

the war is carried on. The Constitution cannot mean to destroy all freedom of opinion and all liberty of speech in regard to the measures and character of those whom the people have entrusted with power. Error in political sentiment and action is something widely different from treasonable conduct and to consider them in the same light and administer like punishment to them would be a course fraught with danger to a free State. The undersigned in order to be brief, refrains from a more detailed examination of the testimony.

On another important point the undersigned entirely disagrees with the majority of the committee. Even if Dr. Maclin be disqualified, he cannot assent to the position that the Senate can declare the contestant, Mr. Holten, entitled to a seat in this body, as Senator from Howard county. It would be strange indeed, if the very candidate whom the legal voters of the county had most unequivocally rejected by a decided majority should be declared entitled to a seat in this body, for that he has been so rejected is a fact on which there can be no dispute; and it would be most unfortunate if the Constitution or the laws permitted such a violation of the rights of constituencies. But such is not the law. Both the Constitution, by its express terms and the established laws of elections, independently of the Constitution, require that a warrant for a new election shall be issued. The 8th section of the 1st Article of the Constitution, provides that, "every person hereafter elected or appointed to office in this State, who shall refuse or neglect to take the oath or affirmation of office, provided for in the said 7th section shall be considered as having refused to accept the said office, and a new election or appointment shall be made as in case of refusal to accept or resignation of an office." And the 12th section of the 3d Article, says: In case of death, disqualification, resignation, refusal to act, expulsion or removal from the county or legislative district of Baltimore city for which he shall have been elected, of any person who shall have been chosen as Delegate or Senator, or in case of a tie between two or more such qualified persons, a warrant of election shall be issued by the Speaker of the House of Delegates or President of the Senate, as the case may be, for the election of another person in his place, &c." These two sections cover the whole ground and show that in all such cases a new election must be held.

But even on the general law of elections, "votes for an ineligible candidate are thrown away and the opposing candidate elected" only in cases "where the electors know or must be presumed to know the disability." [Cushing, on Law of Elections, part 1 ch. 6, section 179.] How could any such disability be presumed to be known to the electors in this case, supposing it really to have existed, when the most intimate, personal and political associates of Dr. Maclin have