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SUPREME COURT
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SUPREME COURT OF THE STATE OF WASHINGTON

VICKI LEE ANNE PARKER and JAMES S. JOHNSON,

Appellants,

v.

KIM WYMAN, in her capacity as Thurston County Auditor, and
CHRISTINE SCHALLER-KRADJAN, MARIE CLARKE, and VICTOR
MINJARES,

Respondents.

And

MARIE C. CLARKE,

Appellant,

v.

KIM WYMAN, Thurston County Auditor, and
CHRISTINE SCHALLER- KRADJAN,

Respondents.

APPELLANT MARIE CLARKE'S STATEMENT OF
ADDITIONAL AUTHORITIES

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 ORIGINAL

Pursuant to RAP 10.8, Appellant Marie Clarke respectfully submits the following additional authorities. Copies of the relevant excerpts of these authorities are attached.

Regarding (1) Ms. Clarke's argument that territorial laws remain valid pursuant to Article XXVII, Section Two of the Constitution and (2) Ms. Schaller's argument that Article IV, Section 8 of the Constitution renders RCW 42.12.010(4) (declaring an elective office vacant when the relevant officer ceases to be a resident of the community he or she has been elected from) unconstitutional as applied to the judiciary,¹ Ms. Clarke submits the following authorities:

- Code of 1881 §3063 (“Every office shall become vacant on the happening of either of the following events ... fourth, his ceasing to be an inhabitant of the district, county, town or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged[.]”).
- Code of 1881 §3053 (“Absence from the Territory, on business, shall not affect the question of residence of any person: Provided. The right to vote has not been claimed or exercised elsewhere.”).
- Wash. Const. art. IV, § 8 (“Any judicial officer who shall

¹ Answer of Respondent Schaller to State's Amicus Brief at 11.

absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office[.]”).

- Robert F. Utter and Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* 104 (2002) (Article IV, Section 8 of the Constitution “was probably in response to the judicial absences that occurred during the 1860s, when judges would on occasion neglect their judicial duties to pursue political opportunities outside the Territory.”).
- Wilfred J. Airey, *A History of the Constitution and Government of Washington Territory* 272, 290-91 (1945) (unpublished Ph.D. thesis, University of Washington, Seattle) (describing “popular dissatisfaction” and “embarrassment” of the people of Washington Territory over the fact that territorial judges were absent from the Territory for significant periods of time, resulting in some court terms being missed in their entirety).

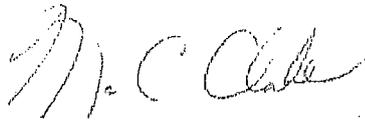
Regarding Ms. Schaller’s argument that proceedings of the Constitutional Convention are more conclusive than proceedings of the Legislature,² Ms. Clarke submits the following authority:

- Thomas M. Cooley, *A Treatise on the Constitutional*

² Answer of Respondent Schaller to State’s Amicus Brief at 7 n.6.

Limitations Which Rest Upon the Legislative Power of the States of the American Union 66-67 (2d ed. 1871) (The proceedings of a constitutional convention “are less conclusive of the proper construction of the instrument than are legislative proceedings of the proper construction of a statute; since in the latter case it is the intent of the legislature we seek, while in the former we are endeavoring to arrive at the intent of the people through the discussions and deliberations of their representatives.”).

RESPECTFULLY SUBMITTED this 15th day of October, 2012.



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PROOF OF SERVICE

I hereby certify that on October 15, 2012, Appellant Marie Clarke's Statement of Additional Authorities was filed electronically with the Clerk of the Supreme Court and, due to the expedited briefing schedule and agreement of the parties, a copy was served via email on October 15, 2012, to the following parties or counsel of record:

1.	Supreme Court	supreme@courts.wa.gov
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 15th day of October, 2012, at Olympia, WA.



Marie C. Clarke

Code of 1881 §§ 3053, 3063

be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this Territory, or of the United States, or of the high seas; nor while a student of any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison, excepting when serving out a sentence in the penitentiary for an infamous crime.

Sec. 3.—3052. No idiot, or insane person, or persons convicted of an infamous crime, shall be entitled to the privilege of an elector.

Sec. 4.—3053. Absence from the Territory, on business, shall not affect the question of residence of any person: Provided. The right to vote has not been claimed or exercised elsewhere.

Sec. 5.—3054. A crime shall be deemed infamous which is punishable by death or imprisonment in the penitentiary.

CHAPTER CCXXXIX.

Time of Holding, and Manner of Conducting Elections.

Sec. 6.—3055. The election of legislative, district, county and precinct officers, in this Territory, shall be held on the Tuesday following the first Monday of November, Anno Domini, eighteen hundred and eighty-two, and thereafter biennially, on the Tuesday next following the first Monday in November; and all elective, Territorial, legislative, district, county, and precinct officers shall hereafter be elected at the times herein specified.

Sec. 7.—3056. Special elections are such as are held to supply vacancies in any office, whether the same be filled by the vote of the qualified electors of the Territory, or any district, county or township, and may be held at such times as may be designated by the proper officer.

Sec. 8.—3057. All vacancies which are about to occur in an office, by the expiration of the full term thereof, shall be supplied at the general election.

Sec. 9.—3058. It shall be the duty of the Governor, at least sixty days before any general election, to issue his proclamation, designating the offices to be filled by the Territory at large at such election, and to transmit a copy thereof to the county auditor of each county.

Sec. 10.—3059. It shall be the duty of the county auditors of the senior counties in any joint council or representa-

tative district, to issue to the county or counties, composing said district, thirty days before any general election, notice designating the office to be filled at each election by said district.

Sec. 11.—3060. It shall be the duty of each county auditor to give at least thirty days' notice of any general election, and at least fifteen days previous to any special election, by posting or causing to be posted up at each place of holding election in the county, a written or printed notice thereof; said notice to be, as circumstances will admit, as follows: Notice is hereby given that on the — day of — next, at —, in the — district or precinct of — in the county of —, an election will be held for Territorial, county, town or district officers (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this — day of —, A. D., 18—. A. B., County Auditor.

Sec. 12.—3061. Nothing in this chapter shall be so construed as to authorize the election of road supervisor, under the provisions of the chapter.

CHAPTER CCXL.

Resignations and Vacancies and Supplying Vacancies.

Sec. 13.—3062. Resignations shall be made as follows: By the Territorial officers and members of the legislative assembly, to the Governor; by all county officers, to the county commissioners of their respective counties; by all other officers, holding their offices by appointment, to the body, board or officer that appointed them.

Vacancies.

Sec. 14.—3063. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such officer. First, the death of the incumbent; second, his resignation; third, his removal; fourth, his ceasing to be an inhabitant of the district, county, town or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged; fifth, his conviction of an infamous crime, or of any offense involving a violation of his official oath; sixth, his refusal or neglect to take his oath of office, or to give or renew his official

Wash. Const. art. IV, § 8

and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justice's and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on non-judicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and non-judicial days.

SECTION 7 EXCHANGE OF JUDGES — JUDGE PRO TEMPORE. The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his or her duty to do so. A case in the superior court may be tried by a judge pro tempore either with the agreement of the parties if the judge pro tempore is a member of the bar, is agreed upon in writing by the parties litigant or their attorneys of record, and is approved by the court and sworn to try the case; or without the agreement of the parties if the judge pro tempore is a sitting elected judge and is acting as a judge pro tempore pursuant to supreme court rule. The supreme court rule must require assignments of judges pro tempore based on the judges' experience and must provide for the right, exercisable once during a case, to a change of judge pro tempore. Such right shall be in addition to any other right provided by law. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement. [AMENDMENT 94, 2001 Engrossed Senate Joint Resolution No. 8208, p 2327. Approved November 6, 2001.]

Amendment 80 — Art. 4 Section 7 EXCHANGE OF JUDGES — JUDGE PRO TEMPORE — *The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.* [Amendment 80, 1987 Senate Joint Resolution No. 8207, p 2815. Approved November 3, 1987.]

ORIGINAL TEXT — Art. 4 Section 7 EXCHANGE OF JUDGES — JUDGE PRO TEMPORE — *The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case.*

SECTION 8 ABSENCE OF JUDICIAL OFFICER. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office: *Provided*, That in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

SECTION 9 REMOVAL OF JUDGES, ATTORNEY GENERAL, ETC. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in

(Rev. 12-10)

which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.

Removal, censure, suspension, or retirement of judges or justices: Art. 4 Section 31.

SECTION 10 JUSTICES OF THE PEACE. The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: *Provided*, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed three thousand dollars or as otherwise determined by law, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use. [AMENDMENT 65, part, 1977 Senate Joint Resolution No. 113, p 1714. Approved November 8, 1977.]

Amendment 65 also amended Art. 4 Section 6.

Amendment 28, part (1952) — Art. 4 Section 10 JUSTICES OF THE PEACE — *The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed one thousand dollars, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.* [AMENDMENT 28, part, 1951 Substitute House Joint Resolution No. 13, p 962. Approved November 4, 1952.]

Note: Amendment 28 also amended Art. 4 Section 6.

Original text — Art. 4 Section 10 JUSTICES OF THE PEACE — *The legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. In incorporated cities or towns having more than five thousand inhabitants the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.*

SECTION 11 COURTS OF RECORD. The supreme court and the superior courts shall be courts of record, and the legislature shall have power to provide that

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Robert F. Utter and Hugh D. Spitzer, *The
Washington State Constitution: A Reference
Guide* 104 (2002)

tempore either with the agreement of the parties if the judge pro tempore is a member of the bar, is agreed upon in writing by the parties litigant or their attorneys of record, and is approved by the court and sworn to try the case; or without the agreement of the parties if the judge pro tempore is a sitting elected judge and is acting as a judge pro tempore pursuant to supreme court rule. The supreme court rule must require assignments of judges pro tempore based on the judges' experience and must provide for the right, exercisable once during a case, to a change of judge pro tempore. Such right shall be in addition to any other right provided by law. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

This section provides for visiting superior court justices and judges pro tempore. Basically, this provision is simply an enlargement of Section 5 (*Hindman v. Boyd*, 1906). A visiting judge has all of the powers conferred upon a regularly elected judge (*Demaris v. Barker*, 1903). However, consent of the parties litigant is required to try a case before a judge pro tempore and is an essential element to the jurisdiction of such a judge (*National Bank of Washington v. McCrillis*, 1942). Amendment 94, adopted in 2002, clarified that assignment of a judge to sit in another court on a temporary basis would not require consent of the parties; however, a party would retain a one-time right to ask for removal of an assigned judge in a case.

SECTION 8

Absence of judicial officer. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office; Provided, That in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

This section was probably in response to the judicial absences that occurred during the 1860s, when judges would on occasion neglect their judicial duties to pursue political opportunities outside the Territory (*Airey*, 1945, 272, 290-91). The governor's extensions of leaves of absence have included long periods to accommodate judges' military service during war (*State v. Britton*, 1947).

SECTION 9

Removal of judges, attorney general, etc. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption,

malfeasance, or delinquency in such resolution. But no removal of shall have been served with ground of removal, and shall be defense. Such resolution shall be houses and on the question of entered on the journal.

This section provides for the ir and prosecuting attorneys and wa California's 1879 Constitution, an 614). No legal questions have be on this section. The removal, cen justices is also regulated by Articl impeachment of the attorney gene same section as that of judges; thi of attorneys as "officers of the co

SECTION 10

Justices of the peace. The legi of the peace to be elected and jurisdiction of justices of the pr by the legislature shall not tre courts of record, except that j tices of incorporated cites and inal jurisdiction in cases whi controversy is less than three exceed three thousand dollars be prescribed by the legislatur than five thousand inhabitant salary as may be provided by use.

This section provides for jus was changed in 1952 and 1977 Legislature has power to set qua v. State, 1975), to determine the 1962), and to establish their jur Improvement Act of 1984 conv district court system. Laws of all references to justices of the p courts. Municipal court judges judges of "inferior courts" gov

Wilfred J. Airey, *A History of the Constitution
and Government of Washington Territory* 272,
290-91 (1945) (unpublished Ph.D. thesis,
University of Washington, Seattle)

The legislature of 1862-1863 created several new Territorial courts for the various counties. As the legislature organized new counties thereafter, it provided them with these Territorial courts.(1) The restrictions on the district courts and the new Territorial county courts illustrate the dual nature of the Territorial judicial system; it was both a Territorial and a Federal system, but largely Territorial.(2)

JUDICIAL ABSENCES

The legislature of 1865-1866 petitioned Congress for the popular election of Territorial judges because two of the three judges had been absent from the Territory for so long a time during the last year that the supreme court and a good many of the district courts could not meet, thereby causing inconvenience and embarrassment to the people of the Territory.(3) Although a bill was introduced in Congress in 1867 to remedy this abuse, no action was taken until the Revised Statutes were issued in the following decade at which time the President had to sanction the absence or the offending official might lose his salary for the year in which the absence occurred.(4)

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1. Beardsley and McDonald. Op. cit., p. 78.
 2. The Federal Government was reluctant to pay additional money to accommodate purely Territorial cases.
 3. Laws of Washington, 13th Sess., p. 219, 1865-1866. Justice J. E. Wyche defended his absence in 1865, on the basis that he had held all courts for four years, two years for Chief Justice C.C.Hewitt who was in the east. Hewitt, Justice E.P.Oliphant, Governor William Pickering, and Surveyor-General Anson G. Henry had all been absent longer than he. Pacific Tribune, Olympia, February 11, 1866.
 4. Congressional Globe, 39th Cong., 1st Sess., p. 1628, 1866; Revised Statutes, Sect. 1884.

POPULAR DISSATISFACTION

The fortunes of the Territorial judiciary reached their lowest ebb during the political controversies from 1865 to 1870. Besides unrest over excessive absences, other evidences of popular disaffection are to be noted. In 1865 the people of Walla Walla complained that Judge Wyche never resided there when he was appointed to that district. That spring he did not arrive until one week of the term of court had passed and left so soon that he failed to finish important judicial business. That fall both he and Judge Oliphant were in the east, but he failed to notify the clerk at Walla Walla in time to obtain the services of Chief Justice Hewett for the October term of court which had about 30 cases on the docket.(1) As a result, the people of Walla Walla were deprived of a court for an additional six months. Little wonder that they looked to Oregon as a place where justice was much more easily obtained.(2) While Wyche claimed to remain in the east to visit friends he was in Washington, D.C.,

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1. Bancroft Scraps, Vol. CX, "District Court, October 6, 1865". Chief Justice Hewett was the only remaining judge in the Territory, and he was at Olympia, 500 miles journey. Wyche's request for Hewett to hold court for him was also so tardy that it would not reach the Chief Justice until after the term of court was to convene.
 2. Idem. "In Oregon, not a stone's throw from us, the people elect Congressmen, who have a vote and voice in the national legislature; here we elect a Delegate who is a beggar... to the lower house; there they have in each county two terms of the Circuit Court per year, also, each month a term of the County Court with jurisdiction to \$500 in civil cases, and Justice Courts always in session, having jurisdiction to \$250 in civil cases; while here, when we can get a Judge, we have two terms of the District Court, and a Justice Court with jurisdiction of but \$100."

in November attempting to secure the removal of Pickering and his own appointment as Governor.(1) It is, therefore, not surprising that the legislature of 1865-1866 petitioned Congress for a check on the abuse of undue absences.(2)

This popular dissatisfaction with the judges came to a head when the legislature of 1867-1868 attacked Chief Justice Christopher C. Hewitt. Hewitt's opposition had become so general by January, 1868, that the legislature assigned him to Stevens County to reside there and gave the bulk of the Territory to Judge Wyche.(3)

A prominent judicial quarrel resulted from this act redistricting the Territory and assigning Judge Hewitt to Stevens County. Early in February, 1868, Judge Wyche rushed to Olympia to take over the office and records held by Chief Justice Hewitt, thereby indicating his personal interest in the affair, particularly since Hewitt insisted that this Act was null and void.(4) When Wyche promptly removed C. C. Hewitt's chief clerk, R. W. Hewitt, and appointed a Democrat in his stead, the

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1. A. A. Denny to D. Bagley, November 23, 1865, A. A. Denny Letters, Pacific Northwest Collection, University of Washington. Denny concludes the letter: "I think he now has more than he deserves unless he would remain at his post, but all this is not for the public as coming from me." On his return Wyche attempted to justify his absence on the grounds that others were greater offenders than he. - Pacific Tribune, February 11, 1866. This justification is discussed earlier in this chapter.
 2. Laws of Washington, 13th Sess., p. 219, 1865-1866. This Memorial is discussed earlier in the chapter.
 3. Ibid., 1st Biennial Sess., p. 23, 1867-1868. This Act and its subsequent disavowal by Congress is discussed in some detail in the chapter on the relations of the Federal Government to the Territory. See Snowden, Op. cit., pp. 181-182.
 4. Washington Standard, March 7, 1868.

Thomas M. Cooley, *A Treatise on the
Constitutional Limitations Which Rest Upon the
Legislative Power of the States of the American
Union* 66-67 (2d ed. 1871)

ers, we ought to interpret and apply the words used in a manner suitable and consonant to that reason, and as will be best calculated to effectuate the intent. Great caution should always be observed in the application of this rule to particular given cases; that is, we ought always to be certain that we do know, and have actually ascertained, the true and only reason which induced the act. It is never allowable to indulge in vague and uncertain conjecture, or in supposed reasons and views of the framers of an act, where there are none known with any degree of certainty."¹ The prior state of the law will sometimes furnish the clue to the real meaning of the ambiguous provision,² and it is especially important to look into it if the constitution is the successor to another, and in the particular in question essential changes have apparently been made.³

* *Proceedings of the Constitutional Convention.* [* 66]

When the inquiry is directed to ascertaining the mischief designed to be remedied, or the purpose sought to be accomplished by a particular provision, it may be proper to examine the proceedings of the convention which framed the instrument.⁴ Where the proceedings clearly point out the purpose of the provision, the aid will be valuable and satisfactory; but where the question is one of abstract meaning, it will be difficult to derive from this source much reliable assistance in interpretation. Every member of such a convention acts upon such motives and reasons as influence him personally, and the motions and debates do not necessarily indicate the purpose of a majority of a convention in adopting a particular clause. It is quite possible for a clause to appear so clear and unambiguous to the members of a convention as to require neither discussion nor illustration; and the few remarks made concerning it in the convention might have a plain tendency to lead directly

¹ Smith on Stat. and Const. Construction, 634. See also remarks of *Bronson, J.*, in *Purdy v. People*, 2 Hill, 35-37.

² *Baltimore v. State*, 15 Md. 376; *Henry v. Tilson*, 21 Vt. 485; *Hamilton v. St. Louis County Court*, 15 Mo. 30; *Story on Const.* § 428.

³ *People v. Blodgett*, 13 Mich. 147.

⁴ Per *Walworth*, Chancellor, *Coutant v. People*, 11 Wend. 518, and *Clark v. People*, 26 Wend. 602; Per *Bronson, J.*, *Purdy v. People*, 2 Hill, 37; *People v. N. Y. Central Railroad Co.* 24 N. Y. 496. See *State v. Kennon*, 7 Ohio, x. s. 563.

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away from the meaning in the minds of the majority. It is equally possible for a part of the members to accept a clause in one sense and a part in another. And even if we were certain we had attained to the meaning of the convention, it is by no means to be allowed a controlling force, especially if that meaning appears not to be the one which the words would most naturally and obviously convey.¹ For as the constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.² These proceedings therefore are less conclusive of the proper construction of the instrument than are legislative proceedings of the proper construction of a statute; since in the [* 67] latter case it is the intent of the * legislature we seek, while in the former we are endeavoring to arrive at the intent of the people through the discussions and deliberations of their representatives. The history of the calling of the convention, the causes which led to it, and the discussions and issues before the people at the time of the election of the delegates, will sometimes be quite as instructive and satisfactory as any thing to be gathered from the proceedings of the convention.

Contemporaneous and Practical Construction.

An important question which now suggests itself is this: How far the contemporaneous construction, or the subsequent practical construction of any particular provision of the constitution, is to have weight with the courts when the time arrives at which a judicial decision becomes necessary. Contemporaneous construction may consist simply in the understanding with which the people received it at the time, or in the acts done in putting it in operation, and which necessarily assume that it is to be construed in a particular way. In the first case it can have very little force, because the evidences of the public understanding, when nothing

¹ Taylor v. Taylor, 10 Minn. 126. And see Eakin v. Racob, 12 S. & R. 352; Aldridge v. Williams, 3 How. 1; State v. Doron, 5 Nev. 399.

² State v. Mace, 5 Md. 348; Manly v. State, 7 Md. 147.