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BARNWELL C. H., S. C., THURSDAY, OCTOBER 18, 1877.

NO. 7.

CUIT JUDGES. he Democracy Should Adhere to the Constitution-That Instru-

ment Prescribes that Circuit Judges Should be Elected by Joint Ballot of the General Assembly—A Ballot is a Private Vote, and an Election Viva Voce is not an Election by Ballot.

To the Editor of the News and Courier Were we asked to define the leading leature of American democracy, we should unhesitatingly say : Strict ad herence to Constitutional obligations and requirements, whether State or Federal; for in this principle is em odied its distinctive character as political theory.

In the political assemblies of a republican State the temptations to sacrifice organic provisions to expediency, and to sever the restraints by which constitutional law holds in check both popular impulse and factional ambition, are at all times very great, but in times of civil commotion or disturbance almost irresistible. True democracy should at all times combat this

The republican party on the other hand, which has so long directed the destinies of these United States, is the embodiment of a higher law than that of the constitution. With it all things aro lawful, but all things are, or are not, expedient, according to the exigencies of the party. All things are lawful which tend to perpetuate its aggrandize its followers: and with it constitutional restraints and limitations must invariably yield or conform to the higher and more republican doctrine of expediency. It follows not lot," in connection with its parliamentthe Ark of the Organic Covenant, but, with one hand, grasps the horns of the National altar, and with the other, clutches the silver and gold vessels of the sanctuary.

From the Potomac to the Gulf of Mexico this venal party has fallen, never to rise again, fallen to pieces by its own corruption, and a prey to its own lawlessness. In South Carolina it trampled the constitution in the dust, but the constitution, aided by the strong arms of the people, has risen in its might and buried the loathsome corpse beyond the hope of resurrection. The natural and legitimate guardians of the constitution have been again placed as sentinels around the temple in which their political goddess is enshrined. Their emblems, devices and banners denote the native democracy of the State. They are charged with this duty: "Ne Respublica quid detrimenti caperet," under sanction as solemn as the Sacrame .. tum of the Roman soldier, and woe betide them if they prove recreant to

their trust. With these preliminary reflections we shall proceed to treat of those portions of the State Constitution which indicate the mode of Judicial Elections, feeling satisfied that the importance of the judicial office and the necessity of a general acquiescence in the validity of the title thereto will amply vindicate our selection of the subject for public discussion.

For the proper understanding of this subject we shall quote the several provisions of the constitution pertinent thereto in their order :

Art. II, Sec. 11. 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 be-

Art. IV, Sec. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, two of whom shall constitute a quorum. They shall be elected by a joint vote of the General Assembly for the term of six years, &c.

Art. IV, Sec. 13. The State shall be divided into convenient circuits, and for each circuit a judge shall be elected by joint ballot of the General Assem-

Now, the question arises whether, on the one band, the general provision of Art. II, Sec. 21, is to overrule the appelal provision in Art. IV. Sec. 13. and the latter be made subjectively to harmonize with the general provision of the former, or whether, on the other, the provision of Section 13 shall be

maintained and enforced as a special and mandatory constitutional require-We confidently maintain the latter proposition, and hold that no election

of a Circuit Judge is valid or effectual which is not the result of joint ballot of the General Assembly in contradiction to an election by "viva voce" vote-What is the meaning of the word "ballot?" According to Wharton's Law

Dict : "Ballot" is to vote for or choose a person into an office by means of little lot, and the universal practice of balballs, of several colors, which are put loting in the Legislative bodies on batim from the Constitution of 1865, into a box privately, according to the such occasions, we assert, as a matter and was embodied in the new Constiinclinations of the chooser or voter; of fact, was in accordance with the le- tution as Art. II, Sec. 31, already quot- ing the election of the Circuit Judges in on, or two or three old pie-pans.

ARE THEY JUDGES, OR NOT? or by witing the name or names of the candidates upon small pieces of THETRUE MODE OF ELECTING CIR. paper, and rolling them up so that they cannot be read, which are put into a box, and, when the time limited for an election is over, an indifferent person takes them out one by one, and, upon reading the name or names, votes, the greater of which is declared duly elected."

Cash. Leg. Assemb Sec. 103: "A ballot" may be defined to be a piece of paper, or other suitable material, with the name written or printed upon it of the person to be voted for; and, when the suffrages are given in this form each of the electors, in person, deposits such a vote in a box or pose, and kept in the custody of the proper officers.

Bouvier's Law Dict .: "Ballot," a diminutive ball, i. e., a little ball used in giving votes ; the act (Potter's Dwarris, 274.) itself of giving votes; a little ball or ticket used in voting privately, and for that purpose put into a box, (commonly called a ballot-box) or some other contrivance."

These authorities fully establish and define the technical meaning of the word "ballot." The next question which arises is whether this technical signification is to be adopted in the construction of our constitution, or some loose and popular understanding of the term "ballot," such as being a synonym for the word "vote." Now it s well established principle in the construction of statutes that, wherever word has received a technical and power, to cripple its opponents or to distinctive signification by usage, that signification must prevail in the interpretation, in opposition to any loose or general definition of the same. We come then to consider this term "baiary history and the practical acceptation of the term by legislative bodies in this State from the Revolutionary period to the present day, for by such history and usage we will be enabled to ascertain the true meaning of the

> By the State Constitution, (19 March, 1778), Sec. 18:

"The S-nate and House of Repreentatives shall each choose their repective officers by ballot, without Sec. 22. Delegates to Congress to be

elected jointly by ballot in the House of Representatives. Sec. 24. Ordinaries for the severa

districts shall be chosen by the Senate and House of Representatives jointly Sec. 27. Judicial officers shall be cho-

sen by ballot jointly by the Senate and House of Representatives. Sec. 29. The two Commissioners of

the Treasury, the Secretary of State &c., shall be chosen in like manne jointly by ballot, Sec. 30. All officers of Army and

Navy of the State above the rank of Captain shall be chosen by the Senate and House of Representatives jointly by ballot.

CONSTITUTION OF 1790,

Art. I. Sec. 12. Each House shall choose by ballot its own officers, &c. Art. II. Sec. 1. The Senate and House provisions. of Representatives shall jointly in the House of Representatives choose by ballot a Governor.

Art. VI, Sec. 1. The Judges of the Supreme Courts, &c., shall be elected by the joint ballot of both Houses, in the House of Represetatives.

5 Stat., 202, Act of 1792, Sub. 1, Electors of President and Vice-President shall be appointed by ballot * * in the House of Representatives *

by the Legislature of the State. 5 Stat., 361, Act of 1792, Sec. 9. Comptroller-General shall be elected by joint ballot of both branches of the

Legislature of this State. 5 Stat., 674, Act of 1812, Sec. 1. Attorney-General and others elected by joint ballot of both Houses of the Leg-

5 Stat., 674, Act of 1812, Sec. 2, That in all joint ballots for the officers bevotes given on such joint ballot shall be necessary to constitute an election. Act of 1784 Sec. 2. Court of Chancery to consist of three judges to be chosen by joint ballot of the Senate voce," &c.

and House of Representatives. 8 Stat., 25, Act of 1812. Bank of the State, Sec. 7. Legislature shall proceed to elect by joint ballot a president and twelve directors.

Court of Appeals. Sec. 1. Chief Justice and two Judges to be styled Judges of the Court of Appeals, to be chosen by joint ballot of the Legislature among the chancellors and judges now in commission.

It will thus appear that from the period of the State's first existence as a sovereignty to the termination of the late civil war, all elections in the General Assembly were determined by bal-

gal and technical defluitions already ed. Both Articles I and II became in- to the Radical legislature. So much eable terms applied without distinction to the composition of the electoral somebody takes down the number of body and the particular made of effeeting a result "necessary to consti- Judges, as originally reported by the gest a policy impelling the convention tute an election."

Such, then, being the time-honored parliamentary signification of the term "joint ballot" and its cognete expres-sions, it behooves both the judiciary and the legislator to receive it according to its accepted and technical meaning, as, indeed, it was received in the ary) a lively discussion ensued upon late election of Judge Kershaw; for other receptacle provided for the pur- "words and praises the meaning of ingred and praises the meaning of ingred and praises which in a Statute (a fortion in a constitution) has been ascertained, are. when used in a subsequent Statute, to be understood in the same sense." Leave out Section 21 of Art. II of

> our present Constitution and the modes of electing respectively the Justices of the Supreme Court and the Circuit Judges, the former by "joint vote" and ment was participated in by Wright, ponents in the Liegislature, than the the latter by "joint ballot" of the General Assembly, would be too pparent to admit of discussion. De this general provision that all elections by the General Assembly shall be by "viva voce," so overstadow the special and express provision with regard to the mode of electing Circuit Judges, that we must go counter to the recognized meaning of language and do violence to the Constitution itself? Certainly not. It has been laid down as an established rule in constitutional interpretation, when a special provision conflicts with a general, the former must be treated as an exception to the latter, as much there, and, although elected by the so as if the words in the general pro- people, that gentleman will have no manity. Knowing by undoubted recwieffen had heer followed with as hereinafter provided," so that we contingency we must give the election must read the 21st Section of Article to the Legislature, which represents II as if the words "viva voce" were followed by "save as hereinafter provided in Art. IV, Sec. 13, of this Con-

the Constitution, yet no violence done to its letter or to its apirit. Without "joint vote of the General Assembly" undue straining of terms from their were unanimously changed to "joint received signification, without any labored exhibition of grammatical ingenuity, without the aid of metaphysical refinement, we have, by this "saving" rule, the plain meaning of the words and intent of the Constitution

show that the election of Circuit Judges requirement. In support of that view we have established the parliamentary signification of the words "ballot." "jointly by ballot," "by ballot jointly," and "joint ballot." We have shown the unvarying custom of election by ballot from the Revolution to the times of reconstruction, and the necessity of giving effect to the mode by ballot in the election of the Circuit Judges, in order to harmon'ze the constitution without doing violence to its express

We shall now proceed to trace the from the time of the Constitutional Convention of 1865 to the present day, with the view of laying candidly before the people all the facts necessary to independent judgment.

On the 13th day of September, 1865, in the midst of public disaster and private woe, the ablest and most sagaclous citizens of this State met at Columbia as delegates to the Constitufore mentioned a majority of all the ing article was adopted as part of the no reasons for doubting that the framorganie law:

This general provision as to all elec tions in the Assembly was unqualified in the Constitution of 1865 by any ex- rist usage in this State. ceptional provision, and if that Consti-12 Stat., 647, Act of 1859. Separate in its infancy, it would, by its plain provision so exceptional? We do not

> provision in Art. L. 14th January of that year.

The general provision with regard to

furnished in this article. It will, more- tegral portions of the Constitution be- for his policy. C. C. Bowen, on the over, appear from the above quotations fore Art. IV was finally adjusted. But other hand, says: (Pro. Con., D. that the terms, "jointly by ballot," "by there was a considerable party in the 621.). "If they (the demograte of the ballot jointly" and "joint ballot," are, Convention zealous for the extension in parliamentary language, faterchang- of popular elections, and which, therefore, sought to make the Judicial office elective by the people, Accordingly we find the election as to the Circuit committee, and up to the time of the at the time of the third reading to second reading, worded as follows:

"The State shall be divided into con- probable that while the section as to venient circuits, and for each circuit a ridge shall be elected by the qualified dictated by a desire that the exact electors thereof," &c.

On the second reading (27th Februthe section, both instructive and amus-O. C. Bowen moved to strike out the should be adopted. Both Mackey and word "thereof," in second line, and in-

was not agreed to I (TipleTage in Fredid O. M. Wilder moved to strike out the log at the possibility of a demogration words "qualified electors," in second judge being elected, what better plan vote of the General Assembly."

Deliarge, Ransler, Craig Leelie, Ban- secrecy of the ballot?" own add harp dolph, B. W. M. Mackey, Nush, Bowen. Chamberlain and Duncan, Mackey's "very important reason'

certain portions of the State the rebels have a majority, that is, in the upper districts, which will be divided into one that the judges shall change circuits.

stitution." (Potter's Dwarris, 117, Yeas 65 pays 24 absent 82 (Pro. Con. Con., pp. 617, 622) language 100 Thus, then, is harmony restored to On the third rending of this section. however, (12th March), the words

ballot of the General Assembly."

State I'm bor see selding a will then

tions was framed, the office of Circuit Judge was not contemplated as coming within the range of these elections We have thus far endeavored to by the Assembly, but was to be filled by ballot through popular elections. by a "viva voce" vote of both houses When the idea of popular fudicial elecis contrary to express constitutional tion was altogether abandoned, some other elective body had to be substituted. On the second reading both the electoral body and the manner of conducting the election were assimilated to the law already adopted with regard to the election of Justices of the Supreme Court, but on the third reading the mode of election, which had not entered the arena of discussion on the second reading, was, without dissent, changed, and although the proceedings of the convention are silent as to the cause of this change, the presumption is that it was deliberately changes produced in the organic law adopted for we learn from the journals that Art. IV was "read by sections and passed for ratification." And here we would call attention to an important principle recognized by constituaid them in forming for themselves an tional writers, viz: That every word and phrase of the organic law is presumed to be deliberately considered and weighed before being adopted, and although there may be room for presumption that in the hesty and crude legislation of these "pursy times," tional Convention, which had been words and phrases in acts of Assembly called under the authority of the Pro- may be loosely and unadvisedly adoptvisional Government. The subject of ed, there is none for such presumption egislative elections, amongst others in the frame work of constitutions. embraced in the report of the commit- These are the pedestals on which rest tee on "Amendments of the Constitu- the liberties of the people, and not one tion," on motion of Mr. Dudley, was stone can be removed from them, by taken up 22d September, 1865, and, af- direction or indirection, without enter full and free discussion, the follow- dangering the total structure! We see ers of the constitution meant exactly Art. I, Sec. 25. In all elections by the what the words themselves import. General Assembly, or either House viz: that the Justices of the Supreme thereof, the members shall vote "viva Court should be elected by "joint vote" in accordance with the general provision, but the Circuit Judges by "joint ballot," in accordance with immemo-

But, it may be asked, what policy tution had survived and not perished was intended to be subserved by a terms, have left no room for dispute, feel under any pressing obligation to for on turning to Article III, Sec. 1, we answer the question in order to supfind: "The Judges of the Superior port our views. It is sufficient that Courts shall be elected by the General the intent is determined by the plate in it, heavy enough to hold it down in Assembly," leaving the manner of elec- established meaning of the words. the bottom of a washboiler or kettle tion to be controlled by the general The intent is thus fixed and unvarying, the policy may be shifting and uncer-We next come to the Constitution of tain. What may be good policy at one 1868, which met in Charleston on the time may be bad at another, and at another no policy at all.

It would appear from the remarks

upper districts) have the ability to elect democratic members, they may also elect democratic judges, but I prefer to trust to the people." And so we have his policy. But we might sugadopt this exceptional mode. It is very voting generally in the Assembly was course and conduct of each thereof should be patent to his constituency, it might have been deemed necessary that, in the election of cir cult judges, the secrecy of the ballot Bowen feared a circuit judge to whom, sert the words "of the State," which from their political principles, they might be obnoxious, and hence. line, and to insert the words by joint could they have adopted, for protection of the General Assembly." The debate upon Wilder's amend might seek to pursue against his on-

The circuit judges, until recently were confined to their respective circuits, a very limited territory. Most or adopting the affirmative is "sul vital and important interests of our citizens amongst whem they live are "It so happens," says he, "that to subject to their control. Besides the influence exercised by these judges over the verdict of jurite, they not only tryand determine questions of fact in or more circuits. This report provides equity, but there is a very large discretionary authority vested in them Perhaps the gentleman from Beaufort both in Dern time and at Chambers. Judges are but men, subject to all the as milistones, chargeable, gr (Wright) may find one of these judges infirmities of erring human nature, except always, although, almost the passions, prejudices mirable, etc. and resentments of our common hu- All monosyllables ending in a course voice in bis election. To prevent this ord, under the "viva voce" system, double that consider that porters and opponents in the judicial not one, but all the districts of the elections, their large, and, if misused, their dangerous discretionary power Wilder's amendment was carried may afterwards be employed to intispective adherents within their Circults. In many questions, particular by a single vowel and ac ly in applications for the restraining power of the judge by Injun were unanimously changed to "joint scales of justice have to be held with a delicate hand, and viewed with un- distil distiller. It appears from the above that when clouded judgment. It is apparent, the general provision in the Constitution as to legislative "viva voce" elec-

"If self the wavering balance shake, Tis rarely right adjusted. Pease, 27 N. Y. Rep., 81,) speaking of tant and valuable safeguard of the independence of the humble citizen."

"The spirit of the system requires that the effector should be secured against reproach or animadversion or any other prejudice on account of having voted according to his own unblased judgment; and that security is made to consist in shutting up within the privacy of his own mind all knowledge of the manner in which he has bestowed his suffrage." Mr. Cooley Cooley's Con. Lim. p. 604).

'Tis this important and valuable safe-

guard then which we claim for the Constitution, wherever and whenever its import and tenor demand its adoption: with issues arising in the State at large. Their duties do not bring them personal relations or contact with litigants. They deal only with abstract noise that it could be heard for in questions of law, in their general appli- and had the double effect of ratel cation alone affecting individuals and corporations, so much so as to be inca- of their unpleasant state, and al merit of hasibility to recommend it to but in a slow and solemn manne plain letter of the organic law.

KAPPA. WILLISTON, September 27, 1877.

Cleaning Beeswax.

that can be taken off readily. To prevent of Mackey, above quoted, that the the contents burning fast to the bottom in the enemy's country, and treat them dread of "rebel votes" in the upper of the kettle or boiler, place in the bot- to a little of what they have given us legislative elections was adopted ver- of Mackey, above quoted, that the the contents burning fast to the bottom

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less accompanied by the name and address of the writer, not necessarily for publication but as a guaranty of good faith.

Barnwell C. H., S. C. Rules for Spelling.

The following rules should be care fully committed to memory, as the

knowledge of them will prevent that hesitation about the spelling of com-mon words, which is frequently expe-rienced even by the well educated: All monosyliables ending in I, with a single vowel before it, have double I at the close; as mill, still.

All monosyllables ending in I, with a double yowel before it, have one I only

at the close; as wall, sail.

Monosyllables ending in I, when compounded, rotain but one I sack; as
fulfil, skiltul.

All words of more than one syllable ending in I, have one Louly in the close as faithful, delightful; except recall; befall, unwell, etc.

All derivations from words ending in

equal; except they end in er or ly, small, smaller, full, fully.

All participles in ing from verbs endand then they retain both—as sec,

ing; agree, agreeing. Adverbs in ly and nouns in ment, retain the e linal of the primitives—as brave, bravely; refine, refinement; except judgment, acknowledgment.
All derivations from words ending in reference; except hindrance from h der, remembrance from remember, dis-

nater, wondrous from wonde All compound words it both end not

their political friends and foes, sup- as sin, sinner; ship, shipper; big." gger : glad, gladder, etc. Monoeyllables ending in a constant with a double vowel before for do ouble the consonant in derivatives.... mate their sense of the course pur- as sleep, sleeping; troop, trooperput sued by the delegates and their re- All words of more than one syllabled ending in a single conscensi

Nouns of one syllable ending in y then, that the judicial mind should be change y into les in the plural, and free from the slightest blas or preju- verbs ending in v. preceded by a consonant, change y into les in the third person singular of the present tenne. and led in the past tende and parti-Chief Justice Denie (in People vs. cipies as fly, flies; I apply and he appiles; I replied or have replied, or he the ballot, which he styles "An impor- replied. If they be preceded by vowel this rule is not applicable-as key, keys; I play, be plays; we have

enjoyed ourselves. Compound words whose primitives end into y change y into i-as beauty, then, and at all times thereafter, beautiful; lovely, loveliness. Journal of Education, and a president of stabile

The Turks in Camp.

Last night there was great shouting in the camp, and I hear several correspondents who are now at Eski Saghra thought it was joy at the occupation of Tirnova expresses himself in similar terms. by the Turks. It was, however, only a renewal of the custom the troops had got into in Montenegro of shouting to each other. This custom the Marshal Mehemet Ali is very partial to, as he says it conduces greatly toward the keeping But the Justices of the Supreme up of good spirits among the men. H Court, it may be said, are elected by told us that often in Montenegro, when joint vote. Et bies! And so the Constitution expressly says. And why not? all huddled together and getting into ver The Justices of the Supreme Court deal low spirits, this shouting was set going, along the sides of the hills, together with their re-echoing sounds, made such men's spirits by breaking the n pable, withoutsmarked comment, of be- what damped the ardor of any enem ing made subservient to individual pre- who might be in hearing, and who natferences or resentments. Thus then we urally formed an enaggerated idea of have a policy to justify the discriminat- their numbers. In the camp liere there ing intent of the Constitutional Conven- is very little going on. Posts and out tion of 1868. We do not youch for its posts go out as usual, and drill goes on. correctness, but it has, at least, the I saw the same men dancing this evening those who are not satisfied with the befitting Turks. Some thirty formed in a line, the end files having hand in their hands . They then joined hand and began singing some kind of country moving three steps to the right, and Put the comb in a sack with a weight then doing balance movement on one foot, during which time the end files waved their handkerchiefs; then another which should have plenty of water in it, over the fire, and come to the boil, or very nearly so. When cold, the clean beeswax will stand on top in a nice cake that can be taken off readily. To prevent like to make even a small re-