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Select Poetry.

A GENTLE WORD IS NEVER LOST.

A gentle word is never lost,
Oh never then refuse one;
It cheers the heart when sorrow-tost,
And lulls the cares that bruise one;
It scatters sunshine o'er our way,
And turns our thorns to roses;
It changes weary night to day,
And hope and love discloses.

A gentle word is never lost—
Thy fallen brother needs it;
How easy and how small the cost,
With peace and comfort speed it.
Then drive the shadow from thy cheek,
A smile can well replace it;
Our voice is music when we speak,
With gentle words to grace it.

THE REGISTRY LAW OF PENNSYLVANIA CONSTITUTIONAL.

SUPREME COURT IN BANC—PRESENT, CHIEF JUSTICE THOMPSON, AND JUSTICES READ, AGNEW, SHARSWOOD, AND WILLIAMS.

Agnew, J. delivered the following opinion in the case of Patterson et al. vs. Barlow et al., which decides that the registry law is constitutional:

We regret that the necessity for an immediate decission in this case has allowed so short a time for the preparation of our opinion, and that the public character of the question demands a treatment too full to be compatible with brevity.

The plaintiffs are private citizens, electors of the Commonwealth, taxpayers, and holders of real estate in the city of Philadelphia. By their bill they ask us to declare illegal and void an act of the General Assembly passed the 17th of April, 1869, supplemental to the election laws of the Commonwealth, and to enjoin the Councils, Aldermen, Commissioners, Controller, and Treasurer of the city from carrying its provisions into effect. The defendants deny the standing of the plaintiffs as proper parties, and the jurisdiction of the court over the subject. In view of the danger to the peace and quiet of the people if the constitutionality of this law should be left in uncertainty, we shall pass by the question of standing and jurisdiction in order to reach the all-important one upon the validity of the law. In passing them by we do not mean it to be inferred that we have not grave doubts of the rights of the plaintiffs to represent the public, and of our own jurisdiction to enjoin against one of the political systems of the State in its entire scope, because of the invalidity of some of its provisions. We doubt the right of the plaintiffs to call for an injunction beyond that portion of the law which they, as private citizens, can show to be injurious to their own rights, and it is more than doubtful how far, as private citizens, they can impugn the law in its public aspects, and ask us to restrain its execution on public grounds. This is the only system to regulate elections intended by the Legislature to be left in force; all laws supplied by it and all inconsistant with it being expressly repealed. If, as a court of equity, we can lay our hands on the whole system, because of the illegality of some of its parts, we can on the eve of any election, arrest the entire political machinery of the Commonwealth, which is set in motion by a general election. This is a stupendous power; and to see its true aspect, we have only to suppose the act of 1839, and its supplements, to be still in force, and that this bill is filed to enjoin against it on the ground of the alleged illegality of some of its provisions. As a question of power, we should have the same right to enjoin against it, and thus to stop the wheels of government. See the *State of Mississippi vs. Andrew Johnson*, 4 *Wallace*.

We come now to the important question, whether the act of 17th of April last, called the registry law, is constitutional? It is admitted that the constitution cannot execute itself, and that the power to regulate elections is a legislative one, which has always been exercised by the General Assembly since the foundation of the Government. The constitution appoints the time of the general election, prescribes the qualifications of the voters, and enjoins the ballot, and for all the rest the law must provide. The precincts and places, the boards of election, the lists of electors, whether called a list of taxables or registry of voters, and the evidence of persons and qualifications, must all be prescribed by law. This undoubted legislative power is left by the constitution to a discretion unfettered by rule or proviso, save the single injunciton, "that elections shall be free and equal."

But to whom are the elections free? They are free only to the *qualified* of the Commonwealth. Clearly, they are *not* free to the unqualified. There must be a means of distinguishing the qualified from the unqualified, and this can be done only by a tribunal to decide, and by evidence upon which a decision can be made. The constitution does not provide these, and therefore the Legislature must establish the tribunal, and the means of ascertaining who are, and who are not the qualified electors, and must designate the evidence which shall identify and prove to this tribunal the persons and qualifications of the electors.

How shall elections be made equal? Clearly by laws which shall arrange all qualified electors into suitable dirtricts, and make their votes equally potent in the election: so that some shall not have more votes than others, and that all shall have an equal share in filling the offices of the Commonwealth.

But how shall this freedom and equality be secured? The constitution has given no rule and furnished no guide. It has not said that regulations to effect this shall be uniform. It has simply enjoined the duty and left the means of accomplishment to the Legislature. This discretion, therefore, belongs to the General Assembly, is a sound one, and cannot be reviewed by any other department of the government, except in a case of plain, palpable, and clear abuse of the power, which actually infringes the rights of the electors. It is not possible, nor does the constitution require that this freedom and equality of election shall be a perfect one. No human law, affected, as it must be, by obstacles and differences of circumstances, can devise a system of perfect equality—it can only approximate it; and mere errors in the execution of the power cannot make the execution unconstitutional. Individuals may experience difficulties, and some may even lose their suffrages, by the imperfections of the system, but this is no ground to pronounce a law unconstitutional, unless it is a clear and palpable abuse of the power in its exercise. Then, that election is free and equal where all of the qualified electors of the precinct are carefully distinguished from the unqualified, and are protected in the right to deposite their ballots in safety, and unprejudiced by fraud. That election is not free and equal where the true electors are not separated from the false; where the ballot is not deposited in safety, or where it is supplanted by fraud. It is, therefore, the duty of the Legislature to secure freedom and equality by such regulations as will exclude the unqualified and allow the qualified only to vote. A free and equal election is the end; regulations to attain it are the means. If the end be attained, it is evident no question of constitutional law can arise on the uniformity or diversity of the regulations by which the end is reached.

Of a necessity, laws passed to promote a given object must be controlled or modified by the circumstances surrounding the object, and must be framed to meet the exigencies standing in the way of the end to be reached. If uniformity of regulation be unsuited to different localities, the end must be attained by diversity. If, in one part of the State, a system secures to electors a free and equal election, but fails to secure it in another part, because of the difference of circumstances, what principle of constitutional law makes it unlawful to enact other provisions to counteract the circumstances and secure the true purposes of the constitution? Good sense, good order, and sound morality require this diversity of regulation when it secures the end; and it is a great fallacy to substitute uniformity of regulation for a free and equal alection.

This is not a new question—a registry law for the city and county of Philadelphia was passed on the 16th of June, 1836. The list of voters corrected and certified on the first Tuesday of October, one week before the election, was made "the only and conclusive evidence of the qualifications of the electors thereof, except in the case of naturalization hereinbefore mentioned."

No attempt was ever made to question the constitutionality of the registry law of 1836, though enacted under the provisions of the constitution of 1790 now in force. It was in force when the convention to amend the constitution sat in 1837-8, and entered largely into its discussions. The attention of the convention was thoroughly aroused to it. In committee of the Whole, on the committee on the ninth article, Mr. Sterigere, of Montgomery, moved to amend the fifth section by adding a provision for uniformity in regulations for elections. It was voted down, and when the report came up on second reading Mr. Sterigere again offered it. The amendment will be found on the 249th page of the eleventh volume of the debates of the Convention, in these words: "The fifth section being under consideration, which reads in words following, viz: SEC. 5. *That elections shall be free and equal*, Mr. Sterigere, of Montgomery, moved to amend the said section by adding to the end thereof the words as follows, viz: *The election laws shall be uniform throughout the State, and no greater or other restrictions shall be imposed upon the electors in any city, county, or district than are imposed on the electors of every other city, county, and district.*"

Mr. Sterigere stated that this amendment was offered in committee of the whole, and was rejected by a small majority. John M. Scott, of the city of Philadelphia, said this amendment was fully discussed in the committee of the whole. It should be understood, he said, *that its effect would be to destroy the registry law in the city and county of Philadelphia.* Mr. Charles Brown of the county of Philadelphia, said he knew no reason why the law should be different in one part of the State from what it is in another. The previous question was than called, cutting off the amendment, and was sustained by a vote of 69 to 42—a number of the political friends of Mr. Sterigere and Mr. Brown voting in the majority. Thus the 5th section of the 9th article was left as it stood in the constitution of 1790, to wit: "that elections shall be free and equal." This was no party vote—the relative strength of parties in the convention being 67 and 66—and it should put an end to all argument on the constitutionality of the registry law.

The question of uniformity of regulation was conclusively settled by this vote. The very purpose of the amendment of Mr. Sterigere was to destroy the registry law, then existing under the identical provision in the constitution of 1790, that elections shall be free and equal. This purpose the convention by this vote decided against uniformity of regulation and against imposing restrictions upon legislative power.

Last year the question upon the power of the Legislature to pass a registry law was brought before this court in the case of Page et al. vs. Allen et al., and a majority of the court (composed of Justices Strong, Reed, and myself) held that the power existed; but Justice Strong thought the act of 1868 unconstitutional in a single, but essential particular, by requiring proof of a residence in the district longer than the constitutional period of ten days. *That* law was, therefore, held to be unconstitutional by a majority, Justice Reed and I dissenting. The decision, therefore, has no bearing on the general question.

That a registry law to identify and distinguish true electors is constitutional we cannot doubt, and that uniform regulations are not enjoined by the constitution is beyond all dsipute.

But is there a necessity for local legislation adapted to the city of Philadelphia, not suitable to other parts of the State? If not, why is a city charter granted, with all its large powers of local goverpment, its special provisions for police and for conduct? Where population greatly abounds vice and virtue have their greatest extremes. A simple rural population needs no night police and no lock up. Rogues and strumpets do not nightly traverse the deserted highways of the farmer. Low inns, restaurants, sailors' boardinghouses, and houses of ill-fame do not abound in rural precincts, ready to pour out on election day their pestilent hordes of imported bullies and vagabonds, and to cast them multiplied upon the polls to vote. In large cities such things exist, and its proper population, therefore, needs great protection, and local legislation must come to their relief. The freedom and equality of the ballot-box must be protected from the local causes which mar and destroy a free and equal election. What crime have the freemen of Philadelphia committed that their voice at the ballot-box may be stifled by the fraud or force which springs out of their local circumstances, and yet the legislature be powerless to relieve them? In the language of another, that would be "to place the vicious vagrant, the wandering mobs, the Tartar hordes of our large cities, on a level with the virtuous and good man—on a level with the industrious, the poor, and the rich." Is that a wise and just interpretation of the constitution, which opens the polls of a large city to such imported hirelings and vagabonds without a home, by adhering to an uniformity of regulation unsuited to the city on the one hand or to the country on the other? Is the constitution of Pennsylvania so deformed and sterile that her laws cannot protect the ballot box of a city from falsehood and fraud because they admit but one unbroken system for the State? Such an interpretation of the constitution is wanting in merit, and can only operate as an incentive to fraud. How, then, can the freedom and equality of elections be secured in a great city, if from the force of local circumstances the place of the real electors are usurped, if the ballot-box can be stuffed with impunity, or if suffrage can be exercised only at the risk of violence or life!

Thus the ground on which the case was placed at nisi prius is swept away; the postulate of the learned Judge being that uniformity of regulation throughout the State is a demand of the constitution as the equivalent of equality of election. But when it is shown that the constitution nowhere demands uniform regulations, and to the contrary, that the very equality of elections demands a difference in regulation to overcome the obstacles to equality and fairness in the city, his fundamental position is overturned, and with it the entire argument built upon it. Then of what service is it to display the difference in this law between the regulations made for the city and those for the State? Let them be ten, or ten times ten, it is not their difference which proves their unconstitutionality—difference in regulation is not want of equality in the election. He who would prove them to be unlawful must show wherein they subvert the rights of the electors themselves. If the prevalence of fraud, corruption, or force in the city makes the law more rigid and exacting in order to determine the rights of the lawful electors, it may be a hardship, but it is not caused by the law, but by the crimes which make the law necessary for their protection.

When the Legislature possesses an undoubted authority to regulate, such as in this case, its discression is not the subject of review. This is expressed by Black, J., in Sharpless vs. the City of Philadelphia, 9 Harris, in these words: "There is another rule which must govern in cases like this, viz: that we can declare an act of Assembly void only when it violates the constitution *clearly, palpably, plainly*, and in such manner as to leave *no doubt* or hesitation in our minds. This principle is asserted by judges of every grade, both in the Federal and in the State courts, and by some of them it is expressed with much solemnity of language.' He refers then to 6 Cranch, 87; 4 Dallas, 14; 13 S. & R., 178; 12 S. & R., 339; 4 Binney, 123. See also the opinion of Sharswood, J., in Green vs. The Commonwealth, decided at Harrisburg in 1868.

We come now to the question. What provisions of this law for the regulation of the city elections, if any, are subversive of the rights of city elections? The number of these objected to is few, after having disposed of the difference between city and State regulations. Much stress has been laid on the right of the people to elect the officers of the elections, and much said upon popular rights, which might well be addressed to the Legislature in making or reforming the law. But, unfortunately for the argument, the people have by their constitution disposed of all such appeals when addressed to us. Which clause of the constitution forbids the officers of election, the canvassers, or even the assessors to be appointed by a board constituted by law, whether it be a Board of Aldermen or a Board of Commissioners? Let the constitution itself answer. Article 6, Section 8: "All officers whose election or appointment is not provided for in this constitution, shall be elected or appointed as shall be directed by law." Here then is a law made under the direct sanction of the people themselves, expressly given in the constitution. But it is said that the law is unconstitutional because the board of appointment in this case (the aldermen) have a majority in it of persons belonging to a particular political party, and the argument omitted to say a majority which is the result of popular elections. This ground of unconstitutionality of a law because a board created by it is composed of individuals of different political opinipes, with a majority in a certain way, the result of popular election, seems to belong to an age fruitful in discovery. How is it possible that any board composed of men can be organized without a majority in political opinion in one way or another? To the party in the minority such a board must always be unconstitutional, if such arguments were to prevail.

But clearly it is not unconstitutional and not unfair to designate a board of gentlemen chosen by the people to administer the laws among them. If these men be unfit a gents it is not the fault of the Legislature, but of people who will elect such men to administer justice to themselves. The law binds the Board of Aldermen to appoint the officers of the election, so that the political party having a majority in the election division shall have a majority of the board. It requires the canvassers to be appointed so that each party will be represented in the several boards of canvassers, adding a supervising power in the courts to correct errors. What fair mind can pronounce this an *abuse* of legislative power, so gross, so palpable, and so plain as to become an unconstitutional act? Said Chief Justice Marshall: "All power may be abused, and if the fear of its abuse is to constitute an argument against its existence, it might be urged against that which is universally acknowledged, and which is indispensable to public safety."—*Brown vs. Maryland*, 12 *Wheaton*, 441.

The argument that the aldermen, being judicial officers, cannot be compelled to act, is of no weight, and was so regarded by the whole Court in *Page et al. vs. Allen et al.*, decided last year. The position would overturn our own acts as judges in the appointment of prison, penitentiary, and building inspectors, commissioners to take testimony, and other officers. The practice is sanctioned by a century of use. The lower courts fill all vacancies in county and township officers, such as commissioners, auditors, surveyers, district attorneys, constables, supervisors, and overseers of the poor. The associate justices constitute a part of the military boards under the bounty and pension laws, and the boards for the revision of taxes, and the judges of the judicial districts appointed the revenue commissioners. Besides, the aldermen have not refused, and it is not likely they will refuse; and what authority have these plaintiffs to gainsay their right to act, or to put in a refusal on their behalf? The truth is, the whole weight of this objection consists in the fact that the majority of the board, representing the popular majority, hold opposite opinions to the plaintiffs, and when a new deal of the popular cards turns up a new majority, I suppose gentlemen of the opposite party will use the same argument.

The next objection urged, with equal, perhaps greater zeal, is that there is no provision for assessing persons in the city after the 20th of September. The purpose of this regulation is obvious; it is to cut off the unqualified persons who are imported into the district to displace the votes of the true electors, by taking a period for the latest assesment sufficiently distant from the day of election to render it inconvenient and difficult for these hirelings to obtain a false qualification. But what clause of the constitution requires the assessment of taxes to be extended to any period? It is a new discovery that the system of taxation must be subordinate to that of election. Neither the constituaion of 1790 nor that of 1838 prescribed any time for the exercise of the powers of taxation, though both use the *payment* of tax within two years as the means of discovering the true elector, and as an evidence of his residence and membership in the community. It is a great error in constitutional law to mistake a restriction for an injunction. When the constitution provides that the elector shall have paid *within two years* a State or county tax, which shall have been assessed at least ten days before the election, its purpose was to restrain the assessment so that voters might not be fraudulently made at the very polls; but it did not require the tax power to be altered so that the assessments should be compulsory down to the tenth day before the election. There is no express injunction, and it is not even a fair implication. The rights of the true electors were well protected when they were allowed two years pending for the *payment* of a tax to secure their qualification, a period including certainly two, and it might be three, annual assessments. To this the law adds an *extra* assessment at any time before the 20th of September. The time of the assessment of taxes is part of a different system—that of taxation; and the constitution has nowhere said it is to be subordinated to the system of election. This time belongs to the sound discretion of the Legislature, and should be regulated with a regard to what they believe the best interest of the citizens. If the Assembly believe that the best means to prevent frauds in the city elections is to increase the period of the last assesment, it may be done—the only constitutional provision being the *restriction* that the time shall not be *less* than ten days before the election.

The alleged double taxation scarcely deserves notice. The system of annual taxation has marked the whole history of the government. He whose name is on the annual list, and on whom a tax is assesed, is clearly not to be listed a second time for *taxation*. He is to be listed for the election.

The first list of electors to be made before the 1st of June, and being made by the same officers, is evidently intended to be made in connection with the original assessment. If an elector has been already taxed, his tax will be transfered to the list of electors; if not, the tax will then be assessed in order to perfect his qualifications as a voter. When the law is so easily harmonized it is a forced construction which exacts a second tax from one whose name is on the original list.

The *extra* assessments on the subsequent lists are evidently required to perfect the elector's qualifications.

It is argued that the provision of this act which requires the assessors to omit from their lists all boarders at hotels, taverns, sailors' boarding houses and restaurants, and all persons not qualified electors having a fixed residence in the divsion, is unconstitutional. It is said that a large class of electors is thus excluded from the list. This is a palpable error. The law forbids the assessors to take down the names of such persons, to prevent the frauds known to result from taking down lists of such persons given in as boardes when no such persons are residing at the hotel or boarding-house. But it nowhere forbids these omitted persons from being placed on the registry at the proper time, and on proper evidence. On the contrary, a mode is provided to enable every lawful elector to be registered by application to the assessors or to the canvassers. Clearly, the feature complained of is a useful provision to protect the right of the true electors of Philadelphia, and to reach the unqualified persons found at such convenient places just on the eve of an election, when their votes are needed by unscrupulous men. Its purpose is to exclude this fraudulent element, by compelling all persons not known householders and fixed inhabitants to come personally before the proper board, and make proof of their right. True, the omission requires of single men, clerks, journeymen and transient boarders a greater vigilance to secure their suffrage, but the hardship is not imposed by the law, but by the necessity which required it, in order to protect them and all other honest electors from being supplanted by fraudulent votes. What clause of the constitution forbids this policy to be excercised according to the exigencies of the circumstances? When the population of a locality is constantly changing, and men are often unknown to their next door neighbors; where a large number is floating upon the rivers and the sea, going and returning, and incapable of identification; where low inns, restaurants, and boarding houses constantly afford the means of fraudulent additions to the lists of voters, what rule of sound reason or of constitutional law forbids the Legislature, from providing a means to distinguish the honest people of Philadelphia or elsewhere from the rogues and vagabonds who would usurp their places and rob them of their rights. I cannot understand the the reasoning which would deny to the Legislature this essential power to define the evidence which is necessary to destinguish the false from the true. The logic which disputes the power to prohibit challenges in elections on the ground that it effects their freedom or equality, must also deny the power to repress the social disorders of a city, because the same bill of rights declare that all men are free and equal and independent, and have the right of pursuing their happiness. The power to legislate on the subject of elections, to provide the boards of officers to determine their duties, carries with it the power to prescribe the evidence of the identity and the qualifications of voters. The error is in assuming that the true electors are excluded because they may omit to avail themselves of the means of proving their identity and their qualifications. It might as well be argued that the old law was unconstitutional because it required a naturalized citizen to produce his certificate of the fact, and expressly forbade his vote if he did not. What injustice is done to real electors by making up the lists so that all persons without fixed residences shall be required to appear in person, and thus to furnish a true record of the qualified electors within the district?

In connection with this subject another feature is mentioned as a hardship, requiring the proof of residence by two witnesses, who must be householders and electors. But hardship is not the test of the constitutionality of a law. This case is no harder than the law which requires a will to be proved by two witnesses before a man can exercise his more precious right of disposing of his property among his children when he comes to die. Both laws have the same purpose—protection. One would protect electors against fraudulent voters; the other would protect the dying man against a fraudulent will.

Another complaint is made of unconstitutionality, on the ground that the canvesers are required to strike off the lists the names of all *unqualified* persons, if, upon *due* inquiry and investigation, they shall find them to be *unqualified*; but, in the absence of the person, they can only do this on the testimony of at least two reputable citizens, who are private householders.

The argument is that the law is unconstitutional because the canvassers might abuse their powers. They are not permitted to strike off the name of any unvualified voter, and if they do he has his remedy at law to compell them to return his name. The canvassers are a legal tribunal established to decide on evidence of qualification, are sworn officers, and are required to proceed in a due and proper mode. But a law can be pronounced unconstitutional only when the law itself subverts the true elector's rights, and not because the tribunal acting under it may make mistakes or abuse functions. All tribunals of every kind could be set aside upon such an argument. The language of Chief Justice Marshall may be again refered to on this point.

Another ground much urged is that the proper time for the proof of the qualifications of electors is the day of election, for then only, it is said, the period of residence is complete, and from the nature of the facts this cannot be shown before. Grant it. But this position is taken in mistake of the very law before us. By this law it is on that day, the election day, the election board sits to receive the vote and the proof; then the elector appears before them and proves his franchise; then the evidence is produced and the decision made upon it. But what clause in the Constitution forbids the means to be provided beforehand which furnishes evidence of the fact? What clause forbids the making up of a record ten days before that shows that the person offering his vote to the board was *an actual* resident in the precinct ten days before, and was then set down as entitled to claim his privilege on the day of election? Why is such a record not good evidence that his residence actually began in the district or pre existed there ten days before the election? It certainly does not diminish the true elector's right, but, on the contrary, tends to secure it. It is better than the testimony of some irresponsible and base perjurer, brought to prove a false residence at some low boarding house. The record has the merit of truthfulness, and it relieves the true and honest elector of those unfounded and malicious objections to his vote made by partisans of either side. Here is the legal proof that his residence in the district began in the due constitutional time. What better proof can there well be of a residence complete on the day of election than the personal appearance of the elector on that day, claiming his vote, with his ballot in one hand and the register in the other? It is good evidence, for the legal presumption of residence arising from such proof is violent.

But it is unnecessary to discuss this subject at greater length. The want of time to condense the argument has made this opinion already too long. Enough has been said to show that free and equal elections are the true end to be secured, and that the system of laws regulating the elections is only the means of securing the end; that this system of regulation is the subject of legislation over which the Legislature exercises a sound discretion; that no clause in the constitution requires uniformity or regulation, or prohibits legislation according to the obstacles which different localities present to prevent a free and equal election; and that it is a mistake to substitute uniformity of regulation for the free and equal election which it is the object of the regulation to secure. We have been also shown that none of the features of this law subverts the rights of the true electors of this city, and that is the only test of the constitutionality of any provision contained in the law.

It is true there is a kind of liberty this Registry Law will destroy. It is that licentiousness, that adulterous freedom which surrenders the polls to hirelings and vagabonds, outcasts from home and honest industry; men without citizenship or stake in the government; men who will commit purjury, violence, and murder itself. To prevent this is the purpose of the law, and it should have the aid of fair men of all parties to give it a fair trial, and secure its true end. It may have defects—doubtless it has; and what system devised by the wit of man has not? But its defects, if any, should be remedied as they are disclosed by experience. The law is not unconstitutional. It is a part of the political system of the State, on which its offices and its very continuance depend; and we, as a Court, have no right to put hands upon the whole system on the grounds of mere hardship, and for defects of regulation which are not clear or palpable violations of the letter or very spirit of the Constitution.

The decree of the Court of *Nisi Prius* is reversed, and the special injunction dissolved, and the case remanded for further proceedings.

Thompson, C. J., and Sharswood, J., dissent.

Several little girls at Lowell saved up their Fourth of July spending money and got up a fair for a sick soldier, which realized $82, for the sick and destitute man. The prudent young men who can afford to watch and wait should not commit matrimony until these girls are grown women. They will every one make a good wife.

Young ladies should be careful and not get chaps on their lips. They have been known to lead to an affection of the heart.

There are ten Indians to one Russian in Alaska.