opinion bear the test in point of discretion or equity. The shortness of the notice offers to my mind an insuperable objection. From the report before us, it appears that the sheriff of Washington made a proclamation of the election on the 31st of October, and that the election was holden on the 2d of November. It was not only morally impossible, but it was physically so, that one third of the electors could be informed; but this objection hath been anticipated on this floor, and great endeavors have been used to justify the shortness, I might say the want of notice, by alledging that the 2d day of November had been preferred, it being a day already appropriated for the election of electors, and that the notice given for that election would answer the purpose for the election of a representative in Congress, whilst it would save the electors the trouble of assembling again.

These considerations, more specious than solid, cannot prevent me from discovering the whole extent of danger of holding elections without certain principles and rules with respect to a previous notice. It was generally believed in Washington county, as in every other part of Pennsylvania, west of the mountains, that the election of electors would without any risk be carried, according to the wishes of a large majority. Hence many persons far distant from their respective election districts did rely upon those that were nearer to attend the election of electors; hence the result of the election for a member of Congress; had the electors of the district been informed, as they ought to have been, that a member of Congress was to be elected on that day, that although there was no danger of risking their object as to the election of electors, yet there might be some doubts as to the election of a representative, have we not every reason to believe from the repeated instances of public spirit prevailing in that district that the election would have been attended by probably more than three times the number of persons that did actually meet; and as to myself I have a strong presumption that the result would have been quite different from what it was. Some of the gentlemen, who supported the report, have endeavored to justify this election on the ground of precedents. They have said, that all former elections in Pennsylvania to fill vacancies in Congress have been holden under the same authority and circumstances. It is not improper to take notice, that this election is the first of the kind that hath been contested in Pennsylvania; that as no exceptions were taken to the former ones, it is an ordinary thing that the committee of elections report as legal elections, those that appear such from *prima facie* evidence; and they never enter into details, but when the elections are disputed. Ought precedents to govern where they militate against an express constitutional provision, and will gentlemen say that elections to fill vacancies held after thirty days notice, such as the first election of Wm. Hoge and others were, can be viewed as a precedent in point with an election held after one day's notice?

It hath been the pleasure of some honorable members to bring into view the motives that have actuated the governor of Pennsylvania in directing the election to be holden after so short a notice. The purity of these motives have been insisted upon, as if any member of this committee were questioning the good intentions of that magistrate; but the intentions of the governor, pure as I doubt not they were, cannot be the criterion to judge of the legality of this election. The governor may think one way, and this committee another, and yet we may all be influenced by good intentions. From the present view of the subject, I am induced to vote against the report. I lean still more to the rejection of the report, as by setting this election aside, the legislature of Pennsylvania, which is now in session, will feel more immediately the necessity of exerting its constitutional powers, and of prescribing by law the times, places and manner of holding elections to fill vacancies in future.

Mr. Jackson. Mr. Chairman—Two objections have been made by gentlemen to the report of the committee of elections: 1st, that the constitution of the United States requires that in *all* cases the times, places, and manner of holding elections shall be prescribed in each state by the legislature thereof; and as no law has been passed in Pennsylvania providing for the cases of supplying vacancies occasioned by death or resignation, that the election of Mr. Hoge is invalid.—2d. If the constitution does not conclude the question, we have a right to examine all the circumstances incident to the proclamation of governor M'Kean, and to determine whether the discretionary power vested in him by the constitution, as the executive of Pennsylvania, for the time being, was duly exercised or not; and it is asserted that it was improperly exercised by him.

The fourth section of the first article of the constitution, upon which the superstructure of the arguments on the first point rests, is in these words, "the times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof," &c.— The language of the section clearly proves it has reference to the general elections, and precludes the idea that it was intended to include the cases of vacancies, as no human or science could designate the proper TIME for holding elections to supply vacancies, that would thereafter occur. Who can determine when the incumbent will die? When the unrelenting hand of death shall cut the thread of life, or when some occurrence in life shall induce him to resign into the hands of the people the trust reposed in him? And unless these things are foreseen, the state legislatures cannot say at what TIME, at what place, and in what manner elections to supply vacancies shall be held. If the legislature were to pass a law regulating the *time* only, and leaving the *place* and *manner* to the direction of the executive officer conducting the election, on designating the place and leaving the time and manner to be fixed by him, it certainly would not be a compliance with the requisitions of the constitution; and a person thus elected would not be constitutionally entitled to a seat in this House. In the construction of a grant it is necessary that the person thereby claiming a privilege, shall shew that he has complied with all its requisitions, and it being imperative that the states shall prescribe the time, place, and manner of holding elections, I doubt very much whether a compliance with either requisition alone would be correctly within the meaning and spirit of the constitution.

I am the more inclined to adopt this construction, when I refer to the paragraph contained in the second section of the first article, which declares that "when vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies." Either this sentence has some meaning, or it has not; if it has any, it clearly follows that the cases of vacancies are provided for in a different way from that directed by the fourth section, which *succeeds* it. Mr. Chairman, when I contemplate the great talents and wisdom which the framers of this instrument possessed in an eminent degree, and the perspicuous and emphatic language which characterises its provisions, that not only every paragraph, but every word of each paragraph conveys some meaning, I cannot reject the sentence just read as a dead letter, unmeaning and inoperative; and unless it is rejected, the executive authority of any state has the power, and is *required* to issue writs of elections to fill such vacancies as may happen in its representation, independent of any state law, or provision; and in conformity with the *supreme* law of the land.

Some gentlemen, however, contend for a limited construction of this clause, granting to the executive authority to issue writs of election; by denying the right of designating the time, place and manner of holding such elections; but it is not to be presumed that a power so merely nominal would be guarded by the insertion of an independent and express provision. If, however, I err in the opinion I have advanced, I deny the propriety of making a contrary decision at this late day. The states, the great parties to the compact, have, without a single exception that I know of, considered, that vacancies are to be supplied by writs of elections under executive proclamations, and have not passed any law upon the subject. A respect for their decisions, for the uniform practise of this house, and a consciousness, that if we err, it is on the side of justice, will I hope incline us to sustain the report—if we do not, I call upon gentlemen to go through the House, to examine the rights of every individual to a seat; and to decide all cases similar to the one now before us in the same way. Sir, we have no law in Virginia providing for similar cases. I speak from present impressions; if I am mistaken, I will thank gentlemen to correct me. Two of my colleagues (Messrs. Clark and Wilson) now hold their seats in virtue of elections held to supply the vacancies occasioned by death, and resignation. If the gentleman from Pennsylvania is not entitled to his seat upon constitutional principles, my colleagues are not; if they are, he is. One gentleman from Pennsylvania, (Mr. Conrad) however, varying the ground of objection, says that the laws of Pennsylvania provide for the case, and require a notice of 20 days previous to holding elections, and as 20 days notice were not given, this election is void. The language of the law he read, proves he is mistaken; it provides for issuing writs of election by the Speaker of the Senate, or of the House of Representatives, as the case may be, to supply vacancies; and as neither branch of the state legislature, as such, has any thing to do with the election of representatives to Congress, it must clearly apply to members of the state legislature *only*.

I will now consider the right of examining the conduct of the executive of Pennsylvania, and of controling the discretionary power vested in him—and first permit me to declare that I believe it is entitled to the highest approbation, and was well calculated to procure a fair and honest expression of the public will. Congress were in session; the district of Washington unrepresented; and the necessity of providing for the exigency as soon as possible most apparent—an important election, the most important, Sir, which occurs under our constitution, about to take place, for the appointment of electors to choose a President and Vice-President of the United States, and upon that day by the Governor's proclamation was this election also to be holden. True, Sir, a lengthy notice was not given, it could not be given; without suffering this election to pass by, and requiring the people to assemble a second time after a short interval, which would have been highly inconvenient. He had reason to believe that all the people would have attended; it was eminently their duty to do so; as the magnitude of that election was great beyond comparison, when considered with the other. A gentleman from Pennsylvania (Mr. Conrad) has told us that he wishes the elections to be more frequent, as it is the interest and duty of the people to attend them. Where were they, I ask him, when the electors were chosen? Were they regardless of their interest and duty, asleep at their posts? Sir, the fact proves the unwillingness of the people to attend; and were the elections more frequent their neglect would increase with their numbers. I will not dwell longer upon this subject, in supporting the conduct of the Governor of Pennsylvania. The gentleman from South Carolina (Mr. Huger) has done ample justice to it. I now deny the right of this House to supervise or control the executive discretion of a free and independent state; and I call upon gentlemen to shew me whence that power is derived. It cannot be too often repeated that our's is a limited grant of powers; no constructive or implicative power is to be exercised by us; this is the language of the constitution; it is the language of common sense, if we have the power, I ask now is it to be exercised? Shall we erect ourselves into a high court of criminal judicature with censorial powers? Shall we say the governor of Pennsylvania acted from corrupt motives? That he was influenced by a desire to control the district of Washington in opposition to the people? Unless we do, Sir, I see no ground for interposition. Mr. Chairman, there is no power vested in this house more dangerous in its injudicious exercise, than the right of judging of the elections, returns, and qualifications of its members; by it a party may determine of what number the minority shall consist, and even whether there shall be any minority at all; I will never consent to exercise this power, even legitimately, except in cases of urgent necessity.

THURSDAY, November 29.

The Bill to regulate the clearance of armed merchant vessels was taken up in committee of the whole, Gen. Varnum in the chair.

The bill was read as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That after due notice of this act at the several custom Houses, no merchant vessel armed or provided with the means of being armed at sea, shall receive a clearance, or be permitted to leave the port where she may be so armed or provided, without bond, with two sufficient sureties being given by the owner or owners, or by the master or commander, to the use of the United States in a sum equal to double the value of said vessel, conditioned that such vessel shall not make or commit any depredation, outrage, unlawful assault or violence against the vessels, citizens, subjects or territory of any nation in amity with the United States; provided, that the regulations herein contained shall not be construed to extend to vessels bound to any port or place in the Mediterranean, or beyond the Cape of Good Hope.

Sec. 2. *And be it further enacted*, That if any armed merchant vessel clearing for any port or place within the Mediterranean or beyond the Cape of Good Hope, shall make or commit any depredation, outrage, or unlawful assault, or violence as aforesaid, on her voyage to or from, or at any place to which she may be bound, such vessel with her arms and cargo, or the value thereof shall be forfeited to the use of the United States.

Sec. 3. *And be it further enacted*, That on satisfactory evidence or information being given to the collector of any port, that any vessel within the same is armed or arming or provided with the means of being armed at sea, for the purpose of committing any unlawful act as herein before expressed, or of carrying on by force of arms, any unlawful commerce, it shall be the duty of such collector to detain such vessel until the case be submitted to the President of the United States, who is hereby authorised to cause such vessel to be disarmed, or to order a clearance to be granted, as he shall judge proper.

Mr. *Crowninshield* moved to amend the first section of the bill in such manner as to prevent armed merchant vessels from clearing out for one port and sailing to another; it would prevent a deviation from the true voyage.

Mr. *J. Clay* thought this alteration would extend beyond what was the true object of the bill; it might interrupt the European trade, while it was only intended to prevent the forced trade to St. Domingo. He suggested an amendment to the amendment, viz. to confine the forfeiture of armed vessels clearing for one port of the West-Indies, and which shall proceed to any other port or place than that of her original destination.

Mr. *Crowninshield* moved then to strike out the whole of the second section, he thought it unreasonable to forfeit the cargo as well as the vessel, her arms, tackle, and furniture.

Mr. *Rodney* asked whether the committee would not be put to greater inconvenience by striking out the section than by amending it.

On the question to strike out, it was lost, only 32 voting for the motion.

Mr. *J. Clay* then moved to insert the amendment he had suggested, adding thereto, "unless compelled by stress of weather." The sole object being to confine the regulation of the clearance of armed vessels to those destined to the West Indies.

On a division, Mr. J. Clay's motion was agreed to—Ayes 62.

Mr. *Crowninshield* then offered another amendment, to extend the regulation of the clearance of armed merchant vessels to the Mediterranean, and beyond the Cape of Good Hope.

Mr. *J. Clay* did not see the necessity of this amendment, as vessels bound to those places never touched at the West Indies.

On the question, only 24 members were in favor of the motion; of consequence it was not carried.

Mr Crowninshield then moved to strike out that part which related to the forfeiture of the cargo in which he was supported by

Mr. Eustis who represented it as an enormous hardship upon the owner to put at risk 4 or 500,000 dollars, for which he was to give sureties; and which might be the value of the cargo.

On the question the word cargo was struck out, 71 being in the affirmative.

On motion of Mr. Eustis after the words in the first section that they "should not commit any depredation, outrage, unlawful assault, or violence" these words were added "nor make any other unlawful use of her arms."

Mr. Eustis suggested the propriety of adding a new section to the bill, to extend the security against the commander, making also an improper use of the arms intrusted to him, or selling them to others in the West Indies.

A question was however previously taken on a motion to strike out what respected the forfeiture of the cargo in the fourth section, which the mover observed, he would not have made, but that the words had been stricken out of the second section; his own private judgment being that the cargo as well as the vessel should be forfeited for an improper use of their arms; but he moved it for the sake of consistency.

On the question, there were 51 for striking out, and 40 in the negative.

Mr. Eppes thought the bill founded on erroneous principles; instead of permitting our merchantmen to arm and afterwards punishing them for the abuse of those arms, he conceived it would be infinitely more prudent and politic to restrain them altogether from arming.

Mr. J. Randolph, fully impressed with the importance of the ideas suggested by Mr. Eustis, in relation to selling their arms and vessels in the West Indies, or rather to the people of St. Domingo, thought it would be better for the committee of the whole to rise, report the amendments, that the House might incorporate them into the bill, and direct the whole to be printed.

This course was accordingly pursued, and the bill made the order for Wednesday.

THURSDAY, December 13.

The consideration of the bill to regulate the clearance of armed merchant vessels, was resumed. The bill as amended was read as follows:

A bill to regulate the clearance of armed merchant vessels.

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That after due notice of this act at the several custom houses, no merchant vessel armed or provided with the means of being armed at sea, shall receive a clearance, or be permitted to leave the port where she may be so armed or provided, without bond, with two sufficient sureties being given by the owner or owners, or by the master or commander, to the use of the United States, in a sum equal to double the value of said vessel, conditioned that such vessel shall not make or commit any depredation, outrage, unlawful assault, or violence, nor make any other unlawful use of her arms against the vessels, citizens, subjects, or territory of any nation in amity with the United States; *Provided*, That the regulations herein contained shall not be construed to extend to vessels bound to any port or place in the Mediterranean, or beyond the Cape of Good Hope.

Sec. 2. *And be it further enacted*, That if any armed merchant vessel clearing for any port or place within the Mediterranean or beyond the Cape of Good Hope, shall make or commit any depredation, outrage, unlawful assault, or violence as aforesaid, on her voyage to or from any place to which she may be bound or elsewhere, or shall wilfully proceed to any port or place in the West Indies, such vessel with her arms, tackle, and furniture, or the value thereof, shall be forfeited to the use of the United States.

Sec. 3. *And be it further enacted*, That on satisfactory evidence or information being given to the collector of any port, that any vessel within the same is armed or arming, or provided with the means of being armed at sea, for the purpose of committing any unlawful act as herein before expressed, or of carrying on by force of arms, any unlawful commerce, it shall be the duty of such collector to claim such vessel until the case be submitted to the President of the United States, who is hereby authorised to cause such vessel to be disarmed, or to order a clearance to be granted, as he shall judge proper.

Sec. 4. *And be it further enacted*, That if any armed vessel as aforesaid, shall proceed to sea without a clearance, or shall leave the port, where her detention or disarming shall be required, contrary to the provision of this act, such vessel with her arms, furniture, and tackle, or the value thereof, shall be forfeited to the use of the United States.

Mr. Crowninshield moved to strike out the proviso to the 1st section, which declared that the regulations contained in the bill should not be construed to extend to vessels bound to the Mediterranean, or beyond the Cape of Good Hope.

Mr. *Eppes* observed there were only two cases in which nations usually allowed their merchant vessels to arm; the one, when a nation is at war, when she willingly takes advantage of the aid furnished by her subjects in arming private vessels of war or letters of marque. The other, when the trade is so remote and the seas so dangerous to peaceable navigators, that each vessel must be qualified to defend itself, as the nation can neither furnish convoys nor establish a force for their protection. He considered the latter case to be provided for by the proviso, and it was to him the most unexceptionable part of the bill. He did not approve of allowing merchant vessels to arm at all. He therefore would move to strike out all that part of the section which went to allow a clearance upon giving bond not to commit depredations on the vessels or subjects of nations in amity with the United States, and so on to the end of the section. As this included the words intended by Mr. Crowninshield to be struck out, he presumed his motion would therefore supercede that made by that gentleman, and after the words were struck out, he meant to insert after the words, "shall receive" at any custom house of the United States any clearance, or be permitted to leave the port where she shall be so armed and provided, unless bound to the Mediterranean, or beyond the Cape of Good Hope.

In passing the first section of the bill in the way it now stood, he was convinced that we adopted a principle, almost, if not entirely unknown to maritime jurisprudence, and such as would without great caution involve the United States in a foreign war. He did not think that circumstances required the adoption of that principle at this time. The following passage in the President's message he suspected gave rise to the present measure:

"While noticing the irregularities committed on the ocean by others those on our part should not be omitted, nor left unprovided for. Complaints have been received that persons, residing within the United States, have taken on themselves to arm merchant vessels, and to force a commerce into certain ports and countries, in defiance of the laws of those countries. That individuals should undertake to wage private war, independently of the authority of their country, cannot be admitted in a well ordered society. Its tendency to produce aggression on the laws and rights of other nations, and to endanger the peace of our own, is so obvious, that I doubt not you will adopt measures for restraining it effectually in future."

These are the evils we are called upon to correct; but let him ask whether the remedy was of a nature to cure the disease. What! Shall it be permitted to every man, who can execute a bond, to wield the arms of the nation! Yet this is the only circumstance required to make a commander of an armed merchant vessel, and this too in a time of profound peace. The evil complained of by the President is that our merchants have taken upon themselves to arm and force a commerce. The obvious remedy is to take away their arms, for then the evil can no longer exist. It is much more easy and more politic to prevent the injury being committed, than to punish the party for the offence.

We are told that armed vessels sailing to the West Indies, are sold with