13, article 4, is either a nullity, because in conflict with the rule set up as universal, or must be made to harmonize therewith by construing the word, if it be possible, to mean "vote." I see no difficulty in the co-existence and operation of the two provisions, even although the first be an universal rule and the second an exception thereto.

The first occurs in the article on the legislative department, and defines and limits the power of the General Assembly with regard to elections in that body.

In article 3, the executive department, it will be found in section 4, that when the election of Governor devolves upon the Legislature by reason of "two or more" of the candidates being "equal and highest in votes," it is provided that "the General Assembly shall, during the same session, in the House of Representatives, choose one of them Governor *viva voce*."

In article 4, judicial department, section 2 provides that the Justices of the Supreme Court "shall be elected by a joint vote of the General Assembly," and section 13, Circuit Judges "by joint ballot of the General Assembly."

While it might be argued, and perhaps with force, that section 24, article 2, relates only to elections of officers of the General Assembly, and to elections created by legislation, there can be but little doubt as to its having relation specially to that class of elections, for in only three cases does the constitution order elections by the General Assembly, and in two of these it specifies the manner of voting, and leaves only the third—the election of Justices of the Supreme Court—subject probably to the provisions of section 24, article 2. And if we were undertaking to go behind the words of the constitution to interpret its meaning, it might be very forcibly shewn why a difference is made in the mode of voting for Governor and for Circuit Judges by the General Assembly—the former having been previously voted for directly by the people, and the election of the latter having originated in the General Assembly.

This, however, is irrelevant, and it is unnecessary to do more than lay down the proposition that any general or universal rule is subject to exceptions, when the exceptions emanate at the same time from an equal or the same power, and that is the present case. The 24th section, article 2, is of force in so far as it is not varied by subsequent provisions in the same instrument.

It appears to me to be clear that the convention so understood it, and adopted that section to define the power of the legislative branch of the government, and then provided by succeeding sections for the specific modes of conducting certain elections, which confer offices of great importance.

The question is thus narrowed down to the last proposition, which is the strength of the case. Can the words "by joint ballot" be construed to mean "by joint vote" that thereby the two apparently conflicting sections may be made to conform, and the election be conducted by voting *viva voce?* This depends solely upon the meaning of the word "ballot." If "a ballot" or "to ballot" can be considered to mean "a vote" or "to vote," that meaning should be adopted, for it would give the fullest force and effect to both sections of the constitution.

I will say here that while the argument was able and ingenious, it did not impress my mind, and subsequent reflection has strengthened the conviction that the word "ballot" has a fixed, distinct and clearly defined meaning, so absolute and so well understood as not to admit of a doubt.

The learned counsel for the defendant base their construction of the word "ballot" upon two grounds.

1. That the theory of the State constitution is "that in all elections by the Legislature, the action of each member should be open to the scrutiny of his constituents, so as to preserve the accountability of the legislator to the people.

2. That the word "ballot" must be taken in its "popular" sense, and in that sense its meaning is the "act of voting," without any designation of the manner of voting.

However plausible may be the policy of the principle set forth in the first ground—and strong, had it been argued in the convention—it is of no avail now. When we go to say what is the law of the land, we must take the law as it is and not as it may have been. The rules of interpretation are well stated as follows: "The way to ascertain * * * our obligations as they arise from instituted laws, is to collect the meaning and intention of the law-maker from some outward signs or marks—the collecting such intention from such signs or marks is called interpretation."

"Words are the common signs that mankind make use of to declare their intention to one another; and when the words of a man express his meaning plainly, distinctly and perfectly, we have no occasion to have recourse to *any other* means of interpretation."—*Rutherford's Rules, Potter's Dwaris*, 135.

And it is only where the words fail to express the meaning plainly, distinctly and perfectly, that we can have recourse to conjecture, whether rational or probable. The first ground, therefore, is removed, unless the second is maintainable.

To cast any obscurity over the words "by joint ballot" it must be shown that the word "ballot" has two meanings when used in such connection, and may have been employed in either sense by the convention. And this becomes a question of evidence and authorities. The "popular" meaning of a word must be understood to be its correct meaning until the contrary is shown. Yet stronger is the presumption that in a convention which frames the constitution of a State words are in their true signification, and they must be so accepted until the error is clearly proven.

What, then, is the true and correct meaning of this word ballot? It is of French origin, and has been adopted into the English language, without any change in its meaning, so far as the authorities give us light. In the standard French dictionaries, it is defined to mean "the act of voting by balls or tickets by putting the same into a box or urn;" "secret voting by means of ball or ticket." The examples in Richardson's English Dictionary clearly define its meaning to be the same as the French word, and I will quote one or two to show a little both of the meaning and history of the word in England:

"The greatest of the Parliament men [illegible] this design of rotation and ballot—as being against their power." "No magistrate was to continue above three years, and all to be chosen by ballot; than which choice nothing could be more fair or imparial, as 'twas then thought, though opposed by many for several reasons."

In Worcester's Dictionary, it is defined "a secret method of voting at elections. America—where the ballot is practiced." And so Walker, and so does Webster, and certainly had the word had any popular signification other than the above, it would have been given to us by Webster.

In an elaborate article on the word in the Encyclopedia Britiannica, the concluding sentence is as follows: "It is one of those matters of which it is necessary in a work like the present to give some *historical account*, and at the same time to explain its existing position as a political question, with a fair view of the arguments adopted by either side." So also an able essay on the same subject in the Encyclopedia Americana, presents the word "ballot" as expressing the side of secret voting as against *viva voce* or public voting. In neither of these articles is the slightest deviation from the definition above cited, nor is there an intimation that any other meaning has ever been attached to the word. Ballot represents the one policy and *viva voce* the other.

It is to-day the question between parties in England. It is the main distinction between elections in England and the United States. It has been characteristic of France in her republican government, and is to-day an open question in every constitutional and legislative body that assembles in the United States. The expression "black-balling" still used in secret votes in clubs and private associations is the perpetuation of the ballot by white stones and black stones, by which the Dikarts casts their votes in the judicial assembly at Athens, and signifies the same as the *tabulea or tabellea* by which the secret votes were taken in Rome. Thus history and literature and the unswerving practice in the constitutional and legislative assemblies from 1788 to the present day show one invariable meaning and application of the word. And as it was used in the constitution of 1868, so it had been used from the beginning of the existence of the State in reference to judicial elections.

In 1865 the question was agitated, and as is cited in the argument for the defense, a change was urged by the provisional Governor of the State, and finally was carried in the convention assembled that year. The Legislature was commanded to vote *viva voce* in the election of judges, and it was openly declared that it was so done to carry into effect the theory of responsibility and subjection of legislators to the scrutiny of their constituents. Again in 1868 the constitution was changed, and the old method restored. Is it possible that it can be argued that the meaning of the word, so recently and with so much ardor discussed, was not understood? In section 1, article 8, it is said that "in all elections by the people the electors shall vote by ballot." Could the meaning of the word be more sharply defined than it is in that section? The supposition cannot be sanctioned that the framers of the constitution could have so trifled with a word of such magnitude as to have used it in senses exactly contrary to each other in two such important sections of that instrument. The authority adduced to shew that "by joint ballot" can mean "by joint vote," or that "ballot" means "vote," without regard to the manner of voting, is this: That in the journals of the convention and of the General Assembly, and in the reports of elections by the public press, the word ballot is "applied as a generic term, denoting the 'act of voting' as often as it is used as a specific term confined to one particular mode of voting."

There is no authority to shew that it has ever been so used in any parliamentary body in debate upon the question or in legislation upon the subject. The proposition, then, is in nowise sustained, nor can I think it sustainable. The use of the word, relied upon by counsel, is a mere abbreviation for the convenience of journalists and the press, and can in nowise be sanctioned to establish the meaning of words.

The evidence in the body of the instrument shews that the convention understood the words it used, and upon opening the journal nothing is adduced to strengthen the defense. On the contrary, almost the initiatory debate in that body was upon "ballot" as opposed to voting by *viva voce*.

The fact that the 13th section, article 4, was passed at the second reading in the words "by joint vote," (Journal, p. 617,) and that it was subsequently changed and ratified in the words "by joint ballot," (Journal, p. 856,) compels us to conclude that the change was made for a purpose, and that purpose can be but the one indicated by the distinction between the words.

Finally, the ratification and adoption of the constitution was submitted to the people of the State. The instrument was adopted as it is written, and that is what it means, and so it must stand.

It is with unfeigned reluctance that a majority of the court has arrived at the conclusion reached in this case; but whatever may be the inconvenience or the individual hardships involved in the decision, it is our solemn duty to declare the law as it is written.

It is, therefore, ordered and adjudged that the plaintiff have judgment of ouster against the defendant, as prayed for in the complaint.

The State of South Carolina vs. A. J. Shaw. Separate Opinion of McIver, A. J.

While concurring fully in the opinion filed as that of the majority of the court, it has been thought due to the dignity of the office in question, and the importance and gravity of the questions involved, that each of us should formally express our opinions. I, therefore, propose to state briefly some of the reasons which have brought my mind to such conclusion, although I cannot hope to add anything to the argument presented in the opinion of the majority of the court.

The sole question involved in this case is, whether an election of a Circuit Judge by the General Assembly voting *viva voce* is a valid election. To determine this question it is necessary to consider the provisions of the constitution of this State, relating to this subject, for the purpose of ascertaining whether that instrument requires such election to be made in any particular mode, and if so, what that mode is. For no one will deny that, if, by the terms of the constitution, the election is required to be made in any particular mode, that mode is essential to the validity of such election, and a person who has been elected in any other mode has no legal title to the office.

It cannot escape the attention of the most casual reader of the constitution that there are two distinct modes of voting, [illegible] only provided for, but prescribed by that instrument in express terms, the one by ballot and the other by the *viva voce* system. It is likewise equally certain that these modes of voting differ in one, at least, most essential particular, the one implying secrecy, the other involving publicity, and, as matter of history, we know that the respective merits of these two essentially different modes of voting have been, and are yet, the subject of discussion in every country where the right of suffrage exists. Does the constitution then prescribe that either of these modes of voting shall be adopted in the election of a Circuit Judge? and if so, which of them is so prescribed? To answer this question we naturally turn to the fourth article of the constitution, styled the "Judicial Department," and in section 13 of that article we find it ordained in explicit terms, that "for each circuit a judge shall be elected by *joint ballot* of the General Assembly." Now, if this section stood alone, I presume it could not be doubted that the only constitutional mode of electing a Circuit Judge would be by ballot. But it is said that in section 24, of article 2, it is ordained that "in *all* elections by the General Assembly, or either house thereof, the members shall vote *viva voce*, and their votes thus given shall be entered upon the journals of the house to which they respectively belong," and that it is necessary to put a construction upon the word ballot as used in section 13, of article 4, different from its primary and well recognized signification, in order that the two sections may be brought into harmony upon the well recognized principle, that in construing an instrument like a constitution, we must look at it as a whole, and so construe its several parts as will prevent conflict and bring about harmony; and that for this purpose, *if it should become necessary*, words and phrases may be read in a sense different from their usual and primary signification. It is, therefore, contended that the word ballot, as there used, signifies simply the *act* of voting, and is not designed to prescribe the *mode* of voting, and hence that the two sections, thus read together, prescribe that the Circuit Judges shall be elected by the General Assembly, the two branches voting in joint assembly, but that the *mode* in which the voting is to be done must be by the *viva voce* system, and not by ballot. It is very obvious that the word ballot is not used in this secondary sense anywhere else in the constitution, for the only other place in which we have been able to find it is in the first section of the eighth article—"In all elections by the people, the electors shall vote by ballot"—and there it is undoubtedly used in its proper and legitimate sense, as no one will, for a moment, contend that, in any election by the people, the electors would be at liberty to adopt the *viva voce* system. Now, while it may be admitted that, in a proper case, it is allowable, in construing a constitution, to attribute secondary significations to words and phrases, differing materially from their usual and proper meaning, in order to prevent a conflict between the different parts of such an instrument, yet this should not be done when such conflict can be avoided in a more natural and proper way, especially when, as we have seen, the rule contended for involves the necessity of giving a word of well defined meaning not only different significations, in different parts of the same instrument, but a signification practically the very opposite of its original and usual meaning. Let us inquire, then, whether this apparent conflict between these two sections of the constitution cannot be reconciled in a more natural and proper way than by distorting the meaning of a well defined term, and attributing to the framers of the constitution such gross carelessness and inattention to their duties as using the word ballot in one section in its proper and legitimate sense, and in another section in an opposite sense; for certainly voting by ballot and by the *viva voce* system are, for all practical purposes, precisely the opposites of each other. There is no doubt of the correctness of the rule that where general terms, no matter how comprehensive they may be, used in a will, a statute or a constitution, are apparently in conflict with subsequent special provisions, such conflict may be avoided by regarding the latter as exceptions to the former, and that for this purpose courts will read the two clauses as if words of exception were inserted. Applying this principle, then, to the two clauses under consideration, there is no real conflict, and they may be read together as providing that in all elections by the General Assembly the members shall vote *viva voce*, &c., except in the election of a Circuit Judge, in which case they shall vote by ballot. The fact that this is not the only instance in the constitution in which this mode of reconciling an apparent conflict between different sections becomes necessary, indicates the propriety of adopting it rather than the one contended for by defendant's counsel. In at least one other instance there is an apparent conflict between other sections of the constitution, which can only be reconciled upon the principle which we have adopted in this case. In section 10 of article 14 it is ordained that the election for *all* State officers shall be held at the same time as is provided for that of members of the General Assembly. It is very manifest that, in order to avoid a conflict with other sections of the constitution, this section must be read in connection with such other sections, by incorporating words of exception, *e. g.* except such as are required to be elected by the General Assembly. It does seem, therefore, that the correct view to take of the two sections of the constitution which give rise to the controversy in this case (section 24 of article 2, and section 13 of article 4) is to regard the former as simply declaring a general rule for the guidance of the General Assembly, to which the latter furnishes an exception, and that while, as a rule, the *viva voce* system was to be the mode of voting in elections by the General Assembly, yet, that, in case of the election of a Circuit Judge, an exception was established, requiring that such election should be by ballot. This view is sustained by reference to the journal of the convention which framed the constitution, to which we are at liberty to refer in cases of doubt, in order to ascertain, if practicable, what intention was in the minds of those who used the words in question. This journal shows; 1, that the distinction between the different modes of voting—*viva voce* and by ballot—was fully understood and appreciated in that body; 2, that the 13th section of article 4, as originally adopted, contained the words "joint vote" instead of "joint ballot;" 3, that it was finally adopted in its present form. Why, then, was the change made from "joint vote" to "joint ballot," if these words are now to be construed as meaning the same thing? The conclusion is irresistible that the framers of the constitution, appreciating, as we have seen they did, the distinctive feature of the system of voting by ballot, in making the change from "joint vote" to "joint ballot," intended to make a substantial and not a mere verbal alteration. For, in substituting for the word "vote," which was equally applicable to *either mode* of voting, the word "ballot," appropriate only to *one* of such modes, they unmistakably indicate their purpose that such mode only should be adopted, so far as that particular election was concerned.

It is said, however, that the words "joint ballot" must be construed as meaning merely the *act* of voting rather than the *mode* of voting, in order to avoid an absurdity, inasmuch as there can be no such thing as a *joint* ballot in the primary sense of the term ballot—a small ball or ticket—and, therefore, as here used it must be given its secondary meaning. Without stopping to consider whether the word ballot has ever acquired such secondary meaning except in the loose and careless language of the public press, or in the journals of deliberative assemblies, where abbreviated forms of expression are quite common, no instance of such meaning having been found in any work of authority, emanating either from lexicographers or legal writers, or to show that the phrase "joint vote" as found in section 2 of article 4 is open to the same criticism, as it is quite as absurd to speak of *joint* vote as of *joint* ballot, it being just as impossible for two persons to give a *joint viva voce* vote as it is for them to put in the ballot box a *joint* ballot, as they can no more vote with a *joint voice* than they can with a *joint ball* or *ticket*, it is quite obvious that the phrase "joint ballot" means jointly by ballot just as the phrase "joint vote" means jointly by *viva voce* vote. In other words, that the word joint was inserted in each instance merely for the purpose of showing that the two branches of the body which was to elect should act together and not separately as they do in performing their usual and ordinary duties. Accordingly we find, by reference to the constitutional and legislative history of this State, as cited in the argument, that the phrases "jointly by ballot," "by ballot jointly" and by "joint ballot" have been indiscriminately used as interchangeable terms, signifying always the same thing as that above attributed to the words "by joint ballot" in the clause of the present constitution now under consideration.

I am, therefore, most reluctantly forced to the conclusion that the defendant in this case, not having been elected in the mode prescribed by the constitution, has no valid title to the office in question, and that upon the demand of the State, through its Attorney General, judgment of ouster must go against the defendant.

The State of South Carolina vs. A. J. Shaw—Opinion by Willard, C. J.

The constitution (article 2, section 24) provides that in all elections by the General Assembly, or either house thereof, the members shall vote "*viva voce*," and their votes, thus given, shall be entered upon the journals of the house to which they respectively belong. Again it provides, (article 4, section 13,) "the State shall be divided into convenient circuits, and for each circuit a judge shall be elected by joint ballot of the General Assembly."

It is contended by the State that the provision as to electing by joint ballot is equivalent to a declaration that the Circuit Judges shall be elected by ballot, and thus creates an exception to the generality of the words declaring that all elections by the General Assembly shall be by "*viva voce*" voting. The respondent, on the other hand, contends that the sole object of the declaration as to electing by joint ballot was to designate the body that should elect the Circuit Judges, namely, the united bodies constituting the General Assembly, joined together for that purpose in one body.

The rule of construction applicable to the case recognizes the fact that words expressing the universal application of a statutory requirement to all cases of this class to which it relates, may be restricted, not only by the use of technical words, importing exception or limitation, and by more general expressions having an equivalent effect and directly disclosing an intention to create exceptions or limitations, but also by implication, inferring such intent as a necessary means of reconciling provisions otherwise inconsistent.

It is only as a necessary implication that such a conclusion can be drawn inferentially. It is only the impulsive force of necessity that can justify an encroachment upon the direct terms of a rule of universal application.

It follows that when the law-making authority has established a rule in terms extending to all cases of the class embraced in it, and has not subjected it to express limitation or exception, an exception or limitation can only be implied where the provisions from which this implication is sought admit of no reasonable interpretation consistent with the direct sense of the term of the general rule.

It would also follow that where the sense and intention of the words claimed to operate as a limitation are of doubtful import, admitting of different constructions some consistent with the general rule and others inconsistent with it, an exception or limitation cannot be implied.

I am satisfied that at the least the intention of the constitution involved in the present case is doubtful. This might be inferred from the fact that the Legislature for eight years immediately succeeding the adoption of the constitution adopted the sense claimed for it by the respondent, and that the entire circuit judiciary was organized during that time upon that understanding of the constitution.

It is not an unreasonable construction that the framers of the constitution may have intended by the language of section 13, article 4, to merely designate the body by which the Circuit Judges should be elected, leaving the mode of election to be determined by that article and section that dealt directly with that subject. Whether such was their actual intention it is not important, under the view I take of the case, to inquire, it being sufficient for the purposes of the present case to ascertain that such is not in itself an unreasonable construction.

If this be the case we are bound to adopt that construction which is in harmony with the antecedent provision prescribing the mode of voting in all cases of election by the General Assembly. In order to warrant an encroachment upon the terms of the general rule we must find a construction inconsistent with that general rule, for it is only by the fact of such inconsistency that we can compel the terms of the general rule to give way before external force. We are not at liberty to raise up a force to antagonize a great fundamental provision of the constitution on speculative grounds or verbal refinements, especially where that fundamental provision is intended to apply a principle inherent in the nature of the exercise of representative powers in government.

It is easy to see that the provision as to *viva voce* voting by the representatives of the people was based upon the general idea that the voting of representatives should be open and responsible, as they act, not in their own interest, but in the interest of the public. This principle is put in opposition to that of secret voting, which is clearly appropriate when the voter acts from his individual choice, arising solely from his sense of personal duty or interest.

It has been said that this is a speculative opinion merely, about which there have been differences of opinion, but it is clear that the constitution of 1868 took this question out of the forum of speculative opinion and placed it among the cardinal principles on which the government should be administered, and we are bound to consider it in that light.

I regret that I am compelled to differ from the majority of the court, but it seems to be the inevitable consequence of my understanding of the rules and spirit of constitutional construction.

Volunteer Forces and National Guard.

The report of Adjutant and Inspector General Moise recently presented to the General Assembly, while it presents a most melancholy picture of the wretched state of inefficiency to which the State military organization was reduced under the Republican Administrations, shows a wonderful amount of work done by the new Administration, and a most encouraging reconstruction and reorganization of the entire system. Gen. Moise, judged by what has actually been done, is the right man in the right place, and it is sincerely to be hoped that his recommendations will meet with such attention in the Legislature as will enable him to complete the work so auspiciously begun.

The report shows that, when General Moise took possession of his office, all the buildings belonging to the State and in use for military purposes, were in a most dilapidated and filthy condition, having been constantly diverted from their legitimate use for service as dance halls and places of public entertainment for the lower classes. Two hundred State arms were all that could be found, and the records of the office failed to show who had possession of the vast military property of the State. That the term vast is not incorrectly used is proved by a table, which shows that the cost of an utterly worthless militia to the State was $497,098.26.

Since the new State Government went into operation the military buildings have been thoroughly cleansed and repaired, and turned over to the care of the proper officers. The State has been divided into three military districts, commanded by Major Generals B. H. Rutledge, John D. Kennedy and Thos. J. Lipscomb. The old Fourth Brigade has been thoroughly reorganized, and is now in splendid condition, and the same may be said of Rutledge's cavalry brigade, now commanded by Brig. Gen. William Stokes, which comprises some forty companies, aggregating 2,000 men. There have been partly organized, though not yet completed, twelve other brigades, eight of which are commanded respectively by Gens. Bamberg of Barnwell, Izlar of Orangeburg, Stackhouse of Marion, Richardson of Sumter, Pope of Newberry, Nicholson of Edgefield, Hemphill of Abbeville, and Humphreys of Anderson. The remaining four were being formed, two in the middle and two in the upper counties.

In order to obtain arms for the cavalry a quantity of old and useless cartridges have been exchanged for 350 new Peabody carbines, and 300 new sabres and belts. There have been collected, repaired and reissued 2,000 stand of arms and equipping some fifty companies of infantry. Many of the companies own their arms. It is recommended that these be purchased by the State at a low price. Efforts have been made to obtain arms due to the State from the United States, but owing to an over-issue of arms to Governor Scott, for political purposes, the General Government has declined to give the usual quota. As Governor Scott had no right to draw those arms for the State for such uses, and as they were mostly very inferior, the Adjutant General thinks that, by proper action on the part of the Legislature, aid can be had from the General Government sufficient (with an appropriation of $9,537.04, which the report asks for) to pay all deficiencies and sustain the militia in a proper degree of efficiency for the year.

Of the National Guard (the colored militia,) the Adjutant General says that he found it to be an organization existing only on paper. Out of four divisions he could find only enough troops to make one good brigade. He recommends a thorough reorganization of the colored troops, and the revocation of all commissions over a year old. He thinks that, with careful and judicious management, a respectable colored militia, or National Guard, can be established, and that such a body will be an element of strength to the government and of value to the colored population.

The appendix to the report contains a complete roster of the officers of the militia and much other valuable information. The whole report should be in the hands of every citizen, who takes an interest in the military system of the State. Gen. Moise has done his work both courteously and well.—*News and Courier.*

THE BLUE RIDGE RAILROAD.—South Carolina has seen worse days than the present, by far, and she will no doubt see better ones. Arising from her long prostration, she already begins to feel the quickening of her former vigor. One of her cherished enterprises in the days of her prosperity, and one that she would have completed long ago but for the calamities that fell upon her, was the Blue Ridge Railroad. It is not surprising to find that among the first things to attract attention, now that she has entered upon a new life, is that long neglected schemes upon which she formerly expended so much treasure. We copy this morning an article from the ANDERSON INTELLIGENCER that breathes a spirit of courage and hopefulness. The Charleston *News and Courier*, reproducing the same article, observes:

"The ANDERSON INTELLIGENCER is a clever article which we publish in another column this morning, has an excellent suggestion in regard to the use to be made of the convicts who yearly devour the substance of the State. The INTELLIGENCER thinks that they might be profitably employed in resuscitating the Blue Ridge Railroad, which, it truthfully says, has cost the State too much money to be entirely abandoned. This is one subject at least on which the upcountry and Charleston can work in happy accord, and it is to be hoped that it will receive the serious and favorable consideration of the Legislature."

The Blue Ridge Railroad was the road of Calhoun and Hayne, and of Frost and Gourdin, and South Carolina has never lost faith in its ultimate construction.—*Knoxville Tribune.*

— Senator Jones, the leader of the silver men in Congress, says that his hopes of a satisfactory silver bill are stronger than ever, and that the delay in the Senate will strengthen the movement rather than weaken it. He says the hard times are but just begun, and that the people will soon demand silver in every State of the Union.

— Governor Wade Hampton, of South Carolina has been selected to deliver the annual address at the next commencement of the University of Mississippi.

The Anderson Resolutions.

From the Charleston News and Courier.

Anderson County did gallant service in the last State election, and the representatives of the County in the Senate and House of Representatives fill high positions with credit and success. Senator Cochran is Chairman of the famous Committee on Public Frauds. Mr. Simpson is Chairman of the Committee of Ways and Means. Mr. Orr is Chairman of the Committee on Privileges and Elections. Anderson County, therefore, has come quickly to the front in State affairs, and the wishes of the Anderson Democracy will always carry weight, and their opinions will have careful consideration. Otherwise, it would be unnecessary to take more than passing notice of the resolutions adopted last week by the Executive Committee of the County. These resolutions are as follows:

"*Resolved*, That this Executive Committee hereby expresses its opinion that the Senators and Representatives in the General Assembly should closely scrutinize the State debt, with a view to selecting the valid and honest portion of it from that which was created in fraud, and which was squandered by officials known to be corrupt.

"*Resolved*, That we favor the repudiation of all of the debt which was created in fraud, and of all the bonds which were sacrificed at nominal prices; and further, that we favor the repudiation of all bonds, the proceeds of which were squandered by Republican officials, inasmuch as their character as public plunderers was notorious, and those dealing with them did so at their own risk.

"*Resolved*, That we favor the payment of the valid portion of the debt, for which the State received a valid consideration, according to the rate of composition agreed upon between the creditors of the State under the Consolidation Act."

The debt has been closely scrutinized by the Bond Commission, and the report of the Commission will be closely scrutinized by the General Assembly. It is reasonable to expect that the manner in which the debt of the State was created, under Scott and Moses, and the way in which the proceeds of the bonds were squandered, will be more clearly and satisfactorily explained than in any of the preceding reports on the same subject. Nor will this exposition be without practical value, for it will indicate what officers were engaged in unlawful acts, and are liable to punishment for their misconduct. It is a different matter when it is proposed to repudiate all bonds "the proceeds of which were squandered by Republican officials," inasmuch as the disposition made of the proceeds did not, and could not, affect the character of the bonds. This is too evident to need explanation.

The debt created in fraud and which remained fraudulent has been repudiated, viz: the Conversion bonds, to the amount of $5,965,000. There were irregularities of different kinds and degrees in the issue and hypothecation of other bonds; but these irregularities were removed by the Validating Act of 1872. Such an Act could not remedy any defect, in any bond, arising from a failure, on the part of the Legislature or the State officers, to comply with the requirements of the Constitution; but it could and did, as decided by the Supreme Court, in the case of Morton, Bliss & Co., waive, on the part of the State, any objections that the State else might have raised on the score of a failure to comply with the terms of the Acts under which the bonds were issued. Whatever was within the power of the Legislature when the original Acts were passed was within its power when the Validating Act was passed. And, excepting always the Conversion bonds, the bonds and stocks validated by the Act of 1872 are the bonds fundable under the Consolidation Act.

It is true that the holders of unfunded bonds may not be able to sue the State, although the Acts under which the bonds were issued contain a provision for the levy of a tax for the payment of interest. The holders of Consolidation bonds occupy a different position. They can take proceedings to compel a compliance with the terms of the contract between the State and the holders of such bonds, which contract includes both the levy of an annual tax of 2 mills for interest and the receivability of the coupons for taxes. The State could not plead that there were irregularities or illegalities in the issue, or disposition, of the bonds for which the Consolidation bonds had been issued, inasmuch as by the Validating Act the State waived that right, as against such bonds, freed them from taint, and made them, in the words of the Act, "legal and valid bonds of the State of South Carolina, for the payment of which the faith, credit and funds of the State have been, and are hereby, pledged." This Act is overlooked by the Anderson Committee.

The Committee declare themselves in favor of the payment of the valid portion of the debt, "for which the State received a valid consideration," according to the composition under the Consolidation Act. We cannot conceive this to mean that the Anderson Democracy wish to repudiate any bond lawfully issued, under the Consolidation Act, in exchange for bonds fundable by that Act. This would involve a repudiation of the action of the Democratic members of the General Assembly who voted for the Consolidation Act. It would involve a repudiation of the State Executive Committee of the Democratic party, who declared the adjustment under the Consolidation Act "final," and pledged the Democratic party of the whole State "to abide by it." And it would involve a repudiation of the action of the House of Representatives, including the members from Anderson, in reiterating on December 20, 1876, their "pledge" to pay the interest on the bonded indebtedness of the State "as now provided by law." The Anderson Democracy will not set the example of repudiating the pledges of the Democratic party, in the most formal manner made and declared, at a time when it is of supreme consequence to maintain the solidarity of the party and discourage dissension. What Democrat can, with decency, be held up to public scorn for declining to be bound by the rules or nominations of the party, when the party itself gives him encouragement, and sets him the example of repudiating pledges more emphatic and more precise than any that the individual Democrat is expected or invited to make? Unless the party is bound, the members of the party are not bound. The Democratic party cannot blow hot and cold with the same breath.

These considerations ought to have weight, for none know better than the Anderson Democracy how restive are the people of South Carolina, and how difficult it is, under the most favorable circumstances, to make them submit without a murmur to the decisions of the party. Let the party be true to itself and the people will be true to the party!

The resolutions of the Anderson Committee must, in view of what we have said, be understood as requiring the acknowledgment of the bonds and stock issued in conformity with the Consolidation Act. We cannot, and will not, believe that they mean any unfaithfulness to people or to party.

THE WINNEBAGO CHIEF.

The Pleasant Recollections of His Recent Sojourn in South Carolina.

The Winnsboro *News* prints an interesting letter to Maj. Thomas W. Woodward, which has been lately received by him from Hon. Henry P. Kimball, of Winnebago County, Illinois, from which we make the following extract:

Major, I give you my assurance that I have become devotedly attached to the people of South Carolina. They are just the most generous, whole-souled, magnanimous, hospitable and cultivated people that ever honored our country. There is not a trait in their character that is mean, selfish or parsimonious. Their latch-string is always out, and chiv