

DEBATES
AND
PROCEEDINGS
OF THE
FIRST CONSTITUTIONAL
CONVENTION
OF
WEST VIRGINIA

VOL. III
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OF THE

First Constitutional Convention of

West Virginia

(1861, 1862, 1863)

XLII. THURSDAY, JANUARY 30, 1862.

The Convention assembled and was opened with prayer by Rev. R. L. Brooks, a member.

After the reading and signing of the journal,

MR. LAMB. Mr. President, the first business I suppose would be the improvement suggested to the 11th section of the third report of the Committee on the Legislative Department which the Convention had under consideration last evening in regard to the apportionment of Raleigh, Wyoming and McDowell. Are the gentlemen present?

MR. HAGAR. Two of them are here.

MR. LAMB. If not ready, the subject I suppose could be passed by with general consent.

THE PRESIDENT. The gentleman from Marshall had intimated a purpose to make an amendment to this report. The motion would be in order.

MR. CALDWELL. The proposition that I made here which I discussed is a substitute offered by the gentleman from Wood, and

as I stated last evening, I was willing to accept his substitute for my proposition, and by reason of his absence I do not wish the matter taken up just now. As there are some other matters connected with the legislative report that we cannot dispose of, perhaps we had better pass them by.

MR. LAMB. This other is the only matter that remains undisposed of except the apportionment of Wyoming, etc. If this is laid over I shall have to be absent an hour or so. The gentlemen are in now and perhaps can report whether they reached an arrangement or not.

MR. WALKER. In regard to these counties we have agreed on an amendment. We give Raleigh the first delegate; Wyoming the second; then return to Raleigh; then Wyoming; then McDowell. That is about as near as we could get to it.

The Secretary reported the amendment as follows:

"Strike out all the 11th section after the word 'for' in the 99th line, and insert the following: 'the first term, to be a resident of Raleigh, for the second term, of Wyoming; for the third term, of Raleigh; for the fourth term, of Wyoming; and for the fifth term, of McDowell county,' and so on in each case in rotation."

The amendment was adopted, as was also the section as amended.

MR. CALDWELL. I ask, sir, that the substitute offered by Mr. Van Winkle for the additional section proposed by me be taken up.

The substitute was reported as follows:

1 "The legislature shall pass general laws whereby any num-
2 ber of persons associated for mining, manufacturing, banking,
3 insuring, or other purpose useful to the public, excepting the
4 construction of works of internal improvement, may be-
5 come a corporation, on complying with the terms and condi-
6 tions thereby prescribed; and no special act incorporating, or
7 granting peculiar privileges to, any joint stock or other com-
8 pany or association, not having in view the construction of
9 some work of internal improvement, shall be passed. But no
10 company or association shall issue bills to circulate as money
11 until it has given security for the redemption thereof, in such
12 manner as shall be provided by laws of this State, or of the
13 United States."

MR. LAMB. Mr. President, I hope it will not be the pleasure of the Convention to adopt the motion. While in perhaps nine cases out of ten these corporations ought to be created by general laws, yet it would unquestionably be unwise to insert an inflexible rule in regard to the subject in your Constitution. What would be the effect of it? You pass a general law prescribing the privileges, mode of organization, etc., of these corporations. Let us suppose you have inserted in that general law that the board of directors shall contain nine directors. A particular case comes up in which it may be expedient to have five or seven; and in that particular case your legislature provides for the incorporation of a company with seven directors, making that single change from your general laws. If you insert this inflexible rule in your Constitution the whole of the charter becomes void. The slightest variation from it, the slightest special provision incorporated in the charter of any company invalidates the whole act. It is a violation of the Constitution. Your corporation has no legal existence. Then the question is simply this: though it may be expedient, may be proper, and will no doubt be expedient and proper, in nine cases out of ten, or perhaps in 99 cases out of 100, that these corporations should be created only under general laws, is it expedient and proper that you should insert an iron rule in your Constitution? Is it expedient and proper that you should adopt here, in fact, the old fable of the bed of Procrustes and fit everything without the liberty of changing it under any circumstances, to your rule? This difficulty may be avoided, it is true, when it becomes necessary to adopt a special provision in regard to a particular corporation. You would have to alter your general laws as to all corporations. The alteration would apply not merely to the special case in hand but to all corporations which had been thereafter created. You would be compelled to alter as to those in all the State as to a particular case. Let us see how it would operate. You want companies for manufacturing purposes in Kanawha, to develop the immense mineral wealth that exists there; to work your coal mines. To incorporate those manufacturing companies and render them capable of securing the public benefit which ought to be anticipated from them, they must have something in their charters a little different from that of an ordinary manufacturing company for the purpose of making iron or nails or something of that sort. And yet here you are to adopt a fixed and inflexible rule which is to govern in all things under penalty that if you depart from it in

any special charter that charter becomes a nullity and the whole property which may be vested upon it is at risk; or you are to go to work and alter your general laws whenever these special cases make it necessary for the public benefit to adopt some slight change from the general system.

I think, Mr. President, all this is a matter which ought to be left to the discretion of the legislature; while I would say that in nine cases out of ten at least the legislature ought to act on the principles which are indicated in this amendment, yet I would regard it unfortunate that you should fix an inflexible rule in your Constitution. The resolution itself acknowledges the necessity which I am advocating. The resolution itself acknowledges that it would be impracticable to apply the same principle to internal improvement companies as to every other company. It leaves it subject to an invariable rule. And, gentlemen, in regard to the last clause of the amendment proposed, I must say that if this Convention undertakes to determine what system of banking shall exist for all time to come in this commonwealth, they undertake to settle more than any men can wisely settle at present; but I will undertake to say, however, that if they intend to fix inflexibly upon us the system of banking contemplated in the last clause of this resolution, they will have adopted the worst system of banking for the public interest, the interest of the stockholders and of everybody that can possibly be devised. I had supposed since the late occurrences that this system had been pretty well exploded. What have we seen recently in Illinois? The whole system throughout the state was based on this principle of stock security for circulation; and the whole system within the last twelve or fifteen months has exploded there completely. I recollect during last fall and winter when we used to be furnished by the banks in Cincinnati and other places with a schedule in regard to Illinois money, all secured by stocks, all announced as a perfect system of security; but here on this schedule you would find a half dozen banks to ten at ten per cent discount, and a dozen other down to twenty; some at thirty; some at forty and so on up to seventy or eighty! All the banks of Illinois based upon this principle were at these enormous discounts. Since then they have all gone out of existence. There was six or seven millions of circulation in that state all founded on this system; and out of that circulation no doubt the bankers and brokers of Cincinnati made some two millions of dollars, owing to its depreciation. No doubt the tax on the industry of Illinois

owing to the deranged state of their circulation incident upon this system far exceeded the whole amount of the circulation itself, for all business was deranged and all business injuriously affected in that state owing to it. A bank based on this system cannot accomplish the end which a bank ought to accomplish. It cannot accommodate the trade and business of the community which surrounds it. We have had them here in Wheeling. We have had banks here in Wheeling on this system; and very wisely they concluded some three or four years ago to wind up and quit business. You have had them in Fairmont and the gentleman from Marion county can answer to this system operating there, has answered for the condition of the people and business of that district.

They commence by lending their whole capital to the State, and what have they to lend to others; what funds have they got remaining to accommodate and facilitate business operations? You incorporate a bank under this system with a capital of a hundred thousand dollars, and they begin by lending \$100,000 to the State or investing it in State stocks, which amounts to the same thing, and then they are out of cash altogether. They have just got simply their circulation to work upon; and with that circulation they must supply their coin; and they must invest that circulation in such way as to be able to meet it when it is returned to them for redemption. With \$100,000 of circulation they buy \$25,000 of coin. That is the usual operation. They buy it with their circulation. Then they have \$75,000 of circulation left, and they can only use that circulation in such way that whenever circulation is returned to them they shall have means of redeeming it. They cannot lend it out for the accommodation of business; and they are necessarily, by the very constitution of their existence, shaving shops. This system has been adopted in New York. But, gentlemen, it is a very significant fact that this system has not been adopted in a single New England state. I am not for imitating either New England or New York, but I do suppose that the Yankees understand something in regard to financial matters. Anyhow, gentlemen, whether the system be proper or not, is it proper to fix these things in your Constitution? Is there the place for them?

MR. BROWN of Preston. I move to strike out of the 12th and 13th lines the words "or of the United States." I am opposed to Congress interfering with our private affairs. I do not think, sir,

that Congress has any right to interfere by legislation in our affairs either in banking or in other affairs, and really I do not see the pertinency of the words. I prefer that we should make our own laws, and that so far as our internal affairs are concerned, both as to this and everything else, that the Federal Government should not interfere with our institutions. I move, sir, therefore, to strike out the words "or of the United States."

MR. VAN WINKLE. My views in preparing this divides it into two provisions. When I came in the gentleman from Ohio was remarking on the latter one. The object of the first part of it, which I can have very little doubt will meet the entire approbation of this Convention in some form is instead of making these corporations for ordinary purposes have peculiar privileges and rendering it necessary to go to the legislature to petition them, to go round lobbying and log-rolling in order to get a little facility for doing business, is to draw the law, not for a small number of citizens but so that any number of citizens can have the privilege of doing their own business under general laws to be passed by the legislature and of course under such restrictions as it will throw around it for the safety of the commonwealth. I believe laws are already in force in reference to mining and manufacturing. There is also a general banking law under which certain independent banks have been chartered. And I believe they do require them there to come and get special permission. This simply in aid of what I have spoken of. We have had great cause in former years to complain of the legislature, of long sessions and little done. I think, as I have already stated, that taking these private matters out of the way and introducing the members to court, with matters involving State policy, it would purify your legislature—or if they do not need purifying by individuals, which is not what I mean, yet it will purify it as a public body; prevent that kind of solicitation which leads to unequal, partial, and very frequently unjust legislation. Now, what is there to hinder? Suppose that I go down to the country of the gentleman from Kanawha and I find a nice bed of cannel coal and I and a half dozen others go and purchase it. Now we want the facilities for benefits in this way. I have not capital enough to fully develop it, and we must try and associate others with us. Well, now get an ordinary partnership with three or four partners, nobody will go into it. We merely then want this legislative facility in order that we may transact this business conveniently; and everybody knows that when a company

enters into an enterprise of this kind the welfare of the public is measured by the success of the company. A charter is applied for and refused though granted to a company just opposite us. Well, now what is the necessity of going to the legislature? We have a limited partnership law, an excellent law too. That allows a partner to go into a mercantile establishment and limit his responsibility. There are certain conditions which he has to file evidence of in the clerk's office. He puts in a cash capital of so much and is allowed to manage the business. It seems to me it is the same in reference to many of these small corporations. Internal improvement companies affect the State at large. Therefore it is a matter in which the State at large should have an interest. But whether it affects the State at large, whether we have one more or less bank in Wheeling or Parkersburg is what I am unable to see.

Coming to the latter clause, I do not pretend to be so familiar with this subject as to say whether it is likely to be entirely beneficial or otherwise. Let me try to explain how I understand the matter. Legislatures are here hammering at the banks and placing restrictions on them, and frequently the restrictions imposed are the very thing that go to destroy their usefulness. Now the government has nothing to do with any part of the business of banking except the circulation. That goes forth to the public, who receive the benefits of the endorsement a special charter gives to the bank. The furnishing of the currency of a nation is a high act of sovereign power. Coinage is not permitted to individuals. It is a function only of the sovereign power. It is proposed here that these banks shall give security for the circulation; nothing more, and the putting up of something that is tangible, that can be sold in the market to pay its bills in case of failure of the bank is what is contemplated here. Now, we are told by the gentleman—and of course, I do not pretend to be as familiar with it as he is—that this scheme has worked badly in Illinois and possibly in Michigan; but I notice it has worked admirably in New York and Ohio. In the other cases state stocks were permitted and about that time the funds were invested in Arkansas stocks, and the result the United States had to come up and pay the money. But I believe the New York banks were secured on their own state stocks, or the stocks of the United States, both perhaps as good as the gold itself. But, again, the gentleman is certainly mistaken in supposing them to put their whole capital that way. They put an amount equal to the circulation. If they are prepared to issue \$80,000 in

circulating notes, they put up \$50,000 in stocks; and so on if they want to increase, but always retain something to do their business on; and I think that some of the banks in the West do the most of their business on their circulation anyhow. I cannot, of course, in a thing that gentlemen profess to be entirely familiar with set myself up as contradicting them; but it is something that each member of the Convention is able to judge of for himself, as to the principle whether banks are to be compelled to give security and indemnify the public against any loss by the circulation of their notes, and consequently whether the system here proposed is a good one or whether it all resolves itself into the first question of whether they are to be compelled to do it or not. As to the first portion of this subject, I think there will be hesitation. If you think banking corporations are improperly included, strike them out. But do give these small business corporations the power of going into business without going to the legislature at every session and encountering private opposition before they can get these ordinary facilities for transacting their business.

MR. SMITH. I entirely approve of the principle involved in this substitute. The thing itself meets my approbation with one exception. But it is pretty generally understood from what I have said in this Convention that I am opposed to enactments in the Constitution. I object to it on that account. I do not know whether it is generally known here or not, but this thing, with the exception of banking exists now under the law in Virginia. I have myself procured some half dozen charters under the existing law by an application to the county or superior court, which ever is the most convenient. It is now the law, and we are adopting the law into the Constitution. It is the existing law now of Virginia. You may apply to the county or superior court at any time and get a charter for any mining or manufacturing purpose, or any other purpose not banking. As to the banking part of it, I think it is a little questionable whether we ought to open the door to such innumerable banking establishments as may exist under this law. The legislature, however, have the power if they deem it proper to add banking to the other acts of incorporation. And here you make it the imperious duty of the legislature to pass this law, and if it works badly you will have to call a convention to get rid of it. You may fill the whole country with a spurious currency, and there is no redress at all. I think banking ought not to be in; and if it is necessary to be in, the legislature can put it there,

and if it is found to work badly the legislature can repeal it. As to acts of incorporation for mining, manufacturing or any industrial purpose, I say the power now exists differently and I entirely approve of it. I don't want it in the Constitution because we have now got it in the law and I don't want to enact a new law and make it unbending in its provisions. I therefore object myself to the whole amendment, not because I disapprove of any of these principles except the banking but because I do not think it is proper to be inserted into the Constitution. I would prefer leaving it to the legislature; for they will have to repeal the existing law for every other purpose than banking or the right still exists. I imagine the lawyers here are aware of the fact that it is the existing law.

MR. VAN WINKLE. I do not know that the law of Virginia is necessarily the law of West Virginia.

MR. SMITH. I imagine that law will continue until it is repealed; or else the laws of Virginia will prevail here so far they are not in conflict with the Constitution that we have already adopted, and if it is necessary they may be re-enacted; and there ought to be a revision of the law, at any rate, under it and adopt such as are necessary. But I believe when you transfer one territory to another political division, the laws existing in that territory at the time of the transfer is made are in force until they are repealed. I believe that is a national principle. It is a law now, and if it is not the legislature will have power to make it a law.

MR. VAN WINKLE. I do not understand what inference the gentleman draws from the fact that there is a law.

MR. SMITH. Why, there is a law now by which the county court or the superior court may grant charters to any industrial association, mining, manufacturing—all but banking. Banking is not authorized by it; but for every other purpose the existing law of Virginia authorizes it; and I say I have secured as many as half a dozen charters in the county in which I live, and the applications there in the country are very common, and most of our companies or incorporations and under and by virtue of the existing general law now in Virginia. I am unfortunate in not being able to turn to the book, but I take it the act was passed in 1852 or 1853, under which the whole thing has been done in the country,

and it is a thorough law to supercede the necessity of these frequent applications for incorporation. I think it an excellent law; but I do not want it in the Constitution.

MR. VAN WINKLE. If I understand the gentleman, whatever is on the old statute book is not to be put into this Constitution.

MR. STUART of Doddridge. I desire to amend by striking out the word "banking" in the second line and after the word "excepting" in the third line inserting "for the purpose of banking or."

MR. LAMB. I hope the objection I made to the insertion of the provision in the Constitution was understood. I, like the gentleman from Logan, considered that it was impracticable for the legislature in nine cases out of ten at least to act under this rule; and that it would therefore by no means follow that it would be wise or judicious in this Convention to insert the rule in the Constitution which would prevent them in every possible case from varying from it. For instance, this provides that "no special act incorporating or granting peculiar privileges to any joint stock or other company or association not having in view the construction of some work of internal improvement shall be passed." Now, if it be necessary, or if it be proper, to make the slightest change in the constitution of that company from that which is prescribed by the general law, the legislature will be prohibited from doing it; and in the case I mentioned, if the general law prescribes nine directors and you want but five or seven and go to the legislature and get a special act subjecting you to the general law with that single exception, your law is void if you incorporate this provision in the Constitution. The same object can be accomplished, as it has been accomplished, by leaving this matter where it properly belongs, to the discretion of the legislature. What is it that has occupied and delayed the proceedings of this Convention so long but this disposition on the part of certain members to incorporate first one provision of your code of laws and then another provision of your code of laws into the Constitution, where they do not belong? Is all wisdom to be gone when this Convention adjourns? Are we to institute a legislature under our system and then say in every line and paragraph of the Constitution that we hold them unworthy of confidence, that we do not believe they can legislate wisely or properly? And particularly in cases of this kind where the necessity may occur of adopting some special provision in regard to one

company or another. The gentleman himself recognized the necessity of that in this, for he is not willing to apply it to works of internal improvement, while the gentleman from Doddridge is not willing to apply it to banks; and if we had anybody representing insurance offices, you would find they would be unwilling to apply it to insurance offices because it may be proper that an insurance office in Charleston, Kanawha, may operate with five directors, while one up here might properly have nine. The legislature by this provision here would be prevented from allowing the slightest variation in the organization of one company from that which has been prescribed by their general system. Is it not best to leave this matter to the legislature? Let the legislature of West Virginia have a wise and prudent and proper system for instituting corporations under general laws that will be just as effective as it would be if inserted in your Constitution where it does not belong; and if it ever becomes necessary to depart from that law, then the legislature would have the matter within their control. Men would not be called upon to invest large amounts in companies necessary for the improvement of the country or to develop its resources with uncertainty whether this provision of your Constitution did not render their charter entirely void.

MR. STEVENSON of Wood. There are two features, Mr. President, in the proposition offered originally by the gentleman from Marshall which I would like to see incorporated in this substitute if it is to become a part of the Constitution; and for that purpose I propose to offer one of them as an amendment.

THE PRESIDENT. There is already an amendment. There is already an amendment to it offered by the gentleman from Wood.

MR. STEVENSON of Wood. Yes, sir; I supposed, however, that this was acted on as an original proposition, and that amendments to it would be in order. If this is to be acted upon as a clause or section in the report of the legislative committee, then two amendments would be in order.

THE PRESIDENT. Would the proposition apply to the amendment of the gentleman from Doddridge?

MR. STEVENSON of Wood. No, sir.

THE PRESIDENT. Then, of course, it could not be offered as an amendment.

MR. STEVENSON of Wood. Then I will just suggest it. I propose to insert after the word "passed" in the 9th line: "except where the object cannot be obtained under such general law."

MR. BROWN of Kanawha. I desire to know precisely the amendment proposed by the gentleman from Doddridge.

THE SECRETARY. To strike out the word "banking" in the 2nd line and insert "for the purpose of banking or," after "excepting," in the 3rd line.

MR. STUART of Doddridge. Then it will be necessary to insert "or banking" again after the word "improvement," and strike out the word "money" in the 10th line. It would be necessary in consequence of the amendment I propose.

MR. VAN WINKLE. It is to put them on the same footing as internal improvements.

MR. BROWN of Kanawha. Then if that is the understanding it is my view exactly. I have written an amendment here expressing the same idea. I wish to place banks on precisely the same footing as works of internal improvement, and I desire that they should be retained in the hands of the legislature. That this plan of associated capital for mining corporations and manufacturing and insuring and other purposes useful to the public I think is highly proper should be done by general law; for it relieves the legislature of an immense amount of special legislation.

There is another view. We have adopted in the education report the principle that the bonuses are legitimate funds to be applied to educational purposes. Now, if you place the granting of banking charters in the hands of the courts, to be decreed whenever a party conforms to certain requisitions, there is an end of all your bonuses and you may have all the privileges of the State granted to little corporations to issue money and they may flood the country with worthless paper and as no bonus derived for the privilege and every little community turned bankers to break up the country. It is highly important therefore that that privilege is preserved in the hands of the legislature, where they may if they choose to prescribe a bonus which will go to the educational resources of the people. The same way with works of internal improvement. Those works that are purely local in their character, merely for purposes of private interest, manufacturing or for lum-

ber or mining, it is proper they should be done by general laws. That is the law now and it has been found to work well in its operation. We have corporations all over the state granted under the provisions of our general law by the courts. But high public policy requires that banking and internal improvements should be retained in the hands of the legislature of the state.

MR. VAN WINKLE. One word in explanation, sir. I do not intend to be anyways tenacious about this matter. I wanted to submit it to the good sense of the Convention. I stated in reference to internal improvements that I had thought proper to except them; that they did operate directly on the public or involve public interests, and therefore it was proper the legislature should retain control of them. Now, I will admit as to the circulation of bills that that also should be considered a public matter, and I would not be at all strenuous in objecting to the amendment of the gentleman from Doddridge. I merely want to suggest that we should confine it however to banks of circulation; and then this last clause may come out. Of course, if they are put in the power of the legislature, I mean to say this, that there are in all the states—and I do not know but in this—companies that are doing a banking business, as they call it. They receive deposits, discount notes. I believe most all perhaps all the banking business in Cincinnati is done in that way; but they never had any power and are actually forbidden to issue bills to circulate as money. Now, under such corporations as that this operation does not arise. It is simply those that issue bills to circulate as money. If this amendment should be confined to them, which it might very easily, I would not object to it. Might take out "banking" or leave in the words "useful to the public excepting the issuing of bills to circulate as money or the construction of works of internal improvement."

With that modification, I am prepared to vote for the amendment of the gentleman from Doddridge, and I suppose that is what he wishes to reach.

MR. HERVEY. I am aware that the gentleman from Wood has consented to the modification suggested by the gentleman from Doddridge. I am opposed to striking out and would be in favor of placing works of internal improvement on precisely the same footing if we are to have a constitutional provision at all; and to obviate the objection of the gentleman from Ohio in regard to existing charters I had provided a line or two which I thought would

do that; but it is not now proper to offer it, namely, that the provision should not affect existing charters until their expiration. But, sir, if this provision, as now stripped—as I regard it—of all individuality, of all practical utility, is sought to be incorporated and is actually incorporated in the Constitution, I shall regard it as of no avail. I see no reason, sir, why banks in this State may not be placed under the same general rules and regulations that they are in other states, and I see nothing in the associated banks of this city to entitle them to a position of credit over banks of other states. Has their history been a profitable one either to themselves or the community? Have not bank doors and vaults been locked for years and years in the very face of a state law, and the legislature at the very next session legalizing that violation of their charters and the law? Sir, there is no argument in it. But, sir, I am in favor of incorporating this provision in the Constitution for another reason and that is that we have heard a great deal in this country about the moneyed power of the country; about the concentration of the money power in the management of the affairs of the country. Now, sir, incorporating a provision of this kind in the Constitution as a general system of banking and for works of internal improvement constructed on a general system, you abolish this monopoly in banks, bank charters and in the systems of internal improvement. You avoid the very thing which gentlemen talked about here to-wit, log-rolling in the legislature. Strike this out and you incorporate a system of log-rolling in the legislature; and if individuals want a banking association they besiege the doors of the legislature asking for special privileges; and if chartered on this basis they have privileges that are possessed by their fellow citizens.

MR. STUART of Doddridge. I accept the modification proposed by the gentleman from Wood.

MR. BROWN of Kanawha. I fully endorse the amendment of the gentleman from Wood. I know there is a large portion of the banking business has no reference to the currency at all and in that as purely local and altogether private and men can bank without incorporation as well as with it if they choose. If I set up a bank and my neighbors come and deposit their money with me I may as well keep it and lend to anybody that may choose to borrow of me; and I would see no objection to allowing these private banks the same purpose. It is very common in almost every town or vil-

lage almost. You have safety-fund banks where the citizens make their deposits and constitute a little banking fund. They may as well be incorporated by law under a general provision as anywhere else. But these banks of circulation that affect the public interest all over the State, and everybody takes them on simple credit that they are a bank authorized by law, and we ought therefore keep an eye on it and control it, that we may always have a safe and sound currency. I would reply to the gentleman from Brooke simply by a declaration that while we may not have had a better currency in Virginia in regard to banks than other states, I am confident we have had as good and have banks in Virginia that will compare any day with those in other states of the Union, and which will generally be rated above them in solvency and circulation, grown in the confidence of the people; and although our banks, when under the pressure of circumstances have been suspended, the banks of all other states of the United States have been suspended also. The eastern banks always have a premium on their paper simply because on account of the balance of trade we have to borrow money and have to pay it there. That is the only reason they have any preference, not because they are more solvent. On the contrary, I believe they are less so perhaps.

Mr. Stuart's amendment, with the modification suggested by Mr. Van Winkle, was agreed to.

MR. STEVENSON of Wood. I offer to amend, Mr. President, by inserting at the end of the word "passed" in the 9th line these words: "except when the object cannot be attained under such general laws."

MR. BROWN of Kanawha. I now move to amend by striking out all after the word "passed" in the 9th line as irrelevant after the amendments made.

MR. STUART of Doddridge. I would like to strike out all after "money" in the 10th line. I would like to retain: "But no company or association shall issue bills to circulate as money."

MR. VAN WINKLE. I see the object of the gentleman from Doddridge. If he will let the vote be taken on striking out, I suppose there would be no objection to let the provision stand that he wants to retain as it is a positive inhibition on all these companies against allowing them to issue bills to circulate as money. But the

object of the gentleman from Kanawha is to strike out the clause that compels those that do issue to give security.

MR. BROWN of Kanawha. I do not want any to issue except those properly chartered for the purpose and for no other purpose whatever. It is a common practice in some states, and I have shown the obligation in this state already to grant charters.

Mr. Stuart withdrew his motion, and the amendment offered by Mr. Brown was agreed to.

Mr. Stuart of Doddridge then moved to add at the end of the section the following: "But no company or association authorized by this article shall issue bills to circulate as money," and the amendment was agreed to.

MR. STEVENSON of Wood. The other feature I spoke of is this: If the legislature will have the power which this amendment proposes to give them, I will not offer it. But for the purpose of getting an opinion on that I offer it as an amendment to come in at the end of the word "prescribed" in the 6th line: "but all general laws passed pursuant to this section may be altered or amended by the legislature from time to time."

MR. SMITH. I beg leave to suggest that is one of the very excellencies of the legislature and its superiority of a constitution, that a legislative act may be amended at any time at any session they choose to act upon it, one year, two years or twenty years thereafter the legislature may alter the law. I suppose the gentleman is aiming at this, that when there is a charter granted it shall be competent for the legislature to alter that charter. They may alter the law, but they cannot alter the charter, for that is a contract. That is the objection to this whole proceeding. Now there is no provision here if your charter wants amendment. How are you going to get it? The legislature it says may grant it and confine it to the general law to granting but having given them no power to amend or alter the charter after it is passed. That is involving the country in difficulty and involving all these charters in difficulty. There ought to be some provision at some place for all corporations that may need relief and redress through their charters. There ought to be some power somewhere to make these amendments, but I do not see under the provisions of this Constitution that there is any capacity on the part of the legislature or any other authority to change the charter even though the par-

ties wanted it changed. The legislature shall pass the general law to grant charters, but that is all they have power to do by this Constitution. That wants amendment, and I do not see how you are going to amend it. Your amendment is supererogatory because that power exists everywhere, in every legislature, to amend a law. But it does not exist to amend a charter.

There have been so many amendments offered and they have not been announced from the Speaker's chair that I really don't exactly understand what has been amended. I think the proper rule is that whenever an amendment is offered it should be in writing and announced by the president of the Convention.

MR. VAN WINKLE. I think when the gentleman from Logan looked into this matter, his spectacles were not handy. He must have left them at home. Now this is the condition of these general laws. The legislature in every one of them reserves the right to change them at pleasure; and it is a good feature just in that respect that it does not for instance make the tolls on a railroad or on a turnpike, or through similar things does not make them vested rights, as they are under these special charters. On the contrary, when the legislature charters now, as when it charters a railroad company, for instance, it gives it certain peculiar functions, as, for instance, the place where the property is to be constructed, the amount of capital it may use and the authority to borrow money; but then the balance is that it shall be subject to the general railroad law which contains a provision that it shall be always in the power of the legislature, so that matters of importance do take vested rights because that without you could not get a corporation to act at all. But this power, the mere subject of regulation, is retained by the legislature. Again, the very beauty in these general laws is, you have a general law in reference to railroads. I have spent winters at Richmond endeavoring to prevent special restrictions being placed on this Baltimore & Ohio Railroad; and I always said to gentlemen there that if they would put it in the general law, make it binding on other companies in the state, we had not a word to say; but that we would resist as far as we could any special legislation against that road in the way of restrictions. Now see the advantage. If it is necessary for one company, it is necessary for all, and every matter of regulation, if you put it in the general law and it should operate inconveniently to the public and hence to the companies, why then the legislature is applied to to repeal that portion of the law. If for any other reason it is de-

sired that the general law be changed, it is changed for the benefit of all. That is one of the beauties of general laws. So with a general law in reference to counties or townships, what powers they may exercise: we want general laws for them, so that if you change for one you change for all; you secure uniformity, equality and promote the interests of all alike. The public discuss the law; the legislature is informed and instructed; the legislation on any subject is settled by the great body of the people, not by a few individuals. The subject of regulating corporations should be thrown open to the public as far as proper to do so and not made the result of special, and generally favorite legislation; legislation that is favoritism and to a few influential men.

Under this system of general laws, whenever the legislature comes to act it must be honest, be governed by public considerations only. Now this exclusion of special legislation in these cases does not prevent any just amendment being introduced. If the legislature shall pass a law regulating insurance companies and in passing that law had overlooked some important point or should have placed some restriction in the law which would render their operation impossible, there will be a voice coming up from the whole public against that feature and demanding that the legislature repeal it.

If, on the other hand, you find these companies under this general law are enjoying too much privilege, or something about it operating injuriously to the public, the public voice comes up in protest and the legislature heeds it if it is just. In that way, instead of having log-rolling, the legislature is left free to act without that kind of pressure and solicitation. I wish to be understood. I believe we have as good men as any others; but this system of favoritism has grown up and we are now suffering from it. In relation to the propriety of this in the Constitution, we claim as the right of the citizen that these things should be open to the public and not confined to a few individuals. I leave it to the Convention to say if this is not precisely the case where we need a constitutional provision. The gentleman from Logan argues as if we were making your general law and putting a general law into the Constitution. We intend no such thing. We simply provide that these things shall be open to any number of individuals who choose to associate for the purpose, and that they shall be regulated by general laws, so that one shall have no more privileges than another; and unless they can show that their matter connects

itself as directly with the public as internal improvements or banks of circulation or other objects that they ought not to ask, that there shall be no special legislation on the subject. Where a matter concerns the whole State, there the Convention will remember I have asserted it was the proper thing for the legislature. But where it concerned a single county, I want the county alone to legislate on it. It concerns nobody else. I think it is due to those we represent here that they shall have this right without going to the legislature to obtain a mere facility for doing business and that business generally beneficial to the public. I have complained of that ever since our railroad has been constructed. I have been at Richmond winter after winter to get facilities that could not injure anybody; but because they wanted to build a railroad in the other part of the state and the Baltimore & Ohio was a great rival—they thought so, but they were very much mistaken—but it was only by log-rolling that anything could be obtained and those representing this trans-Allegheny country here who had axes to grind have voted for the squandering of public money on the railroad in the east but they had no interest when they did not get one dollar for themselves. Such a system ought to be stopped, and this law will tend to do it to a great degree.

MR. BATTELLE. I must call the attention of the Chair to the fact that the gentleman's time has expired.

MR. HERVEY. I hope there will be no exception in any case.

MR. VAN WINKLE. What is the gentleman going to do if I just go on? I hope no such gag laws will be passed.

MR. STUART of Doddridge. I would like to accommodate the gentleman but if this is to be done, let it be understood the rule is to be done away with.

MR. VAN WINKLE. Well, sir, I have lost the connection. I do not think I have anything more to say. I only hope that what I have said is better remembered by the Convention than it seems to be by me now (Laughter).

MR. SMITH. I suppose there is a parliamentary rule that every amendment should be announced before anything is said upon it. That rule so far as I have observed has been utterly disregarded, and it leaves those who are to act in the dark. I do not know oftentimes how to vote. There is no announcement of the amend-

ment. I will ask as a favor to myself that the amendment of the gentleman from Wood be reported.

THE PRESIDENT. The Chair understood that if it was thought necessary, while listening to the opinion of those who understood it perhaps better than himself, he would offer it or would not, the gentleman from Kanawha rose to advise the Chair, who heard him through; and the gentleman from Wood followed on the same side, counseling his colleague from Wood; and in that way the question passed on. The Chair had certainly intended promptly to propound the question after the gentleman from Wood took his seat; but he took with the condition that he was inviting an opinion from other members as to the propriety of the amendment. Hereafter, the Chair will insist on the rule that whenever a gentleman offers a proposition that he takes his seat until the Chair has an opportunity of propounding the question. If he does not do so, the Chair will feel compelled to insist.

MR. VAN WINKLE. He may lose the floor, sir.

MR. POMEROY. I suppose the motion is simply to strike out and insert and is such a motion as will be plain and open without writing. The Chair can announce the motion and let the discussion go on.

THE PRESIDENT. The Chair has found whenever he departs from the rule it leads to great loss of time and that members will not draw the distinction whether it is one of those cases in which everybody understands the motion to be in order or whether it is not. And therefore it is necessary that there may be no mistake longer as to what the Chair does or does not entertain, the Chair will insist on having the privilege of propounding as distinctly as he can the question to the Convention.

MR. VAN WINKLE. The Chair is right in that; and then let the Clerk read it distinctly. But I remark that if you compel a member who gets up to sit down again, some other member may take the floor from him.

MR. BATTELLE. I wish to propound now that very question: if a gentleman gets up and makes a proposition, and pauses in his remarks until the Chair states it, is it understood or not understood with that relinquishing the floor, does he lose his place and his right to speak? That is an important point, sir.

THE PRESIDENT. He has a right to explain his proposition before offering it. In short, common courtesy allows five minutes perhaps of explanation. The Chair is not of the opinion that he can deny another man the right to the floor after the motion is propounded.

MR. VAN WINKLE. If a gentleman takes his seat, he leaves the floor. If one gentleman interrupts another the first must stand during the interruption or he loses the floor. We do not so much contend here yet, but the time may come before we get through.

MR. POMEROY. The idea is just this: suppose a member offers a resolution and is disposed to take an ungentlemanly advantage and move the previous question, I contend the parliamentary rule allows the gentleman offering the resolution to maintain his standing position until the resolution can be forwarded and read and then he can make a speech on the resolution before he takes his seat.

MR. BATTELLE. I wish to make another remark in reference to the proposition that has been interrupted by the conversation of gentlemen since I was up before. I wish to have a distinct understanding, on my part at least in reference to the proposition I made a while ago: whether if I choose to offer an amendment to the bill now pending, or a proposition in relation to it, whether the intervention of the announcement of that proposition from the Chair takes away my right to the floor. If that is a fact, it is a proposition that I never have heard of in any deliberative body elsewhere; and I wish to understand distinctly whether that is the ruling of the Chair.

THE PRESIDENT. How is that?

MR. BATTELLE. If a member offers a proposition to the pending question, does the announcement of that question from the Chair take away the right of the person making that proposition to the floor? For example, I get up and offer a proposition and propose to speak to it as has been the case all along.

THE PRESIDENT. It does not take away his right, but it puts him on a par, in the opinion of the Chair, with any other gentleman except so far as courtesy that other gentlemen may feel due to the mover of the proposition.

MR. BATTELLE. I wish then, now, here, with very great respect for the Chair, to express my most emphatic dissent from that doctrine. For one, I am disposed to take prompt measures to correct it.

THE PRESIDENT. The Chair would make this remark to the gentleman from Ohio that he indicates those general views, that gentleman may look into the manual; but where the Chair is thought to be wrong he will hear any remarks tending to show the Chair is wrong or which may change the decision.

MR. POMEROY. Do I understand the ten-minute rule? I may vote to extend the privilege to a gentleman, to any member even if he was making a direct attack on the member from Hancock? I want to understand the decision of the Chair. I understand the Chair to say that in extending the privilege of the gentleman from Wood the resolution was abrogated. The Chair is certainly mistaken.

THE PRESIDENT. The Chair understood the Convention very well as intimating that if the rule was extended, then they were in favor of abandoning the rule altogether. The Chair took it to be really a vote to that effect.

MR. STUART of Doddridge. The rule cannot be done away with without a vote of reconsideration directly put to this house, and I would remark, sir, that the Chair is certainly not correct in his other decision that when an amendment is proposed to this Convention no man is entitled to the floor until the Chair has propounded the question and then accorded as a courtesy only to the mover of the proposition.

THE PRESIDENT. The Chair is aware that the Convention have not voted to rescind their rule in relation to speaking. We have had no direct vote on that but the Chair has understood that he was not to apply his watch to gentlemen. The Chair has no disposition to be less liberal than the Convention is.

MR. STUART of Doddridge. We hope the Chair will keep the rule; we shall insist on it.

MR. BROWN of Kanawha. I desire to say one word. I am not very familiar with these matters of rules; but I confess, sir, I desire to understand what is to be the rule and to act upon it. The gentleman from Hancock inquires what is to be the rule and desires when he makes a proposition that some gentleman "ungentlemanly"

makes some motion—I do not know what the motion is—whether it is to be enforced or not. Now I suppose if we have a rule it cannot be “ungentlemanly” to enforce it. If it is, it ought to be known beforehand and stopped. I desire to know another thing. If some gentleman “ungentlemanly” offers a proposition and then seeks to inflict an “ungentlemanly” speech on the house if they are bound to sit and hear it.

MR. POMEROY. To cut me off before I explain what I mean, by calling the previous question.

MR. BROWN of Kanawha. I did not hear anything about the previous question. I understand in other bodies—in the house of delegates—when a gentleman makes a proposition there the speaker propounds the proposition to the house, and that until the speaker has done this the party is not allowed to hold the floor nor stand on the floor, nor debate it; and I have seen the speaker invariably require the parties to take their seats until the proposition was propounded distinctly; and after that was done the speaker then announced that the question is open. Now, whether that rule is to govern here, a parliamentary rule—the rule of the house of delegates—I am not prepared to say, but I know nothing in the rule that is either ungentlemanly or improper; and those rules that are selected by this house to govern it ought to be enforced. Whoever takes offense at the enforcement of the rule, I say I am prepared to take the risk in consequences of the offense come whence it may. I shall never take offense at the enforcing the rules of the house so far as I am concerned for I feel very often I get out of order.

MR. POMEROY. I did not use the word “ungentlemanly” myself. I said I would not use the word. But here is a proposition and another gentleman sees proper, without its being discussed at all, to demand the previous question. He has the right to make the demand; but I do say that under such circumstances it is discourteous to do it. It is a legitimate subject of debate, and I have no doubt the gentleman from Kanawha, cut off from the right of free speech in this way, would feel just like the rest of us.

THE PRESIDENT. The Secretary will report the amendment of the gentleman from Wood, to insert after “prescribed” in the 6th line these words: “but all general laws passed pursuant to this section may be altered or amended by the legislature from time to time.”

MR. STEVENSON of Wood. I hope the amendment will not be saddled with the sins of this waste of precious time. If that would have a tendency to shorten discussion at all I will withdraw it. I believe the object I had in view is attained.

Mr. Stevenson withdrew his amendment, and the question recurred on the adoption of the section as amended.

MR. BROWN of Kanawha. I wish to offer an amendment which I will read: "but no charter of incorporation shall be granted by the courts under the general laws unless the right be reserved to alter or amend the same at the pleasure of the legislature, to be declared, however, by general laws," to come in at the end of the section.

MR. VAN WINKLE. It does not appear yet that the court is to grant them. It would be better to say: "No charters shall be granted under general laws."

MR. BROWN of Kanawha. I accept the modification.

The amendment as modified was adopted.

MR. SOPER. I propose this as an amendment, sir, at the end: "Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law."

MR. VAN WINKLE. This is peculiarly in the province of the legislature in framing these general laws; and I am not sure but the amendment just adopted goes a little too far. It ought not to be admissible to amend a charter granted under general laws. It strikes me the legislature would not have power to prescribe all this and then have it in their power to alter it.

MR. SOPER. Was the gentleman opposing the proposition?

MR. VAN WINKLE. I think it is unnecessary, sir. It had better be left to the legislature.

MR. SOPER. We are giving the legislature to prescribe by general laws for the formation of incorporated companies. Now, there is a class in the community wherever those incorporated companies exist who are very often induced to lend their money to give credit to the corporation and debts are otherwise incurred in the neighborhood around where these corporations are. If the incorporations are prudently managed it is all well, but if they get into the

hands of some speculating men who go for the purpose of getting what credit they can out of the community in which they reside and then suffering their incorporation to become insolvent, to turn round to the creditor and say, why, there are no funds of this corporation and therefore we lose our debt. What I want is that the legislature shall at all times have the power to render such individual liability on the part of all men engaged in the corporation that people around in the neighborhood who are getting credit on the strength of it shall be secured for their debts against the corporation.

MR. BROWN of Kanawha. There is but one class of corporations against which this doctrine ought to be enforced, and even there it is doubtful. That is the case of banks of circulation, which have a peculiar privilege conferred on them more than any other institution in the state. Every possible security that can be given the note holder within the power of the law-maker should be required that does not destroy the institution itself.

MR. PARKER. It is policy to protect our people in all cases where we can from giving credit where it is not deserved but it seems to me to adopt the policy suggested by the gentleman from Tyler would prevent any association of wealth from incorporating under this law. If all individuals that enter into an incorporation are to be liable for all the debts that the corporation may contract it will make it a mere private partnership.

MR. VAN WINKLE. The amendment proposed by the gentleman from Tyler destroys the very idea of an incorporation. A mercantile incorporation is that of limited responsibility. It is just that thing that induces men to incorporate, for each knows exactly how much he is going to risk.

The hour having arrived, the Convention took a recess, Mr. Van Winkle having first presented the following report, which on his motion was laid on the table and ordered to be printed:

SECOND REPORT OF THE COMMITTEE ON FUNDAMENTAL AND GENERAL PROVISIONS

The Committee on Fundamental and General Provisions respectfully report the following additional provisions, and recommend their insertion in the Constitution.

By order of the committee,

P. G. VAN WINKLE, Chairman.

1 All officers elected or appointed under this Constitution may
2 be removed from office for misconduct, incompetence, or ne-
3 glect of duty, in such manner as may be prescribed by law, and
4 unless so removed, shall continue to discharge the duties of
5 their respective offices until their successors are elected or ap-
6 pointed and qualified.

7 The terms of all State and county officers, and of the members
8 of both houses of the legislature, not elected or ap-
9 pointed to fill a vacancy, shall, unless herein otherwise pro-
10 vided, begin on the day of next succeeding
11 their election. All elections and appointments to fill vacan-
12 cies shall be for the unexpired term. All vacancies in elective
13 offices shall be filled by special elections.

14 The privilege of the writ of habeas corpus shall not be sus-
15 pended, except when, in time of invasion, insurrection or other
16 public danger, the public safety may require it. No person
17 shall be held to answer for treason, felony or other crime, un-
18 less on presentment or indictment of a grand jury. No bill
19 of attainder, ex post facto law, or law impairing the obligation
20 of a contract, shall be passed.

21 No law abridging freedom of speech or of the press shall be
22 passed, but the legislature may provide for the restraint and
23 punishment of the publishing and vending of obscene books,
24 papers and pictures, and of libel and defamation of character,
and

25 for the recovery, in civil actions, by the aggrieved party, of suit-
26 able damages for such libel and defamation. Attempts to justify
27 and uphold an armed invasion of the State, or an organized in-
28 surrection therein, having in view the overthrow of the govern-
29 ment thereof, during the continuance of such invasion or in-
30 surrection, by publicly speaking, writing or printing, or by
31 publishing or circulating such writing or printing, may be, by
32 law, declared a misdemeanor, and punished accordingly.

33 Private property shall not be taken for public use without
34 just compensation. No person, in time of peace, shall be de-
35 prived of life, liberty or property without due process of law.
36 The military shall be subordinate to the civil power.

37 The right of the citizens to be secure in their houses, persons,
38 papers and effects, against unreasonable searches and seizures,
39 shall not be violated. No warrant shall issue but upon proba-
40 ble cause, supported by oath or affirmation, and particularly
41 describing the place to be searched, and the persons and things
42 to be seized.

43 In suits at common law, where the value in controversy ex-
44 ceeds twenty dollars, the right of trial by jury, unless waived
45 by the parties, shall be preserved. No fact tried by a jury,
46 shall be otherwise re-examined in any case than according to
47 the rules of the common law.

48 The trial of crimes and misdemeanors, unless herein other-
49 wise provided, shall be by jury, and shall be held publicly, and

50 without unreasonable delay, in the county where the alleged
51 offense was committed, unless, upon petition of the accused,
52 and for good cause shown, or in consequence of the existence
53 of war or insurrection in such county, it is removed to some
54 other county. In all such trials the accused shall be informed
55 of the character and cause of the accusation, and be confront-
56 ed with the witnesses against him, and shall have the assistance
57 of counsel for his defense, and compulsory process for obtain-
58 ing witnesses in his favor.

59 In all criminal prosecutions, the jury shall be the judges of
60 both law and the fact. In prosecutions and civil suits
61 for libel, the truth may be given in evidence; and if it shall
62 appear to the jury that the matter charged as libelous is true,
63 and was published with good motives, and for justifiable ends,
64 the verdict shall be for the defendant.

65 Excessive bail shall not be required, or excessive fines im-
66 posed, or cruel and unusual punishment inflicted. Penalties
67 shall be proportioned to the character and degree of the of-
68 fense. No person shall be compelled to be a witness against
69 himself, or be twice put in jeopardy for the same offense. No
70 citizen shall be subjected to corporal punishment, except to
71 death by hanging, for treason, murder, rape or arson. All
72 prisoners shall be bailable by sufficient sureties, except in cap-
73 ital cases where the proof is evident or the presumption great.

74 The enumeration in this Constitution of certain rights and
75 privileges shall not be construed to impair or deny others re-
76 tained by, or inherent in, the citizens of the State.

77 Such parts of the common law, and the laws of the State
78 of Virginia, as are in force within the boundaries of the State
79 of West Virginia when this Constitution goes into operation,
80 and are not repugnant thereto, shall be and continue, the law
81 of this State, until altered or repealed by the legislature.
82 Nothing herein contained shall affect grants of lands, legally
83 issued by the Commonwealth of Virginia before the seven-
84 teenth day of April, in the year one thousand eight hundred
85 and sixty-one, or subsequently thereto, by authority of the re-
86 stored government thereof, or any inchoate or imperfect right
87 to such grants. All civil and criminal suits and proceedings
88 pending in the county or circuit courts theretofore held with-
89 in the said boundaries when this Constitution goes into opera-
90 tion, shall be docketed and thereafter proceeded in, in the cir-
91 cuit court of the proper county; and all such suits and proceed-
92 ings then pending in the Supreme Court of Appeals of the State
93 of Virginia, if the defendant resides within the said boundaries,
94 and the plaintiff is entitled to prosecute in this State, shall be
95 docketed, and thereafter proceeded in, in the Supreme Court
96 of Appeals thereof.

AFTERNOON SESSION

The Convention re-assembled.

The Chair stated the question to be on the motion of Mr. Soper to amend Mr. Van Winkle's substitute for the additional section offered by Mr. Caldwell to the legislative report, Mr. Soper proposing to add these words: "Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law."

MR. SOPER. I was going to amend that motion by inserting the words "to citizens of this State," so it would read: "Dues from corporations to citizens of this State, etc."

THE PRESIDENT. The gentleman cannot modify his proposition if there is any objection.

MR. HERVEY. I object to the modification. I make the announcement immediately after the question has been stated. If the objection is not out of order I desire to be considered as objecting to any change.

MR. SOPER. If the proposition is varied very materially, it is a new proposition.

THE PRESIDENT. The Chair is of the opinion that an amendment with a view of fighting again merely would not be in order. The gentleman could not obtain by a mere modification of his own proposition the right to additional privilege in debate.

MR. HERVEY. That is the point I make.

MR. SOPER. It is an entirely different proposition.

MR. LAMB. I will make the motion, and the gentleman will understand me as not intending to vote for it. I suppose it would be perfectly in order for me.

THE PRESIDENT. The amendment would be in order; but really the Chair would dislike to see a parliamentary management of that kind to effect a purpose against which the Convention had decidedly shown opposition to.

MR. SOPER. I hope the Chair and the Convention will see that this kind of gag operations will not answer the purpose. There is but one fair way, and that is to allow every question here to be

discussed in moderate time. We will have this whole question up every day during this session unless there is some modification of this; and instead of getting through in a week or ten days we will be here two or three months.

THE PRESIDENT. Such a thing could be brought about but it would be a very unfortunate condition of things and would divide the house into factions upon rules of order, which would be greatly to be regretted.

MR. SINSEL. It seems to me there is nothing more clear than that after a proposition has been submitted and fairly stated and discussed, or whether discussed or not, that the mover of the proposition cannot withdraw it only by general consent. Now that I think is clear; and this would only be an evasion in order to protract and delay. If this Convention wishes to get along, they have established the rule and the only way is to adhere to it without regard to persons or individuals. Every member of this Convention ought to have at least an equal chance here. No one member is entitled to more respect and courtesy than another is, provided he conducts himself in that way. When a proposition is submitted the matter can be modified only by general consent. If any one member objects it cannot be done.

MR. POMEROY. The Chair has already decided the point, and the gentleman from Tyler has been speaking upon it; but now it is an amendment offered by the gentleman from Ohio. Of course if a motion is to be discussed and the vote is about to be taken on it, it is proper for another man to offer an amendment to that; and therefore the objection cannot lie in this case.

MR. SINSEL. No one objects to that.

MR. POMEROY. And I believe the Chair has already so decided.

THE PRESIDENT. The Chair is of opinion that the motion of the gentleman from Ohio would be in order. The Chair only expressed regret that the purpose, in all appearances—I cannot say what the object is by any means, but it would seem to carry an indirect way of doing what the house decided should not be done. And while the Chair would very much regret, the Chair would not depart from the rule.

MR. LAMB. In justification of myself I may say that I have held but one principle in regard to this power from the start: that

in attempting to shut out free discussion in this Convention instead of saving time the Convention will do what it has done at present, waste time. If you have forty provisions to that effect, it will be the result of every one of them. Instead of saving time, you are delaying and confusing the proceedings of the Convention. The best way to expedite business is to leave discussion free.

MR. BROWN of Kanawha. It seems then the rule that the Convention has prescribed is to be departed from. It is to be driven from its purpose by this delay in order to throw annoyances in its way. I may be led but I cannot be driven; and whenever any gentleman, or set of gentlemen, undertake to pursue a course for the purpose of harassing and annoying, and, if I may use the expression, baffling the Convention, to drive them into abandoning a rule they have prescribed, it would only make me adhere to it with ten-fold more tenacity. And I say further that if this Convention has not the resolution to maintain its ground when it has taken it, then it ought to dissolve itself and go home. I regret exceedingly that the gentleman may have made the motion for the purpose as I understand it, for if any gentleman makes a motion right and proper in itself—but I regret that a motion is made to do indirectly what the house has made a rule not to do. Now, I could not vote for a motion of that sort.

MR. BROWN of Preston. Has the gentleman from Tyler avowed that he made that motion with a view of making a speech?

THE PRESIDENT. The gentleman did not declare in words that that was his purpose. The question is on the amendment offered by the gentleman from Ohio.

MR. SOPER. I disclaim any intention to offer anything by way of threat or anything on this body. If in the warmth of debate I use words that would be construed that way, they are not intentionally so uttered. The amendment which now is proposed, sir, to the section that is offered shows more clearly what object I had in view in proposing the original proposition. I endeavored to call the attention of the Convention to the necessity of the case, and I was met by the gentleman from Logan with expressions by which he characterized it as a New York measure and said if I understood him correctly that he wanted nothing from that quarter to come and interfere with the business of this Convention, or something to that effect. I did say that unless you guarded your author-

ity here to grant companies of incorporation, you would have a class of men from New York and other eastern states besieging your legislature and courts for acts of incorporation for speculative purposes. I did say that, and that was all that I did say; and if the gentleman had combatted that proposition I should not have said anything in reply. But the gentleman then rather inconsistently said—

THE PRESIDENT. The gentleman will confine himself to the question between the amendment and the original proposition.

MR. SOPER. I know, sir. He instantly said there was a great deal of money in New York and he wanted it to come here.—

MR. SMITH. I did not say a word about these speculative people that would come here after incorporation; but I objected to the amendment because it was calculated to drive capital out of the State, and I want to bring capital into the State.

MR. SOPER. I know, sir; I only referred to the speculators. It is true this proposition is taken mainly from the State of New York—at least substantially. But it is a provision which if adopted here will prove wholesome and beneficial.

There are two classes of men that combine together for corporate purposes. The object of both is to make money. One set of men have got capital and discretion and honesty and will transact their business in the most careful and prudent manner. They do not care how many restrictions you throw around them. If their operation is profitable they will continue it and whenever it becomes unprofitable they will stop it and pay up their debts and discontinue business. There is another class without capital, or who, if they have got some capital, are without integrity and honesty; and they will come and get your acts of incorporation, and then by means peculiar to themselves they will by an inflation of the stock contract debts in your neighborhood; and whenever they can amass money and get such credit as they can from the community, that institution or corporation will become insolvent and then your honest citizens in and around your neighborhood are the kind that will suffer. It is to protect those men that I have offered this proposition; and if gentlemen will look at it, it has no other effect. And they will find it by sore experience if they should be driven to make constitutional provisions similar to those in order to protect their citizens.

Well, now, sir, the amendment here goes so far as to protect citizens in Virginia—and who are they? Not stockholders; not the gentlemen combined in these incorporated companies, but your farmers and laborers who have made a few dollars to lend to those men supposing them to be wealthy and honest who will meet their engagements. That is the class to be protected by this provision; and I submit to this Convention whether or not you do not want to protect your citizens. You are laying no unjust burdens on those men. That don't permit them to come in and say how business shall be transacted. After they have got all they can get from you, they will blow up and throw you away and say, why, here the corporate funds are gone, and there may be individuals out of that very institution rolling in wealth and you gentlemen who have contributed to aid and assist them as you pleased will be deprived of getting a cent. Now, it is to take care of citizens who are defrauded by companies of that kind.

I merely in a few words wanted to present this proposition directly to the Convention, and I will now again remark that there is a similar provision in the State of New York, and put there after a most sore experience solely to protect honest citizens throughout the country. The men of capital will always take care of their own capital; but as I before remarked if capital is employed by honest men they do not regard a provision of this kind in your Constitution. It is one they calculate to act up to anyhow. All it requires is that they pay their honest debts, and if they find themselves in failing circumstances and if they will be resorting to hidden means of extending their credit, and if they will be guilty of things of that kind, sir, they ought to be followed wherever they go and compelled to pay every cent.

I want to be directly to the point. It has come down now to a very small compass. If you incorporate this provision in the Constitution, it does not affect honest men that intend to and are able to pay their debts. If you do not incorporate this, you are liable to be dissatisfied if you get into the hands of dishonest men.

Well, then, there is another provision about it: If some gentlemen come together to form a corporation they will be very careful into whose hands they let their stock go. They will be very careful how they contract debts. It throws guards around all parties. So that you will perceive, gentlemen, that if the act of incorporation is a profitable business conducted on honorable principles, why they are not injured by it; but, as, on the other

hand, if it turns out to be unprofitable, it ought to be stopped instantly, and this provision would have a tendency to stop it. And, gentlemen, they would not sell out their incorporation after it had become insolvent to a set of worthless men because the legislature will make them responsible. They will not permit a set of men to get an institution and keep it going until they get it unprofitable and then sell it to a set of insolvents. Not if the legislature follows up this provision, because they will ask every individual shareholder for a number of years if he has been the owner of stock in the institution. And what effect will it have? Why, gentlemen say, no man of means will go into it. If money is to be made by it, men of means will go in; and if that is not the result, they will wind it up and he will be careful to part with it to responsible men.

(Here the President's gavel fell.)

The question was taken on the amendment offered by Mr. Lamb and it was rejected; and the question recurring on Mr. Soper's original amendment, the vote was taken and it also was rejected.

The question recurred on Mr. Van Winkle's substitute for the additional section proposed by Mr. Caldwell, which as amended was reported as follows:

"The legislature shall pass general laws whereby any number of persons associated for mining, manufacturing, insuring or other purpose useful to the public, excepting the issuing of bills to circulate as money or the construction of works of internal improvement, may become a corporation on complying with the terms and conditions thereby prescribed; and no special act incorporating or granting peculiar privileges to any joint stock or other company or association not having in view the issuing of bills to circulate as money or the construction of some work of internal improvement, shall be passed. But no company or association authorized under this section shall issue bills to circulate as money; and no charter of incorporation shall be granted under such general laws except where the object cannot be attained under such general laws."

Mr. Soper offered the following as a substitute:

"The legislature may pass general laws by which any persons may be incorporated on complying with the provisions to be contained in such laws and be subject to all such general laws as may from time to time be enacted not inconsistent with the provisions of this Constitution.

"The share-owners in any incorporation except insurance companies, in case the corporation shall become insolvent shall be liable for the unpaid debts of such corporation contracted while he was such share-owner to an amount in the same proportion as his or her share shall bear to the whole stock of such incorporation. Liabilities shall not extend to any indebtedness which shall not have been demanded by suit within two years after it shall have become due."

MR. LAMB. I am obliged to call the question of order in regard to the last resolution. It is exactly the same as we have voted down—the latter part of the resolution.

THE PRESIDENT. The Chair is of opinion that in substance it is about the same.

MR. VAN WINKLE. It is modified by other provisions. It is obnoxious to the same objections that is certain; obnoxious as a whole to the objections made this morning. I particularly ask the attention of the Convention to the remarks made by the gentleman from Logan on this occasion and the previous one. The bowels of our earth are filled with the wealth that could be extracted, and these corporations have proved to be the only means by which it can be extracted. Then to attach such provisions to these corporations as would make their grants perfectly nugatory is to defeat the very object of the whole measure. If the Convention agree with the views that have been so ably presented by the gentleman from Logan as to the importance of promoting these corporations for these beneficial purposes, having now removed from this section banks of circulation and internal improvements, and all that is asked for the others being facilities for transacting their business in a certain way—if the Convention agree in the importance of having these corporations afforded facilities for creating them without soliciting the legislature and being subject to have to vote for some enormous expenditure of money; if they think they are desirable in this way, I shall ask them, then, to stick to the substitute as we have amended it here this morning. Although I do not pretend to say for one moment that the gentleman from Tyler is sincere in the view he presents, I feel satisfied that in this country, at any rate such provisions as he has introduced there by way of substitute would be fatal to all these corporations.

MR. SOPER. Well, sir, if the Chair overrules the second proposition I am entitled to be heard on the first. There are two distinct sections in the paper that has last been sent up.

MR. PRESIDENT. The Chair was willing to hear the gentleman from Tyler as showing the difference between the substitute and his other proposition as voted down, if he shall have satisfied the Chair that there is a wide and distinct difference, the Chair may modify his opinion.

The Secretary read the first paragraph.

MR. SOPER. That I apprehend to be new matter entirely. But then again, sir, I have a right to be heard on the proposition. I have not spoken to it at all.

THE PRESIDENT. On the merits of the proposition not without the Chair entertains it. The Chair has heard the gentleman from Tyler, desiring to know whether he ought to entertain it or not, the Chair was first led to the impression it did differ in important provisions from the other; but other gentlemen who had a better opportunity to attend to its reading than the Chair thought it was the same, and the Chair then determined to hear the gentleman from Tyler. If he could show that the proposition was in substance and effect different from that voted down, the Chair would entertain it, but if it was the same proposition, he would not entertain it, and its merits could not be spoken to. The only point on which he was prepared to hear from the gentleman from Tyler was whether it was in substance or was not the proposition heretofore voted down. If it was in substance the same though in language very different, it ought not to be entertained under the rules of the house. But with a view of cutting short and saving time, the Chair is disposed to put it to vote.

MR. LAMB. The point of order I raised was that it was not competent simply to alter a portion of what was offered by the gentleman from Tyler and claim it as a new proposition. It has no application I presume to the first. The substitute consists of two distinct propositions. I thought the second offered was substantially that which we had just voted upon. But the first proposition is a different matter altogether.

THE PRESIDENT. The Chair is of opinion that the substance and effect of the proposition now offered would be just about the same as the one offered previously.

MR. STUART of Doddridge. It strikes me, Mr. President, if you were one of these incorporated companies you would see it in

a different light. Suppose you and I and the gentleman from Logan were incorporated to carry on some particular business. I put in ten thousand, you twenty thousand, the member from Logan forty thousand. If the proposition of the gentleman from Logan makes me liable for ten thousand dollars and the proposition of the gentleman from Tyler makes me liable for the whole amount, then if there is any difference between \$10,000 and \$70,000 there is a difference between these propositions.

THE PRESIDENT. I was not in the chair when the other was offered. If the two propositions bear that distinction the Chair would be of opinion that it would be in order.

MR. BROWN of Kanawha. It looks to me as if the proposition of the gentleman now embraces a different proposition from that of the first. By the first proposition, as remarked by the gentleman from Doddridge, as he supposed or necessarily implied, each stockholder would be liable for the whole; but this confers on the legislature the power to prescribe; and the legislature might if it saw fit impose the same liability for the whole or for a part only.

MR. SOPER. What disposition of the first section, sir?

THE PRESIDENT. The Chair will entertain the proposition both on the first and second proposition.

MR. SOPER. Mr. President, the first section is not obligatory on the legislature. I use the word "may." They may pass general laws to authorize the incorporation of companies for various purposes, or they may not. I submit the whole thing by this proposition to the legislature. If I recollect the proposition for which this is offered as a substitute is binding on the legislature. They in certain cases shall pass general laws. That is the difference between the two. There is nothing to prevent, if this substitute is adopted, the legislature may reserve to themselves the whole power of granting a company or incorporation or may pass general laws for the incorporation of specific companies or for specific purposes. They may do that, and it appears to me, sir, if this whole matter is to go before the legislature at all it had better go in that way and then the legislature are free, as time shall disclose necessities, either to enlarge these corporate powers or restrict them. They will have the whole control of the matter within their own jurisdiction.

That is the difference, sir, between the two propositions. There is another difference. The other is limited. It is not applicable to banking institutions or works of internal improvement. Now, according to the laws of Virginia you can organize an association for public improvement, if I understand it correctly for almost every other purpose. As the laws now exist you can do it, and why not leave this general authority and power with the legislature. You can get rid of this difficulty we have so often heard of here, that we are legislating in the Constitution, that we are going too much into detail. If you adopt the first section of the proposition I now offer as a substitute, you will give the general authority to the legislature, give them unlimited power over the whole matter without going into detail and saying where they shall go and where they shall not go and what they shall do and not do. You get rid of that objection. Now, if we are going into detail and cannot go far enough to take care of what we suppose to be the interests of the people at large, then we will leave this matter to the legislature and let them become wise from experience. Why, sir, you invite capital to come here, to get your institution, your canal coal companies. Why how did the gentleman get those things? Why, they may get some learned man to apply to the county court and get an act of the legislature. How do they become insolvent? Why, they issue some hundred thousand dollars worth of stock without receiving a cent and then they will go to Wall Street and inflate it and crowd it off on the community and then let the thing blow up—and then where is your improvement? If you want to get responsible men to come here and develop the resources of your country, bring men of real capital who will come with it and look after it personally. But if you do not take some plan of that kind in your act of incorporations you will be fleeced most horribly, or the people of the country will. I believe I have seen since I have been here in Wheeling an act of incorporation that will prove one of the greatest engines of speculation that can be drawn in the city of New York accompanied by responsible names an act of incorporation granting to several millionaires (professedly) wanting to purchase all your lands and settle them; and this stock will be distributed in the manner I tell you of and the lands will be got hold of and then held at speculative prices, and instead of increasing your population they will be set so high that men will not touch them and held by men who can put this stock up in Wall Street, and whenever it becomes necessary to buy it in can down with it until they can make fortunes out of it out of the unsus-

pecting people. And, sir, I have seen an incorporation for a bank passed by this legislature that you no more could get where men understand the effect of these institutions than you could jump over this house. You will find these instances all around you and I call upon gentlemen here to pause before they tie up this legislature in a way that they save unsuspecting men under this cry of taking care and bringing out the resources of this country and settling it up. No, gentlemen, every one of you are capable of taking care of your own affairs and you manage it prudently. You will do it yourself. And whenever you find men coming among you that have got capital they will come with it; and whenever you see individuals of that kind coming among you and settling down and distributing their capital in the improvement of their country you may look for real improvement.

MR. VAN WINKLE. The perfect answer to all this is that if a parcel of schemers come out here and act as the gentleman describes, his provision will not be worth one straw in the protection of the public. You cannot protect it by legislation against schemers. You may punish them if you can catch them; but I would say if you compel them to go to the legislature to get a special charter they would go there and get it when honest men could not because they would have no scruples as to what they would promise, and it would be utterly impossible to guard against them; and if they come here men of no property they would be the same then they got to the end of it. If they were New York speculators, you could not enforce your law, for they would keep out of your way; so that the thing would be perfectly nugatory for the very case in which he cites it.

MR. SMITH. It seems to me the amendment of the gentleman from Tyler is exceedingly objectionable. The original proposition excludes from the general law banking privileges. He embraces all corporations within the discretion of the legislature; and while he is protecting the citizen against corporations, he is giving everybody in the community a charter for banking. He proposes by his amendment to give the privilege to any set of men—these scoundrels he speaks of in New York—an opportunity to get a corporation, then go and deal in Wall street, cheat one another with it, and bring out a set of bogus stockholders here, with a bogus institution, and whenever you get to this liability clause, why these men of property are not in the bill. It is only these bogus men you

could look to. They are not worth anything. Get a bank of circulation with these bogus stockholders; get from New York these speculators, and they will flood the country with money that is of no value. Now we don't give the privilege in this law of ours—in the original—the permission to establish banking institutions and make them as common as the leaves on the trees, to make their notes fill the whole air and cover the whole country, till they would have no value. That is the character of his amendment, for it gives that privilege. But we want a charter that will bring solid capital to the country. As I said on another occasion, we want corporations framed in such way as will induce men of substantial capital to adventure their money in the improvement of the country. He wants, by putting the liability feature in it, to bring bogus stockholders and bogus charters to flood the country with it. That is his plan; but I want one of a liberal character that will induce men of capital to engage in it. Now by the very terms of the law, by the very terms of every charter all the stock and all the capital which any man puts in that association is liable anyhow. He loses his whole capital if the company becomes insolvent; and a wealthy man when he takes stock will say I cannot afford to lose this much; if I cannot attend to it, I will not subscribe to it, I am willing to make a substantial act of incorporation and to make that capital subject to the debts of the corporation and no more. A man if he gets into an association of that kind can tell how much he does adventure. He may adventure his whole estate. Now that does not suit people without money. They want to get money. It is the worst means in the world to induce capital into the country. I know there has been a system of fraud in New York, and they are very jealous of it, and because of that they are very much shocked because there are speculators there. We have got them here. You give power to the legislature to make general laws and whenever speculators come into the country and want money out of an incorporation, why, here is the legislature, how prevent it? The whole subject is open to the legislature. They can compel it. By leaving the Constitution as proposed in the original section we trust it to the legislature; but are we so foolish, so ignorant, so wilfully blind to our own interests that we will not take care of ourselves by requiring the legislature to guard the country against loss. You had better provide in your Constitution that no man shall enter the business unless he has some capital to secure his creditors; unless he places on record somewhere or other a mortgage or trust to the amount of \$150,000 or \$200,000 to indemnify

the world against the debts he shall contract. That is only to guard the creditor with an individual dollar; and you may as well ask that proposition as the other. The best way is to leave commerce and trade open to every man's own judgment. If you are unwilling to trade with a corporation, demand security for the debt you contract. Every man has the right to demand it. If I sell them property, I will ask that corporation to give me personal security. If the legislature shall hereafter see fit or deem it necessary to place on corporations let them have it in their power; but to put it in here you make it imperative and you destroy the power of the State to help itself when it needs aid, and you leave it all the advantage of the proposition whenever the occasion does arrive for introducing that protection which the gentleman here asks. It is in the hands of the legislature. While we are poor and want to invite capital, we are left in a condition to invite it. I object entirely to it. I do it from a strong sense of duty to the country; looking to the country as it is; not to legislating for a wealthy community where individual wealth is counted by millions, but here where we can hardly count it by thousands, and where we have more natural wealth than those who live in the land of millionaires. All we want is capital to develop it; and you are tying the hands of the legislature.

I hope it will be the pleasure of the Convention to leave this matter to the legislature, as the original proposition leaves it, and not tie up the hands of the people and say to them they are wholly unworthy to be trusted to manage their own affairs.

MR. SOPER. There seems to be a misunderstanding between my friend and me. The original proposition here, sir, is one of restriction. The proposition that I have offered is general. It may be it authorizes the legislature to establish banks by general laws. Banks in the first proposition are excepted out of it. Incorporations for internal improvements are excepted. The legislature are prohibited from granting any general law for these objects under the first proposition. But the one I have introduced is general. It includes all banks or corporations; and I do it because I want to give this power to the legislature; because I find that gentlemen differ with men so much on the subject, they are unwilling to incorporate without any restrictions. The second section of my proposition I understand the Chair rules out. It is the simple proposition that the legislature may pass general laws to organize incorporated companies. They may do it for any purpose or for

all purposes. But the first proposition says they shall not do it for banks nor as to companies for internal improvements. This is the difference between the two. I am placing more confidence in the legislature than the gentlemen. There is no difficulty, and the legislature will come up to it before long. They will not grant an act of incorporation unless there is security given to protect the bill holder. If you confine them to your own stocks and those of the United States, you are safe. But add to that the personal security of your stockholders and then the bill-holders are safe. Not only hold the stockholders individually responsible, in addition to that giving the bill-holders the preference first to be paid out of the fund if the institution becomes insolvent.

MR. SMITH. If the first clause is merely permissive, what is the use of it? The legislature have the power already.

MR. SOPER. I suppose they have if we pass nothing at all on the subject. But I would rather see every proposition here before the Convention voted down unless the power is given to them generally and discretionary. They shall have a discretionary power over all acts of incorporations. I am satisfied, sir, that these are prudent regulations. Now, sir, banks, we have no business with them unless they be necessities. It is not on the circulation of the bank that banks make their money but in the deposits and they are only to be found in the cities.

I want my friends to bear in mind what remarks I make here. I speak in soberness and I think in truth, and I think many of you gentlemen who may probably represent this new State in the legislature, if you do so, your experience may bring to your recollection some words I have now dropped out here to show the necessity of protecting your people.

MR. LAMB. This whole discussion has had one effect at least on my mind, to convince me that the best and wisest course for this Convention to pursue is to put no provision on the subject in the Constitution. The legislature will then have full authority in regard to the matter. They can adopt, as undoubtedly they will adopt, general laws for the purpose of establishing corporations in all proper cases; and if the securities which are contemplated by the gentleman from Tyler become necessary the legislature can provide for that also. It strikes me this is the wisest and most prudent course for us to pursue.

MR. BROWN of Kanawha. The gentleman from Ohio has come to his conclusions too slow. If we had adopted that course before we entered on this discussion we would have saved much time; but now that we have gone through the work and got the section into a shape that I think is about right, we had better stand to it. I am for maintaining the proposition as it stands and as we have adopted it part by part.

MR. VAN WINKLE. I want to strike out the words "or other" in the 7th line. That might be construed, for instance, municipal corporations and others.

There being no objections the elision was made, and the question recurred on the adoption of the section.

MR. BATTELLE. I merely want to say it seems to me that I shall feel constrained to vote against this proposition as it stands; and I hardly think the framer of the substitute would recognize it in its present form. It seems to me a proposition to restrict somebody, I don't know exactly who, about something, I don't know exactly what; and feeling persuaded that the legislature, at any rate, will have perfect competency over all this question I am disposed, for one, to leave it to their discretion.

This is intended, first, to make it obligatory on the legislature to pass such general laws and in the second place, to restrain the legislature from granting exclusive privileges to any of them. Now, most certainly, if all these are legislative acts, it is intended to operate directly on the legislature to insure to the community this easy mode of obtaining corporations for useful purposes; on the other hand, to prevent partiality being shown among them; that is, that whatever is done or denied to one is done or denied to all.

MR. HARRISON. Like the gentleman from Ohio, it seems to me this proposition as it is now before the house is a very different proposition from what was printed. It has been bandied about from member to member until it seems to have no particular meaning. It has had so many different amendments to it that I don't understand it now; but if I did it accomplishes nothing at all. One object of the proposition is that it shall be mandatory on the legislature to pass general laws; and then there is a provision inserted by the gentleman from Wood that if the object cannot be accomplished by general law then the legislature shall pass a special law. Well, now, sir, will not every corporation or association

consider that its wants are peculiar, that it will require special legislation; that these general laws will not meet its case; and will not they be at all times applying to the legislature for special acts in reference to their particular association? It does not prevent that application or log-rolling in the legislature, which was the object of the original proposition to prevent. Again, sir, the legislature, we all concede has the general power to pass these laws. This requires that they shall pass a general law. Is there any necessity for putting into this Constitution any such regulation? Why, the very thing proposed here the legislature has seen the wisdom of, the necessity of having general laws; and having power on the subject of corporations is on our statute books to-day. That has prevented special applications. So it seems to me the way the proposition now stands it really accomplishes nothing. We say the legislature shall pass general laws to incorporate these companies; but we turn around and say that if you can't do it in this way you can have a special law. And who is to judge whether a special law is necessary or not? Why, sir, it amounts to this only that it gives to the legislature the discretion. We are prescribing a rule to the legislature saying you shall have the discretion to pass a general or special law just as the case may require. Now what is the use of our prescribing the method of legislation on a matter of this kind? It is utterly useless, sir; utterly useless. Because I can see no necessity for it. I think like the gentleman from Ohio that I shall vote against it.

The vote was then taken on the additional section, as amended, and it was adopted.

MR. LAMB. I move to lay the report and amendments on the table and have it printed as amended—the whole three reports.

The motion was agreed to.

MR. VAN WINKLE. I am requested by the chairman of the Committee on Taxation and Finance to ask that that subject may be made the order of the day for tomorrow and so on until completed. The reason given is that he is obliged to leave town on Monday. It is a short report, as the Convention will remember, though it may excite considerable discussion and require mature deliberation. But I hope the Convention will accede to the request. We were at a loss last evening which we should take up first; and as it will promote the object in view I hope we will accede to the

request of the chairman. I move the report of the Committee on Taxation and Finance be made the order of the day for tomorrow morning at nine o'clock.

The motion was agreed to.

MR. VAN WINKLE. The report of the Committee on County Organization was passed by to permit me to prepare a clause I had intended to offer but had forgotten. To fill in the time and get rid of the matter, if the Convention please, I will indicate what I propose. I desire to offer as an additional section, the following:

"Either party to a civil suit brought before a justice of the peace when the value in controversy or the damages claimed is less than \$20, or the defendant in cases of misdemeanor or breach of the peace cognizable by a justice of the peace where the penalty is imprisonment and the fine exceeds five dollars, shall be entitled to trial by six duly qualified jurors."

When this is either adopted or rejected, the report can be printed.

I will now offer this with a single remark that I think the justice jurisdiction being a hundred dollars a jury might be interposed when demanded and some of this criminal business given to the justices of the peace. It will leave it entirely to the legislature what description of business; but whatever they make cognizable by justices may be tried in this way. It would relieve the circuit courts of a good deal of small business, and it seems to me the mode of trial contemplated here would be agreeable to the citizens of the country. These small misdemeanors if a man is taken up promptly and fined on the spot, it has a terror about it that the far-off grand-jury and quibbling of lawyers does not have; and in a case that is punishable by a fine so small, it is not improbable a short imprisonment would be put in their power. It would be better they should be disposed of at once and in a fair way before a justice instead of going into the courts.

The Secretary reported the section as proposed:

"Either party to a civil suit brought before a justice of the peace when the value in controversy or damages claimed exceeds twenty dollars, or the defendant in cases of misdemeanor or breach of the peace cognizable by a justice of the peace, when the penalty is imprisonment or a fine exceeding five dollars, shall be entitled to a trial by six duly qualified jurors."

MR. VAN WINKLE. I would remind the Convention that the criminal jurisdiction by the section passed is such as the legislature may give them, and the reason I did not offer this at once was that I had prepared a section in contemplation that it would be best as originally reported; but that change induced me to withhold it at the time, and so it was forgotten.

MR. SOPER. This is a very important provision, and I want gentlemen to look at it and see how it will operate. I am for giving the trial by jury in all cases unless waived by the party in the proposition, and I move, sir, to strike out the words "twenty dollars"; and then it will read, if I understand it rightly, either party may have a jury before a magistrate.

MR. STUART of Doddridge. I cannot vote intelligently on this matter now in the present state of affairs. I understand the section in the judiciary report has not yet been completed so as to determine in what amount circuit courts shall have jurisdiction concurrent with justices.

MR. VAN WINKLE. It is not in the proposition you speak of as printed.

MR. STUART of Doddridge. Then I make the inquiry of the gentleman from Wood to inform me what is the concurrent jurisdiction of the circuit courts and justices?

MR. VAN WINKLE. This by the proposition of the gentleman from Kanawha, which has not been acted on, the jurisdiction of the circuit court is made down to twenty dollars. That has not been voted. It is to be called up when it is convenient for the gentleman to do so.

MR. STUART of Doddridge. I should much rather the question should come on that first.

MR. VAN WINKLE. I have no objection if the chairman of that report is ready to take it up.

MR. BROWN of Kanawha. I do not desire to enter on that this evening I confess the proposition printed there is not complete as I desire to present it. I have prepared another that was handed in at the time and printed as I desired to have it, and I so announced at the time; but I think the proper place is to consider this subject here, for that was one of the difficulties in preparing the judi-

ciary report—not knowing what the Convention were going to fix the jurisdiction of the justices at.

MR. VAN WINKLE. If the gentleman thinks the amendment should be acted on at all—

MR. BROWN of Kanawha. It occurred to me in settling the jurisdiction of justices of the peace, in the report on county organization is the proper place to do it. The judiciary committee did report a jurisdiction for the justices of the peace, but the Convention declined to consider that and went on and considered the whole question of the justices' jurisdiction in the report on county organization, treating him as a county officer and settling his jurisdiction. Now, I say whatever that jurisdiction is that ought to be made complete so that when you define your circuit court jurisdiction it shall conform to what is provided. As you have done the thing in part, I am not able to say whether it should not be done in whole. Now, I cannot coincide with the proposition of the gentleman from Tyler. I am opposed to giving these justices of the peace juries in the country—opposed to it in toto.

MR. SOPER. There seems to be a misunderstanding about it. The jurisdiction of justices was fixed at one hundred dollars. Well, the gentlemen opposed to it said that if the circuit court could have concurrent jurisdiction to a certain amount they would be satisfied; and I think there was a vote taken here giving the circuit court jurisdiction in all sums above twenty dollars.

MR. BROWN of Kanawha. I think it has not been passed.

MR. SOPER. I rather think it was, sir.

MR. STUART of Doddridge. Jurisdiction of justices of the peace is settled undoubtedly as to the amount. Jurisdiction of the circuit courts is not settled except that they should have concurrent jurisdiction to twenty dollars and upwards.

MR. DILLE. I would suggest to the gentleman from Wood that if he proposes to introduce that proposition, or introduce it this evening, let it be printed; and when the subject comes up properly let the thing be before the Convention; and now, in compliance with the order this morning let us take up the executive report and proceed with it as far as we can.

MR. VAN WINKLE. With the consent of the Convention, with a view of taking up the executive report, this proposed additional section is withdrawn.

MR. CALDWELL. I want to bring to the attention of the members of this Convention the fact that in nothing that has been brought before this Convention for its consideration has there been proposed anything like a probate court, or, in other words, a tribunal for the admission of wills to probate, the granting of letters of administration, the appointment of curators, etc. I believe in the report on the judiciary department the power of probate is conferred on the circuit courts; but I want to remind the members of the Convention that in other states they have probate courts sitting all the while, from day to day, and in our state we have had the facility of these probate courts from month to month twelve times a year. Therefore, it is, I want to bring to the attention of the Convention whether it will be sufficient to satisfy the wants of the people of the new State to say they shall only have the tribunal of the circuit court for the admission of wills to probate, etc. I think, sir, too much delay, too much loss might result if we do to wait from one term of the circuit court to another; and, therefore, with a view of establishing some tribunal in each county of the State, I don't propose to establish and operate a court in each county of the State, because I am satisfied a probate court could not maintain itself without an incumbrance on the people. I do not know precisely what probate would be in the county of Ohio; I know what it has been in the county of Marshall. In that county for the year 1861 the number of wills admitted to probate was six and of letters of administration granted eight; number of guardians appointed, together with one committee, seven. The fees resulting would not amount to more than thirty dollars. So that Marshall county, one of the largest in the State, could not maintain a probate court.

I propose, sir, in this report now before the Convention to establish some sort of a tribunal in place of this probate court that might answer the purpose and prevent delays. I propose to give to the recorder of wills and deeds power to admit wills to probate, grant letters of administration, appoint guardians, curators, etc., with right of appeal to any party aggrieved to the circuit court; to bring this in as section 5 at the end of the word "Recorder." I see, sir, my amendment is prepared to come in as a section after

the end of the 5th clause. As well there perhaps as after the word "Recorder."

The Secretary reported the provision as follows:

"That the recorder of wills and deeds shall have, under such regulations as may be prescribed by law authority to admit wills to probate, grant letters of administration, appoint guardians, curators, etc., with right of appeal to any party aggrieved to the circuit court."

MR. VAN WINKLE. I would suggest to the gentleman to make an independent section.

MR. CALDWELL. I will offer it as an independent section, then. I do not desire to detain the Convention with any further remarks. I think there ought to be some tribunal of this kind for the discharge of the duties of probate.

MR. STEVENSON of Wood. I would call the attention of the gentleman from Marshall to the fact that "deeds and wills" were stricken out.

MR. DILLE. I supposed the Convention had accomplished the same purpose when they had adopted this 5th section. We have provided there for a recorder. The committee when they reported that section contemplated that the recorder there referred to would be the party who would have charge of just the same department and perform the same duties as is contemplated by this section just introduced, and I can see no reason for changing my notion on that subject. If the gentleman will look at the latter part of that clause he will find that the legislature may from time to time direct and authorize the duties, all of whom shall be prescribed by general laws. Suppose you have a recorder, why then you can throw just such duties on that recorder as the legislature in the exercise of its wisdom upon that subject thinks proper. The object of striking out the words "of deeds and wills" was to express the very matter contemplated. If you definitely fix here that he shall be the recorder of deeds and wills alone why then you might exclude the other powers; that would preclude the idea that other powers might be conferred on this officer by general laws. It seems to me the very object contemplated by the gentleman can be effected by a provision of law conferring the power on this party of admitting wills as well as deeds to record and also appointing guardians, granting letters of administration, etc. It seems to me as though

there is nothing inconsistent with the idea, and that was my object when the words "and deeds" were stricken out, as it was on my motion. It seems to me in looking at it that the same object can be accomplished—has been—by the legislation as is attempted to be accomplished by the provision of the gentleman from Marshall.

MR. VAN WINKLE. I am inclined to regard with favor the proposition of the gentleman from Marshall. I coincide with what the last gentleman who spoke has said. The power is there, but there is this same distinction that there was in the proposition that has been in debate to-day. The one, as the report stands now gives the legislature the power to do so if they deem it expedient. The proposition of the gentleman from Marshall, with a view to relieve the circuit courts as much as possible inasmuch as they sit but once in three months to have it open every day, makes it obligatory on the legislature to do so. Now, that is the practical question for consideration. It is a matter with which I am not very familiar. I know that there is an inconvenience in having to wait term after term in the county court. I had some conversation with the gentleman from Monongalia, now absent, on this subject. In the Convention of 1850 he was anxious for the establishment of probate courts throughout the state for this very purpose. I asked him when he first came on here whether he still favored them and he said, no; his subsequent experience had shown him that it would be too costly an operation; that some officer, he observed, could as well discharge the duties, in the first instance, at all events, and that the erection of these courts would be a costly thing in the country where so little of it was done. He has I know given considerable attention to this subject, and he has had a great deal of experience in it. He seemed to think it might be confided in this way to some officer, and said the county courts would probably be abolished and it would devolve, as it used to, on the clerk of that court or some other officer, who could do it as well as the clerk. The legislature, if they acted on the subject at all, would provide that such a case should not be proceeded in before the recorder. The gentleman who last spoke as to the views of the judiciary committee assumed that if he was charged with the record of these things he would also be charged with the admission to probate, etc.; but the question is now raised by the proposition of the gentleman from Marshall whether it shall be made obligatory on the legislature to pass the proper laws for enabling the recorder to discharge these duties, or whether it shall be left an open question that they may give it to

him or to some other officer as they please. On the whole, I am inclined to favor the amendment because I should like to give the matter that direction, that the recorder of these papers should have the charge of it in order that the people who have business of that kind to transact might not be delayed.

MR. BROWN of Kanawha. I am glad the gentleman from Marshall has brought this before the Convention. It is one of the difficulties that struck me when we had provided for the election of a recorder but had prescribed no duties. The recorder is to my mind a word without meaning in the judicial sense; for the word means a various number of things, and there is nothing in our laws to define it; and, as the gentleman from Wood has remarked the legislature may give it no duties in the world—not even the recording of a deed or will or any other thing, may set him to keeping accounts. I go on the idea now that no court has been proposed to be substituted in lieu of the county court. That is not the proposition yet before this Convention, whether they will have a county court. If on the idea that we are to have no county court and that is to obtain, then it is essential we should provide something in its stead. Now, it is essential to have a probate court of some character. There is an attempt in the judiciary report to give the circuit courts probate jurisdiction; but they would only sit four times a year, and here are necessary wants arising between times. I have very strong objections to giving the power of the probate court to an officer where the whole thing is fixed up between two men about a dead man's estate. I do admire the old plan of Virginia, that whatever is done is done in open court, and whoever undertakes to do anything it is generally done before the world and it is read out loud; where fraud is very difficult to keep in. It is an embargo on fraud. To transfer this to the office of a man who sits in his office every day about other duties, and when some person comes in it is all settled up there among themselves, and you have no assurance except in the honesty and integrity of the officer. But I do not know where else to provide for this office but to give it to this recorder. The gentleman from Marshall has answered to my mind not only what I had expected would take place, that you cannot maintain a probate court, and you are compelled to impose the duties on somebody else who is not a probate court, or any court at all, but who is to be chosen for other qualifications altogether, that of recorder. Well, while this is not an objection so much to confer it here in this state of the case, it is rather an objection that

arises out of the course we are proposing to adopt, of abandoning the organized courts we have already. That it is essential to have some probate court somewhere all over the state admits of no question. I think the gentleman from Preston is in error in permitting this to be left to the legislature. If it is intended the recorder is to have any such office, it must be conferred in the Constitution, for the legislature may throw it somewhere else. I think there is greater fitness in providing for this here than for the magistrates in the provisions about townships. I think also the other duties of the recorder might be more legislative. Inasmuch as the first section of the judiciary report as adopted declares the judicial power of the state is to be in the courts, the legislature could not confer this judicial function on the recorder if it were not provided for expressly in the Constitution. The Constitution is, therefore to determine whether this judicial function is to be conferred on the circuit court or on the magistrates' court. The magistrates' court has its jurisdiction expressly delegated; to the circuit court it is proposed to give all the general jurisdiction of the State that is not expressly prohibited to it and conferred on some other court. Then here would be the whole residuum of the jurisdiction of the courts and all the judicial power in the State. It is therefore proper that this probate power should be conferred on this recorder in the Constitution if it intended he shall have any power at all; and if we fail to provide some other tribunal on whom it can be conferred, then I see no better place to confer it than on the recorder. For the present I shall vote for conferring it there.

MR. CALDWELL. I am glad to see that I have brought to the attention of the Convention a matter that seems to be regarded as of some considerable importance; and with a view of considering it further so that we may be able to perfect this matter, I think we had better defer it until morning, and with these views, I now move the Convention adjourn.

The motion was agreed to and the Convention adjourned.

XLIII. FRIDAY, JANUARY 31, 1862.

The Convention assembled and was opened with prayer by Rev. Mr. Musgrave, of Wetzel County.

Mr. Brown of Preston called up a resolution offered by him yesterday as follows:

“RESOLVED, That hereafter no member shall be permitted either to speak or vote while outside the bar of the hall.”

MR. BROWN of Preston. I offer this resolution in all kindness and for the purpose of avoiding a difficulty that occurred in the Convention yesterday. There is no rule of the Convention designating what part of the hall a member shall occupy when speaking or voting. I am myself opposed to the resolution that I offer, but I do it simply for the purpose of avoiding difficulty that is likely to occur. It will be remembered that the President decided that a member of the Convention has not the right to speak beyond the limit of the bar; and my friend from Brooks County, was ordered within the bar yesterday to address the Convention. At that time we had our bristles up a little, a manifestation of unkind feeling in the Convention. When the feeling subsided and the sea was smooth again, my friend from Marshall, last evening, addressed the Convention from outside the bar; so that there is a different ruling, at least a different action on the part of this Convention on that subject according as the feeling in the Convention may be ruffled or smooth at the moment. I hope the resolution will be voted down and that members will be permitted to occupy any portion of this hall and both speak and vote where they sit.

The resolution was rejected.

MR. DERING. I hold in my hand a petition which I ask may be read and laid on the table.

It was a petition of citizens of Monongalia county praying that the Convention insert in the Constitution a provision prohibiting the legislature from appropriating money for the construction of internal improvements and limiting the per diem of members of the legislature after the first session to thirty days.

Mr. Taylor offered the following:

“RESOLVED, That hereafter this house take a recess from twelve o'clock A. M. to three o'clock P. M.”

MR. STUART of Doddridge. I move to amend by saying:

“RESOLVED, That the house take a recess at six and meet again at seven.”

That half hour is not much but it is very important at present with my arrangement in the senate. I do not suggest, sir, the

meeting at seven because I am in favor of it but in order to accommodate members who desire to do so.

MR. BROWN of Kanawha. I believe the hour of recess is half past twelve. I do not see that the proposition gains anything except to discommode one of our members and it would look like that was the only object it had. We gain nothing by it. I shall vote against it.

The resolution was rejected.

MR. DERING. I hold in my hand a petition which I ask may be read and laid on the table.

The petition was of the same character as the one previously presented.

MR. CALDWELL. Is the unfinished business of yesterday now in order?

THE PRESIDENT. I suppose the order of the day would be the first business.

MR. CALDWELL. I ask the privilege of submitting what I propose to offer, a substitute for my amendment.

Permission was given, and Mr. Caldwell, accordingly, offered the following which was laid on table and ordered printed:

"The recorder, in addition to the duties incident to the recording of deeds and other writings, the recording of inventories and other papers relating to estates, the registering of births, deaths, and marriages, and the issuing of marriage license, shall have authority, under such regulations as may be prescribed by law, to receive proof of wills, and admit them to probate, appoint and qualify personal representatives, guardians, committees, and curators, with the right of appeal, to any party aggrieved, to the circuit court of the county."

The Convention proceeded to the consideration of the order of the day, it being the report of the Committee on Taxation and Finance.

Following is the report submitted by the committee January 10, 1862:

"The Committee on Taxation and Finance respectfully submit the following provisions for incorporation into the Constitution of West Virginia:

1 "1. Taxation shall be equal and uniform throughout the
2 State, and all property, both real and personal, shall be taxed
3 in proportion to its value, to be ascertained as directed by law.
4 No one species of property from which a tax may be collected
5 shall be taxed higher than any other species of property of
6 equal value; but property for educational, literary, scientific,
7 religious or charitable purposes, and public property, may by
8 law, be exempt from taxation.

9 "2. A capitation tax, not less than fifty cents nor more than
10 one dollar shall be levied upon each white male inhabitant
11 who has attained the age of twenty-one years.

12 "3. The legislature shall provide for an annual tax, sufficient
to
13 defray the estimated expenses of the State for each year; and
14 whenever the ordinary expenses of any year shall exceed the
15 income, the legislature shall provide for levying a tax for the
16 ensuing year, sufficient, with other sources of income, to pay
17 the deficiency, as well as the estimated expenses of such year.

18 "4. No money shall be drawn from the treasury but in pur-
19 suance of appropriations made by law, and an accurate and
20 detailed statement of the receipts and expenditures of the public
21 money shall be published annually.

22 "5. No debt shall be contracted by this State except to meet
23 casual deficits in the revenue—to redeem a previous liability
24 of the State—to suppress insurrection, repel invasion or de-
25 fend the State in time of war.

26 "6. The credit of the State shall not be granted to, or in aid
27 of, any county, city, town, township, corporation or person
28 whatever; nor shall the State ever assume or become responsi-
29 ble for the debts or liabilities of any county, city, town, town-
30 ship, corporation or person, unless incurred in time of war or
31 insurrection for the benefit of the State.

32 "7. No county, township, city, town or other municipal cor-
33 poration, by vote of its citizens or otherwise, shall become a
34 stockholder in any joint-stock company, corporation or associ-
35 ation whatever; or raise money for, or loan its credit to, or
36 aid of, any such company, corporation or association.

37 "8. The legislature may at any time direct a sale of the
38 stocks owned by the State in banks and other corporations;
39 but the proceeds of such sale shall be applied to the liquidation
40 of the public debt; and hereafter the State shall not become a
41 stockholder in any bank or other association or corporation.

42 "9. An equitable portion of the public debt of the common-
43 wealth of Virginia prior to January 1st, 1861, shall be assumed
44 by this State; and the legislature shall ascertain the same
45 as soon as may be practicable, and provide for the liquidation
46 thereof, by a sinking fund sufficient to pay the accruing
47 interest and redeem the principal within thirty-four years."

J. W. PAXTON, Chairman.

Mr. President, I do not design to occupy the time of the Convention at any length on this report, but merely to say a very few words on the different sections as they come up for its action; merely to suggest some considerations which influenced the committee to the conclusions they arrived at and which are embodied in the report, and leave to members of the Convention to elaborate for themselves. I may premise by saying that the two great features of this report, the two fundamental principles in it, are, first, that taxation shall be collected equally and uniformly from all the people of the State in proportion to their means; and, next, that these taxes when so collected shall be likewise expended for the equal benefit of all the people of the State and not for the benefit or advantage of a few or of any particular section or locality.

The first section of this report, it will be observed, adopts the *ad valorem* principle of taxation—that is, taxing all property without discrimination in proportion to its value. For it must be remembered, sir, that it is the value of any particular thing or object that is taxed not the thing or object itself. Value is, in reality the subject of taxation. This, I believe, sir, is now generally conceded to be the correct principle of taxation; and it is that which prevails, either by constitutional provision or by legislative practice in a large majority—indeed, I may say in almost all, of the states of this Union at the present time. Probably, sir, there is no feature of our present Constitution that has been so objectionable, and is still so objectionable, and I may even say odious—to the people of West Virginia as that feature which discriminates in taxation relieving one species of property from taxation, necessarily to increase the burden on all others. It is of this, sir, that the people of West Virginia have ever complained; and whilst the ordinance of secession may have been the occasion of this new State movement on the part of our people, I apprehend there can be little doubt in the mind of any one that the fundamental cause for this division and desire for a new state may be found in the injustice and oppression which our people have suffered from unequal taxation, from oppressive taxation and unequal representation.

It appears to me, sir, in framing a new constitution now for the people of West Virginia we should be particularly careful to guard against the liability in future of the perpetration of any such injustice on any portion of our own people.

Whilst it is the undoubted right of government to levy taxes for its legitimate support on the aggregate property of a state, justice requires that each citizen's portion or share of that aggregate should be dependent on his share or proportion of that aggregate property; and to require less or more from one individual than from another on equal value is manifestly unjust and oppressive, and we have so esteemed it, most assuredly here in western Virginia and have ever complained of such a system.

The whole object of the committee in presenting this section of the report was simply to declare what they believed to be a sound general principle of taxation and avoid all details, leaving those details properly to the legislature and leaving the principle to be carried out justly and equitably by the legislature. The exemptions which are provided for in this section are such as appear to be sanctioned by almost universal usage and are conceded, I believe, everywhere to be right and proper.

I will merely add, sir, that I hope the section will commend itself to the judgment of the Convention and be approved by its votes.

MR. BROWN of Kanawha. Mr. President, I move to amend this section by striking out after "personal" in the second line down to "but" in the 6th line, and insert after "personal" the words "according to its value," so that the section shall read: "taxation shall be equal and uniform throughout the State on all property according to its value."

It will be perceived by looking over that section the first proposition is that all taxation shall be equal and uniform. That is a fundamental principle I deem essential to incorporate in this Constitution, and that it should be according to the value of the property. The report in the latter clause of the section as it stands, to my mind, is simply repeating the same thing. To say that "taxation shall be equal and uniform throughout the State on all property according to its value" embraces the whole subject. Now, to say that "no one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value" is simply to reiterate the same thing. For one is asserting it positively; the other is asserting it negatively. I can see no advantage to be gained by it.

MR. PAXTON. Before that motion is put, sir, I simply desire to say that probably the first sentence covers the ground that is

occupied by the second which the gentleman proposes to strike out; but at the same time, sir, it appears to me that this second sentence only renders the meaning of the whole section more full and clear. It makes it more specific; and it is put there in contradistinction to a section in our present constitution which expressly provides for discrimination and does exempt one species of property at the expense of all others. It certainly makes the section just that much more distinct. I hope it will not be stricken out. There is nothing new in the provision. It can be found in the constitutions of several of the states.

MR. VAN WINKLE. The amendment goes farther than the chairman of the committee has stated. The first line embraces the principle that taxes shall be equal and uniform. Then it begins to be mandatory; and that is the part proposed to be stricken out. If you do strike out what is now proposed to be stricken out, you leave it in the power of the legislature to apply the principle in the first line as they may think proper. I should like the gentleman who wants to strike out to show where is the great difference in mere language except in the arrangement of the words between his proposition and this. This goes on to say that all property, both real and personal, shall be taxed in proportion to its value. I think, sir, there is some point in that, and it is very different from the amendment proposed. He wants it to read that taxation shall be equal and uniform throughout the State on all property, both real and personal, I believe. But this other if I understand it, is mandatory and provides that all property shall be taxed; because if all property is not taxed—any species left out, why, then the other property has got to bear the whole burden.

MR. PAXTON. Was it proposed to strike out the word "all"?

MR. VAN WINKLE. Yes, sir; and insert "on". Now, sir, in reference to the taxation clause, here comes the rule; it is defining the principle and giving the legislature and all other persons to understand precisely what is meant here, and there can be no escape from it. The language of the whole section is concise, and it appears to me there is no unnecessary repetition. Some that may not be very palatable, but nevertheless necessary. It says in so many words, that no one species of property from which a tax may be collected shall be taxed less than any other species of equal value. I trust the Convention will retain this clause precisely as it stands. First, that which makes it compulsory on the legislature

to tax all property except those for which an exemption is provided; and, secondly, that which gives them the rule in applying this principle, that no one species of property shall be taxed higher than any other species. Now, sir, on this the whole matter of this report turns, in my opinion. If the Convention strike out what they are asked to strike out and insert in lieu of it what is proposed, then I think this principle of *ad valorem* taxation, so far as it means anything, is lost, killed and destroyed. Now, merely to say that when you tax a species of property you shall tax it so much on its value is saying very little. To say that it shall be equal and uniform is saying very little. We have got that in our present constitution, and taxes are as unequal as possible; and not only unequal in exempting certain species of property and estimating in the Constitution the value of another species of property, but in leaving the legislature perfectly at liberty to continue these things—things of that kind—to an unlimited extent. I do not think a worse system of taxation could have prevailed than that we have been subjected to the last eight or ten years; and if the public are tired of that, if they wish now to prevent inequalities of taxation; if they wish all property to be taxed alike, then they had better retain this section precisely as it stands. I think this is the turning point, the test question of all this matter, and it is now on this question proposed for this Convention to decide whether they do want taxes that are really alike or leave the whole matter at sea again and be treated as we have been under the present Constitution, by which an unjust proportion of taxes, as everybody knows, has been paid by this western section of the commonwealth—taxed, sir, to pay for slaves that are hung; taxed to pay rewards for runaway slaves; and then the slaves themselves not taxed in proportion to their value. That has been one feature. Licenses for every profession, every business, everything they could attach a license to, put on without any rule whatever, oppressively, arbitrarily; whether high or low, they were unjust. Now, this is what we want to put an end to. If the State is equal to raising the money for the management of its affairs, then lay it on all property equal and uniform, and everybody is served alike. It is no matter whether that property is in possession of a merchant for sale or anybody else, you reach the property and tax it and it eventually comes off of those who get the benefit of the property. That I understand to be involved in this proposition that it is property and nothing else that is to be taxed except where

the capitation tax is provided for. And certainly that is the true rule. Our laws, our administration, one-half or nearly of the expense of government comes in giving protection to property. Now, property should pay for it. A portion of it no doubt goes in giving personal protection; but there an equivalent is given in military service, jury duty and many other things for which the citizen is constantly called on. But, in addition to this, it proposes a moderate capitation tax, which I am in favor of for many reasons.

This whole report, sir, based on that first section, as far as relates to that meets my entire approbation, and I trust it will that of the Convention. I cannot imagine that any other system can be called "equal and uniform", and the Convention may depend that it is not a question of language here—not because these words may be simply superfluous—that they want them stricken out. It is because they want to get rid of the principle. And if it is a mere question of words, then I beg the Convention to let the words stand, and we shall know precisely what this section means. There can be no mistake about it if these words are left in.

MR. BROWN of Kanawha. The gentlemen seems to be wiser above his day and generation in the assumption of the object of this amendment—that it is not to the language but to the principle. The gentleman tells us that this sentence embraces the substance of the former proposition; but then we must beg leave to differ with the gentleman in his declaration. I think he wholly failed to show that his statement was correct. The fundamental principle of equality in taxation is the fundamental principle asserted in this proposition as amended. Now I do not perceive where the gentleman finds himself authorized in saying that the object is to get rid of the principle, not the words.

MR. VAN WINKLE. I found it in the debate on the educational report in the sentiments the gentleman then expressed.

MR. BROWN of Kanawha. I do not know what the gentleman found in that debate nor care. He has not seen anything of that in this. There is no eye so keen as to see what is not to be seen. I will endeavor to show to this Convention that the first proposition does embrace everything that is substantially contained in the second line; and that it does assert the fundamental proposition that taxation shall be equal and uniform upon all property according to its value; and that covers everything and you can get nothing more if you use all the language ever written since the days

of Adam to the present time. And upon all property, personal and real, the taxation shall be equal and uniform and it shall be according to the value of all that property, personal and real. Now, what more can be in it so far as property is concerned? The gentleman from Wood tells us he is in favor of the poll tax or the tax on individuals, because it will catch some individual stragglers. That has nothing to do with this question we are now discussing, the question of property. The gentleman tells us under this principle—under the similar clause of the Constitution of the state as it now stands—departures have been made by the legislature from it. Well, now, sir, is not that begging the question? Instead of this clause being contained in the Constitution of the state as it now stands that Constitution has an additional clause which warrants the legislature in departing from this provision which is an express declaration that slave property shall be valued at the price of three hundred dollars of land; an express declaration on its face that taxation in respect to that very property shall not be equal and uniform. The gentleman tells us that now he is going to avoid a construction by the legislature because it is not in this provision. It seems to me marvelous indeed that the gentleman should tell us that the former action of the legislature under a constitution which violated the principle here prescribed is authority for the legislature hereafter to fight this section here when sworn to discharge and perform it. He tells us that licenses are a violation of this principle. I repudiate that. Let it be provided that under this Constitution there will be no license taxes. Can any gentleman say that whenever any government is asked for a privilege that it cannot prescribe the terms on which it will grant it? Every individual without any license about it has a right to obtain and hold and enjoy property of every description; but where is the man in this State that has a right to set up any peculiar privilege and indict all his neighbors for the same thing without first obtaining the permission of the law of the land?

MR. PAXTON. In reply to that question, I would just say that in almost every state of this Union the right does exist, without any special license, to deal in merchandise, to carry on business; that the parties so engaged in this kind of business are taxed alike on their goods, the merchants' goods like the farmers' stock; and in that particular taxation is equal and uniform, and that is the principle that is attempted to be formed into this Constitution. I say almost everywhere except in this state.

MR. BROWN of Kanawha. Very well, let us test that. I do not know how it is with the merchant. I do not complain of a merchant; but is there any state of this Union where a man can turn out and practice law and sell liquor where and to whom he pleases—drug the whole community, undermining the very foundation of society and say he has the right to do it as he pleases and that the state has no power to stop him or regulate his conduct? Every man has a right to set up a bank in a community and fix the currency of the nation; spread the whole country full of bank-notes like leaves, which are not worth the paper on which they are written? Exercise all these franchises which can only be derived from sovereign power that controls the action of all its citizens, without any authority derived from that power? If that is the constitution you are making, I am sure it will not go down with the people of Virginia, if that is the proposition—to disrobe your government of all the powers it ought to possess to attack and defend the rights and securities of the citizen, then it will be like your bank paper issued under it, not worth the paper on which it is written. The right to regulate every one of these things is a right inherent in the sovereignty, unless it is taken from it by this constitutional provision, and that always carries with it the right to prescribe the terms on which that franchise is to be granted and that whoever does not comply with those terms cannot enjoy the privilege. And that is right. Why, sir, gentlemen who walk into the courts and enjoy all the privileges of harassing and annoying their neighbors by summoning them from all over the country to attend their little petty lawsuits, are not to be even charged with the privilege.

MR. VAN WINKLE. I fancy the gentleman is setting up some men of straw. I did not understand the chairman of the committee to object to issuing licenses and charging a proper fee for professional or special privileges. It is the taxing of licenses to carry on the ordinary pursuits of business, which are a part of the immunities of citizenship, that I object to; compelling merchants to pay such taxes for doing what belongs to a citizen. It is a system not only wrong in itself, but calculated to drive people and business from the State.

MR. BROWN of Kanawha. It is prescribing oppressive and vexing terms on which it is to be obtained, and he who does not choose to discharge those terms cannot enjoy that privilege; and if the legislature choose to legislate for the good of the people, that

is a matter between the legislature and the people. Announce plainly and clearly to the world that your object is to disfranchise the legislative power of the State on which privileges are to be derived and enjoyed and you have hanged your Constitution. This proposition, then I say, as stated in the first clause of this sentence, that taxes shall be equal and uniform throughout the State on all property, real and personal according to its value fully covers every conceivable case in the taxation of property and leaves to the legislature the right to prescribe the terms on which privileges may be had. It leaves to the legislature the power it has ever enjoyed, if it chooses, to charter a bank, to issue five dollars for one and obtain an interest of 18 per cent instead of six that is enjoyed by the citizen; to say you can pay a bonus for the privilege or you cannot have it, and nobody is hurt. It is so to the gentleman who chooses to set up a store and sell goods to his neighbors. It is not allowed to every other citizen. They can prescribe to the doctor that before he shall practice his profession and charge fees that other people are not allowed to do that he must comply with the terms prescribed by the State. So of the lawyer who goes into court. There is no violation of the principle of equality. It is one of the fundamental powers that belongs to every government, to regulate and control all who undertake to exercise privileges. Everything is to be for public and not for private good. Let us see if the second clause is not a mere repetition of the first. This first embraces all valuable property, personal and real according to value; and "no one species of property from which a tax shall be collected" is just repeating the same thing. It is like saying two and two make four, and then repeating two and three don't make four.

MR. LAMB. I shall not use up my ten minutes in the remarks I have to make in reply to what I must say in a very singular argument of the gentleman from Kanawha. In the first place, he tells the Convention that his amendment is substantially the same as the original proposition; that his amendment, in fact, embodies everything that is contained in the original proposition; and then he proceeds to an elaborate attack on the original proposition. Now, if the original proposition carries with it all the evils which the gentleman from Kanawha has portrayed, how is it he is here offering an amendment to it which he says is really the same thing? Either his first proposition is wrong or his argument is wrong. In the next place, the gentleman's argument is predicated to have this

effect on the Convention, that if you adopt this first sentence you are not at liberty to regulate the selling of liquors, to regulate banking, and you are not at liberty to regulate practicing attorneys. Will the gentleman, as a lawyer of first-rate standing, as I know him to be, risk his professional reputation on the assertion of any such thing? After the adoption of this clause are you not at liberty to adopt such regulations as the public interest may require in reference to all these subjects, with one single exception, that the properties of the banks, the attorneys and of all persons, is to be equally taxed? You may subject them to what regulations you please; but so far as they are the holders of property, their property is to be taxed like that of other people. I do hope it will be the pleasure of the Convention to adopt this principle, and to adopt it as it stands in the report of the Committee on Taxation. The words here are so clear, so precise that there is no misunderstanding the meaning, and a common man as well as a lawyer can say exactly what is their effect. They do embody a principle which I regard as second only to the principle of equality of persons in regard to representation; the great principle of equality of property in regard to taxation. I hope it will be the pleasure of the Convention to adopt and to carry out—to see that both these principles are carried out fairly—in the Constitution which they intend to propose to the people. And then let them leave the legislature at full liberty to adopt all proper regulations, as the legislature will be left at liberty to do, in regard to banks, liquor selling, attorneys and everything else in which the interests of the community are involved. This proposition will not interfere with that. This proposition is not liable to the objections in that respect to which the gentleman from Kanawha pointed out at the same time that he told us his own proposition was the same in substance.

MR. IRVINE. Mr. Speaker, I rise for the purpose of making only two or three remarks and I will be just as brief as the nature of the case admits of. This first sentence, Mr. Speaker, is perfectly plain. Taxation shall be equal and uniform throughout the State on all property both real and personal; shall be taxed in proportion to its value to be ascertained as provided by law. Now, this sentence is perfectly plain; that taxation shall be uniform on all property both real and personal. That includes all property, both real and personal. You cannot tax one species of property higher than another without violating the rule here laid down in the first sentence. But the second sentence, Mr. Speaker, is a little ambiguous.

If it is merely intended as a repetition of the first sentence, it is tautology, totally useless. Is it intended to repeat what is conveyed in the first sentence? If so, it is wholly useless. It is mere tautology. No one species of property from which a tax shall be collected shall be taxed higher than any other species of property of equal value. If that is all that it means, why it is a mere repetition of the first sentence; but after having been introduced here in connection with the first sentence the presumption is that it was not introduced for the purpose of repeating what is in the first sentence but for some other purpose. Now, I want to know for what additional purpose this sentence was introduced. Was this introduced for the purpose of affecting a privilege that is sometimes granted to a man in the use of his property? The privilege of selling goods—I mean licenses?

MR. LAMB. If the gentleman will read on through the section, he will see the meaning of it, that certain kinds of property are enumerated from which no taxes are to be collected; public property and property used for the purposes mentioned, educational, religious, charitable, etc. Take the whole section in its connection, and those words with it "on which a tax shall be collected." These kinds of property are to be exempt from taxation. "All property shall be taxed"—of course, everything must be taxed except the several kinds thus exempted.

MR. IRVINE. I do not think there is anything in the gentleman's explanation. He thinks it is necessary to introduce the first clause. Why resolve the section into two sentences; the second sentence into two clauses? Now, suppose you drop the first clause altogether; the second sentence beginning at "No," down to "value"—drop that clause. The second sentence would come in as well without the first sentence as without the first clause of the second sentence. It is not necessary at all to introduce the first part of the second sentence in order to explain. Suppose after the words "as directed by law" we go on and say: "but property used for education one and the other purposes, shall be exempt." It is not at all necessary to introduce the first part of that sentence for the purpose of introducing the second part. It is separate and distinct and might be introduced in connection with the first sentence as well as with the first part of the second sentence. It seems to me, Mr. Speaker, that the first part of this second sentence was introduced for a particular purpose distinct from the purpose from which the second sentence was intended to answer. That answers

every purpose. It declares that taxation shall be uniform on all property both real and personal. Now, no species of property from which a tax shall be collected—I do not understand for what purpose that was introduced. Unless it is made clear so that the Constitution will be understood by everybody I shall at least vote against that clause.

MR. DILLE. I have looked over this section carefully and I can see words that could be omitted, and convey the idea that I think should be conveyed to embrace the matter that we at least in this part of the state have contended for ever since I have had any knowledge of the state. It seems to me that the provisions of that section are clear as they are now. In the first place, if you will notice in the first part of it there is a square enunciation of a principle. That principle is one that we have all along contended for; that is, that taxation upon personal and real property throughout the State shall be equal and uniform. Now, the mere enunciation of a principle amounts to nothing unless you carry with it a provision requiring the legislature to carry out that principle. The last part of the first clause announces that the legislature shall tax all real and personal property in proportion to its value. Seems to me this first clause, then, announces the principle that we have all contended for during every period, I believe, of the history of the western part of this state, and then a requirement upon the part of the legislature to carry out that principle. Then the second sentence goes a little further, and I think it is proper, especially as we have so long contended for that principle—not contended for it in one view of it but in every view—and that more clearly expresses our sentiments. Having for the first time in the history of our portion of the state had an opportunity to do so, we clearly fix upon the legislature a prohibition that they shall not in the exercise of any discretion or any power that they may conceive that they may possess, upon any species of property, in any way, violate this fundamental principal. It seems to me we ought to have that provision, and we ought to so impress it, not only upon our people but upon our legislature that they may not under any circumstances, in reference to any species of property, violate that fundamental principle; and as announced here by the report of this committee and the amendment proposed by the gentleman from Kanawha. It certainly will address itself to this Convention as not only a more clear and perfect exhibition of that principle than his does. But it seems to me, Mr. President, that the gentleman

does not go far enough with his amendment. He merely announces by a provision in the Constitution a principle but he does not follow that with a requirement that the legislature shall carry out that principle and that they shall carry it out with reference to every species of property. The only objection, really, that I can see to this sentence is in the latter clause of it, and that is that it leaves it to the discretion of the legislature to tax or not property used for educational, literary, scientific, religious or charitable purposes. If there be any objection to it, it is in leaving to the legislature a discretion; but being one of those persons in this Convention who believe the legislature has some wisdom, and will act in the exercise of a sound discretion on that subject. I have no fear the legislature in its future action in reference to these matters will not exercise that discretion as soundly as this Convention can do.

Hence, I am in favor of the section as it stands; and I think it is really a provision that we ought to have and that we ought to abide by in detail for fear that the legislature might at some future period in its history feel disposed to violate in reference to some species of property this grand and fundamental principle that taxation shall be uniform throughout the entire State on every kind of property according to its value.

MR. HERVEY. I want to say a word, not particularly in relation to the subject matter involved in striking out except that the question of license has been referred to in connection with the section. Now, Mr. President, the question of license is involved in this sentence. It is not prohibited to the legislature; and if this section is voted as it stands—as I hope it will be—the legislature of the State will have a perfect right, notwithstanding all the words the section may contain, a perfect right to require license. This provides for taxation upon property real and personal; but it does not say anything about privilege—to bank, sell liquor, deal on goods, practice law or medicine, or anything of that sort. The people will reserve them the right through the representative to levy a license on the lawyer, the retailer of goods and ardent spirits. I don't conceive, however, that the license question is at all implicated in this section or has any connection whatever with it. That is reserved to the people exclusively.

MR. STUART of Doddridge. This reminds me somewhat of the fable of the rat. This thing may be meal or it may be a cat; and

it is rather invidious, and I have been cramped, and I really cannot understand the object of the gentleman in seeking to introduce this second clause into it. It may be to cover the cat with meal. It reads: "Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law." Now, what do you want us to understand by that? Suppose you tax my horse the same as you would another man's mule in proportion to its value. If that is in the first clause, what is the necessity for the second? Unless it is to throw in some ambiguous section here by which a different construction may be placed upon it? Now, I admit frankly if this could not be construed by which the legislature might be interfered with in assessing or fixing the tax or license on any person for carrying on a particular business, I have no objection to it; but if it could be possibly construed in that way, I think we had better strike it out. "No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value." Now, sir, it might possibly be that a man who was carrying on any business and had to have a license for it, that you would have no right to impose a license on him which would look to taxing his property higher than any other man; that you, should look to the value of his property and would have no right to impose a license under this section. But if it is not to preclude the right to tax a privilege I have no objection to it. But as it might lead to a construction of that kind, and as the first part of the section carries out clearly the object of the gentleman, I think we had better strike it out.

MR. PAXTON. I am not sure whether I understand the objections that have been made to this section. If I do and the opposition of gentlemen, it is not to the principle involved here. If I understand the gentleman from Kanawha, he does not object to the principle but to the manner of expressing it. Now, sir, this section simply declares, in the first place, that taxation shall be equal and uniform throughout the State. I presume there can be no objection to that. I apprehend no gentleman on this floor desires to object to that principle. It next declares and requires that all property shall be taxed. Is there anybody here who desires to have an exemption made, to say that any particular kind of property shall not be taxed as high as all other property as the case is now? Unless there is a disposition of that kind, sir, I cannot see the objection to the second part of this first sentence in connection with

the first part. In regard to this second clause, "no one species of property from which a tax may be collected shall be taxed higher" than another, I can assure gentlemen that so far as I am concerned and the committee is concerned, there is no cat in the meal bag about it. It was simply intended to make just that much more specific, as I think it is, the first declaration that all property shall be taxed alike according to value. There cannot possibly be any misapprehension about that, it is so plain. But now in connection with what follows as to exemptions it makes it the more readily comprehensible. I will just remark by the way that the principle laid down here is the principle of taxation that may be found in the constitutions of pretty much all the states with but two or three exceptions, where the constitutions say nothing at all in regard to the subject and where there is no constitutional provision, as there is not in some of the states, follows the same principle.

MR. SMITH. The view I have of this subject, it strikes me it was not perhaps subject to any particular objection but that of repetition. And upon a more close examination of it, I am fearful it may lead to this construction. I do not know whether there is a cat in the meal tub or not; but there is such a thing as licenses for merchants, such a thing as tax on incomes, such a thing as tax on salaries particularly as to licenses—

MR. PAXTON. A single remark I forgot is simply this; that this section does not in any manner restrict the legislature in the imposition of taxes on privileges or anything else that is not property. The legislature is at perfect liberty to tax in any manner, shape or form, or by any name it pleases, what they please, provided they do it in conformity to this principle; to which I think no exception can be taken.

MR. SMITH. I had considered all that, but still there is a difficulty. "No one species of property from which a tax shall be collected shall be taxed higher than any other of equal value." Now, you tax merchandise. A merchant buys in town the first of June his goods for the year. The commissioner comes round in May and makes out his books. Well, now he gets the goods in June, is not taxed, it is not taken down in the commissioner's books; no tax levied on it.

MR. PAXTON. I have to correct the gentleman just there a moment, because if I understand the working of this system pro-

vision is made for that sort of thing; that where a merchant comes into possession of property after the time the assessors come around to levy the taxes, he may by legislative provision be required to come forward and go to the assessor and give him a list of the property he has to contribute in proportion to the balance of the year. That is the way these things work in other states.

MR. VAN WINKLE. In some places they tax him his average stock. That is the most common way.

MR. SMITH. There is something of an exclusive privilege about giving a license. I think it would be the better way, to get rid of all difficulty at the close to put in these words: "but nothing herein contained shall be construed as to inhibit the legislature from levying a tax on licenses, salaries or incomes." Now, I know that the revenue of our state from licenses especially is very large; more, perhaps, than a million of dollars in the State of Virginia at this time; and when we want taxes, why they are able to pay and it is a very just subject of taxation; and if that is the meaning which the gentleman attaches to the section this sort of a clause can rid it of that doubt of construction. Now, the language is "All property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other of equal value." Now "all property" means anything that is capable of being owned. It is real, personal or mixed. It is "all property" a general comprehensive term.

That certainly embraces goods, embraces the property which a man sells to his customer as a tavern keeper; and it is a thing you cannot very well tax for it is coming in or going out the whole course of the year, difficult of taxation at all. This has made it necessary to grant licenses by which it shall be done and that should be regulated by law to ascertain the amount that is probably sold by the business transacted; and if as the gentleman says it is not intended to control the legislature in that particular then the terms which I introduce would avoid all difficulty. "But nothing herein contained shall be so construed as to inhibit the legislature from levying a tax on licenses, salaries or incomes." Salary is a *choses in action*, and it would be embraced under the term "property." If you tax the income and if you tax the salary, as may be done, it would be sufficient. But a tavern keeper's license, a license to sell goods and a lawyer's license, a doctor's license—I want them all

fixed. I have been paying a tax myself some fifteen or twenty dollars a year on my profession as a lawyer. I don't want the State to lose that tax. It is a very important tax, and I therefore think it would be prudent to put in this clause to rid of that misconception.

MR. BROWN of Kanawha. I accept it as an amendment to mine.

MR. SMITH. I perfectly agree with the principles of the report.

MR. VAN WINKLE. Does the gentleman offer that as an amendment? It is not in order now. We have not had an opportunity to discuss it.

MR. SMITH. I do not think it is in order. I merely offered it as an argument, and so at the proper time I will offer it, at the close of the section to ask to introduce it, and with that amendment I would vote for the section, those two sentences as they are. I have no objections, only it is repeating the same idea and only involving it in more difficulty of interpretation; the repetition involves it in a greater difficulty of interpretation. I do not suppose that there is a cat in the tub here, but the cat may get in the tub unless we watch it.

THE PRESIDING OFFICER. (Mr. Pomeroy in the chair.) Does the Chair understand the gentleman as withdrawing his amendment?

MR. BROWN of Kanawha. I do not withdraw it, sir.

MR. DERING. It seems to me, sir, that this section is not liable to the objections that gentlemen raise against it, nor is the amendment, I think, calculated to make it any more clear and explicit than it already is.

We have long been complaining that in western Virginia against unequal taxation, and the committee here in its first section have made the declaration that taxation on all property, real and personal, shall be in proportion to its value. The second sentence only reiterates and emphasizes that declaration in a little more explicit form; and we desire to impress upon the Constitution, to make it stand out in bold relief that this Convention desires to incorporate in their Constitution a principle in the most emphatic form possible in order that our people may see that we have had

that thing in view, and we are determined it shall stand out in bold and prominent characters. It is a mere repetition, sir, of the principle incorporated. Now, sir, is there a West Virginian anywhere that would object to that principle; a citizen within the bounds of the new State that would object to that principle? Why, sir, it is to West Virginians one of the most dear and cherished principles we could incorporate in our Constitution; and can there be any objection to a reiteration of that principle in this second sentence? It seems to me there cannot. The amendment indicated by the gentleman from Kanawha is ostensibly offered to correct objections for which I think there is no ground. There is no cat in the meal-tub, sir. I had the honor of being one of the committee and I did not see any cat put in the meal-tub at all. There is no covering up, no prohibition of the legislature in reference to licenses whatever. We do not say the legislature shall not provide by law for licensing merchants and lawyers, hotel-keepers, etc. No such thing is to be found in the section; no such inhibition whatever on the legislature; a clear right to go on and legislate with regard to licenses, and there is no prohibition whatever. I do not think the section is at all liable to the objection gentlemen have raised against it. It seems to me it is, as I said, a mere emphatic reiteration of the grand principle that taxation on all property shall be equal and uniform.

Again, sir, I cannot see any objection to that; I cannot see how the amendment will help it any; I cannot for the life of me, see or find any cat in the meal at all. I am in favor of the section as it stands.

MR. SINSEL. As this is an important section, I want to see whether I understand it fairly or not. "Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law." I understand by that that the legislature shall not in one section of the State levy, for instance, four mills on the dollar and in another section five mills on the dollar; but it shall be the same every place. In the second place, I understand all property shall be taxed in proportion to its value. That is, if one horse is worth \$5, tax it on \$5, and if another is worth \$125, tax it on \$125. And so on with every other species of property. Well, the mode of ascertaining the valuation, as I understand the section, the legislature is to prescribe—how it shall be done and who shall do it and so on. Well, now, sir, in the first part of the second sen-

tence, "no one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value." I presume this clause never would have entered into this Constitution had it not been that there is a clause in the present Constitution of Virginia which was in direct opposition to this principle; and I suppose the committee wished to remove all doubt from the mind of the most common reader that their property should be taxed in proportion to its value, no matter whether it was a horse, cow, sheep, hog, slave or whatever it might be. I don't see any particular need of that, neither do I see it will do any harm. As to licenses, I think lawyers understand them to be issued not upon the valuation of property at all but for a privilege. You issue a license to a man that wishes to engage in a certain kind of enterprise, and he pays for the privilege with a distinct understanding that no one else shall come in competition with him unless he pays a like tax for the same privilege. A tax then and a license is not a double tax on property but a privilege granted to the individual to carry on a certain business. This section cannot affect the license question at all. If I am wrong in my understanding of this, I wish some learned gentleman to correct me.

MR. HAYMOND. I am for the section just as it stands. It is, sir, the doctrine which western Virginia has been advocating for a long time; a doctrine which I hope will be adopted by this Convention. It is for this reason that we are trying to cut ourselves asunder from the eastern part of the state. We wish to secure to us this very doctrine. The gentleman from Logan appears to be uneasy fearing he will not get the chance to tax a man for what he is worth and then taxing him again for his industry. Now, I never thought a man ought to be taxed for his industry. I believe if he paid taxes for what he was worth, it is all he ought to be taxed. Now, let us suppose a case. Here are five of us who have been partners. We dissolve and when we settle we have \$1000 apiece clear cash. Here comes the assessor and assesses us \$1000 apiece. We have nothing more and now each one is going out on his own hook to engage in business. Is it right that one of these partners should pay now more tax than another? That is the question. I am going to be a farmer in Marion, another something else. Why should we be taxed one more than another? I never could see that a merchant should be taxed more than anybody else. I have been a farmer and merchant both at the same time. I have been a merchant for 17 years, sometimes carried on two plants; then had to

pay \$100 tax, when my other taxes were about \$70.00. I paid \$170 tax while my neighbors, worth more than I, did not pay as much by a hundred dollars, as I did. I never could see any justice in that. I do not want a man taxed for his industry. I want us to have a liberal constitution here, under which every man will have a right to do that which he wants to do; that every man will have a right to follow the pursuit he desires to follow, and let him pay taxes according to what he is worth; and that is all any honest government ought to require.

MR. HAGAR. I differ a little from my friend, though we agree in a great many things, especially so far as concerns the adoption of the section under consideration. He wants to know the reason why these men in different occupations are taxed. Well, we charge the merchant to sell goods. Lawyers charge very high fees, and we want to make them pay for it; doctors charge very high charges, and we want them to pay for that. A man who has a horse going round the country imposing on the people, I think it is right to tax his license. But I am for the section as it stands.

MR. IRVINE. Mr. Speaker, the gentleman from Marion contends, I think, for the construction that I think this section might possibly be susceptible of.

MR. HAYMOND. I did not allude to that at all. I said the gentleman from Logan was uneasy for fear there was some "cat in the meal-tub" (Laughter).

MR. SMITH. No, no; I was not; it was the gentleman from Doddridge.

MR. IRVINE. It was then inferred that the gentleman gave the construction that I have myself contended it might possibly receive. As to the chairman of this committee giving a particular construction to it and saying that is the construction it is to receive, no doubt this gentleman is perfectly honest in his declaration; but when we come to construe this section you could not even read into the construction of the section the speeches that were made in this Convention to show how the Convention construed it. That is a well-established principle. You could not read into the law that is passed in Congress that speeches that were made during the time upon the law. It is to be construed according to its language, according to the subject matter and the context, no matter how the framers of the law intended it; and unless the language and the

context admits of that construction it will never receive that construction. The only question is, how would they construe this section according to the rules of construction that have been adopted by the sages of the law for construing all laws?

Now, Mr. Speaker, I have only five minutes; let me know when my time is up, and I will take my seat. In construing this law, it will be construed in connection with the context. Then the first question will be asked—here is the first section fixes the rule, all property shall be taxed equal and uniform throughout the State on property both real and personal. That is the great principle that we have contended for in the west as enunciated in this sentence. Gentlemen on the other side of the question seem to contend that we are combatting the great principle we have contended for in the west here, that taxation shall be uniform on all property according to value. I am in favor of taxation being uniform. I am in favor of the great principle that we have contended for, that every species of property ought to be taxed in proportion to its value, including negroes and everything else. This principle is clearly expressed in the first sentence. Then in interpreting this whole section the question will be asked, for what purpose the first clause of the second sentence was introduced? Now, it is a rule of construction that you must give effect to every part of a sentence; if it is susceptible of any meaning, you must give some effect to every part of it. For what purpose was this introduced? If it merely repeats what is contained in the first sentence, it answers no purpose. Might it not be contended that when a man obtained a license to sell goods that you cannot charge him for the license? “No species of property from which a tax may be collected” is the peculiar language used here. He may contend that as a tax has been collected from his goods you cannot tax his license; that it is in effect collecting another tax from his goods—the goods he sells and that you cannot tax him any more than you would tax a man for any other species of property. That is, in other words, to express myself more clearly, that you cannot tax him for the privilege of selling the goods.

MR. PAXTON. A single explanation.

THE PRESIDING OFFICER. The gentleman from Ohio has spoken twice.

MR. PAXTON. I waive it, sir.

MR. CARSKADON. The tenacity with gentlemen stick to the first clause of the second sentence has convinced me that there is some purpose in it; for had it not been so they would not have been so tenacious in holding on to it. It simply reiterates what is said in the first sentence; carries nothing else with it. The first sentence to any man of common-sense is as plain as there is any necessity for; and there is no necessity for the first clause of the second sentence without some particular construction to be put upon it. I had from the first reading of it suspected that there was some design in it, and the intimation of the gentleman from Marion has confirmed me in that opinion. Therefore I am decidedly in favor of the amendment which the gentleman from Logan proposes to add at the conclusion of the sentence. And if they have not the purpose which has been indicated by that first clause of the second sentence, they can have no earthly reason for opposing the amendment of the gentleman from Logan. Therefore I hope the gentlemen from the rural districts will take into consideration that this is to exempt merchants—at least it is my opinion so—and I give it for what it is worth—from paying a license; and it will therefore have to be that extra amount of tax levied, to come off rural districts, in order to make up the revenues of the State.

MR. PAXTON. Explain what you mean by exemption merchants from paying license? Do you mean to say they will pay no tax?

MR. CARSKADON. No, sir, not paying tax; but pay no license for selling goods. I understand it has heretofore always been the law that they shall not pay any license.

MR. STEVENSON of Wood. I was going to make a suggestion. I don't know whether I have a right to make the motion or not, that this 15-minute rule should not apply to the chairmen of committees. It is impossible, it seems to me, that you can consider a report brought in by a committee where the chairman has not the privilege of explanation. The privilege has been extended in every other case in this Convention.

MR. BROWN of Kanawha. I rise to a question of order.

MR. STEVENSON of Wood. I merely wish to know if it is in order.

THE PRESIDING OFFICER. The Chair thinks it is not in order.

MR. STEVENSON of Wood. The Chair will remember that I just asked if it was in order. The gentleman need not be quite so fast.

MR. HAYMOND. The gentleman from Hampshire entirely misunderstood me. I was merely alluding to the gentleman from Logan who appeared to be very uneasy for fear there was something he did not understand. The gentleman from Hampshire misunderstood me.

But I am sorry, Mr. President, to see men here wanting to put in this Constitution the very things which we have been opposing for twenty years. We have been contending for twenty years for the very things which this clause contains and I do not see how gentlemen can get up here and oppose it. I wish this clause adopted in the very form in which it now is; I wish to see West Virginia stick to that principle which she has been contending for for the past twenty years. That is what I am for, and nothing else.

Mr. Brown of Kanawha addressed the Chair.

MR. HALL of Marion. The gentleman has twice spoken.

MR. BROWN of Kanawha. No, sir; you are mistaken.

THE PRESIDING OFFICER. The gentleman from Kanawha made a motion to amend but he did not make a speech at that time.

MR. BROWN of Kanawha. This proposition, Mr. President, either says one and the same thing or it does not. It is a cat in the meal-tub, or it is not. Now, which is it? This Convention will bear me in mind that I have urged it was a different proposition and was a cat in the meal-tub. I moved to strike out the intermediate clause because, as I believe it repeated substantially the same proposition contained in the first; and if I be correct in that, then it certainly will meet the approval of this Convention to strike it out, for I do not think any gentleman can defend the proposition to repeat it twice in the Constitution; for if it is right to repeat it, it is right to repeat it everywhere in the Constitution, and then repeat the Constitution. Now, therefore I say if the proposition is one and the same substantially, it ought to be stricken out because it is a repetition and can only have the effect of discrediting the Convention that does it. If this clause does not mean the same thing as the first sentence it ought to be stricken out because it is an attack on a fundamental system, one essential to the defense of

the State. The gentleman from Marion thinks every man ought to be taxed alike; but if the gentleman takes his \$1000 and puts it in that form, and the lawyer—the other man with \$1000 puts his at interest and then goes about his profession and makes five thousand dollars the next year off his profession, would you think the lawyer ought not to be taxed something for that capital that makes five thousand while the farmer is taxed on his farm at its full value?

MR. HAYMOND. If he makes \$5000 could not he be taxed on that the next year?

MR. BROWN of Kanawha. No, sir; he would spend it all before the year was out, just as the merchant we went to levy on on the next 1st of February will not have a cent perhaps. He will buy his goods again, and when the time comes, it will all be gone in the meantime.

MR. LAMB. I merely want to ask the gentleman a question: whether the value of the merchant's stock would not, of course, be ascertained as directed by law? I suppose the legislature would see that the law was not evaded in the way the gentleman indicates.

MR. SIMMONS. I just rise to make a single remark in regard to mercantile business. I have been engaged in that for a number of years, and it has been intimated by the gentleman from Hampshire that if the merchants are not taxed up on a license the people generally at large have to pay it from some other source. I wish to remind gentlemen here that have never been engaged in this business that if the merchant pays a heavy tax, the people who buy his goods pay it themselves. If he is taxed heavily, he undoubtedly must sell his goods high enough to enable him to cover this tax; if his taxes are light, he sells at a lower rate. I have always found that to be the fact. I don't say the merchant is justified but he will protect himself in the matter of his expenses. In laying unfair burdens on him you are simply laying them on the people who are his customers.

MR. VAN WINKLE. The gentleman from Hampshire had something to say about the "rural districts." I have heard a good deal about the "rural districts" in my time. Nobody here has for one moment said a merchant shall not be taxed. It is as to the system that is to be applied, that there is any question about. The report, as I understand it—and it is not as explicit on that subject as it might be—confines the tax to the "property" in the hands of the

merchant; and I should like to know if that is not the fairest way, more in accordance with equality than to allow the legislature to put on an arbitrary tax and increase it at its own pleasure? If gentlemen would make themselves familiar with how these things are managed elsewhere they would see there is no practical difficulty in any part of it. This section is the identical provision that is in operation in nine-tenths of the states of the Union, where the practice is exemplified every day. There can be no practical difficulty about it. The only question involved is the rule by which you are going to get at it. In reference to the clause as it stands, I believe that it is necessary, to contradict the practice that has obtained very widely in this State, that this language shall be repeated in this slightly different form, to make the meaning more explicit, even if gentlemen will have it that it is a mere repetition. It is necessary that we should forbid. One is the affirmative; the other is the negative; but that this clause should be here forbidding discrimination in taxation in different kinds of "property"; forbidding that one species of property should be taxed higher than any other. Now, sir; in reference to the cat in the meal-tub, there might be a cat in the other meal-tub. I would like to know why if the gentleman from Hampshire thinks we are "tenacious" about retaining this language, if he can infer any argument from the "tenacity" with which it is sought to have this language stricken out? If it is only repetition, why so tenacious? Mere repetition is a trifling fault, not worth all this elaborate effort to throw suspicion on a mere surplusage. Has the gentleman from Hampshire ever heard of a peculiar species of property in Virginia which the legislature of that state under such a provision as he wants here felt authorized to tax way below what other property of equal value was taxed? His argument cuts both ways. The point I want to get at is that no citizen shall have just cause of complaint as to the taxes that are levied on him; and if you make it a strict rule that all shall pay according to the value of their property, none can have a right to complain. I wish, sir, to prevent the legislature under the spur of circumstances, under the spur of an outside pressure, to make laws which some particular individuals may desire, thinking their friends are numerous enough to affect the elections next year. And I hope every member of this Convention will see the necessity for it. You know how hard it is for them to screw up their courage to lay the proper tax on property, and how they try to find some way to raise the needed revenues by laying taxes in some other way, on other subjects or by other devices, less liable

to antagonize large interests when it comes to the elections. If you are going to levy upon salaries and incomes, the rural districts had better look out; because if you are going to tax my income, I want the farmers' income taxed too; and how will he like it, to pay a tax on his land, on the crops in his possession and then pay a tax on the income of the year? Will the farmer like that and if he doesn't like that for himself does he want to put it on anybody else? There is a provision in the old constitution that attempts to guard against that; but it has been found nugatory in practice. Gentlemen ought to consider these things. Do you want to make a constitution that is to be satisfactory and that is to stand? If you want to make a constitution that is to confer the benefits we hope to derive from it, then make it equal in its privileges and purview and don't give to one what you deny to another; don't impose a burden on one that you don't impose on another in proportion. That is the only fair and just rule; and if there is any cat in the meal, I should like to know where it lies. The cat must be in trying to make one pay more than his fair proportion if it lies anywhere.

MR. PAXTON. I understand that I have not exceeded my privilege; that the first remarks I made when the section came up was not to be counted under the rule, I merely wish to read from one or two constitutions so that if there is any cat in the meal-tub that other people have been guilty of it as well as ourselves.

From the Constitution of Tennessee:

"All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that the same shall be equal and uniform throughout the state. No one species of property from which a tax shall be collected shall be taxed higher than any other species of property of equal value."

From the Constitution of Louisiana:

"Taxation shall be equal and uniform throughout the state. All property on which taxes may be levied in this state shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property shall be taxed higher than another of equal value on which taxes shall be levied."

I imagine the object of the framers of these constitutions was the same as the committee had in view, simply to make it so plain that there could be no misunderstanding.

MR. STUART of Doddridge. The cat has got out of the meal-tub and is loose now, that is if we are to take the expositions of the gentleman from Wood. He said he wanted to restrict the legislature so that when they come to imposing a tax they could not increase the tax on the merchants' licenses. And I suppose we are to understand that this is a restriction on the legislature in imposing these licenses. The question comes up whether you want to restrict the legislature in imposing these licenses or not.

The Secretary reported the amendment of Mr. Brown as proposed, to strike out the 3rd, 4th and 5th lines and some other words and insert other words, so that if adopted, the provision would read:

"Taxation shall be equal and uniform throughout the State on all property both real and personal according to its value; but property used for educational, literary, scientific, religious and charitable purposes may by law be exempted from taxation."

MR. HERVEY. No gentleman has alleged on this floor that it takes away the power of the legislature to impose licenses. It has been denied by every advocate of this section as it stands.

The vote was taken on Mr. Brown's amendment and it was rejected by the following vote:

YEAS—Messrs. Brown of Kanawha, Chapman, Carskadon, Cook, Hansley, Hall of Marion, Harrison, Irvine, Montague, Robinson, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Walker, Warder, Wilson—17.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Caldwell, Dering, Dille, Dolly, Haymond, Hubbs, Hervey, Hoback, Hagar, Lamb, Lauck, Mahon, McCutchen, O'Brien, Parsons, Parker, Paxton, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle—30.

MR. SMITH. I will ask to amend the section by adding these words:

"Nothing, however, in this section shall be so construed as to prohibit the legislature from levying a tax on licenses, incomes and salaries unless in cases where the estate from which the income arises is taxed as property."

To come in at the end of the section.

MR. VAN WINKLE. I would call the gentleman's attention to a section in the present constitution: "The general assembly shall levy a tax on income, salaries, etc."

MR. SMITH. Mine embraces the same idea.

MR. VAN WINKLE. I was going to advise that you offer it as a separate section that we might take up the question by itself, as I intend to oppose it.

MR. SMITH. I would offer it as an independent section, and just copy from the existing constitution. My object is to secure a tax on licenses, incomes and salaries. I will just adopt the language of the Constitution of Virginia.

The first section was then adopted, and Mr. Smith offered the following as a separate section:

"The legislature may levy a tax on incomes, salaries, and licenses, but no tax shall be levied on property from which any income so taxed is derived, or on the capital invested in the trade or business, in respect to which the income so taxed is issued."

MR. SINSEL. Under that section, if you adopt it, I might engage in the mercantile business with a capital of \$50,000. This capital then, as property, will be exempt from taxation and they will tax me on a license for the privilege of selling goods. Now, you see at once that that cuts out all competition from any other person engaging in the mercantile business. My neighbor would be liable to fine. He might come to Wheeling and buy a lot of goods for his own use; but if he undertook to sell them to his neighbors, if he did, he would be fined because he has no license. I have an exclusive privilege of selling and yet paying not a cent of tax on \$50,000, paying only for the privilege of selling my goods. So you see it cuts out the competition right at once, and the State would derive no more tax from that source than if you say to tax the individual, so I am opposed to it.

MR. SMITH. The gentleman has wholly misconceived it. The license is intended to be a tax on the property and also a tax for the privilege. I leave it to the legislature what it shall be. Where there is \$50,000 capital, there will be a particular tax, and on \$100,000 a particular tax, and where there is \$200,000 the tax will be in proportion to the amount of property invested in the business and it is always more than the ordinary tax upon the

capital invested. You look at the legislative acts on this subject. We have been granting licenses. They pay very heavy licenses. It is the complaint of a great many merchants that their tax is too high; but I imagine that there is an *esprit du corps* among merchants too, and wherever you touch the matter of license you see the merchants hopping up. But the objection raised to this is that the practice is to tax the license too high, costing more than the property itself; that the subject of trade would be taxed and the legislature have the whole power. Here you have \$50,000. Well, you will assume the tax on \$50,000—the *ad valorem* tax according to the ratio of taxation adopted where they will put the \$50,000 down, they will put, maybe, \$15 or \$20 for the privilege of selling. They tax the property and they tax the privilege both; and that is left to the discretion of the legislature. That is the object of the amendment. It is to secure that subject from the difficulties that would arise where it is a changing, varying property from time to time and from year to year. It is to tax it by the amount of capital actually engaged in it, because if you go to tax property there may be no property in hand at the time the commissioner comes around. And hence the necessity of taxing a license according to the usual capital of the party engaged and some little bonus for the privilege.

MR. PAXTON. The committee whose report is now under consideration had this question before them—this very provision reported by the gentleman from Logan—and we could not see any propriety in a provision of that sort; or any use, because that provision would conflict with the principle which the committee had agreed to report as the basis of their system, now adopted by the Convention. We have adopted a principle of equal and uniform taxation. Is it a reality or a sham? If it is real, then I can see no propriety in adopting this, because the legislature already have the authority to levy taxes in any manner, shape, form or way, or under any name they please, in conformity with that principle. Therefore, if it does not conflict with that principle, there is no use of putting it in the Constitution, because the legislature already has the authority this would confer. You might as well go on and specify how the legislature should levy the tax, in what manner, through what officers—make a code while we are at it. As I said before, unless the object of this is to come in conflict with the principle already adopted, there is no use of it here, for the legislature already has that power and this detail should be left to them. If it

is intended to come in conflict and we adopt it, we would have declared a fundamental principle for our system of taxation and then in the next vote have taken a position that comes in direct conflict with that principle. Do we mean what we say when we declare a principle here? I do hope this Convention will not adopt the section proposed for the very reason that if it conflicts with the principle we have adopted it should not be adopted; if it does not, the legislature already have the power that is necessary to give them entire and absolute control over the whole subject.

MR. VAN WINKLE. With a view of bringing this matter to a direct issue, I will offer the following as a substitute for the section offered by the gentleman from Logan:

"No tax shall be levied on licenses, salaries, or incomes, but the property used in any business or calling shall be taxed as other property. Nothing herein contained shall be construed to prevent the county authorities from issuing licenses, and charging such reasonable fees for the same as may be allowed by general laws."

I wish, Mr. President, to bring the Convention to a direct vote on the question whether they are going to allow one class of citizens to be taxed higher than another; or allow one class to be taxed twice: first upon their property and secondly on their income, while others are not taxed on their income?

In the first place, sir, this whole idea of licenses is a strange one. Gentlemen have heard a good deal about our having a "free state." They have it in a certain sense; but I want to have a free state in another sense, where the white people are free. I want it, sir, that any man can go into any business when he chooses if he will comply with the laws regulating it; not but what any man may be prevented and regulated with respect to the things demanded by the public morals: but the idea that a man cannot open a store without permission of the commissioner of revenue is repugnant to a correct system based on popular liberty. I would ask if you want to subject the citizens of this new State to that idea that a man is not free to engage in trade without he goes and asks permission of the commissioner of the revenue. Why, sir, gentlemen talk as if these licenses were exclusive privileges. It is no such thing and never has been. Any man who chooses to go and pay the fees can get a license. It is only in cases of selling liquor, where good character and such things are required, that any of these remarks will apply. The idea of talking about a

lawyer's "license." A lawyer's license is simply a certificate that he has undergone the examination which shows him to be competent. That used to be a lawyer's license. A lawyer pays taxes on his property but not for his privileges. If you tax a merchant, he pays for the privilege and pays a tax on the property he is obliged to use in his business. They may charge a lawyer what they charge now for issuing the paper to him. That may be all well enough. But it is with reference to where it becomes a burden thus put on to the merchant and others that are dealing in that kind of goods. If we want to drive business from the State we had better go on in the plan that has been pursued. And what difference does it make to the "rural districts"—to quote the gentleman from Hampshire—if this merchant pays upon the property he has in possession, or pays a round sum? What difference can it make to them unless the idea is that the merchant is to be taxed beyond the proportion his property would allow? If a merchant has an average stock of \$10,000 and the tax is 4 cents, he will pay \$40; if he has \$20,000, he pays \$80 and so on. Is not that fair? But will you put them into a class, and put a tax on at the pleasure of the legislature of whatever they may choose without any guaranty that one shall be proportioned to the other?

I ask, first, whether the people of this State are to be so tied up that they cannot choose what business they will go into which does not affect the morals of the public, on the one hand, or if this Convention is going to consent to the principle now sought to be established by this amendment. Remember it comes from the old Constitution of Virginia under which these things have been practiced. Why are we here making a constitution for a separate state if it is not to escape from the tyranny of just such things, suffered by our people under the old; if it is not, in this particular matter that taxation in the case of a particular class and of all other individuals shall be equal?

Now, what have we to do with salaries and incomes? In the history of Great Britain an income tax was resorted to only in times of war. It was considered a war tax. What are war taxes? We are paying them here. You must place a stamp on every bill and note that is issued. You cannot give your note of hand unless you pay a tax to the government on it; cannot write a will or any other legal paper unless it has a stamp upon it paying a government tax. These are war taxes. This income tax in Great Britain has always been left to be resorted to on extraordinary occasions. It was promised by the chancellor of the exchequer that as soon as the

Crimean war was over that war-tax should be lifted. But then came on the war of India and they are yet laboring under that war expense. Here in this free State, in one of the sovereign and independent states of this Union, under republican institutions, here, we are asked to take this extraordinary tax, which people are willing to pay only in time of war or great public emergencies, and make it the common rule! That is what we are asked to do. If property is taxed according to its value, if 40 cents will not pay the expenses of the government, put on 50; if 50 is not enough, put on 60. But then it will be equal on all the citizens and on all the property of the State, which is the thing that is to bear the burden, for it is that mostly which is to be protected. We are all liable to turn out and bear arms for personal protection. That with a small capitation tax would be a sufficient equivalent for the personal protection we get. But all the rest of the machinery of the government is employed—nine-tenths of it—in the protection of property. Therefore, property should pay for it. But when you come to levy that tax on the property of the citizens of the State then according to the principle we have recognized everywhere in this Constitution, the fundamental and foundation principle of our financial system, on which our institutions are to be built up—that is equality of the citizens, we make them equal by taxing them each one in proportion to his property. You require more always where there is more protection given and less where there is less protection given. You require, for instance, more in personal services from the sound, healthy man than from the valetudinarian or aged man. You require the young man to shoulder his musket and turn out to defend his country; but only in extreme cases those whose health is feeble or from any other cause unable to perform the same service, and it is all perfectly right.

And so it is in reference to this question of taxation. Now this amendment I have offered embraces a fair and equal system. The amendment of the member from Logan is the old method under which we have been groaning and which has at last resulted in a general desire to repudiate the whole thing. I have provided that these licenses should be issued by the county authorities. They are the proper judges. That will be, of course, under regulations to be prescribed by law, and they can issue and demand a proper fee for issuing them. If they choose to make it five dollars or two dollars on a license, I have no objection; if they choose to make it fifteen or twenty dollars on an ordinary license, I have no objection to that; but I do think these businesses that are com-

mon to every citizen everywhere else ought to be common to every citizen here, and we do not want any of these tyrannical laws imposed on our citizens any more than they are imposed everywhere else. There is no call for it. Tax the merchant on his property and you will get all you are entitled to, and about as much as you will get by this special license. And as in some twenty or thirty states of this Union they have found out a way to apply this rule, there will be no difficulty in applying it here. Our officers have as much intelligence as they have there, and will be just as able to apply the rule as they are in any other states.

MR. SMITH. I offered the amendment at the solicitation. I thought, of my friend from Wood, and I expected to get his support.

MR. VAN WINKLE. My solicitation to you was to offer it as an independent section. It was in the old constitution as such; but I announced at the same time that I intended to oppose it.

MR. SMITH. I thought you said you would vote for it (Laughter).

I regret to see my friend from Wood take this ground he does. He is a member of the fraternity to which I belong, and with all the abuse that is heaped on them, I undertake to say that in all public measures calculated to advance the interests of the country—I say it now; I have got so far advanced in the profession I may say it without being immodest—I say they are the most liberal class of this whole community, and wherever a public measure fraught with public interest is before the country you will always find them shoulder to shoulder pressing it forward.

Now, let us see how the merchants and others stand up to the work; see how many merchants will vote for this measure. Lawyers are embraced in the licenses as well as the others. I call upon my friends, the members of the bar vindicate the character which I have now given them—by their votes come up to it (Laughter). I call upon my friend from Wood to come up and vindicate the reputation of his profession—a profession honorable and liberal and generous.

MR. VAN WINKLE. I hope I shall not need to vindicate my professional character by paying five dollars for the privilege of belonging to the profession. I value it a little higher (Laughter).

MR. SMITH. I believe the gentleman has got down into a more sober business profession, and since he has got down there he has

lost some of that liberality that belongs to the profession (Merri-ment). But I call upon them to stand up and let us see how many merchants stand up and agree that they will pay license. It is a just and expedient law. I say they have a privilege, as a professional man I have a privilege of appearing before the bar and defending or prosecuting the causes of others, but the community at large is excluded from it. I say when you get a license to sell goods you have an exclusive right and you should pay for it. The country at large gives you that exclusive privilege and I demand that the commonwealth should be compensated for it and that you shall not go back on the farmer and laborer to pay up that deficiency which you ought to pay for the privilege granted you. That is the ground I take. I do not consider that I am practicing on the principle of a demagogue either. If there is anything I despise more than another it is legislating as the demagogue, looking to see how popular it will be.

MR. VAN WINKLE. Does the gentleman apply that to me?

MR. SMITH. Surely not. Because you are practicing on a principle that does not look demagogical; because you are resisting what will be regarded as the principle of the demagogue, and I am advocating one that may be so regarded. I am vindicating myself against such a charge, not charging you with it.

I say it is just; and I do not ask that I as a lawyer should have this exclusive privilege and for that privilege pay no price, and go back and ask the farmer or the mechanic, or any other class of laboring men in the community, to pay it. I ask that the merchant who sells to the farmer and sells to others and holds an exclusive privilege of doing so shall come up and pay for the privilege. That is what I ask and it is just. And I will so provide, that if the farmer's land and his negroes and his other property is taxed, that then, sir, his income shall not be taxed; but if the lawyer is not taxed in his income, why, then let him pay for the privilege; but if his income is taxed then he does not come under the provisions of that. Nor is the merchant. If his goods are taxed, he is excepted from its operation, and where it is not taxed he is to pay. And you cannot—it is impossible to tax the merchant. His goods are traveling from hand to hand all the time—a thousand dollars today, six hundred dollars tomorrow—and how are you going to tax it? You must have the commissioner running every day to ascertain the amount of property he has got to assess

the taxes he should pay. If you tax him as upon an income of \$50,000 and lay a tax on an income on a stock of \$50,000, then he will pay for his license; but if he don't pay as upon a property of \$50,000, then he pays for the privilege. It is equality and justice, and I want him to pay a little more than the owner of his property. I want him to pay for the privilege. It is a privilege, an exclusive privilege he has when he is not taxed. I call upon the merchants now to come up, and I call upon my lawyer friends to stand up and vindicate themselves, the whole of them. It is proper and right.

MR. LAMB. I regret exceedingly the gentleman did not also call upon the bankers (Laughter). So far as they are concerned, some allusion has been made to them in a former part of this discussion. I may say the application of the principle embodied in this first section will certainly subject them to a much higher degree of taxation than they are now subject to. But however that may be, however it may affect lawyers or merchants or anybody else, I have from the beginning endeavored to occupy a position in this Convention of advocating and maintaining what I supposed to be great and correct principles. And, as I have already said, I look on this principle of the equality of property in regard to taxation as second only to that great principle which we have adopted, the equality of persons in regard to representation. However it may affect one class of the community, or another, it is a proper principle, and without reference to its operation on classes, as a just and fair principle I hope this Convention will adopt it. The merchant will pay a tax upon his stock, the value to be ascertained as shall be prescribed by law; and certainly there can be no difficulty in that more than in ascertaining the value of other property. He will pay a tax on the debts that are due him, on his furniture in the house, on all other property he may possess—a tax on that which we all pay and in precisely the same proportion. I doubt very much whether the commonwealth will not by such a system secure as abundant revenue from this source as they will upon a system like that which has heretofore existed in this state; for that system, proposed to be perpetuated here by the gentleman from Logan, is entirely an arbitrary one:

“The legislature may levy a tax on incomes, salaries and licenses, etc.”

There is no principle here. The legislature may levy it without regard to any principle; without regard to justice; without regard to equality. There is nothing here to carry out this great

principle of equality, even as between merchants, or as between persons who are in the receipt of salaries. There is no principle as between these classes, nor even as between persons in the same class; nothing to confine the legislature to any quality or any justice between the parties subjected to these arbitrary taxes. As for the lawyers, the prices for goods, and all this, why, gentlemen, the lawyer is perfectly indifferent about whatever tax you may impose on him. There is no patriotism in the declaration of the gentleman from Logan, for he knows whether the tax is ten dollars or a hundred dollars, the client pays it. If you want goods at low prices, if you want really to benefit the "rural districts," in that respect, subject these matters to as few embarrassing restrictions as possible; leave the business as free as you can. Where you have one merchant alongside your farm, let another man go there to enter into competition. That is the way in which the farmer and the rural districts will be benefited, in which they will secure goods at reasonable prices. If you are to make this an exclusive business, if you are here to grant exclusive privileges to a certain man or to a few men to sell goods to your farmers, you may depend upon it that not merely will the price of the license but ten times the price of that license will come out of the farmers' pocket. This great principle is not only a correct one, I maintain but it is one that will benefit all classes; one, too, that I think will secure to the commonwealth which we hope we are about to establish as full a treasury as you can secure to it by this exclusive system.

MR. STEVENSON of Wood. As I am neither a lawyer nor a merchant I suppose I may not come within the call of my friend from Logan, and of course he will not expect me to accept his proposition. I had supposed that gentleman, from his arguments heretofore, was opposed to stuffing the Constitution with legislation, but that our duty here as framers of a Constitution was to incorporate in that instrument only great principles and leave with the legislature power to apply and develop and carry out those principles as might be dictated by the interests of the people when the time arrived to apply them. Now, sir, there is but one principle involved, it seems to me, in the amendment proposed—I mean the amendment of the gentleman from Logan, because I must discuss that, of course in considering the substitute for it offered by my colleague, and that principle is simply this: whether after having labored all this forenoon to breathe the breath of life into a great principle—this *ad valorem* system of taxation of property—we shall go

to work and knock the breath right out of it. That is just the substance of the proposition made by the gentleman from Logan. We have settled the principle here by a very decided vote that taxation shall be equal and uniform throughout the State on all property, real and personal; and now he proposes to give the legislature special authority in some particular cases to abandon that principle. Well, now, if there could be any good reasons urged here in favor of abandoning the principle at all; if it could be shown that more revenue could be raised in that way; that there would be less injustice done than in the other case, why that might possibly be an argument in an extreme case for the abandonment of that principle. But it seems to be agreed here that it will make but little difference in the amount of taxes or revenues raised for state purposes whether you abandon the principle or adhere to it, at least that no more will be raised by abandoning than by adhering to the principle you have adopted. Then shall we abandon the principle and especially shall we abandon it when it is not established here that we will make anything out of that abandonment? I hope not, sir. If a principle is worth anything it is worth being applied to all property wherever the legislature in the laws they make shall be able to find that property. That is the grand principle which we have adopted: that all property, whether in the hands of a lawyer, banker, farmer or merchant shall be taxed in proportion to its value. I say that is the correct principle. If you abandon that principle once, or if you give the legislature power to abandon it, in a particular case, or to a number of particular cases, you have opened the door to any amount of abuses almost in the way of taxation. You cannot tell where they will stop, because it is discretionary with them, as I understand the proposition, if we open this door at all in this particular, we leave them to use their discretion in imposing either a small or a large tax in these particular cases. I hope, sir, unless better reasons are adduced for abandoning this great principle of *ad valorem* taxation on property than those which have been urged, the members of this Convention will adhere to the principle they have already adopted.

Now, sir, I care nothing about this matter of taxing licenses: I mean I don't care whether you require a license from a professional man or not; or from merchants or not. My experience and observation in regard to license on merchants—and I have watched it with some care—is this: these extravagant prices which they have been compelled to pay for the privilege of merchandising has had the effect of driving the customers to move out of the State—

particularly on the border across the river where they could purchase their goods cheaper and where the legislature have been more liberal to that class of men. That is the effect it has had. Numbers of merchants are driven into other states where a more liberal policy—perhaps I should say a less oppressive and harassing policy—is pursued. I say that will be the history of the adoption of this amendment. It is impossible where it will stop. You may wish it to apply only to particular cases or to persons of a particular class; but if that matter is left entirely to the legislature, they might adopt almost any plan it pleases in reference to this matter, and thus the operation of this principle and the objects of this Convention to be defeated. I hope, therefore, sir, it will be the pleasure of the Convention to preserve this principle of taxation which they have adopted in this first section all through this report, and never abandon it. If we do, sir, the principle itself is gone.

MR. STUART of Doddridge. I would like to inquire how this authorizes one county to levy a greater license than another.

MR. VAN WINKLE. It contemplates that the legislature may pass general laws. The idea is that it shall not be a tax but a reasonable charge for issuing the license.

MR. STUART. I only wonder that the gentleman did not leave this privilege to the townships (Laughter). Now, sir, the county may under that provision charge a license or may not. If licenses are to be charged for privileges it should be uniform it appears to me. One county may overrun another by granting licenses while another might desire to refuse. I shall vote against the amendment of the gentleman from Wood.

MR. SIMMONS. I ask for the yeas and nays on this.

MR. BROWN of Kanawha. The principle that taxation shall be equal and uniform is a fundamental principle in the proposition we have adopted. I want to see how far that question is to be maintained and what is to be the operation in the matter. One man has no property and therefore nothing to tax except his head, and that will pay a dollar, and with every other man in the community will receive the blessings of the government and enjoy its privileges and securities. He every year lives as well, enjoys as many comforts upon a salary of a thousand dollars, two, three, four or five thousand dollars; fares sumptuously every day and wears his purple

and fine linen, and pays nothing but the tax of one dollar on his head. Now, is that carrying out the principle of equality? Is that applying the principle properly and rightly that is. Now, the principle is defective. There is the tax on property; but he has no property, nothing at all which the law can apply to.

MR. VAN WINKLE. I never supposed a man's labor is property and that the State could exact a tax on that. All taxes are laid on surplus—on what a man has left after he has paid the cost of living. I hope it is not intended to tax the white labor of the country. But the gentleman takes a very superficial view of this matter as he states it. The gentleman who enjoys that generous salary and lives in the style my friend supposes must live in a house, and for one living so luxuriously it would have to be a handsome and expensive house. He does not own the house but he pays roundly for the use of it. Now, you may depend that the State's tax on that house—all the taxes on that house, state and local—have been added to the rental which the owner requires this Sybarite to pay. He pays all those taxes on that house and grounds when he pays his rent. The renter pays as much tax on what he uses as the man who owns his own home—probably something more. Every man who knows anything about political economy knows how these things adjust themselves.

MR. BROWN of Kanawha. I am meeting this question as it stands, I say the commissioner will come around and be told, sir, I have no property. Here is my head; tax that a dollar. If that is not a violation of this principle, it is of the principle of similar equality. But here are the gentlemen whose offices vary from one thousand up to five thousand dollars a year. Why, there are plenty of officers that receive their salaries and live comfortably and fare well although they bear none of the expense of the government that secures them these privileges. Here is the president of the James River and Kanawha Company receives a salary of five thousand dollars. Yet he pays no tax at all, when his neighbor with a little farm worth \$500 is taxed on the value of it, and his neighbor who has got a little old donkey is taxed on that. I want to know why this gentleman should not be taxed on his salary and why it should not be assessed on this principle in conformity with its value as much as anything else. I am unable to perceive why. It is this law which secures him the blessings of the country, and I am unable to see why he should not bear his per centum of its burden. Well,

sir, you know the gentleman who wants to keep a hotel. He has got no hotel, but he wants to keep one; so he goes and rents one; and that man is taxed on the property, he is taxed on this house and lot; but the gentleman who wants to keep it rents it for whatever it is worth per year and then he goes to the court or some authority and asks the liberty to charge everybody that comes there and makes them pay to accommodate them for it. Well, sir, the traveler stops at this hotel and he pays the price. Another man comes to a neighbor who has no license, and if he charges for entertaining the man, he is fined for it, and this tavern-keeper will be the first man to indict him for it. Now, I want to know what difference there is in indicting one and not charging the other? If this gentleman for the mere trifle he has derived from the authority of the government can make a thousand dollars out of it I do not see why he shall not be taxed on his salary if he does not pay any tax for having the license. But if he does, then he has accomplished all that is required. I do not see why you should give this gentleman the privilege of charging his neighbor and not allow every other neighbor the same privilege. Now, it is necessary to have licenses for the public good; and it seems to me that you secure to the public these blessings at the same time that you obtain from the party who gets the privilege of enjoying it and making a profit out of it that remuneration for the State that every other individual is required to pay. It is no more a violation of this principle than taxing a man a dollar on his head. A gentleman wants to sell liquor and make a fine fortune in that way. He will spend a hundred dollars and get his stock on hand. You cannot tax him for what he did not have the day the tax was levied; and he will sell as he pleases and turn his money and be back to market perhaps twenty times before the commissioner comes around. He will use up all he made and in the final end he has nothing you can tax. How are you to tax this man on the principle contemplated unless you assess him every day in the year? Whatever day you may fix it on, he will buy his goods the day after that. It is not like a man who buys his goods to keep, who has something permanent in it from year to year. The man who buys horses to cultivate his fields. The goods are bought to sell and to be kept no longer than disposed of. The grocer, who will turn over his whole stock two or three times a year can whenever he pleases have none on hand. It is not like the farmer. His lands are all the time there—always to be found whenever you go for them. Unless you then levy this tax for the privilege to cover the whole transactions during the year,

you are to ascertain from him what is expected to be the business transactions of the year; you have no other way of reaching that man.

Well, gentlemen argue very strangely. The merchants are always shrewd, smart men as alive to their interests as any other class of the community. Gentlemen tell us, if you lay this on the merchant, he will not pay it; he will lay it on the consumer to whom he sells his goods and that you really do not tax the merchant but the consumer. It is therefore argued do not lay this license because it is not on the merchant but on the consumer. If that was the case, why is it merchants feel any concern about it? Why, sir, whenever you touch the interest of a thing you will stir the world. Men are governed by their interests, merchants as well as others. Why is it the gentleman who has got a salary, who lives by it, does not want his salary taxed. Because it is to his interest not to have it taxed. I can see no reason. Every man ought to be taxed his per centum in proportion to the amount of benefit he derives from the government which protects him. The farmer is taxed on his head, his horses and everything else that he has got. But the lawyer has got something his neighbor has not got, the right to prosecute suits and charge fees, which is a capital in his brains; and is it not right that he should pay a license before he should obtain this privilege? The gentlemen say it is no tax on the lawyer at all, because he just charges it to the client. Well, now, if that is the case, clients have more interest in it. I am confident the lawyers always think they pay it and I am sure no lawyer ever added a little to his fee because he was charged with a license before he was allowed to practice. Clients will pay the very same and the treasury will be deficient that amount. Strike it all out and you have to make it up off the laboring men of the country and let out all these men who enjoy these privileges at the hands of the government. Well, sir, if that is to be your policy, to turn all the burdens of the government all back on the dray-horses of the community, then you are making a very fine constitution for the favored classes.

MR. VAN WINKLE. I want to repeat—

THE PRESIDENT. The Chair would remark that so far as his observation has gone a gentleman offering a proposition has a right to explanation which is not charged to him as a speech.

MR. VAN WINKLE. I don't want five minutes. I only want simply to repeat that the proposition of the gentleman from Kanawha is nothing more than this: either that you are going to tax labor for a man's daily work or that you are going to establish an inequality. Now, if a man is dependent alone on a salary for his living, that is his daily labor; and are you going to tax that man on his daily earnings and not tax the laborer who works by so much a day. What is the difference whether a man works for a dollar a day or \$365 a year? Now, carry that out, and it would be the most obnoxious proposition that was ever passed in any deliberative body. And, sir, this iniquitous law, as it now exists in Virginia is made to apply to engineers on railroads, who are nothing but mechanics and who earn a daily stipend. Do you want to put such a provision as that into your Constitution? Well, sir, all this gentleman's remarks which I have heard seem to allude to me in some way or other; but the facts do not bear them out. In the first place, I am not a practicing lawyer. In the second place, I am not in receipt of any salary. In the third place, I never was, but once, a candidate for any office. I ran once for the legislature, for which I hope to be forgiven, and was defeated—for which I desire to be thankful (Laughter). I was merely appointed an alternate to the June convention and the party who was delegate declining to come here, I came. I wrote to Parkersburg that I would not be a candidate for this Convention; but when I got there they insisted on it and I was elected by a heavy vote. I was tendered the highest office under the restored government, which I declined; was offered a high office under the United States Government, and was ready to take the second office. I was offered another office under the government, which I declined. I do not think, if I know myself I shall ever be a candidate for any office. If ever a man was sick and tired with the little experience he has had of public office, it is myself. Now, sir, I stand just there. I have no doubt or fear that my constituents will censure me. They all do know that if there is anything I am wedded to, it is precisely this principle of equality in legislation as affecting the rights of the citizen. I was as strenuous as I dared to be in the convention of 1850—the more so in the committee touching county courts and county organization than I could be in the convention; but my speeches made there were published, and they knew precisely what my attitude was in that convention and what it would be in this Convention when I pledged them at the court-house. What I said then in regard to this tax on salaries I say now, and I at least claim credit for consistency.

MR. SIMMONS. I wish to make a single remark in regard to the attitude of the gentleman from Kanawha towards the merchants. I may be mistaken. There is something in his argument I do not understand. He goes on to tell you that a merchant is a very shrewd intelligent man and always watching opportunities to defraud the government in the matter of his taxes. I would ask the gentleman whether if the commissioner comes the day after the merchant has paid out his money for goods if the assessment is not made just the same, for he must have had the money the day before he paid it out. If he buys on time, he had no money and had no right to be assessed for it. I cannot see any advantage a merchant can take in defrauding the government in that respect. I do not wish the mind of this Convention to be poisoned in this manner. I do not think the commissioner would be deceived; because the merchant has the money in his business and he is assessed with that money. I just wished to make this single remark in order that gentlemen may not be deceived in this matter.

MR. BROWN of Kanawha. I am a little surprised the gentleman should suppose I would make any reflection on the merchants. On the contrary, I have the highest respect for them, and neither doubt their integrity or principle.

In regard to the intimation of the gentleman from Wood that he seemed to be the subject of my remarks, I had no reference to the gentleman. I did not know that he either had a salary or held an office, or anything about it, and therefore thought not about his salaries. The allusion I made to the president of the James River & Kanawha Company was in illustration of what I had to say about taxing salaries. With reference to the balance of the gentleman's remarks, I was glad to hear he had been so successful and hope he may continue in the public service.

MR. SMITH. I would just ask to make this remark. The gentleman from Wood said it was tyranny to tax the laborer. Now, there is no such thing as a license for a man to labor. Who ever heard of a man going to court for a permit to work?

MR. VAN WINKLE. Taxing salaries is to put a tax on labor, and I stated expressly that the enginemen who drive engines on the railroad are taxed. I wrote at their request to the auditor, Mr. Bennett, and got his views. He stated that it had been decided they should be taxed.

MR. SMITH. It is all left to the legislature—permissive to the legislature; and I never heard of a man who was working at his 50 cents or a dollar a day on the farm—I never heard of his being taxed on the money earned in that way. It is not a salary, it is daily labor or monthly labor, or yearly.

Here is another point I wish to submit to the Convention. Here is a man traveling about the country with a circus, all sorts of exhibitions. I say evil to the country. You say he shall not be taxed, no license shall be required of him. The gentleman from Wood charges me with inconsistency. I think the gentleman is wholly at fault there. I am not inconsistent but am perfectly consistent. He has got in a section here which I think from what has been exhibited, or was intended, or looks very much that way, to prevent this very thing—the taxing of these persons. I want to correct that interpretation if there is any mistake in it and give direct power to do this thing which by the other section might be inhibited; and I want to give them the power that would otherwise not exist. I would greatly prefer simply to say that taxation should be equal and uniform throughout the State and leave it there. But, no; you go on further and introduce other clauses that may tend to exclude or receive a construction that would exclude the legislature from the right of granting licenses and taxing them. It is that object I have in view, and it is not at all inconsistent. If you will go back to my doctrine, I will fall in with you and leave the whole of it to the legislature. Adopt that which we all seem to approve, that taxation shall be uniform and equal throughout the State; get that in and let it stay there, and I will withdraw my amendment. But I say, as the gentleman from Kanawha said: merchants, lawyers, doctors, everybody else who have brains and get the benefit of their brains, should have their brains taxed; and if a lawyer or anybody else gets a judgment that gives him \$5000, will his brains be taxed for the \$5000?

The hour for recess having arrived, the chair was vacated.

AFTERNOON SESSION, JANUARY 31, 1862.

The Convention re-assembled at the appointed hour and resumed consideration of the Report on Taxation and Finance.

The question was on the substitute offered by Mr. Van Winkle for the additional section offered by Mr. Smith, and the yeas and nays had been ordered.

MR. STUART of Doddridge. I believe, Mr. President, I had not exhausted my privilege. I made one little speech perhaps. I want to occupy two or three minutes again; and I really think the best thing the Convention can do now is to leave this subject to the committee to read as it does: "Taxation shall be equal and uniform throughout the State, and all property both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law." Now, sir, I shall not go into the history of things as did my friend from Wood, but as we all want to have a little pitch at it occasionally I must make one observation in regard to the argument of the gentleman from Wood. He seems to intend to provide for such taxation here as to make it certain that he never will receive public office again. But I never before understood why he wants to go into such details in our Constitution. It is because he never expects to be in the legislature again, and he wants to do all that legislation in our Constitution that will be necessary for many years thereby he will be released from further obligations to the State (Merriment). I understand now why it is the gentleman is so anxious, perhaps only as he never intends to give us the benefit of his labors any more. This is why he desires to get so much legislation into our Constitution. Sufficient apology, and I will excuse him. But I cannot concur in the sentiment. Now, sir, the substitute he offers here:

"No tax shall be levied on licenses, salaries or incomes, but the property used in any business or calling shall be taxed as other property. Nothing herein contained shall be construed to prevent the county authorities from issuing licenses and charging such reasonable fees for the same as may be allowed by general laws."

Now, in some respects, that would answer, Mr. President; but how is it you are going to tax these peddlers?

MR. VAN WINKLE. Two words. The object of the amendment, which I see the gentleman misunderstands—about which several gentlemen have spoken to me since the recess also—"nothing herein contained shall be construed," is to preserve it as a police regulation, which it originally was: the taxing of peddlers, shows, ordinaries—or at least licensing them with a proper fee or consideration for it—for instance a circus—is preserved as a police regulation by the local authorities and not made the subject of taxation by the legislature. That is the distinction I intended to observe.

MR. STUART of Doddridge. Well, sir, I was going to remark that if our Constitution prohibits the legislature from imposing a tax on these licenses, I want to know how it is going to be done. How are you going to tax these ordinaries and peddlers and all classes of this kind? Do away with this power to levy and collect these licenses? I cannot understand unless it is by a general provision authorizing; and then I see no object to be aided by the substitute of the gentleman. If there is to be a general law proposing these taxes on licenses, what is the object of the substitute?

MR. VAN WINKLE. In the states where these similar provisions prevail, licenses are not taxed directly as a tax, but there is a charge. As, for instance: they charge in Ohio for a circus or theatrical exhibition, or perhaps a license to keep a hotel or ordinary, and various other things no doubt including peddlers—the peddlers' license is no doubt intended for the operation of home merchants; but it is not as a subject of taxation. If the gentleman will remember, these licenses are always issued, not by the state but by the county. They were originally a police regulation, and to that I have no objection. The objection is to taxing licenses *ad libitum*.

MR. STUART of Doddridge. I must admit it is very obscure, and I think the gentleman had better leave off his legislation and let the general assembly legislate concerning these matters. I really don't know what would be the effect of it if we adopted it here in our Constitution. At first it struck me as an anomaly. I tried to see through it and I have been studying it ever since and I must admit that I cannot see through this thing. The cat is still here I think. I cannot understand it. Now, sir, "nothing herein contained shall be construed to prevent the county authorities" from issuing licenses. There is nothing here to prevent the county authorities from issuing licenses, and there is nothing in this constitutional provision to prevent a man from carrying on the very same business even if the county does not issue licenses—is there? If there is I cannot see it. The county authorities may issue licenses, and even though they do there is nothing in this provision to prevent any person from carrying on the exact trade without a license.

MR. VAN WINKLE. It provides it is all to be regulated by law.

MR. STUART of Doddridge. Well, then, let us leave it all to law.

MR. VAN WINKLE. Well, but I hope the gentleman doesn't want the legislature to go beyond its proper functions.

MR. STUART of Doddridge. I think, sir, if you put this in our Constitution in its present form, the provision which says licenses shall not be granted, then I would rather trust the legislature than the county authorities. I think it must be apparent to the members of the Convention that we had better not adopt this substitute; leave this thing for legislation; and even if the gentleman will not aid us hereafter, adopt the fundamental principles which should govern us and let the legislature regulate these matters.

MR. VAN WINKLE. I think the county authorities should have something to say about it; they are better authorities than the legislature, who know nothing about it.

MR. LAMB. If the substitute is adopted the question will then recur on the additional section for which this is a substitute. I would like the Secretary to report the section which this is offered as a substitute for.

Mr. Smith's motion was reported as follows:

"The legislature may levy a tax on incomes, salaries and licenses; but no tax shall be levied on property from which any income so taxed is derived or on the capital invested in the trade or business, in respect to which the income so taxed is issued."

The vote on Mr. Van Winkle's substitute was taken and it was rejected by the following vote:

YEAS—Messrs. Brumfield, Battelle, Haymond, Hubbs, Lamb, Lauck, Mahon, Parker, Paxton, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Soper, Trainer, Van Winkle—17.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brooks, Chapman, Carskadon, Cook, Dolly, Hall of Marion, Harrison, Hoback, Hagar, Irvine, Montague, McCutchen, O'Brien, Parsons, Robinson, Stephenson of Clay, Stuart of Doddridge, Sheets, Smith, Taylor, Walker, Warder, Wilson—26.

The question recurred on the additional section offered by Mr. Smith.

MR. PAXTON. Before the vote is taken on that—I believe I have been on the floor but once—I desire to make but a single explanation in regard to the operation of a tax on merchants, for I think that matter has been somewhat misunderstood. There seems

to be an impression prevailing that if merchants are taxed as other men are the taxation will be less than heretofore. I am inclined to the opinion that it absolutely increases it, for this reason: that besides the regular State tax they will pay, they will then be liable for the county tax and school tax and all other taxes that may be levied. If a merchant, for instance, in this county—and so in every other—pays but one tax, that is called a license, to the State. If instead of the old license, sir, the merchants shall be taxed on the property they possess that would be a State tax. They would next be taxed 180 per cent upon that as a county tax. They would next be taxed 75 per cent on the State tax for school purposes. First 4 cents; then 140 per cent on that; taking this year's tax for county purposes, 72 per cent upon that as a county tax and 75 per cent on the State tax for school purposes.

MR. LAMB. The 75 per cent is on the county tax on my tax bill.

MR. PAXTON. Well, that makes it a great deal worse. But I think the gentleman is mistaken. But any one can see at once that any merchant under that rule will pay a much larger tax than he does now, and the advantage that will accrue to all the counties in the State will be this: that all the counties will then derive a revenue from the merchants' property, whereas now they do not. At present what is paid on the license goes to the state; the counties get nothing. Under the other system of taxing merchants just as others are taxed they would pay not only the regular State tax but pay this additional county tax, school tax, road tax and every other local tax that may be levied on every species of property. So that while the burden of taxation might not be increased on them, it would preserve entire the correct principle.

THE PRESIDENT. Suppose it is levied as a township tax on merchants, shows, etc., would not a single township in the county receive the whole of it and others be excluded?

MR. PAXTON. I do not know that I understand.

THE PRESIDENT. In most of the counties now in this portion of the state, they have but one town in them, at the court-house. Suppose all the licenses were collected by the township tax would not it be mostly collected in the township in which the court-house was situated?

MR. PAXTON. I was speaking of the effect of taxing merchants instead of a license; taxing the merchants on their property as you tax everybody else on their property.

THE PRESIDENT. If it was turned over to the local authorities, what would the State get?

MR. PAXTON. I do not propose that it is to be taken from the State and turned over to anybody else. That all depends on the mode prescribed by the legislature. But if instead of a State license, as now, a merchant's property is taxed as all other property is, I say that in addition to the tax it would pay the State, the assessment of the property would make it liable and it would pay all the local taxes that are assessed against the property of others. Now he pays but one tax, that is a license, to the state; nothing for school or other local purposes. What I have endeavored to express—I do not express myself very clearly—is this: that under the new system the merchant would pay more taxes really than he does now and that the county, schools and other subjects of local taxation would derive a benefit which they now do not.

MR. BROWN of Kanawha. Mr. President, it seems to me the gentlemen now opposing this section answer themselves. The doctors disagree. The gentleman from Wood—both gentlemen from Wood—give as a reason that this taxation from licenses on merchants was so oppressive it was driving men out of the state. Now, if the argument of the gentleman from Ohio be correct that the operation of this new law will be to actually increase the burden that is now destroying them, what is to become of the merchants? Why, they will say, save us from our friends. Now if the argument of the gentleman from Ohio be correct, take away this license tax and you are going to impose a much heavier burden on the mercantile community. Why is it when you touch the subject you stir the merchants? If they are so awake to their interests, why, when you carry this new system, do they not cry out, more taxation, more burden. Now the effects to my mind contradict the argument, and I therefore cannot appreciate the force of it.

MR. PAXTON. The gentleman seems to think the members are influenced here chiefly each by his own individual interest in this matter. I beg to assure the gentleman that that is not the fact at all. I beg to say for one that I repudiate any such motives.

MR. BROWN of Kanawha. I hope the gentleman will be satisfied with the explanation.

MR. PAXTON. And that my object is to maintain entire the principle of equal and uniform taxation, and I care not how merchants may be taxed, or lawyers, nor what may be the cost of this principle to any man. Maintain the principle we have declared. We have declared it; let us carry it through.

MR. BROWN of Kanawha. I understand the gentleman's proposition. He declares that is his object, and we declare that is our object. The question is, which is doing it? We don't pretend to deny the sincerity of his declaration and his opinion that he is doing it; but I show that he is not doing it. We pretend to be here the gentlemen who are carrying this into practice, and we are endeavoring to do it, and object to the gentleman's actions as well as words; and I do not understand that I intimate at all that these gentlemen who are advocating this are affected by personal considerations, but I understand that these gentlemen are maintaining with vigor and industry and zeal and earnestness the cause and interests of a class in the community with whom they have only a mere common interest. Personally, I presume they care nothing about it. But the whole mercantile class is affected by it, and they are now maintaining their interests; and I say it has been urged on this ground, that it was oppressive to the mercantile class. The argument of the gentleman is that it is going to be burthensome. The argument cuts its own throat. I do not suppose that lawyers in favor of the proposition who are urging it with great zeal have any personal concern in the matter I suppose that is a matter of total indifference and we never think of implicating any gentleman of being controlled by his own personal feelings in the matter; that he is representing a class and speaks his sentiments as affecting the interest of that community. I have no doubt every gentleman is acting for the public at large.

MR. PAXTON. The gentleman remarked that merchants were a class of sharp business men, and I take the inference. But I know not the merchants in the house, the merchants throughout the state. We know the merchants in Richmond have raised this question, alleging that the operation of the system of licensing was oppressive on the city of Richmond, as the largest in the state; and I presume the city of Wheeling has felt the same things. I have heard merchants in my own town question the same doctrines and I have

no doubt their ideas were sharpened by their interests in the matter. It is not here, it is everywhere.

MR. BROWN of Kanawha. Now, sir, unless this doctrine of licenses is to obtain, we are not only to lose the taxes on salaries, shows, hawkers and peddlers and all these individuals who gad about in an irregular and uncertain business that you cannot define and determine, because as I understand the proposition—it is however voted down—the motion was simply to grant licenses. Well, now every lawyer who gets a license pays on it a tax to the state and pays the commissioner a fee for issuing the license. He could issue it just as cheaply for \$500,000.

MR. BATTELLE. There is another class of persons affected by this provision.

MR. LAMB. I would suggest that when a speaker is interrupted the time he loses ought not to be counted against him. He ought to be allowed an extra minute for every interruption.

MR. STUART of Doddridge. A speaker has no right to be interrupted unless it is his pleasure.

MR. LAMB. O, he cannot refuse it.

THE PRESIDENT. The Chair has been allowing the additional time. If it is thought the other rule would be better, the Chair would adopt it.

MR. BATTELLE. "The legislature may levy a tax on incomes, salaries and licenses." I suppose this provision would make it perfectly lawful to impose a tax, not merely upon officers of the government or officers of companies or corporations who are receiving thousands, but it makes it just as lawful for them to levy a tax on a man who is laboring on a farm at ten dollars a month, or laboring in any other capacity. If it is a salary, it is an income. If it is wages it is either a salary or an income. There can be no distinction. According to that provision I suppose it is perfectly competent for the legislature to impose a tax on anybody's compensation or wages however little. But we are not left to theory on the subject that such would in fact be the practice. There are persons in this county, persons in this city who have had imposed on them a tax on their daily earnings working in the shop or in the mill, who supported themselves and their families by their daily labor and that alone. Under the provisions of this section here, which is

now proposed to re-engraft in our new Constitution such taxes as have been heretofore imposed, and if I mistake not collected. I do hope the legislature is not to be made to re-incorporate a feature so offensive and, as it strikes me, so damnable; at least so offensive—so justly offensive if it is to be put into our new Constitution. I think there can be no dispute about it as to the perfect competency on the part of the legislature if this provision goes into the new Constitution, to impose taxes on any person who receives compensation for labor however little it may be.

Well, now, we may say that the legislature may not, in practice, levy a tax on an income that is so small as that to which I have alluded. That suggestion is answered by the fact that they have done so in Virginia, of which we are still a part, under this identical provision. That was a few years ago, under the present Constitution of Virginia, I believe, a variation from year to year. At one time it was fixed at something like this, that all sums over a certain amount should be taxed the next year; that a certain amount would be allowed, the next year perhaps raised. But I recur again to the fact—the indisputable fact—that in this very county and no doubt in many other counties taxes have been imposed on the wages of the day laborer and on the pay of men who were receiving what was a bare competence for the support of their families from day to day.

MR. STUART of Doddridge. I only want to remind my friend from Ohio that not many days hence in the discussion of the school report he strenuously advocated including the proceeds of taxes on licenses, etc., in the school fund.

MR. BATTELLE. I had not come to that in my remarks just now.

MR. STUART of Doddridge. What, have not got to that? I say you kept us very well employed on that for several days. I suppose the gentleman has forgotten that it is in his report on his motion.

MR. BATTELLE. The gentleman doesn't understand me. I have said nothing in these remarks inconsistent with my present remarks, with my former position. I merely said that the permission to the legislature to tax incomes and salaries was unfair, and I cited examples in which it had worked unfairly and oppressively.

MR. STUART of Doddridge. If it does operate unfairly, it ought to be stricken out of the report.

MR. BATTELLE. It is not in my report.

MR. STUART of Doddridge. Well, I may be mistaken. I only wanted to call the attention of the gentleman to it. This matter, Mr. President, of collecting taxes by licenses is a source of revenue, and I must say it is a very considerable one and one that we should not overlook at the present time. It is rather an indirect way of collecting taxes I admit. The people, they say, have to pay, but it is the consumer that has to pay, and the poor man does not consume a great deal and he has very little tax to pay that is collected in this way. No doubt we pay a very large tax to the general government, but we do not feel it. We do not know anything about it. The poor man hardly knows that he pays any tax at all to the general government. It is paid in an indirect way; and the tax we pay now to merchants is an indirect tax on the people and they do not feel it. Yet it is the consumer that pays. I think if we looked to the interest of the community generally that we ought not to deprive ourselves of this source of revenue. It is a considerable source of revenue; and I am not like the gentleman from Ohio, chairman of this committee. I rather think it will come down a little harder on the merchants if we have a right to tax them on their licenses for the privileges they enjoy, and I think the remarks of my friend from Kanawha in regard to the argument of some gentlemen, that people had to go off to other states to purchase goods and were induced to do it because they could sell lower—that argument was conclusive and forcible. A house divided against itself cannot stand. Gentlemen are divided in their opinion about this matter when they introduce arguments in opposition to those of the chairman of the committee.

MR. HERVEY. My friend from Doddridge has made a very strong argument against his side of the question. (Laughter.) I had rather come to the conclusion to vote against his proposition. He says it is a pretty good way of raising money and the man that pays it doesn't pay it; that is the people pay it to him, the taxpayer, and he pays it to the treasury. Now, sir, that reminds me of a little of the black fellow, who had a very thick heel, who was lying on the floor with his feet to the coals. After while he waked up and thought he smelled something burning, very odoriferous. "Ah smell somet'ing," he said. "Smells lak a nigger's heel. Whose

heel's a burnin'?" By and by it began to get through and all at once he yelled, "By golly! It's dis nigger's heel!" (Laughter.) Now, sir it strikes me that after we bore away into this system of indirect taxes we will begin to feel after while that it's our heel that is "burnin'." (Laughter.) I have come to the conclusion to vote against this burn.

MR. HALL of Marion. I wish, sir, to enlarge a little on the argument of the gentleman from Ohio. It is a fact that under the action of the legislature at Richmond they did pass such a law as that went down to the taxing of the wages of the laborer, I believe, to the lowest amount without restriction and there was but one sentiment about it. All over the country the laborer and all other classes of persons were ready to denounce it as oppressive, an unjust and improper method of raising the necessary revenues to carry on the government; and in the city of Wheeling, I understand, that tax was actually collected. But I know that in the county of Marion the question was raised and it was not clear there, and the matter was referred to the attorney general of the state upon a construction of the act passed, and he decided that the act was authorized to require that the wages or income, though it were the wages of the day laborer, were subject to taxation. Now, there was no division of sentiment about that thing. I found no man in any part of the country who did not denounce it, and why? Because it was an admitted fact that it was proper to look to the men who had the means and ability to pay, and not fall upon the poor man who by his day labor was merely able to keep soul and body together.

But let us follow this thing a little farther. What was the reason it was not collected elsewhere all over the state? So far as I know, I never heard of its being collected anywhere except in Wheeling, in the county of Ohio. It was not in Marion. Our representatives there were placed in what position? Why, sir, they had to deny that they voted to pass any such act. That it bore no such interpretation; and they labored and instructed those whose business it was to look after the gathering up of the revenues that would be derived from this source that they were not to act and our commissioner went on and overlooked this matter, or at least construed it according to the instructions of the persons who represented us in the legislature when the act was passed had felt bound to construe it to me. And then what was the result? The very next winter, sir, among the very first acts passed by the leg-

islature was one to repeal that act, seeing that the legislature cannot oppress the people and that the people will rise up in their majesty if they attempt a thing of that kind; they will have to deny it when they come home; and if they ever get back at all the first act they do there will be to repeal it. Now, sir, there is an argument in that for the gentleman from Ohio that shows the safety and propriety and importance of leaving this thing to the legislature. I have been protesting all the time against making a cart-load of our Constitution. But when we leave this matter to the legislature—and I understand there is nothing mandatory in this—the legislature “may” is all it says; and the argument of the gentleman from Ohio is to leave the impression here that by incorporating this clause in the Constitution we are seeking to rob the poor man of his money. It is no such thing in my view unless you say they shall do it. Now, that is the reading of the proposition. There is nothing mandatory in it and they may do it to such an extent with such discrimination as they may deem right and proper; and if they should err in this the people will bear down upon them just as they did before as in the case referred to by the gentleman from Ohio.

Is there any propriety, then, in taxing salaries at all. There seems to be in the clause we have adopted, a doubt. That very fact makes it necessary when we cannot agree that we should remove that doubt. But there is eminent propriety in taxing the salaries and in taxing merchants and all this, because direct taxes are odious and we must derive taxes from some source and if you do not do it in some such source as this, then you must resort to direct taxation, which is the last resort at all times, always has been, with every people, because people would rather pay in such indirect ways as suggested than in any other way; and in this way the greater proportion of the taxes comes off those who purchase and consume most; and in that way those are made to bear who are most able to and ought to bear. I trust we will adopt this and remove any doubt on this question and say the legislature shall have the power. I desire to have it so that the people control this matter; that they can try one thing and another until they get it to operate fairly and equally and after that can avoid oppression and injustice.

MR. SINSEL. I have no objection to the legislature having the power but what are the conditions proposed by the section offered by the gentleman from Logan? The legislature may impose a tax on certain trades or callings; that the capital invested in that trade

or calling shall be exempt from taxation. Now while you attempt to establish the principle of equal and uniform *ad valorem* taxation on the one hand, you give it up on the other. You have in the first section just adopted declared for the establishment of this rule as the fundamental principle of your whole financial system. Here in the next section you are called upon to act on, it is proposed to incorporate a provision that directly antagonizes the other. More than that you leave it to the legislature to favor this class of individuals or oppress them just as they like. If you require a license tax of a merchant and do not tax his property, his capital invested in his business, what becomes of your equal and uniform taxation of all property? If you wish to bear down on the merchant, you may make the tax on the privilege higher than it would be on his capital. If you wish to favor him, you can make it lower. In either case you violate your fundamental principle when you omit the tax on his property which is laid on all other property. If in accordance with the section we have just adopted you tax the merchant's capital like the capital invested in any other trade or calling, you know exactly what you are getting. He is only paying what other persons pay upon like value of property, and you are maintaining your principle.

MR. BATTELLE. I wish to say a word in reference to the remarks of my friend from Marion. It seems his argument was a little singular. He proposes as a remedy, as I understand it, for the provisions which it is proposed now to insert in the Constitution, a remedy for the evil effects it may have, the revolutionary right of the people. I do not see that his argument amounts to anything else but that. That we put into the Constitution a permission to the legislature to do a certain unjust, unequal, and, if you please, unrighteous, thing, and the remedy for all that is the right that inheres in the people to revolt against it, as it seems they did in his and some other counties when the same sort of unrighteous thing was done by the Virginia legislature under warrant of this identical provision. On this ground and none other we are asked to repeat this iniquity and this folly. It seems to me the much better remedy is not to give the legislature the power at all. I did not say the provision here was mandatory. I intended to say that it proposed to put into the Constitution a permission to the legislature to impose this kind of a tax, and I said that not only may they in theory impose such a tax but that they actually have done so in the past; and for one I am not disposed to give them the priv-

ilege to repeat that wrong. It seems to me by far the safest course is simply to withhold the power. They may never resort to that species of taxation again. If you do not give them the authority, they certainly will not.

MR. HALL of Marion. I mean, sir, that revolutionary right of the people, if he calls it such, to turn out an unfaithful agent and to put in a true one. That is a right of revolution that I vindicate in the people and always will. I mean, sir, when the people have unfaithful representatives they take them by the nape of the neck and turn them out and put somebody there who will know and do their duty. So far as refers to the fact that that tax was not collected, I say there was no resistance in that particular; but the representatives were ashamed to meet their people, and they told our commissioners to do no such thing and to cover it up until they could get back to Richmond and blot it out. I used this to show that the people were ready to make their representatives mete out to them equal and exact justice. I tell you the power is in the people and the rights in the people. When this is not mandatory I tell gentlemen, do not borrow trouble and get scared at a raw-head-and-bloody-bones. Why, sir, the legislature have the power to tax church property. Do they? No, sir; the people would not allow them to do it. So there is nothing in that argument. The fact is that we must raise taxes. The question is how and upon whom? I for example live by the profession of the law. I have no farm. Why not tax my profession? I can make as much. I will bear it. True, individually I would fare the better by the course proposed by the gentleman, not to tax these licenses. My friend from Ohio county in his position as banker will have his salary of \$3000. Why not tax him? Saddle it down on those who are able to pay. If you don't make them come from some you have got to rake it out of the poor day laborers. Bring money from where money is.

MR. MAHON. I am opposed to the amendment of my friend from Logan; and I oppose it on the same view that the gentleman from Doddridge expressed on that subject. I am of the same impression, that the license the merchant pays is put on his goods and that the people pay it. It does seem to me very unjust to pretend to tax capital and derive no tax whatever from the possessor of that property. Say, for instance, I am a merchant doing business with a capital of \$10,000, and I have to pay \$100 license, and

I add it to the price of the goods I sell. The buyer is my friend from Doddridge. Say, is he the payer of that tax? Now, sir, in a community such as we have at least in Jackson county there are generally some poor men. The poor families in these counties pay that enormous tax. It is not the merchant who pays it; it is the consumer. Well, is there any justice in this thing? He says: Lo! they do not feel it; it goes out so gradually they don't feel it at all; they are not sensible of the fact. Nevertheless, it has been added to their expense and the injustice is just as great as though I would put my hand in the pocket of my neighbor and take out 25 cents. He didn't know I took it; he never missed it; and yet I am a thief!

Therefore, I say, I oppose the system; and, more than that, if I understand it correctly, these license taxes go to the State and the counties and townships derive no benefit from them. I am opposed to it on that ground. I believe the county should have her proportion of that tax, and the school funds in particular should have their interest in that tax; and I do believe those who are friendly to the school system should vote against this amendment, to have all the tax we can possibly get to place our school fund on a sound basis. If I understand, those license taxes are to go to the State treasury altogether.

MR. STEVENSON of Wood. I made a short argument on the other amendment which has just been voted down. It appears I was misunderstood. Maybe I did not make my argument very clear. Let me, sir, read what is proposed to be inserted here as a new section:

"The legislature may levy a tax on incomes, salaries and licenses; but no tax shall be levied on property from which any income so taxed is derived or on the capital invested in the trade or business in respect to which the income so taxed is issued."

Now, I think every gentleman in the Convention will admit that whether it be appropriate to adopt this section or not, it is a departure, an entire departure from the principle of taxation we adopted this forenoon. If there could be anything said here to show that either the people or the State in the long run would be the gainers by this departure from a well-settled and just principle, I concede there might be some force in the argument urged in its favor. Certainly this Convention is not convinced—at least I have not been—that there is any additional advantage to be de-

rived from the adoption of this section, that would not be derived if it was not adopted. Now, why depart from the principle if that is the case? Gentlemen have not shown here that the people would be benefited by it. The State revenue would not be increased by it. Now, sir, if we can gain nothing—indeed, unless we can gain a great deal—why sacrifice this principle? That was the position which I took.

Let me tell you that this proposes to leave to the mercy of the legislature the whole matter of taxing incomes, and in that I include the labor of every man who makes his living by honest industry; for most certainly if you can tax the wages of a clerk who makes \$500 or \$800 a year, or the lawyer who makes \$3000, you can tax the laborer on the same principle who makes his 75 cents or a dollar a day. It is taxation on labor, on the means, and sometimes the only means, a man has of making a living for himself and those dependent on him, and not upon property. Now, sir, if you can obtain the same thing by taxing property, which you exempt in this provision, (“but no tax shall be levied on the property from which any income so taxed is derived”), if you can raise the same revenue by taxing the property, why shift it from that property to income? I ask gentlemen in this Convention to think about that question. This is a very peculiar and remarkable provision. Very large property interests might find exemption under it under color of a tax on alleged income. It might result in a very extraordinary method of taxation.

One word in reference to the matter of licenses. When I spoke in reference to that matter what I wished to express to the Convention was this: that trade and commerce does not flourish, and cannot be permanently successful where all the conditions on which a man may carry it on are unsettled and uncertain. I will venture to say the history of the world does not furnish an example where trade has been prosperous, as a general thing, where the rules and laws that regulate that commerce are unfixed, unstable and unsettled. That is the reason why the mercantile business has been crippled and in some instances destroyed in western Virginia. It was not that the merchants objected to paying a license but that the regulations governing that license were on no fixed principle. It was all uncertainty. If a man invested \$25,000 in any town in western Virginia under a certain state of regulations that existed at that time, he did not know but the very next year the legislature might strike out all these regulations and create an entirely new

set that might destroy his capital and his business. That is a principle that governs commerce in this country and in the world, and always has, because it is one of the laws of trade that is just as fixed and unalterable as the laws of nature themselves. It will operate, gentlemen, in reference to your trade, in reference to the common industry of the State, in reference to every business in it until you have fixed some great principle as a common center to which the merchant, the mechanic, the farmer and citizens generally can look as a rule by which their trade, or business or calling is to be governed. Now, sir, let me say, when you depart from this principle of taxation which has been adopted in this first section you throw everything at sea. A merchant cannot tell this year if he enters into business what the regulation will be next year. You may lay a special tax on him this year of \$50 and next year it may be \$150. You may not only make his special tax so, but you leave it in the power of the legislature to inflict a tax on his income, and that may be such as to utterly destroy his business. Under any such regulations it is utterly impossible that trade can become fixed and stable and prosperous in this State. That thing, sir, has been abandoned in nearly all the states. Where commerce is prosperous, where the merchant has become rich and contributes his revenues to the state, it has been where trade has certain fixed cardinal regulations and rules which govern it as well as the other institutions or callings that are found in the community.

Gentlemen say that the matter is with the legislature. I will admit that fact; but do not you grant it is unsettled, whereas stability is the one thing demanded by all commercial interests. The legislature may take a notion that they can tax exorbitantly a certain class of men because they are not a great majority. They are useful, but they are in a minority. There will be no difficulty about putting an exorbitant tax on that people because it will not affect the prosperity of the gentlemen who fill that legislature at the time. I don't say it will be the case, but it may be; and therefore it leaves the matter unstable, unsettled and uncertain. Capital is timid and always wants assurance of settled conditions. That is the strongest argument to my mind why the taxation of our commercial classes and interests should be established on a fixed and stable, and just basis. The finances and general industries and trade of your new State are largely dependent on what you do right here and now. And let me say to you that if you adopt a provision here under which a tax will be laid on the muscles and

industry of the people of this new State you have struck a fatal blow at this prosperity. If gentlemen want to make this Constitution popular with the people who are to pass on it, they must not incorporate a system so objectionable as that would be to the great bulk of the people within our limits.

MR. HARRISON. I think, sir, if the gentleman from Wood would look at the facts that have resulted to the country from taxing the licenses of merchants and other dealers, look at our statute-book, see the vast number of persons there required to take out a license to travel around through the country—perhaps he did when he was a candidate for this Convention—

MR. STEVENSON (in his seat). I did not electioneer any.

MR. HARRISON. He would find at almost every cross-roads a certain thing, a store; and if it had been your fortune as it was the fortune of some other members of the Convention perhaps, to have found it necessary to meet people at the various prominent points, you would have found a store at almost every cross-roads at night and a good many between. And if you will go into the towns and cities—take this, for instance—why you cannot step out of the door hardly without meeting a store. Now, if this system is so very onerous and oppressive on the merchants why is it that they are so numerous abroad? Let me read a few of the subjects for which licenses are issued; houses of private entertainment; houses of public resort; eating houses; cook shops; bowling alleys; billiard table; bagatelle tables; livery stables; distilleries; merchants, having right to sell liquors; merchants, general; fuel dealers, and a long list of almost a hundred, from the code index. It has been found a very convenient way to collect the tax off the people, and I think the report of the auditor for 1859 will show that upwards of a million dollars—fully one-third of all the revenue—that is paid into the State of Virginia is derived from these license sources. It is nearly a million and a half. Our revenue is about four millions. Now, can we afford at this time to do without that revenue? Will this Convention, by refusing to adopt this amendment say it will not look to this source of revenue any longer for aid in defraying the expenses of the government? If that is what it intends to do it will vote against this resolution; but if it thinks that these sources of revenue are fair and right and just and profitable, it will vote for the resolution. My opinion is—it may not be worth a great deal—that we should sustain it. I be-

lieve it was the gentleman from Doddridge who argued, very correctly, I think, that you have this revenue to pay, the money must come and the question is whether you will go directly into every man's pocket and take it, or will you take it indirectly and make it a kind of involuntary thing. You are not compelled to go to the merchant to buy. You can do without his goods. But then remember there are people who have more money than others, and they do buy and the consequence is they pay a larger portion of this tax than the poor men and the man who does nothing. If you permit the legislature to put this license on the merchants and the merchant puts it on the goods, then it is not the poor man who pays this bulk of taxes but it is the man who has the more means and buys most largely of the merchants.

MR. DERING. I do not rise to make a speech, but merely for the purpose of indicating what influences shall control my vote in this thing more than anything else. If the section which it is proposed should be adopted here, taxes, incomes—all incomes indiscriminately—and I hope it does—I am utterly opposed to it.

Sir, you have heard argument upon argument from gentlemen here who are opposed to that showing the injustice and impolicy of taxing the industry of the country. Why, sir, I very well recollect when our country was in turmoil, and, sir, it almost produced a revolution in that country. The voice of the people was so potent, sir, that both men had taken the ground, in the first place, that it did tax their industry; that the whole community were to be made tributary to the revenues of the state in that respect; but there they were checked by the popular indignation and did not dare to enforce what they called a just interpretation of the law. Now, sir, let me tell you the country will not bear any such thing. Let me tell you that any such odious feature will meet with a sudden rebuke when they come to vote on this Constitution, and hundreds will be controlled by that very thing when you present a constitution with this feature in it. Sir, I am opposed to taxing merchants. I am not opposed to letting the legislature impose a license on them. I think it is but right they should pay some small sum—nothing like what they have paid, because the license on merchants has been onerous to an extreme degree because they composed but a small part of the community and have comparatively few votes at their command. The legislature will always do their duty and lay it on them heavy enough; will never fail to make

him pay all the license he ought to pay, and a good deal more to boot. I see nothing in the section we have just passed that prohibits the legislature from laying this license; nothing in the whole chapter on taxation and finance that prohibits the legislature from making this levy on the mercantile community of the country. The legislature will not if you leave that power with them tax incomes of our laboring community, of our mechanics and farmers and the whole country at large. I am willing, then, to leave the section as we have passed it and have confidence that the legislature will do their duty and levy a license tax on the merchants of the country but not on the industry of the country generally. I therefore, sir, shall vote against this section with a view of opposing anything like the granting of authority to lay taxes on the industry of the country, and that alone shall control my vote.

Mr. Hoback asked for the yeas and nays on the question.

The vote was taken on Mr. Smith's motion and it was rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Carskadon, Cook, Dolly, Hansley, Hall of Marion, Harrison, Hagar, Hoback, Irvine, McCutchen, Robinson, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Walker, Warder, Wilson—21.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Caldwell, Dering, Dille, Haymond, Hubbs, Hervey, Lamb, Lauck, Montague, Mahon, O'Brien, Parsons, Parker, Paxton, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle—27.

MR. SMITH. I will strike out the word "income" in that section and ask a vote on that. It is a new proposition. The word occurs twice.

The Chair entertained the motion.

MR. STEVENSON of Wood. I would like to hear it read again, sir. I read it myself several times, but I do not recollect exactly how it reads.

THE SECRETARY. There will have to be a clause stricken out.

MR. STUART of Doddridge. I am in favor of the section certainly; but I am afraid it will be rather a bad precedent at pres-

ent, after we have been amending it and have voted it down, to amend it again and then re-offer it.

THE PRESIDENT. The Chair would suggest to the gentleman from Logan whether it would not be better to retain his amendment and offer it at the next reading of the report.

MR. CALDWELL. My opinion is that this motion is not in order. I will state the grounds of my belief. I think the practice is in all parliamentary bodies—

THE PRESIDENT. The gentleman has withdrawn it.

MR. SMITH. We will take the objection when we offer it again.

The Secretary reported section 2.

2. "A capitation tax, not less than fifty cents nor more than one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years."

MR. PAXTON. I suppose it will be generally conceded here that there is no "cat in the meal-tub" in this section, anyhow. It is very plain and I do not think it can be misunderstood. The capitation tax provided for in this section is a part of our present system of taxation, and, so far as I know, has been sanctioned by the cheerful acquiescence of our people. I have never heard of any complaint from any quarter. It appears to be an eminently proper and just tax. It is very proper that every citizen should contribute something for the support of the government of which he is himself a part, a share of the taxes be it ever so small. I do not know that it is necessary to enlarge on this matter; merely to say the committee thought the mode proposed here of making this tax specific within the range of fifty cents to a dollar, preferable to the present mode which seems to assess a man to 200 dollars. Under the present constitution the tax is 80 cents, and it may be increased or diminished as the taxes on property are increased or diminished. In this section it is specific between the limits of fifty cents and one dollar.

MR. CALDWELL. I am not so sure as the gentleman is but there is a cat in the meal-tub here. We will all remember that there is in Virginia according to our constitution a white titheable; as well as a black titheable; and I think the blacks should pay a tax as well as the whites. It is proposed here to levy a tax on only the white male inhabitants.

THE PRESIDENT. This is the capitation tax. It has not been changed. It has not been applied to the blacks ever by the legislature. In county levies in Virginia a tax has been laid on the blacks. There has been no capitation laid on them.

MR. HARRISON. A capitation tax on free negroes, I believe, sir.

MR. SMITH. I will ask to amend so as to make the tax specifically one dollar, so as to read: "A capitation tax of not less than one dollar shall be levied, etc." I think if you put one at all it ought not to be less than one dollar. I suppose if a man is worth three hundred dollars at our present rate the tax would be about a dollar. To rate every white man over 21 years of age at a dollar I think is a reasonable price. Fifty cents is rating men too low.

MR. STEVENSON of Wood. There is this difference in the amendment of the gentleman from Logan and the section as it reads, that—if I understood it properly—the legislature may tax more than one dollar. I don't like that, sir. I would rather limit the amount, beyond which they shall not go. But if you say they shall levy a "tax of not less than one dollar," why they may levy a head tax of ten dollars, if they like.

MR. SMITH. I think you would hear from the heads very quick if you did it.

MR. STEVENSON of Wood. I know we did have a tax in my county of \$3.75; and we heard from the heads, but we had to pay the tax. I don't want to leave the door open for abuses of that kind, and I am decidedly in favor of limiting it to one dollar or two dollars. It is as high as I want it; and I think we had better say it shall not be less than fifty cents. I was reading last night the Constitution of Ohio, made in 1850. They not only refuse to levy a head tax but actually use an argument against levying such a tax, and if our people should get the same notion they have in some of the other states they may wish to reduce this tax even as low as fifty cents. I would not like anything in the Constitution to prevent that reduction. If the legislature see it is necessary to have the tax at one dollar they can keep it at that until we get another constitution; but if the people should desire a reduction of that tax, why then they have no power to do it if you adopt this amendment. I am decidedly in favor, sir, of this section as it stands, and I think it would meet with very general favor amongst the people.

The question was submitted and Mr. Smith's motion rejected; and the section as reported by the committee adopted.

Section 3 was reported as follows:

12 "3. The legislature shall provide for an annual tax, sufficient
13 to defray the estimated expenses of the State for each year; and
14 whenever the ordinary expenses of any year shall exceed the
15 income, the legislature shall provide for levying a tax for the
16 ensuing year, sufficient, with other sources of income, to pay
17 the deficiency, as well as the estimated expenses of such year."

MR. PAXTON. The whole object of this section is simply to require an annual tax sufficient for the ordinary expenses of the government, and in case of deficit to provide for it. A provision of similar import to this may be found in many of our later constitutions.

MR. BROWN of Kanawha. I was going to move to strike out the whole section; but I do not know that it is of any importance to move to strike it out, since the vote on adopting or rejecting it is the same. I can see no necessity for this section at all. The peculiar duty of the legislature is to provide the revenue for carrying on the State government and levying the taxes on the people to do it. I think there can be no doubt about that. I have never heard any good reason assigned for placing a clause here requiring the legislature to do the very thing the legislature is called for. One of its fundamental powers and objects of its existence is to maintain the government that it constitutes a part of. It seems to me it were just as applicable to put in a proposition that they should annually levy a tax to pay the per diem of its members. Because it is wholly unnecessary, I object to it, as cumbering the Constitution. They have already the power and it is their duty to do it. And if they fail to do it, repeating over and over again does not make it any stronger; and if they fail to do their duty what is the remedy? There is no superintending power to compel the legislature to levy the taxes. They are the law-making power; that is their business. I can see no object to be attained by it.

MR. LAMB. I cannot regard the section in the light in which it is presented by the gentleman from Kanawha. I view it as rather an important provision. It is to make it imperative on the legislature, in case the ordinary revenue does not meet the ordinary expenditure in any one year to provide immediately by

taxation for the deficit in order to prevent the accumulation of debts on account of these deficits. If any provision is necessary, it must be in the Constitution. It is a provision which cannot be supplied by law; and I think it ought at least to be declared to be the imperative duty of the legislature to provide an annual revenue equal to the annual expenditures.

And what is the remedy, the gentleman asks, providing the legislature will not do it? Why, Mr. President, we have provided in twenty places in our Constitution that the legislature shall do so and so. What is the remedy in each of these cases if the legislature refuses to obey the constitutional injunction? The remedy is with the people, and you by making this provision in the Constitution present to the people the case of a legislature wilfully neglecting their constitutional obligation. If the people do not apply the remedy, there is no remedy, it is true, and there cannot be any. Such action by the legislature would be revolutionary and the remedy must be outside of any application of law, organic or statute. But it is just the same case here as it is everywhere, where you have attempted to make it the imperative duty of the legislature to do this or omit to do that. If they disregard the mandates of your constitution, there is no remedy but with the people. There cannot be in any case—this case as well as all others. Are we for that reason to omit all instructions and all restrictions which we, as representing all the people of the State and all the political authority of the State, see fit to incorporate in the organic law? I would have it, I must confess, declared in your Constitution as the imperative duty of the legislature to prevent the accumulation of annual deficits. If they have not yet provided a sufficient remedy, let them meet the case manfully by a tax on the people. It is the only way in which you can keep your finances in proper condition; and if the legislature fail to perform their duty in this respect, I hope the people will appreciate sufficiently the importance of the principle to apply the proper remedy by turning them out.

Mr. Smith moved to strike out "defray the estimated expenses" and substitute "meet the wants," after "sufficient" in line 12. I will state my reasons for this. This section is, I believe, mandatory on the legislature, and while mandatory confines it to current expenses—nothing else. We might want to build a capitol. That is not current expenses, and that requires an appropriation and an indebtedness, and it is the expenses alone that you provide for. You may have other liabilities. There may be a desire

to make some improvements in this country and it may be necessary to carry on these improvements and those current expenses. Well then you have made it mandatory on the legislature to provide for expenses only.

MR. PAXTON. For "estimated" expenses.

MR. SMITH. What do you call expenses.

MR. PAXTON. Why, sir, I suppose if they wanted to build a capitol, there would be an estimate made of it as part of the estimated expenses.

MR. SMITH. Would that come under the head of "expenses?"

MR. VAN WINKLE. But lending money to corporations would not.

MR. SMITH. It looks to me like the beginning of a system which it is perhaps legitimate for me to allude to, in the subsequent sections. I do not desire to say anything in regard to the subsequent sections, but it is in reference to the subsequent sections that I propose this amendment. The subsequent sections seem to me exceedingly objectionable such, I think, as well if they here defeat this Constitution and the people—inevitably defeat it. And I am not choice about the words that may embrace what I have in view I am willing to adopt; to meet the sufficient, to meet the ordinary, to meet the liabilities of the State. That would answer me; but I look upon the word expenses as current expenses in the management of the government. That is the sense in which it presents itself to my mind, and it is in that sense that I object to that; for I do not want to confine the legislature to merely the expense that may be incurred by the government in its ordinary business. But I think that in this country we shall have need of other expenses than ordinary expenses of carrying on the government. And it is my opinion about the meaning of the word "expense" that induced me to offer some other phraseology. I am not choice, I say, about the words that carry out my meaning; but I desire a course to be pursued that will not tie the hands of the legislature; although I should not imagine that the legislature under the terms of this would be estopped from making provision for these other subjects of expenditure. Yet it looks like the foundation of the beginning of what is to follow. If you will examine the balance of the section, it carries out the idea, and I propose to amend the balance of the section.

MR. VAN WINKLE. The words "necessary expenditures" would meet that thing and confine it to current expenses. I propose that, because then this section might be passed and the question you allude to be reserved where it is more plainly indicated.

MR. SMITH. I have no objection to it only for the reason assigned.

MR. VAN WINKLE. In case any alteration in the after part would make alteration here necessary, it would of course be passed.

MR. SMITH. Yes, sir, that is the view I had. I would prefer that course for the purpose of looking into other parts of this taxation plan.

Objection was made to Mr. Van Winkle's suggestion.

MR. SMITH. I ask that it may pass, because it may become material. I do not want—

MR. VAN WINKLE. My suggestion was that by changing to "expenditures" it might then be passed. I don't mean passed by. It would not then affect the question with that word in.

MR. SMITH. The suggestion, which I accepted, was to strike out the word "expenses" and substitute "expenditure."

MR. HERVEY. I am opposed to striking out, sir. There is a wide difference in the signification of the two words. The word "expenses" here, in connection with the balance of the section, has a definite meaning. It means the current ordinary expenses of the State. Whereas, by striking out expenses and introducing another and a more general term, "expenditure," we imply not only the expenses of the State but all kinds of expenditures no matter what. Looking over these sections, it seems to me the ground-work is commenced to be laid in the third section; goes up in regular gradations until it becomes consecrated in the 4th section; and I am in favor of following it step by step clear through. I think that any change in this present section impairs the whole structure. Therefore, sir, I think uniformity, regard to the system as laid down in this report requires that we should preserve the present words. It has a definite meaning, referring to the expenses of the State ordinarily incurred.

MR. VAN WINKLE. I think, sir, the substitution will not be necessary here. The word I suggested to the gentleman thinking

it would meet what was his objection and would then leave this section so that it could be acted on; but looking at it again it seems to refer entirely, as the gentleman who has just spoken suggested, to the ordinary expenses of the State and it does not affect any other expenditures.

MR. STUART of Doddridge. I would suggest "necessary expenditures" there, and strike out ordinary.

MR. VAN WINKLE. I was trying to show that even to meet the gentleman's views, it will not be necessary to even substitute in this section. That is understood to be confined to the ordinary expenses of the State. Then it provides that the legislature shall raise by taxation sufficient to meet those ordinary expenses.

MR. SMITH. I will withdraw the amendment for the present.

MR. VAN WINKLE. A man who goes in debt for the ordinary expenses of his family will never get out of debt in the world. This provides that no deficit occasioned by the excess of ordinary expenditures over revenue shall be allowed to accumulate. It is illustrated in the history of this State. Only a few years ago, they had by extending internal improvements produced a deficit in the ordinary expenses of the State and the taxes to meet this deficit were, I think, limited to three years. Under the committee's report we would meet our ordinary expenses each year by taxation; but if we undertook to build, say a state capitol, we should have to make a debt for the purpose. If we wanted to erect a state house there is nothing in this report to forbid the legislature doing so. As the capitol would be for the use of posterity for ourselves that might prefer that posterity should pay a part of it, and so borrow the money for the purpose of making that State house. This does not prevent it. Well, if they were expending, say, ten thousand dollars a year on public buildings until they were completed, this does not compel them to levy a tax to raise that. If they choose to do it by loan, they are at liberty to do that. And I think I can also say that that view of it does not affect that other question which the gentleman from Logan wants to present at the proper time. I think the section itself is a very proper one and one that we ought to adopt most cordially. We ought not to permit any such deficit to accumulate. Better to be taxed at once and pay it than to wait until it has accumulated with interest and interest on interest. Then it is a burden.

MR. STUART of Doddridge. I would go a little further than the gentleman from Wood, and I will assign my reason in a few moments. From the reading of this I infer that so much of the expenses estimated for the year would be all moneys that may have been appropriated for any purpose, for instance, for any internal improvement purpose. Suppose you appropriate a hundred thousand dollars for the purpose of carrying on some improvements? Well, I want that to be met as we go along. And I am only sorry that we have not had that law in Virginia for many years past. If we had had it, the legislature would have been bound to meet the current expenses of the year by levying a tax and we would not have been in debt forty millions of dollars. But this thing has grown on us so gradually and the debt accumulated while the people knew nothing about it. Now, if you will compel the legislature to levy yearly to the amount of the necessary expenditures, then the people will have something and will not go in debt and know nothing about it. I would like to have this changed in the way indicated by the gentleman from Wood. "Estimated expenditures" of the State for each year. I would leave out "whenever the ordinary expenses shall exceed the income, etc." Now, that is exactly my sentiments. I am an internal improvement man too. I'll go for it. As we improve, I want to pay for it and not entail a debt on posterity that should be looked after at present. I want to vote in some section that will provide against a contingency of that kind, of letting the State incur large debts and people know nothing about it until taxes become so onerous. I move, sir, to insert "expenditures" in the 13th line, and strike out "ordinary" in the 14th.

MR. LAMB. Mr. President, it strikes me that would alter entirely the intent of this provision. If gentlemen will look at the whole of this provision they will see it draws the distinction between the ordinary expenses of the State and the extraordinary expenses.

MR. STUART of Doddridge. For information: Supposing the State appropriates a hundred thousand dollars for some internal improvement, do you look on that as "ordinary expenses?"

MR. LAMB. The gentleman will find that is provided for in the subsequent part of this report. That would be an extraordinary expense.

MR. STUART of Doddridge. An extraordinary expense. Extraordinary; well, I want that levied as we go along.

MR. LAMB. This draws the distinction between the ordinary expenses of the government and the extraordinary expenses; and it is intended to put here a rule that the ordinary expenses shall be provided for here for the year by taxation; but that if the revenue levied is not sufficient for the expenses of the year a levy shall be made immediately sufficient to cover the deficiency. This prescribes no rule in regard to the extraordinary expenses. If we find it necessary, for instance, to build a capitol, that should not be considered one of the ordinary expenses of the State. The legislature would be at liberty notwithstanding anything contained in this provision to arrange that matter as they might deem best. If the legislature were to appropriate a hundred thousand dollars or a million of dollars to internal improvements, that could hardly be considered, with any propriety, as ordinary expenses of the State, unless you adopt some other provision than this. That would not be affected by this provision.

The whole object and scope of this provision is to compel the legislature to provide for the ordinary expenses within the year and immediately afterwards. What provision it may be necessary to make in regard to extraordinary expenditures will necessarily come into consideration when we have the balance of this report before us; but it is not involved in the consideration of the present section. This has one plain, definite object which I think ought to be provided for in the Constitution. The object which the gentleman from Doddridge seeks to accomplish had to be provided for in a distinct portion of the report, not connected at all with this.

MR. PAXTON. The effect of the amendment proposed by the gentleman from Doddridge, to strike out "ordinary" would be this; that in case of an extraordinary expenditure—say, for instance, a case of armed invasion or insurrection—the State might find it necessary to incur extraordinary expenses to a large amount, even a million dollars; and yet, if you strike out the word "ordinary" then the legislature would be compelled to levy a tax at once to pay the entire expense. Certainly it could not be his intention to require the legislature to levy a tax to meet such an extraordinary expense as that. That would be the effect of the gentleman's motion, and would defeat the whole intention of this provision. This is merely to require that the legislature shall levy a sufficient tax

each year to meet the ordinary expenses of the year. It does not prohibit the legislature from levying any other tax they please. It does provide that they shall provide against a debt consequent on the accumulation of temporary deficits. But to require them to levy for every expenditure however extraordinary would certainly be an improper requirement.

MR. STUART of Doddridge. My object is not to meet extraordinary expenditures, but I think these appropriations for internal improvements are only ordinary expenditures. Such as the rebellion, as a matter of course, we cannot make a provision for that. But I do insist that the legislature shall be compelled to levy a tax to meet all appropriations for all purposes of that kind. I do not see if we are not able to pay we should not engage in it. If we don't do that—have such provision—the same state of affairs may occur that has already occurred in the State of Virginia. We will find we will not be able after while to pay interest on the money we owe. It would be a very imprudent farmer now who would incur expense year after year and let the interest devour it. It would be better for him to make the provision to pay as he goes along; and if he has not the ability to make the improvement, let him do without it until he is able to make it. I think the new State should not enter upon this internal improvement system to any greater extent than she can pay as she goes. That is my object, not to meet extraordinary expenses such as referred to by the gentleman from Ohio.

MR. HERVEY. The provision of the gentleman from Doddridge is completely met in the 5th section of this report: "No debt shall be contracted by this State except to meet casual deficits, etc." The contingency which he supposes might arise cannot arise under the 5th section of this report.

MR. STUART of Doddridge. After consultation, I withdraw the amendment for the present.

The third section was then adopted, and the Secretary reported the fourth:

18 "4. No money shall be drawn from the treasury but in pur-
19 suance of appropriations made by law, and an accurate and
20 detailed statement of the receipts and expenditures of the public
21 money shall be published annually."

MR. PAXTON. A provision similar to this may be found, I believe, in the constitution of every state of this Union as well as in

the Constitution of the United States. I do not know that it requires any explanation whatever. The only difference between this section as reported here and one of a similar character reported by the Committee on the Legislative Department, which on motion of the chairman was stricken out, is that this provides for publishing annually a statement of receipts and expenditures. This is probably more explicit and I think preferable in that regard only.

The 4th section was adopted and the Secretary reported the 5th:

22 "5. No debt shall be contracted by this State except to meet
23 casual deficits in the revenue—to redeem a previous liability
24 of the State—to suppress insurrection, repel invasion or de-
25 fend the State in time of war."

MR. LAMB. I would move to insert there, after the word "revenue" in the 23rd line, "to erect public buildings." I suppose there will be no objection to that. We will have to erect public buildings. It may be rather hard for us to provide even for that expense.

MR. DERING. I was going to offer the following amendment, to be added to the section, to be brought up all together, and we will meet the question right at once:

"Nor shall the legislature ever appropriate any money or the credit of the State to any railroad or other work of internal improvement."

MR. LAMB. It is an entirely independent provision. I prefer the vote should be taken on my amendment. I would inquire of the chairman whether there is any objection to the words I have proposed?

MR. PAXTON. For myself I have no particular objection to it. Of course, I cannot speak for the committee; although I should think even for the erection of public buildings the State might in the course of two or three years levy a tax sufficient for that. Still I have no particular objection for myself to amending the section in that particular.

MR. LAMB. I would suggest that the vote be taken on this and then the gentleman from Monongalia can offer his amendment; otherwise I must call for a division of the question, which will accomplish the same thing.

MR. DERING. I don't withdraw it, sir.

MR. VAN WINKLE. Well, sir, I ask for a division of the question, first on public buildings and afterwards on corporations.

MR. STUART of Doddridge. I understand that cannot be done.

MR. VAN WINKLE. Any member has a right to call for a division of a question when the question is susceptible of division.

MR. STUART of Doddridge. You cannot say which question shall, be put first.

MR. VAN WINKLE. I stated them in the order they were offered. I did not intend to assume any such authority. It would be the natural order.

MR. BROWN of Kanawha. We are framing a constitution with a view to an independent organization; and I for one desire to make that constitution conform to the wants of the people over which it is to be the organic law. The State upon which this Constitution is proposed to act is one that is now without internal improvements to a very great extent. It is a state perhaps more now than any other in this Union requiring a system of internal improvements; a state that has been for 30 or 40 years bearing the burthen of revenue to make internal improvements in the state, but unfortunately under the administration of one section of the state, has had its revenues appropriated elsewhere than within its borders. One of the crying evils that has been in the mouths of these people has been that the power of the state has been exerted to levy taxes on the people for works of internal improvement and then to transfer that money to other sections of the state and also appropriate it. Why are we here to-day clamoring for a new State. One of the reasons, sir, that moved the people of this section of country is in order that they may have control of their own moneys and expend it among themselves for their own benefit; and that they may apply what is rightfully their own to their own benefit; may not have their funds and all their resources and wealth appropriated elsewhere. Now, this clause in this report, proposed to be adopted as part of the Constitution, is to tie forever that very hand that is now seeking relief and release from the bonds it has been in heretofore. It is an effort to strike down and destroy the object we have in view in the formation of a separate state; an attempt to tie beforehand the hands of the state and people so that they shall

never exert their combined power and ability to develop the resources of their state to enter on a system of internal improvements. Fix this as proposed in the organic law and put it before the people, and there is but little motive with them for a new State; it defeats the very object they have in view in, and they will tell those who present them that Constitution we will have none of it.

What is the condition and situation of the State? Just look at it in its whole area. With the exception of this section it has scarce a turnpike you can travel on or drive a wagon or stage upon; with no means among the community to make those roads; with no railroads or canals; with nothing done of an internal improvement character on the part of the State; with a country that is diversified with mountains and valleys that are inaccessible across each other, that you cannot traverse unless you go down to the mouth of your rivers and up the channel of the next. If you should establish the capital in the center of your State, or in any particular prominent locality within it, there is no way of access to it save and except to mount your horse or take it afoot. And you expect that for all time to come your people are to be made to trot to the capital and trot back again, with all the power and means at their command; and yet you prohibit them by this Constitution from using them; that your legislature, although they may be the wisest men that ever assembled shall not exercise their wisdom to call forth the resources they could command to develop these resources, to put this State on a new footing and prosperous career. All that is to be prohibited by the enacting of this clause which is forever to tie up our legislature and say they shall incur no debt save and except for war and rebellion and such like things. Why, gentlemen seem to be alarmed at this war. I take it for granted when this war is over, we will have no more for nearly a lifetime. We will be sick enough of war; and then it will be absolutely necessary to the prosperity of the State that the legislature should be untrammelled in this matter and you should be able to call to your aid the wisdom of the people's representatives to put this State on a free career of prosperity.

I hope, therefore, gentlemen here who feel the necessity and want of internal improvements in their country and neighborhood will act with me and vote down this attempt to tie the hands of the representatives of the people. Why put it here? If your people do not want your internal improvements, they will not ask for them. If your people do not choose to encumber themselves with any debt to make them, they will tell their representatives not

to incur the debt or enter on the plan. If they want them, why seek to tie up in this Constitution. If gentlemen wish to put any such proposition to the people, let them put it as an independent proposition, so that they can vote for the Constitution with it or without it as they may choose? And I will warrant you whenever they put the question to them, they will by an overwhelming majority of more than three or four to one vote in favor of a system of internal improvements, managed and directed by their representatives and the money expended among themselves for their own advantage and benefit. Those gentlemen that represent a country that needs these improvements but who wish to vote to tie up the hands of their representatives will consign themselves to the tomb of the Capulets. I do not see on what principle any gentleman who by adventitious circumstances have obtained a better position, a more favorable condition in the condition of the State as it will be than others, should desire to tie the hands of the legislature. It is something of that dog-in-the-manger policy; they don't enjoy nor let others participate in it. I am for a legislature which shall be perfectly free to exercise its discretion to meet the wants and necessities of the people whenever they arise; that when the mandate of the people has gone forth that this is what they want—this that and the other work of internal improvement—that the improvement shall be entered upon; that your Constitution shall not trammel representatives in incurring a debt if it is necessary to create it. In other words, that you may make internal improvements that shall benefit posterity a thousand years hence, but shall not tax to lay a debt on the community now to build it, but obtain capital to effect the object and then distribute the cost among posterity. Then no harm is done to anybody. All have been benefited; and you can look over the whole nation and those states that have entered on this career of internal improvement are now far in advance of the rest and those that have never entered on it are behind their sisters. This question is this: In entering now on this race shall we abandon a policy that has been pursued with such great results? The only injustice of which has been is that the property has been distributed in other sections and not in our own. I hope this Convention will vote down this proposition or rather to insert the amendment that changes the whole character of it.

MR. VAN WINKLE. I apprehend that if this Convention votes in and votes out any proposition that is submitted here it will be

a pretty good indication of how the people will receive it in reference to this matter of making internal improvements by the State, for to that I shall confine myself. As respects the matter of the public buildings, there is a great deal to be thought of and a great deal to be said if there was time.

Well, sir, I want to come to this subject of internal improvements to be made by the State. And now the question arises: in what condition do we find ourselves in reference to such matters? We find ourselves not only without the improvements that have been given at our expense to other parts of the State but we shall find ourselves saddled with a part of the debt contracted to pay for them. Turn it and twist it as you will, that is the thing to which it has all got to come. We have immediately to assume a portion of that debt without reference to the way it was contracted. We have seen, sir, the prodigal—worse than prodigal—system that has been pursued in this state and in other states in reference to this very subject. We saw a few years ago several cities repudiating the payment of their interest on account of being involved in debt beyond their ability. We say this state so involved that even if this rebellion had not occurred she would probably have been in a very tight place by this time; and that fact, sir, was known at the last regular session of the legislature at Richmond; and yet, sir, the prodigal was not checked in the least; and it was done by log-rolling. I have been there, sir, and have written a good deal about it. It was by these various projects in various parts of the East by those who favored them, uniting together and voting for each other's bills that this great debt has been saddled upon us.

Now, we do not want that thing re-enacted in our new State; and while we want the improvements—while I trust the State may be covered with them in due time—yet, sir, the question is whether our government is going into a system of large expenditures by the State to run up a debt and inflict burdens on this people that they must stagger under for the next three or four generations in order to obtain them. That is the way the question presents itself to my mind. We are commencing poor; we are commencing with a debt that will be all we can carry for many years; and now it is proposed to open the flood-gates of folly and let that debt be increased with a rush such as we have seen in the eastern part of the state. There is another section here which prevents the State from becoming the partner of any joint-stock company in this matter; and I would call attention to the fact that whenever the State has money to spare, out of her ordinary revenues beyond

her ordinary expenditures for the building of these improvements, there is nothing in this report to prevent her spending it in this way. This only relates to the creation of a debt.

And, now, I will ask gentlemen, speaking of a railroad how long a one do they want? If they want to make it a great State, work it on a scheme to extend it nearly across the State? If that is the scheme, it must be from one hundred to two hundred miles in length. The road with which I am connected is a hundred miles long and has cost for construction about \$45,000 a mile, and that is exclusive of interest. There was contracted during the building of the road an exclusive loan by the sale of its bonds. It was not nearly as heavy in that case as many roads in the state in the east. A hundred miles of road at \$45,000 a mile is \$4,500,000. Two hundred miles of road would, of course be \$9,000,000.

Now, is there, in the first place any probability that the State will within the lifetime of any of us be able to incur a debt—I do not say be able to spend the money, if she did it—but be able to incur a debt for that amount. Interest on the smaller amount would be \$270,000 a year, added to the annual expenditure, which must be raised by taxation when probably the ordinary expenses of government would not amount to more than that sum. Then you are going to double that ordinary expenditure besides assuming the debt you will have to as part of the debt of Virginia, of \$5,000,000 at least; for I cannot possibly see how it can be much if any lower and I am afraid it will be more. The interest on this will be \$300,000 more. Then you have \$840,000 to be expended in this small section of the State, to be raised annually by taxation. The very fact, I apprehend, until we are in a better situation to shoulder the debt which will be upon us and meet our ordinary expenditures, if the legislature should authorize the contracting of another debt would damn the credit of the State in all the markets of the world. You would hardly be able then, with a large debt of that kind authorized to be added to the debt of the State, you would hardly be able to borrow the one or two or three hundred thousand dollars at the utmost that may be necessary for the erection of your public buildings.

But apart from these consideration, here is another matter which can be done by private means. If these roads are well located, if they run in connection with the channels of trade, you can get help from abroad to build them by private companies, as the roads already in this part of the state have been built. There has been no aid from the State of Virginia to the Baltimore & Ohio

and Northwestern. Neither of them has had one dollar from the state. And yet they have been constructed and are in successful and profitable operation, because they covered the lines of trade and because it was desirable to the large states lying at each extremity of them to have those roads with a view of affording the needed direct communication to markets and thus enhancing their business. You see Cincinnati has a delegation at this time at Washington urging the opening of the Baltimore & Ohio road, and of course Baltimore is urging it too.

Now if a railroad such as would accommodate this State, which I believe a road running through the State from northeast to southwest would do—if such a road was proposed after the country returns to a proper state, I believe such a road can be built by private enterprise. But if you go into this system of state building, you will have the case of Pennsylvania over again. In order to get through her line of canals she had to grant charters to one-horse railroads running up to the canal all along the line, and that is the way over forty millions of debt was contracted. The main road did not cost half the money. But that is what you produce whenever you leave a matter of this kind in the hands of a public body like the legislature. Most certainly I have no objection to see every desirable improvement made that can be; but looking to what will be the probable situation of this new State, I do think that we ought here in this Constitution restrict the legislature during the time this Constitution is likely to continue in force from expenditures in such way. If the time shall come when we are in a better situation, when the people of the State shall desire to have improvements made at state expense an amendment to the Constitution permitting it can easily be had.

MR. STUART of Doddridge. I must be permitted to say, Mr. President, that if I have anything of a temporary nature at heart it is the welfare and prosperity of the State of West Virginia, and I do not think I have been actuated here by any selfish motives, and I hope I shall not be. If I was to look at the interests simply of my own small locality, I would certainly oppose the motion of the gentleman from Kanawha; but, sir, I cannot do that. I am very happily situated, and I believe my friend from Wood is very happily situated. I have got a very fine improvement a fine railroad, the Northwestern turnpike road, and nearly every improvement we ever expect to get in this State or any other state; but, sir, in looking to the interest of the whole State at large, not being confined to

any particular locality, I must be permitted to say I am compelled to support the amendment of the gentleman from Kanawha. Although the opponents of internal improvements opposed the motion I made in the second section, in which it would perhaps have held some controlling influence, I am utterly opposed to that. I suppose it is because they want to strike at the very roots of internal improvements. I am an internal improvement man; and, now, gentlemen of the southwest, let me say to you that unless you be careful and know what you are doing you will get yourselves into a trap that you will not get out of until you break up this Constitution. Sir, there are a good many counties in the state I never would have known existed had it not been for this Convention and meeting representatives of them, and I will never know them hereafter unless we can get some internal improvements; and I think these gentlemen ought to be the last men to oppose it. We know the value of them. We know in the little county of Doddridge, sir, where we paid revenue of perhaps some thousand or eleven hundred dollars a year before the construction of this great improvement, the Northwestern Virginia Railroad. Now, sir, we pay some \$5,000 or \$6,000. We increased our revenue some five-fold.

And now what is the policy for West Virginia, if we ever get a new State? Is it to look up these people in the southwest in their mountains and say that they shall never have any outlet and their property never be increased by internal improvements? We will have nothing to collect from them; no revenue; will not be able to carry on the ordinary expenses of our government unless we do something to enhance the value of their property and let their great mineral resources and wealth be developed by this kind of improvement.

I would have been very much in favor of the amendment I proposed to the third section in order to hold the legislature in check that we may not run into enormous debt; but gentlemen could not see it in that light; but now they want to strike at the very root of internal improvements and say the State never shall appropriate anything for purposes of that kind. I am opposed to it. And I simply got up here to call the attention of gentlemen from the southwest who expect to get perhaps a railroad through their country—to call their attention to it for fear they might overlook it and might form an opinion here and might pledge themselves to some measure that might be destructive to their best interest.

MR. PAXTON. I desire to say a few words on this subject; but as it is now late, I will move that we now adjourn.

The motion was agreed to and the Convention adjourned.

XLIV. SATURDAY, FEBRUARY 1, 1862.

The Convention was opened with prayer by Rev. Josiah Simmons, member from Randolph.

MR. BROWN of Preston. I believe the right of petition on all subjects is regarded as a sacred right. I beg leave this morning to present two petitions from my constituents on a subject upon which it is true the Convention has partially acted. Nevertheless I desire to have the petitions read, and laid on the table.

The petitions, signed by citizens of Preston county were accordingly read by the Secretary. They prayed that a provision be inserted in the Constitution forbidding the exercise of the right of suffrage by any person who has not paid the state and county taxes assessed against him.

MR. HAGAR. I hold a paper in my hand containing the resignation of Capt. Cassidy as a member of this body and also a petition soliciting the appointment of E. W. Ryan, in his stead as member from Fayette County.

Letter and petition were read.

MR. BROWN of Kanawha. I move the reference of that letter of credentials to the Committee on Credentials, as in the case of the gentleman from McDowell and Mercer.

MR. HAGAR. If it would be consistent, I would rather the Convention would act upon it, as they will have the say so in it anyhow, and it is plain, short and small. Mr. Ryan is here ready to take his seat.

MR. BROWN of Kanawha. I withdraw the proposition. I suppose the first thing will be to accept the resignation of Mr. Cassidy.

THE PRESIDENT. The Chair is under the impression the acceptance is necessary before taking action on the other.

MR. POMEROY. I move it be accepted.

The motion was agreed to.

MR. VAN WINKLE. I shall object to any action being taken on that petition. It does not appear that they cannot hold an election in Fayette county now, and if a new election is ordered to be held in that county, and the return is that they cannot hold it, it is all very well. But this does not allege that no election can be held. It says no election could be held last October. I do not think, sir, there is any use of sending a paper of that kind to the Committee on Credentials. If they wish to have the county represented, the best way would be to take such steps. I do not know why they cannot have an order for a new election to be held in Fayette county. That is all we can do about it.

MR. BROWN of Kanawha. I think the gentleman should have answered the question he propounds, to have told us how an election can be held in the county of Fayette. I know no law, sir, under which you can hold an election there. The ordinance of June prescribes the mode by which the governor can order elections for house of delegates. Mr. Ryan, the gentleman present, was appointed by the citizens of Fayette—a long list of them—to the house of delegates on account of their inability to hold their election and their delegate to the legislature that was elected in May having gone to Richmond, his petition was referred to the house committee on credentials who reported adversely because they knew no law under which the house could admit any member who had not been elected in the manner prescribed by law; and no election had been or could be held until the Governor issued his proclamation and appointed the officers to hold the election. But the Governor is authorized by no ordinance of this commonwealth to order an election for this Convention. The ordinance which called this Convention together fixed that for itself, and where no election was held or could be held in the manner prescribed by the ordinance there is no power in the State to prescribe any such order. There is no law, ordinance or recognized authority by which it can be done. The whole question, then, is left to this Convention. Here are the people disfranchised by circumstances over which they had no control, who have selected their delegate in the only way that is left and that is the only right that belonged to them—a way that has been recognized and acted on and approved by this Convention; and their delegate is here asking that he be permitted to take his seat in the same way others have done. I confess I cannot perceive any difference between this case and others. The question

is then, will this Convention make an example of the people of Fayette and disfranchise them.

MR. HERVEY. I would inquire of the Secretary whether those names are in the same hand-writing?

THE SECRETARY. They are in a different handwriting.

MR. POMEROY. I move that this case be referred to the Committee on Elections. I think it is the proper way. I have not time, and the majority have not, to examine the papers.

THE PRESIDENT. The gentleman from Boone moved immediate action.

MR. POMEROY. I move to amend by referring to the Committee on Credentials.

MR. STUART of Doddridge. The question is now before us and all the facts are here. We have delayed a longer time than is necessary to receive this gentleman on the floor. It does seem to me it is very proper that we should act on it at once. I want to see the county of Fayette admitted here. He comes here endorsed by the former member of this Convention who we all know was an honorable gentleman, and I see no propriety in submitting this thing to the Committee on Credentials. The facts are here; let us have the opinion of this Convention at once. I hope it will be the pleasure of the Convention to receive this gentleman from Fayette. He comes here endorsed by the honest citizens. Unless he is received now and at once the county of Fayette will not be represented on this floor. I presume our labors will soon close and I am not for any further delay in this matter.

MR. HAGAR. I hope the amendment will not prevail but that we will at once act on it. We will have to act on it if it goes to the committee and it is a plain, simple case and the county has not been represented in this Convention for three or four weeks.

MR. BROWN of Preston. In a matter of this kind, I at least owe a duty to my constituents and every member on this floor owes a similar duty. That duty is to see that any gentleman who claims a seat in this Convention shall come here by some proper authority. I am aware of the fact that we have been admitting gentlemen on this floor in the mode indicated by the paper read by the Secretary, and, sir, in the two cases in which the Convention last acted a reference was had to the standing committee of this

house upon credentials. No member of this Convention has—at least I have not—seen the paper that has been meagerly signed by citizens of Fayette county. It may be all right. The paper may be a genuine paper. I do not know; no member of this house can know anything about this thing. We cannot tell anything about the character of it. We have no evidence on this subject. For what purpose was this committee raised. Why, to inquire into this thing and to hear evidence in reference to cases of this kind to keep this Convention from doing wrong in the premises and having some suitable occasion, through the medium of a committee by which this Convention can form a proper judgment on this case and on every case that is submitted for its consideration. The mode proposed is certainly, sir, very irregular. It is a great departure from the usual custom in bodies of this kind and in bodies that receive their authority by an election of the people. And hence, sir, we should guard this matter with careful regard to our duties in this particular and not voluntarily have a paper forced upon us and grant a gentleman a seat in this Convention without his credentials passing the scrutiny of the committee raised for that purpose. If this Convention will not have some respect for its own dignity and for the integrity of its authority to act for the people of the State we are sent here to represent, how can we expect others to have. We owe it to ourselves as much as to our constituents that no man be allotted a seat within this bar until it has been properly shown that he is entitled to it.

MR. STUART of Doddridge. I would simply say that the gentleman from Preston and I are on that committee. So far as I am concerned I am prepared as much now as I will be on that committee. I have all the evidence I expect to have before that committee. If I want to see that paper I will go up there and take a look at it and I am satisfied from the source it came from it is genuine.

MR. HERVEY. This Convention has on previous occasions made a mere reference to this committee which was created for a specific purpose: that is, to inquire into the credentials of persons making application for seats on this floor. Now, I cannot see why there can be any objection in this case more than in other cases which have been referred. This is a peculiar case. This is not a similar case to any that has occurred on this floor. The letter addressed to the President of this Convention states that the former delegate desires that this member may be admitted as his successor. Well, now, sir, what right has a former delegate to indicate who his suc-

cessor shall be? His right to a seat on this floor is based on that paper, and members of this Convention have not even examined that paper; know nothing about it except as read by the Clerk. There is a committee whose business it is to inquire into this thing. Why not send it to that committee and have their report?

MR. STEPHENSON of Clay. I should like to ascertain who the committee is. Do they expect to delay this matter until this is sent back and fore, to hunt up the signatures in order to see whether they are genuine or not? If not, I do not see any necessity for delaying the matter. I expect the Convention are in possession of all the facts that the committee could be.

MR. POMEROY. I would like to know.

MR. STUART of Doddridge. I want to rise to a question of order. The gentleman from Monongalia has taken the floor several times. I understand the rule is gentlemen must rise to address the Chair. The gentleman from Hancock has been standing there a half hour.

MR. POMEROY. Then I must have risen.

THE PRESIDENT. The gentleman from Hancock and three others all rose at the same time.

MR. POMEROY. I believe it is customary in all bodies of this kind to have a committee on credentials, and I cannot see what a committee of that kind is for if cases of this kind are not referred to it. I have no objection to admitting this gentleman as a member on this floor if the committee after an examination of the case recommend it. Fayette county has a population of five thousand people. Now, it is a singular thing, with a lot of Union soldiers in the county, a man comes here and claims to be a representative on this floor endorsed by a single baker's dozen out of the whole population of the county. Not a solitary name but 13 on that paper. Now, that is a singular thing with all this protection that is afforded by the Union soldiers. I don't know this gentleman at all. He may be a worthy man; but on the principle of admitting members in this loose way into a body of this kind, I do enter my protest; and I want if this vote is reached now to enter my vote, so that my constituents may know that I did not vote to confer the authority and responsibilities of this Convention and increase its expenses upon a petition of this kind. I want to speak plainly on this subject.

MR. BROWN of Kanawha. I desire to know whether the gentleman voted for the admission of Mr. Smith from the county of Logan on a petition of twelve?

MR. POMEROY. I think I did not. I am not certain.

MR. BROWN of Kanawha. I would like to know how you voted in the case of the delegate from Nicholas.

MR. POMEROY. Well, sir, I do not remember; but I do remember that the gentleman from Kanawha contends that two wrongs do not make one right and I agree with him. I believe in the case of the gentleman from Logan I did not vote at all, though I did not know the number of petitioners in his case was so small. I do not know whether the vote was recorded or not, it will show. I contend it is a well established principle that two wrongs do not make a right; and that this is too important a body to be careless about admitting anybody to membership who comes along with no better authority behind him than a petition signed (or purporting to be) by a dozen people whom nobody knows anything about. This is quite as important a body as the Legislature of Virginia, which I believe is generally conceded. Yet this gentleman was not received by that body on much larger petition than he presents here. Why should we accept less credentials than the legislature? Why should we receive him here on this without even a reference? If we do, why have this committee at all? I am opposed to the admission of a member without the reference of his credentials to the committee.

MR. DERING. I believe it is the rule of all legislative and deliberative bodies that the credentials of every applicant for a seat shall be referred to and reported on by the appropriate committee. It has been said by the gentleman from Kanawha that we admitted members here on a mere petition. Well, sir, I think that was a wrong precedent. Yet I think we see the error of that precedent; and if we did wrong in that instance, shall we persist in doing wrong and keep it up? Well, sir, if we did do wrong, let us retrace our steps and get back to a proper attitude on this subject of introducing delegates. Why, sir, if we resolve ourselves into a mass-meeting, that gentlemen can just come in on a mere petition, gain admission to our body on a mere recommendation from somebody, are we a convention exercising all the highest sovereignty of the people of West Virginia and entrusted with a duty of the most important kind ever entrusted to any deliberative body, or are we a mere mass-meeting masquerading as a Convention, into

which anybody may come who can present a letter from anybody else? Are we a regularly constituted deliberative body, regulated by law, the mode and manner of our election prescribed, or are we, sir, a mass-meeting that any gentleman from any part of western Virginia can come in and take a seat and draw his pay from the treasury, without being authorized by any of the forms of law on a mere petition from persons unknown to the Convention, and that even this petition shall not be examined by the proper committee of the Convention? Sir, the gentleman from Fayette may be a loyal, good Union man. I do not doubt that he is; but, sir, shall the request of 13 citizens from a remote county entitle a man to a seat in this body when the law that convened us prescribes the manner of our election?

MR. STUART of Doddridge. I must call the gentleman to order. He is discussing the merits of the case not the motion before the Convention.

MR. DERING. Of course I was arguing on that point. The merits of this case are involved in the motion to refer. It is such a case as to require that the papers, such as they are, must be submitted to the committee before the Convention can with propriety vote on it. Then the Convention can have some basis for its action. It is a course that has been adopted in some cases here recently, and I trust we will not depart from that order of doing business.

MR. HAGAR. I have been acquainted with Mr. Ryan some 12 or 14 years. So far as his Union sentiments are concerned, he is as sound as any of us. He came here with a great many signers to go into the legislature, yet there was no law and he was rejected. He started to go back there and went to Beckley. Capt. Cassidy resigned, could not come, and all the men that were there signed his petition. He returned thinking the recommendations sufficient. I am not particular whether it goes before the committee or not. I say these things to remove the false impression that might be made on the committee in reference to his loyalty. Cassidy is a man of good standing, who has at least sacrificed all his property for the Union. He recommends him just as good as any man can be recommended. He is a loyal man. I have no fears about it. I am not tenacious about it whether it goes before the committee or not; but I want to remove any false impression that might be made on the committee in reference to it.

MR. BRUMFIELD. I would like to know if the gentleman is a resident of Fayette?

MR. HAGAR. He is; born and raised there.

MR. MCCUTCHEN. For the satisfaction of this committee, I would just remark that Mr. Ryan is a resident of Fayette; raised in that county; of good unimpeachable character; a sound Union man; and I have known him ever since he was a boy. As it regards his character and qualifications they are entirely good. There was a move of this kind before I left home in order to send him to the legislature, but that failed in consequence of being informal and he returned and took the course that has been pursued; and as it regards his being a citizen of that county, his loyalty and everything of that kind, there need be no doubt on that subject. I have known him ever since he was a child.

MR. LAMB. No doubt Mr. Ryan is very well worthy of a seat and a very good Union man; but that is not the question here. The question is: is he the representative of the people of Fayette county. It is impossible, of course—

MR. STUART of Doddridge. I understand the question is: shall this be submitted to the committee?

MR. LAMB. It is a very proper consideration in determining that question whether this thing is to be run right through the Convention without consideration or not or whether it shall be regularly and deliberately considered. It is a question that is necessarily involved in the other.

MR. STUART of Doddridge. We will all have our objections after it gets to the Committee on Credentials; but we don't want to have this question argued until it goes to that committee. It is unfair that the thing should take this course at present.

MR. LAMB. Then why did you oppose the reference?

MR. STUART of Doddridge. Why, I thought we would get along without any trouble and save time.

MR. HAGAR. To save time I will withdraw my motion.

MR. BROWN of Kanawha. Since we have used this much time I am in favor of this Convention settling it now. The gentlemen on the committee may be the most intelligent men in the world, but I have equally high respect for the intelligence of the Convention

as a standing committee. But this Convention has adopted a rule different from that and not referring just when it please, and there is no distinction between these cases.

MR. LAMB. I suppose I am entitled to the floor if this question is to be discussed. I had the floor when you arose. If this question is to be discussed, I want the floor. I want distinctly to understand that the objection is withdrawn to the reference of this matter to the committee. If it is, I have nothing further to say. If it is not, I have the floor. This time must not be counted either (Laughter).

THE PRESIDENT. The gentleman from Boone withdrew the motion to act upon the credentials immediately; and that dropped the amendment, so that there is really nothing on this subject now before the Convention.

MR. HERVEY. I move the case be referred to the Committee on Credentials.

The motion was agreed to and the application so referred.

THE PRESIDENT. When the Convention adjourned it had under consideration the amendment of the gentleman from Kanawha to insert the words "or works of internal improvement."

Mr. Walker offered the following resolution:

"Resolved, That the Committee on Finance make off the account necessary to pay the members of this Convention mileage and present it to the legislature for their action."

MR. VAN WINKLE. I move the indefinite postponement of that resolution. I hope gentlemen of this Convention have more respect for themselves than to go begging to the legislature. I cannot join in any such beggary as that.

The resolution was indefinitely postponed.

THE PRESIDENT. When the Convention adjourned, it had under consideration of the amendment of the gentleman from Ohio to insert the words:

"or erecting public buildings." and the amendment of the gentleman from Kanawha to add the words: "or for works of internal improvement."

MR. DERING. I ask the Clerk to read the amendment of the gentleman from Kanawha.

The Secretary reported the amendments as follows:

Mr. Lamb's amendment, to insert after the word "revenue." in the 23rd line of Section 5 the words: "to erect public buildings."

Mr. Brown's amendment, to add to Mr. Lamb's amendment the words: "or for works of internal improvement."

MR. DERING. I am opposed to the amendment of the gentleman from Kanawha. That gentleman yesterday evening in addressing the Convention said our new State of West Virginia was without internal improvements. Sir, I acknowledge that to a great extent it is without internal improvements. It seems to me that the circumstances by which we are surrounded forbid any such thing. We are surrounded, sir, by various circumstances which the time allotted to any speaker on this floor will not permit him to go into any detail. He says, Why are we here clamoring for a new state? It is because, said he, they have appropriated our money to internal improvements in the eastern part of the state and left us in this part of the state without any. Well, now, I beg leave most respectfully to differ with my friend from Kanawha upon that subject. Internal improvements, sir—railroads, canals and turnpikes—all sink into utter insignificance, sir, compared with the great principle we are contending for when we ask for a new state. Sir, we are not contending here for internal improvements; we are not contending for dollars and cents to improve our mountains and valleys. We are contending for something higher and nobler and grander than anything like the paltry considerations which the gentleman has intimated we are clamoring for. We all complain, in common, against eastern Virginia for appropriating all our moneys in the old state to improvements in the eastern part of the state. I join in the hue and cry with the gentleman from Kanawha and with all the people from his section. Our people stood as a unit all over western Virginia in denouncing eastern Virginia for her partiality in legislation; but we are here for a higher purpose, to sever the bond that connected us with a nest of rebellious traitors. We are endeavoring to inaugurate a new state for the purpose of perpetuating liberty, of sustaining our glorious Union, and holding up to the world in western Virginia the stars and stripes, that significant emblem of our liberty and nationality. That is what we are "clamoring" for now, sir; and every other

incident sinks into insignificance when compared with it. Why, the gentleman says, is this war to last for a lifetime. God only knows. He says we may not have, after this war is over, another war in the lifetime of this generation. We cannot tell, sir. This system of blood has been inaugurated by these southern rebels. Once the tiger tastes blood, there is no opposing or satiating its infernal thirst. We may have wars and rumors of war for years to come; wild border forays and skirmishes while these two republics shall exist if made separate republics. There has been an alienation begotten of this rebellion that will continue longer than the present generation; and I expect to hand down to my children the hereditary hatred of a southern rebel; to inculcate it in his breast and tell him to cherish it while he lives. Sir, I never can forgive those men that have broken up the best government ever instituted on the face of the earth. I cling to it with the tenacity of life and my feelings go along with that sentiment, and I expect to be an enemy to the South if she ever breaks up the government that gives me liberty and protection to me and my family, and to enjoin that duty on those who are to come after me. I am for no compromise in this war, no terms except a total submission of the South to loyalty. They must acknowledge the government under which we live. They must lay down their arms; they must submit to the laws and government that has so long protected us all; nothing else will I ever agree to, and I trust our government will never submit to anything else.

Why sir, is this a time, when rebellion stalks abroad in our land, when even in loyal West Virginia we have traitors in our streets here and all over our loyal West Virginia—is this a time to inaugurate a system of internal improvements, a system that will hinder our progress and check us in our onward march to conquest and victory? I trust that there will be array of sections on this floor. I trust that southwestern Virginia and northwestern Virginia will stand shoulder to shoulder in support of the government and in opposition to the rebellion. I trust we shall have no sectional strifes such as we had between eastern Virginia and western Virginia. I deprecate that feeling. I trust we here will have no sections but that we will be one united and undivided people, with homogeneous interests and with all marching along to the music of the Union. The gentleman from Doddridge yesterday pledged himself to the gentlemen out in the southern section to look well after their interests. Here is an arraying of sections at once upon us. Has that section any interests that are not equally

the interests of the whole State—that are to be looked after at the expense of other sections? Sir, I hold my brethren in southwest Virginia as brethren. I will give them the hand and say to them let us not divide our new State into sections already; let us not create this sectional feeling such as existed between old Virginia and western Virginia; but let us stand as brethren having one country and one destiny and one common government to support. This attitude I think we ought to occupy, and no appeals to sections should be made upon this floor. Let us not begin this war of sections so soon in the history of this young State; but let us all cultivate a spirit of amity; let us all cultivate a spirit of harmony; let us all cultivate a spirit of unity, that we will stand together for weal or woe, let our destinies be what they may.

But, Mr. President, I know that I shall be crippled for time on this subject of internal improvements. It opens up a vast field. If you want to inaugurate a system of internal improvements in West Virginia at such a time, where shall we land? Will we not be admonished by the examples of the states around us who have attempted the same thing? Look at Mississippi. That state (Jeff. Davis') has repudiated and darkened her escutcheon for all time; will never wipe out the stain. She stands as the finger-mark of the world as "repudiating Mississippi." Look at Pennsylvania, who inaugurated a system of internal improvements and was called on to appropriate million upon million until she arrived and had to sell her works to a private corporation on its own terms at the very verge of bankruptcy. Shall we start out, with our proportion of the old Virginia internal improvement debt on our back, and travel this same road to the same ruin? Shall we with such examples staring us in the face inaugurate at this day a system of that kind? Why we are admonished by every consideration that can appeal to sane men to steer clear of any such fatal mistake in the incipient stage of our new government. But I have not time to go into detail on this subject. Why, sir, what stares us in the face? We are starting on an untried voyage with our little state with her sails unfurled; we are endeavoring to put her on the ocean with the stars and stripes at the mast-head, and favored by the popular breezes, sir, I trust she will ride on without any currents to hinder her progress.

The Chair (Mr. Dille in the chair) indicated that time had expired.

MR. HERVEY. It had never occurred to me when I became a member of this Convention that any such proposition as this would be seriously thought of much less endeavored to be enforced here and made part of this Constitution. Why, sir, what has been the soul, the very inspiration of this West Virginia movement? I allege it has been in consequence of the long-continued, the repeated out-cry of western Virginia against this unjust, onerous and oppressive system of expending public funds. Had it not been alleged in every corner of western Virginia that the power of the east was controlling the west; that the fact was they were taking the money out of the pockets of the west to do, what? To build railroads east of the mountains. Tell me, sir, of all the millions that have been paid by western Virginia into the treasury of the State. Where are her works? Not one solitary foot of railroad in West Virginia built by the State of Virginia. And yet, sir, year after year, year after year, this cursed system which was foisted upon us by the superior power of the east and which ground us to the very earth, is now sought to be engrafted on the policy of the new State! Look at the state debt of the Old Dominion—forty-odd millions! Repudiation staring the State in the face! Sir, the man is worse than a visionary who would stand up in the face of day and before an intelligent assembly allege that ever that state debt will be paid. No man expects it. The debt never will be paid. Never! With the division of the Union, the debt is gone. Sir, old Virginia has followed in the wake of Mississippi and Illinois. Her credit is gone. She is bankrupt—utterly bankrupt; and, sir, by means of this very cursed system of partial legislation and taking the money of the people to build roads to suit particular localities. This State is to construct works of internal improvements? What has been the experience of the large states of the Union? The State of Pennsylvania undertook to construct great works of internal improvement. The capitalists of Philadelphia, and the city of Philadelphia alone, brought their power into competition with the great State of Pennsylvania and broke down her works. She constructed her central railroad from Philadelphia to Pittsburgh and completely cut the throat of the State works; and, sir, the State was brought to her knees and compelled to sell those works for whatever the company pleased to give her.

Again, sir, who is benefited by these works? Have we been benefited by the works of the State of Virginia? They are partial in their benefit, not general. I do not know how it has been with members of this Convention generally, but in our section of the

State we told the people that under the operation of this new state of affairs there would be a reduction of the taxes; there would be a reduction of the state debt. Must I go back to my people and tell them that we have launched upon this old, rotten, exploded system of constructing works of internal improvement by the State? Now, sir, can the thing be practicable? Suppose we undertook to go into it. What is our population? Less than half a million people—much less. What has been the cry in this Convention? We are poor, unable to pay our taxes now. Of what avail then is this system if it should be inaugurated? Almost every member is coming to the fact—which is palpable, known and read of all men—that this new State cannot construct these works. Then, sir, why undertake to enact a solemn farce in the Constitution which must remain inoperative? But the great danger is here. You have seen how these untold millions have been drawn from the people through the legislature—how this enormous taxation has been piled up on the people. Why, sir, the first debt was to procure a small appropriation for that work and this work and for this other work, and the whole half dozen works must be joined in order to secure those appropriations. Very well, the first small sum was secured for each of them. That was an entering wedge—perhaps enough to complete the survey and lay out the route. Then, again, upon the argument that the State had invested \$100,000 in this work and \$100,000 in that and \$100,000 in the other, they must have further appropriations to save what had already been put in. Are you going to lose your investment here? You certainly do not intend to lose all this investment. Now, \$200,000 for each of these works must be appropriated—works scarcely begun. Now, \$500,000 more. Still the work is not accomplished. It is the last argument, shall these works all fail, all this vast investment be lost, for the lack of a little more? Or shall we throw all the energies of the State into these works, complete them and make them sources of revenue to the State? Why, sir, these works which have penetrated the Allegheny mountains and the Blue Ridge at three different points come out and stop at no point, have just entered on a course in which they are backed by the whole power of the State, the whole force of the internal improvement party of the State, to subordinate the entire State, its entire resources to our purposes and wishes. This is the line of argument along which the Commonwealth was led to the overwhelming ruin that impended when she took her plunge into the rebellion; and who can say that the knowledge of that impending ruin was not a factor in determining

the reckless men who had got control of public affairs in Virginia to take that plunge?

Sir, the whole system of internal improvements as heretofore adopted and carried on in Virginia is a false and fraudulent system. They have, in the first place, exacted conditions of these companies; forced them to go where interest did not warrant them. Even where foreign capital was concerned, they by a system of log-rolling and false legislation to accommodate the diverse and different interests of the State, have routed even those works out of their proper channel by a bare majority, when no interest whatever, no real interest of the State, required it, with the result that the whole investment of these untold millions is unproductive.

(Here the President's hammer fell.)

MR. PARKER. This is a question of a good deal of importance to the new State. Is it better, then, for this Convention to forbid for all time the aid of the State to any works of internal improvement however general in beneficial results to the whole State, or to permit the legislature to extend its aid to such works as its wisdom shall deem to be of general concern? That seems to be the question. As the national government has confined its aid to only works of purely national concern, so a state, in my opinion, should extend its aid only to such works as concern the whole state. The work of individual capital and enterprise is inadequate. When any state descends from these matters that are of general state concern to works that are of only private or local benefit, she becomes the sport and victim of individual and local competition, log-rolling and plunder. This has been the peculiar misfortune of Virginia. Washington and his contemporaries stood upon the high state policy when in 1790 they projected the great work of connecting the James with the Ohio river. But they died, and their successors went to log-rolling and have continued log-rolling until they have created a debt of from \$35,000,000 to \$40,000,000, and instead of any system there is but disjointed breaks of these improvements, as Governor Wise said in 1854, "beginning everywhere and ending nowhere."

Now, the question is whether that is an intrinsic difficulty in the system or whether it is the mismanagement of the officers that have had charge of the state works. That is the question. De Witt Clinton, in 1816 or 1817 projected a great state work, the Erie Canal. He stuck to it and completed it in 1825, solely on state account. At that time western New York was a wilderness; the

state's population was only a million and a half. In 1860, it was four million. The city of New York at that day had only 220,000; in 1860, it had over a million. More people in the city of New York, which this Erie Canal has built up than there is in all Virginia today.

So it has been with Pennsylvania. So it has been with Massachusetts; so with Delaware; so with Ohio, Indiana and Illinois. Each has been taking hold, in time, and pushing through these great lines of state improvements. All their canal systems, I admit, except the Erie, have been superseded by railroads running along the same lines, quicker than canals. But it was these great canals which gave the impulse to the states, that has pushed them on to the greatness they now hold. It was these early improvements in the form of canals, which have since been superseded by railroads.

Now, I would ask gentlemen here, suppose these states had in 1825 had constitutions with the prohibition the gentlemen here propose to put into ours, where would they have been? Western New York, now peopled with great cities would still have been a wilderness. The arm of great state aid alone could penetrate the wilderness, and connect the waters of the Hudson with the great lakes and the inexhaustible West. I say they would have been—much of them—a wilderness. Western Virginia, rich in all her great resources, has been the victim of log-rolling in the east; letting everybody there roll their logs and she has not had anybody to roll hers. She has been rolling logs for the east; but they have not come over here to help us. Look at the meager improvement on the Kanawha, the Coal, the Guyan; a half million spent on the Covington road, now going to decay: that is all there is. Now, gentlemen, we want no long lines. It is not that we want. The Baltimore & Ohio road, with the Ohio river, opens up the long lines, to the best markets of the world. But we want to penetrate the interior, bring out our forests here, open inexhaustible mines of wealth that is now locked up and will remain so until we penetrate it with suitable outlets. Then it will flow out; it will carry to the farm; it will quicken the great farming interest; it will quicken and give vitality to every city.

This, Mr. President, has been the past. With the experience of all for the last fifty years; experience which is now spread out before us; the experience of all the states for the last fifty years,

let our legislature have it. Let them be, as I doubt not they will be, with all this light before them, wise and prudent. Where they can give; where it is a matter of broad state concern, there let the State step forward and give her aid and hand. She is ready to aid and can do it. I aver it is practicable. She can do it without the least risk in the world to herself. She can hold the whole works as security; and unless it is a paying work, then the wisdom of the legislature with the light that is before them and the experience now to guide them, will not embark in it. They should not. The people will not let them.

It seems to me, therefore that we should leave this to the wisdom of the legislators that shall come after us, and that it is vital to the interest of this new State to let this be done. Let our new State be cut loose from the thralldom of slave labor and she will spring forth into newness of life, with joy and freedom on her wings.

MR. LAMB. It strikes me that the question which is presented to the Convention by the amendment of the gentleman from Kanawha has not been correctly stated or understood by the Convention. It has certainly been argued in a manner in which I do not conceive the question fairly exists before this Convention.

It is not the question whether the State shall make internal improvements or not; it is simply the question whether we shall embark in a system for making internal improvements with state bonds. That is the question which is presented. The section prohibits the creation of debt except for specific purposes; and the distinct question presented by the motion of the gentleman from Kanawha is: shall we permit the State to embark in a great system of internal improvements to be made by state bonds?

I trust, sir, that if any practicable scheme of improving this State can be presented to the Convention it will never find me as one of its opponents; but the system which is now attempted to be engrafted here is, I take it, impracticable. It will not result in accomplishing the object which the gentleman from Kanawha himself would desire to accomplish. Its result, in my view will be un-mixed evil. It will result in leaving this State buried beneath such a load of debt that it will be impossible for evermore to re-establish the prosperity of this people. It seems to me that it will utterly fail to accomplish those improvements which are so desirable.

Let us consider this matter for one moment. Suppose we devote our energies exclusively to the establishment of a line from the Baltimore & Ohio Railroad to the mouth of the Guyandotte, or the mouth of the Kanawha upon state debt. I undertake to say that line, adopt what route you may, must exceed 200 miles in length; that that improvement, adopt what system you may, will cost over \$9,000,000. Then \$9,000,000 state bonds are to be issued in addition to the portion of the debt which we are to assume from eastern Virginia. Our debt which will then be fastened upon the people of West Virginia cannot be computed at less than \$14,000,000. The interest upon that debt will not be less—for you cannot expect to create that debt at even six per cent—than \$1,000,000. Now, gentlemen, the whole of your revenues in 1860 from these 44 counties was \$490,000. The whole revenue clear, or collectable, rather, before these disturbances existed, according to the auditor's report, for these 44 counties, was \$490,000. Under the present circumstances of the country the man would be thought beside himself who would suppose we could now collect in the same district \$250,000, or one-half. And yet, here, to accomplish this scheme, you are to load us down with a burden which will involve an annual expenditure for interest alone of a million dollars. You are to go into the market and present your bonds to the capitalists of Wall Street and of Europe, with these facts staring them in the face. You may accomplish something in this way; you may compel the contractors to whom you let the work—if you can let it; if men can be found to take contracts—to take your bonds; but what would be the result of that system which has been heretofore practiced extensively in eastern Virginia? The result of that system would be that you would pay double prices for the work, and your debt in the end, instead of being \$9,000,000 on account of these internal improvements if you adopted the scheme of compelling contractors to take the bonds for their work, you would find it would be \$18,000,000 or \$20,000,000 before you were done.

And this is the sort of system that we are to embark in under the pretext—the sheer pretext—that we are to accomplish the improvements of the State under present circumstances by making these improvements with state debt. If we have means, I am willing to the extent of our ability to go into this work; but I tell you, gentlemen, I tell you now, and the future will establish the truth of my words, you put these words into your Constitution and the credit of West Virginia is gone forever. Put these words into your Constitution and you have prostrated forever the credit

of West Virginia and you will be utterly incapable of accomplishing your object or of providing for any necessities which the state of the times may hereafter force upon us.

It is with this view of the subject, gentlemen, and not from any indisposition to improve the State of West Virginia that I am opposed to inserting these words into this clause. If there be any principle which has been established by the experience of the states comprising these United States, I take it this may be considered as the one, the particular one which our experience has established; that it is necessary to guard and curtail the powers of legislatures by constitutional provisions in regard to schemes of constructing works of internal improvements with state bonds. Look at all the states, from Mississippi to Pennsylvania and see to what an untrammelled power if the hands of a legislature has led to. Look at the State of Virginia, embarked in this system, and you will end as they have ended with a parcel of pieces of railroads unfinished and which you are utterly unable to finish, with all your energies cramped and burdened down, with every man's farm covered by mortgage for half its value. Gentlemen, I speak understandingly on this matter. I have seen the effects of it here in the city of Wheeling; and now every man's property in the city of Wheeling is pledged for one-half its value on account of efforts which the city of Wheeling has made to secure these internal improvements to herself by this miserable system of contracting debt. How is it at Pittsburgh and in Allegheny county? Why, gentlemen, I saw a statement not long since comparing the assessed value of property in Pittsburgh and Allegheny county with the debt now resting on the people. The result of this same system was that it showed that the amount of that debt was nearly one-half the whole assessed value of that city and county. You will have, gentlemen of the "rural districts" this system, if you force it upon us in operation, and it will take half the produce of your farms to pay the taxes which will be the necessary result.

(Here the hammer fell.)

MR. SMITH. I have listened with some consideration to the arguments that have been offered on this occasion more than on any other that will arise. Perhaps during this Convention do I desire some day to address the house; but there is so much that I would like to say that it is difficult for me to determine what I shall say out of the abundance of what there is to say. I will first say that every section of this bill has been drawn with a reference to resist-

ance to internal improvements. I look upon the vote that was given yesterday as evincing an indisposition on the part of this house to aid or abet in any way internal improvements. They are not only unwilling to aid it with ordinary revenues of the country but now they come up with a bill forever trammeling the power of the legislature to do anything whatsoever for its improvement. They manacle the State; they plant in this Constitution the principles of the destruction of the State, for they build a Chinese wall around it cutting off all communication with other parts of the world. I regret to see that the opposition to this improvement spirit comes from those who heretofore have been the most clamorous and diligent and active in prosecuting it in old Virginia. This very city of Wheeling to my certain knowledge have been from year to year applicants at the foot of the legislature. They have been asking and demanding time and again for the aid of the legislature to carry out those improvements which they have now.

MR. LAMB. I must correct the gentleman. The city of Wheeling has asked no aid from the legislature and has received none except the guaranty of her bonds; and this guaranty is utterly valueless. The credit of the city of Wheeling is this day worth more in the market than the credit of the guarantor.

MR. SMITH. I am aware of that; but it is not because the city of Wheeling have not made application for it.

MR. LAMB. One word more; that guaranty was only obtained by giving the State abundant collateral security. She granted as a security a property worth fifty times what the guaranty is worth to-day.

MR. SMITH. I say the city of Wheeling has been clamorous in its appeals to the legislature. It was fortunate to be there and I never object to the fact that they did so, and on every application it has been my pleasure when a member of that legislature to give it all the aid I could. I defy that gentleman to show, except on one occasion, a single vote of mine that did not respond to that application. I did not condemn the city of Wheeling then for doing it. She was a new city, small then in numbers, but struggling with energy and vigor to build herself up and come into competition with Pittsburgh. I rendered all the aid I could and the State rendered its aid. I recollect on one occasion when they were struggling to get the property from Harper's Ferry out in this direction they then applied and got a subscription for a million of dollars. I un-

derstand from the gentleman through some failure in the execution of the contract on the part of the applicants that was not paid; but they applied and they got it. And if there was a failure, it was their own fault. I do not condemn it. I then living on a central line, I insisted that that part of the State was entitled to aid; and I insist now that it is a narrow policy that after you have filled your own granaries would deny the right of another portion of this new State to come in and have a share of it. All the improvements made here we expect to assume and pay. The gentleman from Monongalia, how many roads has he got to connect himself with this road? How many roads have they got there to connect themselves with this road next to Baltimore. How many has Marion county got? That whole northwestern country is checkered over with roads the payment for which we have to assume. Look at the poor counties of Braxton, Gilmer, Wirt, Roane, Nicholas, Fayette, McDowell, Raleigh, Boone—all that section of country. What have they got? They have to pay their proportion of the very improvements that you have. You put a principle in the Constitution which forbids any aid to be rendered to that section of the country. There are various counties out in this direction that have received nothing. They are locked up now; with all their wealth, they are locked up and no chance of improving them. There is one with immense resources of wealth, though not improved, on the river. Will you deny the people the right of improving that river? There is the river Guyandotte that runs up into a rich valley of mineral wealth. You lock the hands of the legislature and say they shall not aid and assist.

MR. DERING. Were any appropriations ever made for improvements in your country?

MR. SMITH. We did get them for Coal river and it has improved that country immensely. But you say they shall not have them hereafter. You have got your road. Now, as to this Baltimore road—how did you get this Baltimore road? Baltimore did not want to come here. She didn't desire it; but it was the policy of the legislature that prohibited her from taking the natural route and the one she desired. The move to bring the Baltimore road to the west started in Kanawha. She asks the legislature to grant her the privilege to come up the Valley and cross through the line of the present contemplated Central Railroad. Where were the people here then? Did they vote for it? No, sir; the delegates from the county gentlemen represents, the delegate from

Wood and all this upper country resisted it and said they should not have it. They forced Baltimore, they pressed her through an unnatural route through the mountains. I do not regret it, but this is the history of it. Kanawha herself instituted that inquiry into the ability of Baltimore to make a road and she sought it. And she asked for a charter, and had that charter been granted and had you not resisted it, that central part of the State would have had this road completed, and then you would have been calling upon us not to stand in the way of us who have no such improvements. That would have been the course you would have taken. Now, this is history. The representatives from Wood and from this section of country voted against allowing the Baltimore company to go up the Valley. You have got it, and now you say Baltimore has made us and by your action have prevented her from going through the center of the State. We had a corporation that was able to build it. You have taken that corporation from us and now boast of what you have done. You have defeated the natural line, taking the worst line for the road, forced her to make it, and now say inasmuch as that is forced, as we have defeated you and got this road, we will tie up the hands of the State so as to prevent you in all future time from having any improvement whatever. That is the course you are pursuing. I say, gentlemen, this is not liberal. We come up here in good faith to unite with you in forming this new State, but we never contemplated a connection with a people who would put in their Constitution, in their fundamental law a principle prohibiting that State from ever improving her own condition. You are not compelled to introduce any wild scheme of internal improvement. This does not force it upon you; it is left to the legislature; and now you who do not want this road, who do not want competition by running roads the other way, it is idle to talk about it. It is resistance to this through road that will come in competition with mills and mines and other interests that will control you.

(The President's gavel fell.)

MR. VAN WINKLE. Since history has been introduced here it may be well to have the correct history. At any rate the gentleman's recollection of past events may be faulty or at least different from mine. I shall give my version from a pretty attentive perusal of the documents.

In 1829, sir, thirty years ago—now 29 or 30—permission was given to the Baltimore & Ohio Railroad to construct their road

through to the Ohio river at a point not below the mouth of the Little Kanawha river; so that if there was anything forbidding it to go up the valley, it was previous to that time and before there was any system of internal improvements in this state. I am aware that there was an attempt to carry it up the Valley—to get permission to go up the Valley—but I do not think that was intended to prevent the line going to the Ohio river at a more northern point, and that was reconsidered by the clause in that law that they should not strike the Ohio below the mouth of the Little Kanawha.

Again, sir, in that first bill, the State of Virginia subscribed \$1,038,000 to construct the Baltimore & Ohio Railroad, not to Wheeling but for the purpose of constructing it to Cumberland, and had put in a condition that it should be finished to Cumberland by a certain time. Difficulties with the Chesapeake & Ohio Canal Company arose. There was room enough to pass the Point of Rocks without infringing on the privileges of the canal. That question remains open, the company entirely suspending work for three years on the Baltimore road. Then the difficulty was removed and that cause of detention was taken advantage of by the State of Virginia, when no one from reading the act would suppose time was the essence of the contract, not only to withdraw her subscription but withdraw her permission for the road to go to the Ohio river anywheres. Now, sir, it was not the people of Wood that did that. That was the interest concerned in the gentleman's own road; and since this is to be a question between Charleston and Wheeling, let us understand precisely where we are.

The Baltimore & Ohio Company again applied to the State of Virginia for the mere naked right-of-way, in the first place, and asked a renewal of the subscription. The right-of-way would have been granted at that first session; but Mr. McLane (?), President of the Baltimore & Ohio Company refused to take it without the subscription. Next year they came in not asking for the renewal of the subscription but simply for the right of way; and the friends of the Central road baffled that measure for some three or four years and prevented the legislature granting even the naked permission to go to the Ohio river. This is their feeling in favor of internal improvements, and the friends of that road have been the opponents of everything that has been asked for. I do not mean the gentleman himself when he was a representative of Kanawha. I believe they acted, certainly, with the friends of the Northwestern road. And the Central road interest has stood in the

way of the Baltimore and Ohio ever getting anything and have endeavored to lumber it with restrictions from time to time. This is the history about that matter, and never one dollar has been paid by the state. The city of Wheeling in its negotiations with the Baltimore & Ohio Company came to this point, that the company was willing to do certain things after it was determined the road should go to Wheeling, and nowhere else. The Baltimore & Ohio Company would accept the charter provided Wheeling would subscribe \$500,000 stock; and to make that subscription available Wheeling asked the state to guarantee its bonds and pledged the stock—a dividend-paying stock now, and was then expected to be soon—as security for it. And that is the only favor the whole Northwest has ever had in reference to railroads.

MR. LAMB. We gave as collateral some \$500,000 of other property in addition to the stock.

MR. VAN WINKLE. So that when favors are asked by this section we have to put up the security or we don't get them.

And, now, sir, I apprehend it is no use introducing the turnpikes into this account. The mileage is equivalent to 80 miles of dirt turnpike or more. The question is not one, however, gentlemen will admit, to make it an issue between one section of the state and another. It is not in that view that we have raised it. Gentlemen may judge us by themselves; for I know it is a very easy way of getting at another man's motives to know what your own are. But that is not the source of the opposition here. I can tell the gentlemen; we want to build our road, and want a half million of dollars to do it. We want a bridge across the Ohio and money for that. It is not because we have got through, as the gentleman thinks, that we are opposing this bill. The tunnels on the Northwestern road are not finished; our iron is about worn out and we are not in condition to do anything in reference to it. I hope gentlemen will make special provision for us; if this thing is going to be put in, we shall want at least our share.

Now it is very easy to insinuate that gentlemen's motives are so and so; but I profess to stand on this, as on every other question judging as best I can what the interests of the new State will demand; and I should despise myself if I thought I had come into this Convention to enter here into a scramble for the public funds—especially when we have got none to scramble for, only the public credit. But that is what it is asked to do. There is nothing here to prevent the legislature from building roads, if they have the

money. The only thing is shall this legislature be restrained from borrowing money for these purposes? But I would ask now; between the improvement of the State, on the one hand and the bankrupting of the State on the other, is there any choice? For I maintain, in the circumstances in which we are at present—the money matters of this State as we all know they will be when we take on us that portion of the debt from which there is no escape; for we owe the whole debt if we separate, and it is only by an arrangement that we can diminish it, if we get it down. I say this State, under present circumstances will have as much as she can stagger under. Now, mark it! The gentleman from Ohio tells us the revenue is \$460,000 in good times. How much of that will be collected next year? How much the next? For with the best intentions on the part of the citizens, money is not going to be had as easily as heretofore. We do not know what is coming on us. Things may be a great deal worse than they are. It will depend on how the United States may be able to sustain its credit whether we will have any credit at all; and if our circumstances are such as we all recognize, the only way this thing could be done at all would be for the State to issue and sell its bonds at a price of fifty cents on the dollar at least. If the restriction is put on that you cannot sell the bonds at less than par, you cannot sell a dollar. That day has gone by in Virginia. You cannot sell a railroad bond except the railroad, that has brought par in the market for several years; and you cannot go into the market with railroad bonds, as we did in the case of the Northwestern Virginia Railroad bonds. They have sold at a premium. That is the way the money goes—that is the squandering. Bonds are given direct to contractors and sold by them at far below their value; and works thus made to cost much more than they otherwise would.

This question is one that we ought to take up as a broad statesmanlike question. It is not a question whether Kanawha has asked for a railroad or not, or whether Wheeling has asked for a railroad or not; that is not the question at all. The question is whether we shall risk ruining the credit of the State by leaving it in the power of the legislature to borrow money *ad libitum* to be spent on railroads in the conditions that exist now, with a dozen unfinished railroads in Virginia without connections at either end and not more than two or three of them professing to pay dividends. I say our legislature ought to be prevented from doing it. As I mentioned the other day, there is not one of these in a finished condition. If you will take up the report of the Board of Public

Works, you will find that where there are three cross-ties on the Baltimore & Ohio Railroad there is but one on those Virginia railroads. If you could take up one road and finish it, and confine it to that, all very good. If, as I say, you could make a road down through the center of this State, I would not hesitate to allow an exception to be made in favor of that. But can you do it? No, sir. So soon as a proposition comes into the legislature to build that road, the counties that lie to one side will demand they must have something too; and then you have the very thing that has occurred in all these states where the legislature has gone into this system; where, in order to get a railroad to every man's door, about twice as much money is expended as would have built the principal railroad which ought to have satisfied them all.

(Here the hammer fell.)

MR. SMITH. The gentleman seems to question the accuracy of my history. I said it was Kanawha that instituted that effort to get the Baltimore people to carry a road to the Ohio. I say so still. A complication was made, and a motion was made at Parkersburg to prohibits from striking the Ohio river below Parkersburg and that carried and defeated it. I am right. It was the action of the people of Parkersburg and above that prevented Baltimore from going, where she desired to go; and I said in consequence of this, while the Baltimore people wanted to make the road up through the Valley and through by Charleston, you got them to take the northern route through the votes of every man in the legislature from your quarter of the state. Well, I don't blame you for it. It was a fair competition. The only time I ever voted against an application from Wheeling—and those applications were legion in number—was when there was a conflict between Wheeling and Parkersburg as bitter as any conflict I ever knew, and it was a painful obligation imposed on me to vote in that contest for Parkersburg. In seven years in the legislature that was the only time I ever voted against Wheeling. Now, the very first thrust that is given at the other section of the State comes from Parkersburg and Wheeling, who now lie in the same bed together. There comes the response. And look at this committee. How many of them are from the southwest? They have had no representative there. They have themselves in and have manacled the southwest. They have got the Baltimore road. They denied it to us and took it themselves, and now they say we will manacle the hands of the legislature, that at no time hereafter

shall they have any improvements in that country. Why, sir, all their talk is that the legislature is not to be trusted; they are not worthy of the confidence of the people; they will squander the money and they give instances of squandering by other legislatures. Why, sir, you may as well revolt against the stomach because sometimes you eat more than you ought to eat. You might as well because there is a vicious member in the church repudiate the whole church. I care not what you engage in there are wrongs committed and it only imposes the higher obligation on the people to restrain their action. These are worthy examples pointing to a more prudent course of conduct. That is all there is of it. But you are seizing it now—you who have got all you want. You come in now and say we will not feed the body because it will over-feed itself. You are well fed and now you say we will allow no other portion of the State to have anything. Don't want that central road you speak of; don't desire that road brought down to the Greenbrier river. I want a road to connect with the Baltimore & Ohio through that section of country. Now, we have no sort of way of reaching markets. I want to be placed on an equality with you. I want the transverse trade. We have no cross trade in this country.

MR. DERING. How much will that cost?

MR. SMITH. I don't know. The legislature will consider that, and if it is not worth building, they will not build it. Shall not contract a single debt for any such purpose. I want to ride through that section of country, somewhere, wherever the wisdom of the legislature may point out.

MR. VAN WINKLE. Don't you know that personally I am in favor of that identical road?

MR. SMITH. I judged from your actions here that you were very much opposed to it.

MR. VAN WINKLE. Your friends know it, that I am very much in favor of it.

MR. SMITH. That is a fact I am very grateful to learn.

MR. HAYMOND. As I was a member of that committee and the gentleman from Logan has alluded to it I think it necessary to state the course that I shall pursue. And in the first place, I will say to this Convention that on this question I alone differed with

the committee. I will say to the gentleman from Logan and members from the southwest that I am here to stand by them.

MR. HAGAR. Bully for you.

MR. HAYMOND. I am for internal improvements. I think when a man buys a farm he should improve it. We have laid off a large farm, and we are partners. I think we should improve it. The gentleman from Monongalia has told us he is here for higher and nobler purposes than internal improvements. He tells us he is here to cut loose from the rebels. I tell the gentleman from Monongalia I am not here for this purpose. I am here for higher and nobler purposes than that. I am here to form a constitution for West Virginia and I am here not to cut loose from rebels but to crush them by the force of arms. That is my doctrine, sir. Sir, we expect to have a seat of government either at Grafton, Clarksburg or Weston. We want a great road through that country. It is a road, sir, which I have always been in favor of.

MR. SMITH. Don't drop Braxton, the center.

MR. HAYMOND. Well, I think it will be the center. I have always been in favor of a railroad connecting with the Pennsylvania road at Uniontown leading to Clarksburg, Weston and Charleston and going on south to the Pacific. That is my idea, sir, passing through the new State by the seat of government. It would enhance the value of lands in this new State one hundred per cent. Sirs, and this is not all. We have the Baltimore & Ohio road now and that is charging us a tremendous tax for the transportation of our cattle. This is a great grazing country. In my region of country, we send out cattle by the railroad to Baltimore. They charge us \$60 to \$80 a car. If we had a railroad connecting with the Pennsylvania road we could send our cattle to Philadelphia cheaper than to Baltimore, and the price of beef is always a dollar a hundred higher than in Baltimore, and by this means we would save an immense sum to West Virginia—enough to build the railroad. The gentleman from Logan told us the county of Marion was dotted with turnpikes and she had a railroad. The gentleman is right. I am now offering to stand by him, to aid in making railroads through the southwestern country. They must have them. We never can make this country without roads. This State is full of minerals, and to make it a great state we must improve it; we must build up manufactures; and what are manufactures worth unless you have some way to market? Sirs, I will tell this

Convention that we must not fold our arms and say that we are cutting loose from the rebels. No, sir, we must go to work and improve this great State and become a powerful people. That is the only way to get along. Why, you think you will have nothing to do when you get a new State, I suppose. I will tell you that is when you will have to go to work and build up your greatness; build up this State to be one of the most powerful states in the Union—for she has got the mineral that is calculated to make her such. A good deal has been said about Wheeling. What has built up Wheeling? Her National road; the Ohio river. Sir, I was in Wheeling in 1829. It was but a small place. I could have bought the lot where the Northwestern Bank is located for \$60, and if I had had the money I would have done it. The Northwestern Bank, I believe, gave \$10,000. And how she has been built up by this National road and other improvements. She has the Baltimore & Ohio road now and all the advantages. And I ask Wheeling to come to the rescue of this noble State and follow us to the mountains and help us open the mines that are in the mountains.

MR. STEVENSON of Wood. I believe I cannot on this question go to vote without expressing in very few words my disapprobation of the amendment of my friend from Kanawha. It seems to me that in this whole discussion there is little difference of opinion among gentlemen who have taken different sides in regard to the importance of public improvements; in regard to the importance and necessity of developing the great natural wealth that is to be found within the limits of this new State of West Virginia. On that question, I say, there is no difference of opinion amongst the members of the Convention. And, for one, sir, permit me to say that if I could be satisfied in my own mind that the plan proposed by the amendment of the gentleman from Kanawha was the plan that would effect the construction and successful working of these internal improvements and the development of this natural wealth in this new State, I would be one of the warmest advocates it would have on this floor. So far as the little influence I can exert it would go. We all agree on the desirability of the construction as soon as possible of these great works of internal improvement. We differ as to the means by which that can be successfully done. I think it cannot be denied that this plan of extending the credit of the State, or allowing the State itself to become a joint owner in these improvements, or to certify the bonds of parties who do, has in no instance, or if in any, in very few instances ac-

complished the purpose which the authorities of that state and the parties interested supposed it would. I take it that a true argument of that kind is worth more than all the abstract opinions that can be urged in favor of these measures on this floor or elsewhere. The fact has been alluded to here that in this State of Virginia of ours where it was thought this principle suggested by the amendment of my friend from Kanawha would accomplish these great purposes, has failed in that respect and has left the people of this State with a burden of tax from which probably they will never be able to escape. Look at the State of Ohio after she had traveled through the same process just proposed here by this amendment, becoming interested in those public improvements or becoming indebted for the construction of them. When she formed her last constitution, some ten years ago, she incorporated a provision essentially the same, but more in detail, as this proposed in the report of this committee. Because, sir, the thing had not worked as the friends of internal improvements anticipated it would in that state. Look at the other states. Pennsylvania has been referred to. She constructed the main line and branches of her public improvements at a cost of some \$40,000,000, and she sunk some forty millions more in the hopeless effort to make them pay her people and then sold them for \$8,000,000 and gave the Pennsylvania Railroad forty years to pay for it without interest. The state has incorporated in her constitution the same principle that it is proposed to incorporate in ours, not by constitutional convention but by action of the legislature in submitting an amendment which was adopted almost unanimously by the people of the state. These people had gone through this process of trying to make public improvements on the credit of the state as is now proposed here. I say these facts in the history of internal improvements are worth more than all that can be said, if you are to talk for hours in favor of this amendment.

Now, here is the point. I say that while I am just as much in favor of having internal improvements as any gentleman on this floor can be, and wish to see the prosperity of this State built up by the development of her raw material as speedily as any gentleman can wish, yet I say you defeat that very object if you adopt this amendment. That has been proved here, it seems to me. The condition of the state credit is not such and cannot be for years to come as will allow the legislature to pledge her credit for the construction or working of these internal improvements. Well, now, what can be done? I will tell you. If we have such vast beds of

minerals in our valleys and in the bowels of our mountains and oil beneath the surface of the earth, and timber "on a thousand hills," and it is so valuable as gentlemen have said it is, let me tell you that private enterprise and the money of men who will enter into that without the State becoming interested in it will develop that wealth and give it shape and value and thus enrich your State, more speedily than under the other process—were that within the range of possibility. There is my argument. Make a good constitution, under which capital will feel safe, under which capital and enterprise will be encouraged and protected, omitting all this wild folly of trying to use the credit of the State to build railroads into a country that can offer them no business until it has been created; carefully preserving whatever credit the State may be able to command under the adverse circumstances of her inheritance from Virginia; profiting by the experience and avoiding the calamitous results that Virginia and other states have suffered—and depend upon it enterprising and moneyed men will come into your State, build roads into it and develop its raw material of wealth just as fast as your resources will justify, and much more rapidly and surely than it could be done under state patronage even if you had the money or the credit to do it. You can reach these results more speedily, more effectually, without impoverishing the people and without bankrupting the State, by leaving this work to private capital and enterprise. This is, in sober truth, the only way it can be done. You may resort to the fallacies and follies that others have resorted to, who were too impatient to wait for the natural and legitimate process, but you will only have for your pains the same ruinous result they have found; all the surer in our case because we have no resources or credit to start with as they had.

But there is nothing in the provision in this report that prevents the legislature entering on internal improvements if she has the money to do it. I do not understand that by this section the State is prevented from appropriating money for the purpose of constructing any particular public improvement. I do not understand that the State may not set apart a fund and let that fund accumulate for any purpose the legislature deems advisable; but the restriction is that she shall not incur a debt except for certain specified imperative purposes.

Let me ask gentlemen here what particular improvement there is, or is likely to be, needed in this new State that private capital and private enterprise will not enter upon and accomplish as speedily, or more speedily than the State would do it. Why, sir,

what are the businesses in which capital would be invested here? In mining, in manufacturing, in building railroads, in making slack-water improvements, in making turnpikes, and so on. All these kinds of business are peculiarly adapted to private enterprise and associated capital amongst a number of individuals. They will go into that business and you may rest assured that just the moment that capital is invested and all branches of industry become prosperous and a line of transportation, short or long, is demanded, capital will be enlisted and the line will be built, more speedily by that process than any other you can adopt. And just as certain as you adopt the other, proposed in this amendment, I tell you—I am no prophet nor the son of a prophet—but I predict that before ten or twenty years every bankrupt railroad company will have its arms up to the elbows in the treasury of this State and will keep them there till every dollar is exhausted and these public improvements prostrated completely and the industry of the State paralyzed as long as that state of things continues. That has been the history of public improvements attempted in this way everywhere, as I have shown, and it will be so, I am just as well satisfied as I am of my existence in this State if this principle is voted here.

(Here the hammer fell.)

MR. BROWN of Preston. I am opposed, sir, to the amendment of the gentleman from Kanawha because it proposes to introduce into the legislature of our State that damnable system of log-rolling that has cursed the State of Virginia and destroyed her credit. That system, sir, has prevailed ever since the state engaged in works of internal improvement; and the result of it has been that a great number of improvements have been inaugurated in the state and as has been remarked by the gentleman from Cabell, who quoted Gov. Wise, "beginning everywhere and ending nowhere." Why, sir, if you look over the map of old Virginia you will find railroads running parallel with each other and destroying each other. And yet in these works, sir, the state was investing her capital, and the capital of posterity—pledging her credit for the vast debt that now weighs upon this people. I hold, moreover, sir, that if the State of Virginia had not pursued the policy she did pursue we would not be in the position we now occupy. Virginia would not have seceded from this Union. Never! If this system had not prevailed, it would still be the Virginia of olden times, the Virginia of Washington. It was said by John Randolph in the convention of 1829-1830 that no people who were desperately indebted could bear

a regular and sober government; that the partisans of Caesar were in debt, that the fellow-conspirators of Catiline were in debt; and Virginia, overwhelmed with debt as she was, could not "bear a regular and sober government" any longer. She had run into debt and destroyed her reputation and credit in the world, and went into secession—a treason, sir, more damnable than the conspiracy of Catiline against the liberties of Rome.

But, sir, how do we expect to obtain credit? How do we expect to occupy a position in the world? How do we expect to take our place among the states of this Union, if we shall happily do so? We must maintain our credit; we must act on honorable principles.

And, now, sir, the principle on which this system of internal improvements is based is fallacious. It is wrong *ab initio extrema*; and consequently it has cursed the country. Why, sir, if trade and commerce seek outlets, private capital will find those outlets. Money will accomplish the purpose in the hands of private enterprise. Trade will seek an outlet just as surely as water will seek a level. There is that mobility about it. If, sir, we inaugurate this system, we will most assuredly ruin our credit. We must have credit. We cannot always expect to rely on the resources of our State to meet our liabilities and we must have credit for some purposes. We need then to be very careful how we incorporate a principle into our Constitution that will prevent our borrowing a single dollar for any honest purpose—that will destroy our credit. But gentlemen tell us—we constantly hear it repeated—that these improvements will pay after while. Why, sir, who ever heard of an improvement in the State of Virginia paying? Who ever heard of an improvement reimbursing the treasury for the indebtedness incurred in its behalf? If these parallel lines of road made in Virginia, from this town to that town and the other, all over the country, whose representatives have been bought up to secure their own interests—if ever they happen to pay from three to five dollars over an amount necessary to keep these improvements in operation, that money instead of returning to the treasury and aiding in the payment of the debt incurred for the improvement, has been added to the salary of some superintendent or president of these roads; and men there to-day are receiving salaries of \$3000 to \$5000, and every dollar of the earnings of these improvements are devoted in this way instead of being legitimately devoted to the purpose of reimbursing the treasury. Must we see enacted in the halls of our legislature that same cursed system we have witnessed in Virginia for the last 20 years? No, sir; never! My people have

been against it, and they will continue to oppose it. It is not because I am opposed to internal improvements, but let us make these improvements on honest principles, like honest men. Let us when we are able devote our energies and our capital to making those improvements, when we are able to pay for them; if we have the money to pay for them. And if that cannot be done, sir; if there be coal in our mountains, if timber on our hills, if there be resources not yet developed, rest assured, sir, the time will soon come when private capital will develop those resources. This is the honest principle; there is care and prudence in the expenditure of money. It is all folly to talk about the inability of private capitalists to develop these resources or make these improvements. It is denied in the great road that leads to Baltimore; it is controverted, sir, as false by the improvement from Grafton to Parkersburg. Not a dollar of the money required for these great improvements but was furnished by private companies. I am utterly opposed to rushing rashly, foolishly, madly into debt, destroying the credit of the State, destroying all the hopes we have now or hereafter by permitting the legislature to issue bonds of the State for internal improvements; for the same men will occupy the halls of our legislature here that occupied them in the city of Richmond; and the same influences will control legislation in this direction if permitted that controlled it there. They can be bought up to subserve their own interests. Let us put a stop to that and base our improvements on solid principles, and act wisely. I am opposed, sir, now, here and everywhere, to this system.

MR. STUART of Doddridge. I don't understand that the motion of the gentleman from Kanawha is inaugurating immediately a system of internal improvements. It is simply leaving this matter to the discretion of the legislature to adopt whatever plan they choose. If they see cause to negotiate a loan for such purpose, they have the privilege of doing it. We do not know what circumstances may arise; what may be appropriate for the legislature to do in the future. Gentlemen seem to think if we have this amendment we will never have any state credit. I would ask them what would we want with credit if we expect only to obtain credit for carrying on our ordinary expenses I suppose we will never need any. Surely we will be able to carry on the ordinary expenses of the government without any credit, and we can do it. We ought to be looking to some system that will put us in position in which we can carry on State business or ordinary expenses by our revenue. If we are

only to have credit for the purpose of preventing rebellion or meeting a war, I would say that this is the best system in the world to avoid that necessary expense. There can be no expense in the world that can be adopted that would make us effect a purpose of this kind better than the internal improvement system. Look at the internal improvement system of eastern Virginia. Now it has been made impregnable almost. And what would give more value to us now than some internal improvements in northwestern Virginia to assist the general government. What money could be more properly expended if we could do it in time to meet the necessities of the case at present? Suppose we were in the situation now that eastern Virginia is with our internal improvements—we had a communication down to the southwest and could throw our armies there when we pleased, what would be our position to what it is at present. We would be invulnerable to their attacks as they are now to ours. They are fixed so that they can throw their force at any point and even hold the general government in abeyance. Then it may become necessary in future legislation to complete these improvements; to build us a road looking to various points of our State for our public defense; and if it should be necessary in the opinion of our future legislators to do a thing of this kind, you are going to insert a provision in this Constitution to peremptorily deprive them of that thing—peremptorily, I say, taking the 3rd section of the report with the 5th section where is proposed by this committee that it fairly deprives the State legislature from ever embarking in anything like an internal improvement system; ever appropriating one cent of money for that purpose. That I saw when I moved an amendment; when I moved an amendment to the 3rd section yesterday. The 3rd section looks to nothing but the ordinary expenses; and when I asked if the paying of \$100,000 for the purpose of making a railroad would be considered an ordinary expense, he said, no. Then I say adopt the section as reported, with this third section already adopted and the legislature will never be enabled to appropriate one dollar.

As I said, I have not one selfish feeling in this matter. My section of country needs no internal improvements. We have all that we ever expect to ask. But, sir, if the same policy had been pursued by other states, we in the northwest here would never have had these improvements. If Maryland had held her hands from these improvements and the city of Baltimore, we never would have held them. Other states have been cited—Pennsylvania and Ohio. It is true Pennsylvania has incurred large debts

for the purpose of internal improvements. They have enhanced the value of property there five-fold. Although the State of Pennsylvania has expended some forty or fifty millions on her internal improvements she has been paid and repaid one hundred-fold. What would be the State of Pennsylvania if it was not for her improvement system. Blot out her railroad, taken from her, and the forty millions of dollars she has expended, paid back, in remuneration, would she be willing to receive it? Although she sold her State improvements for \$8,000,000 would she do without them now if she was offered five hundred millions and be deprived of them?

We must keep our credit simply for the purpose of carrying on the ordinary expenses, provided in the 3rd section. If we cannot carry on the ordinary expenses of our government we ought to quit trying to get up a state here. If we have got to look for credit to carry on these things we ought to stop now. Who is the beneficiary party in these internal improvements if it should be effected by the state legislature? We enhance the value of our property every dollar. Would not the State collect that much more revenue from that property? Then if she is the beneficiary party, are we going to tie her hands up and say she shall not participate in these things? I stand here to-day condemning the action of the State of Virginia in not appropriating money to take an interest in this Baltimore & Ohio railroad. We ought to have control or a word of say so in it. But it has been the open policy of the State of Virginia to not have a voice in the direction of that road. But now, sir, we find the city of Wheeling and my friend from Parkersburg standing here fighting against the principle that has made them. It cannot be denied for one moment that if the policy that is sought to be engrafted here had been engrafted on that constitution of Maryland and other states, we would not have enjoyed the benefit of those roads.

(The hammer fell.)

MR. HARRISON. Mr. President, it seems to me in the course of this discussion the true object of this section has pretty generally been left out of view, particularly by our friends from the southern counties. It strikes me the object of this section is not to prevent the construction of works of internal improvement by the State at all. That is not the design of the section at all. But it is to provide that they shall be made on the most economical plan. Those

who are acquainted with our railroad system of making internal improvements in this State heretofore have told us that it always costs a great deal more than it appears to because they go on the credit system. Their bonds are put into the market and will not bring their face value and consequently we have really to pay much more than we supposed. Now the object of this section is to prevent that; that if we want to make any work of internal improvement by expenditure on the part of the State we shall provide the money by direct taxation for the payment of it at once—payment in cash. If you want to make a turnpike road through any of these counties that will cost ten thousand dollars you must levy the tax for it at once to meet the whole thing. That is the policy that is sought to be introduced into the new State, to pay as you go; let no great state debt accumulate upon us. Now look at the past history of Virginia; look at the debt resting upon us now. When will we get rid of our share of that? I hear a gentleman say “when we pay it, 30 years hence.” What will we want 30 years hence? We will want the money to pay on this public debt then. It won't be paid then. Are you willing to keep adding on to this debt for the next thirty years, and still have it hanging over you? I think not, sir.

There is another question I will propose for our delegates from the southern counties. The gentleman from Logan calls upon the southern counties to stand by him in this proposition to amend by inserting that you may create a debt for works of internal improvement. Well, now, what work of internal improvement in the state has had the largest finger in creating this public debt. If I recollect aright it is the James river and Kanawha improvement, the very thing these Kanawha gentlemen have been advocating ever since the thing first started. If I mistake not the gentlemen along the Kanawha river and from Logan all have been the strongest advocate for this James river & Kanawha improvement. They have been increasing its debt on us; and has it ever paid anything back to us? Why, sir, I believe the legislature was convened in special session to sell out the whole thing to the French Emperor recently; and I suppose if it had not been for this secession of the state it would have been sold; perhaps it is. I do not know what has become of it. But these very gentlemen have been the strongest advocates for the creation of that very debt; and up in our country, when a man is a candidate for the legislature he strikes at that improvement and he tells us it is a great singing fund of our State; that the money has all been sunk.

I want to notice one argument of the gentleman from Doddridge. I don't know whether he expects to represent Doddridge county or not. Perhaps he will. He says he is satisfied, have all they want; and he is going to help his neighbors in the southwest, be very liberal. Well, I know some people in Doddridge, and I am not so sure they are going to endorse his policy if they find out when he goes home that has been his policy, that he is willing to tax Doddridge for the benefit of people elsewhere. They may not send him to the legislature any more and may take up a man who will not be quite so liberal. There is some force in his argument that great advantage will be derived from railroad facilities all over the State, and that the rebellion derived great advantages from the railroad system in Virginia. Another view of that matter, and I cannot feel the same satisfaction in it as the gentleman from Doddridge manifests, is that those roads were built largely at our expense and that we have been thus made to contribute to the strength of secession, to our double injury. If there is any argument in that as applicable to the present question, it is against the gentleman. The gentleman undertakes to give the State of

Maryland the credit of building the Baltimore & Ohio Railroad. I don't understand that the State of Maryland had anything to do with it. It was the project of a joint stock company that thought they saw profit to be derived from it. I think if any other railroads are to be made through this portion of the State—if there is enough promise of profit to make it worth while for anybody, we will find private companies ready to step forward with the money to build them. We will be at no expense at all, but enjoy the benefits. It has been already said, and we know, that internal improvements in Virginia have never paid anything. Perhaps one or two small roads have paid small returns; but the great mass of those roads have not paid one dollar into the treasury and never will.

This debt keeps accumulating upon us. We will have to shoulder our share of the Virginia debt, and it cannot be less than \$6,000,000, and at the lowest rate it will take at least \$360,000 a year interest to carry it. The United States is levying a direct tax on us of \$200,000 more; and we want some day to get our share of this debt paid and we must put on an additional one per cent for a sinking fund to accomplish this. Allowing the annual tax for carrying on this new State at \$200,000, and that is a low estimate, we find the annual demand on us will be \$820,000; to be laid on a people who in their best days have been able to pay only \$490,000 a year.

(The hammer fell.)

MR. BROWN of Kanawha. The gentleman from Harrison seems to have forgotten a very fundamental fact in connection with this question, and that is the improvement in the value of property resulting from internal improvements. As markets are brought within reach there will be an increased demand for farm products and consequent rise in the value of all farm property. This with development of mining and manufacturing enterprises, giving large values to other kind of property, will greatly increase the assessed valuation of the State and correspondingly increase the revenues available for interest and other public purposes.

Gentlemen argue that we are attempting to embark on a system of internal improvements—inaugurating a system. Is that true? Do we say one word on the subject of internal improvements? Don't they come forward with a clause to prohibit forever the State from investing anything in it? One gentleman comes up here and tells us they are very willing the legislature shall appropriate any money they have—all the money they are willing to raise by taxation—for the purposes of internal improvement, but shall not incur a debt for such purposes. He denounced it as the most direful evil that ever cursed the country. Let me ask the gentleman what does this internal improvement, the Baltimore & Ohio Railroad, save himself and his neighbors? How could the government have been there in time to have driven off those who gathered around Grafton to fix the manacles on his limbs but for the facilities furnished by this Baltimore road? I say further had we had that same improvement up the Kanawha valley, or even if it was there connecting with the Tennessee and Virginia road, how easily could this government have immediately transported its armies back up to the very backbone of the rebellion and cut off the finest transit in the Union. That Tennessee railroad, which enables this Confederacy now with only some million and a half of men to hold in check some twenty-five millions of the Union and its armies. Once tear up that railroad and the Confederacy is gone. But you have got no such improvement; and how can you ever get it without calling on the State for that aid? I say, sir, your own every interest demands, both public and private; and gentlemen all acknowledge these are public improvements; that they all demand that we should embark in this work.

I wish in parting to commend the gentleman from Marion.

MR. DERING. I desire to say to this Convention before the vote is taken, that we are about, if this amendment of the gentleman from Kanawha passes, about opening books of credit for the new State that I verily believe will land her in bankruptcy. Why, sir, what all have we upon our shoulders? We will assume an equitable portion of the debt of the State of Virginia, which will amount to \$8,000,000 or \$10,000,000. We will have to pay that debt, sir, and the interest on it annually for many years to come. Because it is impossible in the present state of things that we should pay any part of the principal. We will have to provide public buildings, that will cost an immense amount of money. We must have a capitol and a penitentiary, asylums for the blind and deaf and various other necessary public buildings that we will have to incur the expense of. We will have to keep our government in motion and it will require money to do it. And are you going to press down this people with the burdens of taxation and thus scare away immigration from our new and rising State? Sir, our policy should be on the cash basis of pay as we go. We will be enough in debt without opening books for new debts without this system the gentlemen from the southwest wish to put upon us. The gentleman from Logan says we have got all we want and now we seek to throw them off. I will tell the gentleman if you go into statistics you will find the northwest whenever she got a turnpike had to give millions to get that few thousands. That is the only kind of improvements ever made in this section by the state. What railroads we have were built by private enterprise, in spite of the state rather than with its aid or even favor. The region of whose neglect these Kanawha gentlemen complain has had far greater favors from the state than ever we have had. Look at their Kanawha improvement, and the improvement of other rivers there on which vast sums were expended. The southwest can get railroads the same way the northwest got them; by inviting and making it the interest of outside capital to come in and build them. But gentlemen of the southwest, just wait until the baby gets on its feet before you ask us to run our State into debt and forever bankrupt her. Let this system be in abeyance a few years, and then if help is still needed we will come up to the help of the gentlemen from the southwest. We need improvements all over this part of the state, sir. We are locked up as well as they. We don't seek to impose any burden on others; we don't ask any favors at the hands of the State, and as I have said we never have had any. But we are not disposed to run our State into debt before it gets out of its baby clothes to contrib-

ute to our internal improvements. Immigration will not come in where people are taxed to death, and immigration is our greatest need. We are here asking to be developed by outside capital. If we begin by piling up new debt for wild-cat schemes we repel all this. Start on a cash basis and show that we intend to be prudent and business-like, and we invite it. As internal lines of transport are needed, they will be built by private capital. All we have to do is to hold out inducements for it to come in and be willing to wait a little. The world was not made in a day; a great state cannot be built up in a day. I beg the gentlemen, then, in this, the infancy of our State, to beware how they vote for a policy that will engulf us in ruin and bankruptcy.

THE PRESIDENT. The chair will be vacated until half-past three.

AFTERNOON SESSION

The Convention reassembled at the appointed hour and the Chair stated the business before the body.

MR. HERVEY. When this question was opened up last evening the gentleman from Doddridge made a sectional appeal to this Convention. He told the gentlemen from the southwest to stand up to this amendment; that their rights and interests were involved in it; to come up to it as one man, and that he would stand by them. Now, sir, I thought the day of sectionalism had passed. There is nothing to be gained, I hope, by tactics of this kind. Members of the Convention will not take that view. But, sir, if they unfortunately should inaugurate this system, it is a two-edged sword. It cuts both ways. If they first weave this web, it will be "Will you walk into my parlor, said the spider to the fly?" If an appeal to sectionalism is made, those who have appealed must rely on their strength against the stronger. Without the annexation of these Baltimore & Ohio counties where would the power of the southwest be? It is the last question that ought to be raised at this early stage of the progress; and, sir, not twenty minutes elapsed after this question was raised, although no appropriations were being asked until that appeal had been made in this Convention.

Now, sir, what will be the result of bringing this question before the legislature? Why, sir, if in the discussion of this ques-

tion here, we have seen this sectional issue so promptly raised, the day it comes before the legislature, if it ever does, we shall have the city of Wheeling arrayed against the city of Parkersburg; Parkersburg against Wheeling; both against Charleston; Charleston against both; all these old scores brought up to be fought over; all these old sores re-opened.

A convincing argument against this sectional policy was, perhaps unconsciously to the speaker, contained the address of my very worthy and distinguished friend from Logan, who detailed how the southwest was euchred out of the Baltimore and Ohio Railroad; how they tried to have it run up the valley of Virginia and then across the mountains and down through Kanawha, but failed. Why advocate a system by which he acknowledges they were cheated out of a great public improvement? I do not say he pronounced on the merits of the case, but I say that is the view of the gentleman himself.

Again, sir, another gentleman placed it on different grounds. He says, why turn us out of doors without protection? Give our poor neighbor ten dollars. Well, now, sir, that is just what I supposed it was, what I expected it was; taking from one section and giving to another. Once inaugurated, this interest will be like the horse-leech's daughter, crying "give, give!"

Again, sir, no attack has been made on internal improvements by any one on this floor. I presume we are all internal improvement men. We all want to see the country served with good roads, bridges, railroads, canals—every facility for travel and transportation; the very great value and pressing need of which we all realize and appreciate. There is no difference of opinion about that. The difference is upon the manner of obtaining them. Shall they be constructed on state account, or shall we leave it to private enterprise?

MR. SOPER. I hope no gentleman in this house is influenced by sectional party views in relation to any vote he may give in the formation of this Constitution. The question now before us is one of the utmost importance and I think the experience of legislation throughout the state has satisfied us that we ought to be extremely cautious how we give the power of jeopardizing the credit of this new State. Public improvements by the state or by lending its credit has in almost every instance proved injurious, and the result many companies have gone down and the state has been left heavily in debt. In view of the difficulties that are staring us in

the face in the peculiar condition of affairs, I submit to the Convention whether or no the provision as reported by the committee on this subject is not a safe and prudent one. For my own part, sir, I am satisfied that we are acting carefully and cautiously by rejecting this amendment. It is impossible for us to tell, sir, but one thing I think we may safely assume; that if we adopt or assume to pay what could be considered an "equitable proportion" of the debts of the State of Virginia, and if we shall be prepared to meet whatever demands the general government may impose upon us, we shall so burden our people with taxation that many of them will be scarcely able to bear up under it.

Now, sir, I am not one who is opposed to internal improvements, I am in favor of them; but I want it upon a fair, safe and wholesome basis. I would rather proceed slowly with it, sir, and surely even if I had to wait for years to come before the beneficial results of it should be demonstrated. I would say to the gentlemen who are urging this improvement policy and who talk so much about leaving this matter to the legislature, that there is a provision already adopted in the Constitution which will protect them safely. Gentlemen will bear in recollection that here is a provision for the amendment of the Constitution. Now, if we shall be able to dispose of these taxes and burdens that are to be laid upon us; if they shall prove less than we expect and we can meet them easier than we now think then if it is deemed the wishes of the people that this State should contribute aid in order to make internal improvements, it can be done under this clause which provides for amendment. And this is a safe clause. What is the objection to leaving this whole matter to the legislature? Why, you hear about what they call "logrolling." You hear one of the gentlemen say he has been at the city of Richmond session after session to present the advantages to be derived from the chartering of the Baltimore & Ohio Railroad and of the difficulties encountered. Any gentleman who has experience in legislative matters knows that this system of logrolling, or other influences which are brought to bear on a legislature are to say the least dangerous and injurious in their consequences. Under this provision for amendments, no amendment can be made until it has been twice brought before the people; their attention shall be called to it, so that they may vote intelligently. It would be a safe provision, if we were here ready to start with the determination to grant the credit of the State in aid of these companies to say that no debt for that purpose should be contracted until submitted once or twice

to the people. If an amendment is proposed in the legislature to change the Constitution to permit it to lend its credit or engage in the construction of some public work, and after two legislatures have approved the scheme the people authorize it by popular vote, then if it did not turn out well they would have nobody to blame but themselves. This process will always be open to those who believe works of this kind ought to be undertaken by the State; and that is as far as we ought to go here. When I vote against this amendment, it is not because I am opposed to internal improvements. I take it we all want them. The difference is as to the means and method of effecting them. I want the State improved on such basis that as the work progresses it will enhance the credit of the State, not destroy it. I am therefore clearly of the opinion that the only safe and prudent course for us now is to lay aside this amendment. Gentlemen need not go home and tell their constituents there is no provision made for this in the Constitution; because they can at any time, in the manner I have told you, get an expression of all the people of the State and if the people want it can accomplish the object in two or three years from the time the movement is commenced. I would not now authorize giving the credit of the State for works of internal improvement; I would not have the State become a shareholder in any company for such purpose. I should be willing to require these companies to become incorporated and take and extend a certain amount of their corporate funds towards the completion of the improvement; and when they had made beneficial improvements in a certain proportion the amount should be aided by the credit of the State.

MR. LAMB. I would not have troubled the Convention again on this subject but for the frequent references to the city of Wheeling.

The city of Wheeling has had nothing from the state treasury for her improvements—nothing whatever. She has been frequently before the legislature, and has troubled the legislature a great deal in reference to these subjects; but she has been brought there as a defendant to oppose plans which she supposed prejudicial to her interests and the interests of her people. This has been her share in this matter. The improvements in which we have been interested have been built by private capital, not by state capital. We have not had our hands into the treasury for the purpose of benefiting this section of the country; and such improvements as

they have been enabled to build, with a load of debt occasioned on the people of this city, I believe now the people of this city would be perfectly willing to dispense with every advantage they have received from those improvements if they could be placed clear and free of the debt. But I want the members of this Convention to understand that for the purpose of making our improvements here we have not had our grasp on the public treasury. The State of Virginia has not made them for us.

MR. BROWN of Kanawha. I would ask if the bonds of the city of Wheeling were not guaranteed?

MR. LAMB. There is not a bond shaver in the whole country that ever made a harder bargain to a man that applied for a loan that the State of Virginia did with us when we applied to get a guaranty. That is the fact in regard to that matter. She required the credit of every parcel of corporate property and received that independent of the pledge of the Baltimore & Ohio Railroad stock itself. And what is that guaranty worth, in comparison even with the credit of the city of Wheeling? Yes, sir, we got that guaranty; and we got it on those terms; and that is the aid we have had from the state in making our improvements.

It is a fortunate thing perhaps that this motion is connected with a motion to allow the erection of public buildings; for I do think if a stranger—a reasonable man—was here hearing the debates of this Convention and understanding that we were now gravely considering the propriety of putting an enormous debt for these purposes on the State of West Virginia he would see the necessity of very speedily having a lunatic asylum erected within our commonwealth (Laughter). Under these circumstances, in the present situation of the country, when we know not what is to come, except that come what may we must be subject to immense taxation to carry on this government; except that whenever we assume our portion of the debt of the state and undertake to pay interest on it we do know the resources of the people of western Virginia will be strained to the utmost—under such circumstances, we are gravely considering the propriety of taking an additional burden of nine millions of debt upon our shoulders, with a revenue of \$490,000.

MR. HAYMOND. Mr. President, it is argued, on the other side of the question, that we are about to assume a powerful debt, which belongs to the Old Dominion, that we are to settle with them and

that we are to be involved in debt, ruined. Sirs, I desire that we shall have a settlement with them, and if we owe them anything we are able to pay them. But, sir, it is argued by a number of men throughout the country that on a fair settlement they will be in debt to us instead of us to them. We are further told that we are inaugurating a set of internal improvements which is to involve this country in an immense debt of some fifteen or twenty millions. Where do they get their arguments? I tell them they are mistaken. We are here telling this Convention that we are for the liberties of this country; that we are only asking to have the right to do that which we want to do; to have the right to say that if we want to improve this State of West Virginia we shall do it. That is what we ask. We are asking for the liberties of the country, and that is what people want and nothing short of that will satisfy them. I heard it said since I left this house that the people whom I represent would condemn the course I am taking. I have the pleasure to say to this Convention that I know the feelings of Marion county. I had the pleasure of seeing at the McLure last night some of my friends from that county who waited upon me and told me that an oyster supper was in waiting for me on my return home for the noble course I had pursued in this Convention (Laughter). Did that look like tearing me down? No, sir. I told them that if my feeble efforts were entitled to their respect it would be the happiest day of my life to meet them at the oyster supper (Laughter).

Now, Mr. President, the gentleman from Harrison, I was astonished to hear him oppose this measure. We are fixing our plans and carrying them out, to make his very town the seat of government. We are going to build—

MR. HARRISON. Who is?

MR. HAYMOND. I am not talking about who. We desire, when we get our public buildings erected to build a great railroad through this State and that point was to be on it and be the seat of government. We once had a railroad meeting in Fairmont. It was attended by about a thousand from the different parts of the country. We had a delegation from Pennsylvania; and who was in that delegation? Sirs, we had Honorable Andrew Stewart there, who addressed that Convention. It had met there for the purpose of fixing on a plan for this contemplated railroad leading from the Pennsylvania line to the Kentucky, and thus pointing its way

to the Pacific. Sirs, the Honorable Andrew Stewart was there in all his might and power. He addressed that convention amidst the shouts of that people and told them to go on with their improvement and Pennsylvania will meet you at the line and beat you there!

MR. DILLE. I have not intended to participate in this discussion nor neither do I now desire to engage, as I feel very much as though we had discussed it and consumed time enough. But, really, I have come now to the conclusion in reference at least to some of the gentlemen who favor this proposition—I have ascertained why and where they have got their visions. My worthy and esteemed friend from Marion has revealed the secret, the great secret. The visionary “Tariff Andy,” from the county of Fayette, has convinced him that it is the work of a day, almost the work of an hour to construct magnificent railroads; and really that gentleman has it in his mind that the legislature of the new State of West Virginia has nothing to do but to pass an act of incorporation and a great and magnificent railroad starts at the Pennsylvania line, or at the Northwestern road, or at the Baltimore & Ohio, and never stops until the cars are riding beautifully down to Kanawha, to the Ohio, and off towards the Pacific! Now, really, if that gentleman will only look for a single moment, if he will consider for a single instant, he will see that all his visions inspired by “Tariff Andy” are for naught. If he will only look around him and ascertain what is the population of this new State, what are her resources, her prospects of population, he must come to the conclusion that he may advocate these wild and visionary theories until his head turns gray and his children after him, and no railroad can be constructed by the citizens. And were we to inaugurate or attempt the system that is proposed here, which shows upon its very face that it is impracticable, that it cannot be carried out—why, sir, if he will only take the present resources of the State, the present wealth of the State, as a criterion and look forward to the best prospect, he will realize that for the next twenty years we may not be able to pay the interest on the debt which naturally, legally and justly will fall to us for our share and pay the ordinary expenses of the government. What is the use of us investigating a theory when we look at the facts, when we attempt to carry it into practice and we all become gray and our children become gray before that provision can be in good effect further than to harass and embarrass the State, which we look forward to in the future

as a State to which we can cling with pride. Why, sir, if we will only come down to the facts we will find that the best estimate we can place on the revenues of the State, with a taxation of 40 cents to the \$100, will not yield us sufficient to pay what I suppose will be our just proportion of the state debt, laying aside our current expenses; and if they will only recollect that we need a state house, a governor's house, a house for each department of the government; that we have no asylums for the blind and deaf, that these things must be provided for if we expect to prosper, if we expect to acquire a reputation as a state among the states of the Union. But go a little farther; I fear, and what has aroused me here, is that very state of things. I fear if you engraft a provision in your Constitution by which the State may engage in works of internal improvement, you thereby engraft a principle in your organic law which will produce a state of things which we have all regarded, all lamented, and which we have all attempted to discountenance in this whole region of country—and that is a species of logrolling. "You go for my work of internal improvement, and I will go for yours, and we will carry both." Why, sir, we have had that thing here exemplified to-day. We want works of internal improvement in the southern part of the State. You go for this scheme and I will stand by you, and then we will expect you to help put the capital in our locality. Why, sir, gentlemen, this is only a part and parcel of a common system which well-nigh ruined the good old commonwealth. It has, I verily believe, contributed more to corrupt the people of the old state, the mother of states and statesmen, than all other causes combined. It has produced recklessness.

MR. STUART of Doddridge. As the gentleman has made remarks that rather impugn the actions of some members of this Convention, I desire to know of the gentleman as I have been advocating the amendment whether he has any allusion to me.

MR. DILLE. None at all.

MR. BROWN of Kanawha. I think the gentleman should state distinctly who he does allude to. He has reference to some gentleman and I wish to reply to it.

MR. DILLE. I have no objections to your replying to it, so far as I am personally concerned. I have seen exemplified here the system that I want to discourage and dishearten. I will refer particularly here to the sentiment uttered by my friend from Dod-

dridge in regard to the objects of the southwest. Why, sir, that is the very sentiment that has ruined Virginia.

MR. SINSEL. If we are to debar the legislature from making any improvements within our border, I cannot see any particular good that would result from our having a new State. The great complaint has always been with us that we were paying money to improve other localities while the west was hemmed in and almost impossible to get out—that is in many parts of West Virginia. It does seem to me the object of government is by a combination in that way to overcome these natural barriers; for the whole people combined to open these outlets that nature has seemed to indicate for the good of the whole. Now, what sort of benefit will the large majority of the people living in many counties of West Virginia receive from a government here entirely shut up with no outlet whatever? They will probably find no communication with any person only the tax commissioner. He will come around for what purpose? It does seem to me if we want to make this State anything we must at least give the legislature the privilege of constructing turnpikes, or a railroad if necessary, and such other improvements as will develop the resources of the State. Now, a gentleman from Preston in the forenoon remarked that if it had not been for these improvements, the State of Virginia never would have seceded. Now, just look at the facts of the case. Take all lying on the Ohio river, the counties lying along the border there, where they have a communication with all the world and the rest of mankind, and along these two railroads, the Northwestern and the Baltimore & Ohio where they have a like communication—and what do you find? You find the people loyal almost to a man. Go back into the mountain counties, where they were cut off from any communication, and what do you find there? Nothing but a nest of secessionists (Laughter). Who was it that invaded the soil of Taylor county, as the first rebel soldiers? Why, sir, they were from these mountain counties; and if they had had the same means to receive intelligence that they had along these railroads I have no doubt they would have been as loyal as we were.

I hope the amendment of the gentleman from Kanawha may prevail, but it seems to me I wish to add at the close of the section when it shall be prudent to do so, a limitation to these works of internal improvement so far as railroads are concerned. I would add at the end of the section something like this: "The legislature may aid in the construction of a railroad from some point on the

Northwestern Virginia railroad to the Kentucky line but shall not aid in the construction of any other railroad within the State." (Laughter.) Now, it does seem to me that the people ought to have communication through to put us on a par and level with the balance of the State. I live in a county where we have three railroads coming in altogether and checkered with turnpikes. All this northwest is checkered with them. And here we are to leave all these mountain counties closed up without turnpikes. It is bad enough to deprive them of railroads and much worse to deprive them of turnpikes.

MR. PAXTON. I had expected to say a few words on this question, and being absent I do not know what has been said and what positions have been assumed. I have no doubt, however, from my knowledge of the ability of this body that the ground has been very well covered. I shall therefore only refer to a memorandum I find in my pocket of statistics on this question, and I wish to call attention to it for a single moment.

I find in looking at the constitutions of various states that the states I will now name have restrictions on this subject of state debt: New York, Pennsylvania, Maryland, Kentucky, Ohio, Indiana, Illinois, Michigan, Iowa, Wisconsin, California, Oregon, Minnesota, Texas, New Jersey and Louisiana. All those states have restrictions of some sort in regard to the contraction of state debt. Some are absolute; some qualified.

THE PRESIDENT. Virginia has.

MR. PAXTON. Virginia also; I omitted Virginia.

Now, sir, what I especially desire to call attention to is this: It will be seen from this that all the newer states have restrictions on this subject generally, many of them absolute prohibitions; that these new states have had the wisdom to profit by the experience—the sad experience, I may say—of some of the older states on this subject, and have avoided that great source of evil, state debt. It will be further observed that the states that have heretofore engaged generally in works of internal improvement contracted enormous debts when there was no prohibition in their constitutions, and have since been compelled, and have attested the folly of their course, by adopting in their later constitutions or by amendments to the old, absolute restrictions against the contraction of debt. I refer especially to Ohio and Pennsylvania, our nearest neighbors.

Both have attested to the folly of this system of internal improvement on state account. And having attested it, they have been compelled finally after involving themselves in almost financial ruin, to adopt the other system which we now propose to incorporate in this Constitution.

Now, I ask gentlemen if they could have any stronger evidence against the system this amendment proposes to incorporate in this Constitution? We have the testimony of these states that have tried it. They attest that it has failed, and they condemn it. We have also the evidence of the newer states on this subject. They have provided against it in advance.

I will make but a single further remark, and it is this: That all works of internal improvement must of necessity be partial in character in benefits. It is utterly impossible for any state to undertake a system of internal improvements that will equally and alike benefit all parts of the state and all the people of the state. Now, the question which I wish to put in view of that fact—I apprehend it will not be denied that it is a fact—is it right, is it proper, is it legitimate for a state to collect taxes from all the people of the state and appropriate them to the benefit of a few? That is the inevitable consequence of a system of internal improvements on state account. It always has been, it always must be, so. I do not myself believe it is legitimate for a general government to undertake works of internal improvement. I mean I do not believe it is right; that the government has a right to do it. In the first place, I don't think it is one of the objects for which governments are instituted. I assume that a government is instituted for the purpose of promoting social order and protection to the person, the well being and property of the citizen. If I am right in that presumption, it follows that legitimate taxation must be confined to these purposes—for the purposes of promoting social order, for the protection of person, life and property of the citizen. And therefore the State has no right to tax the citizen for the purpose of engaging in any speculation—for it is a mere speculation. If I am right in this assumption, a state has no right to tax its citizens to engage in any incidental speculation or any other purpose foreign to the object for which the government is created. Even if the abstract right to do this did exist, even if it does exist, it cannot be exercised without a violation of all correct principles and without perpetrating great injustice on one portion or the other of the state; for, as I remarked, it is utterly impossible under any system

to make an improvement that will, benefit all the people equally. Consequently it is not right to tax all for the benefit of comparatively few, or tax the whole state for the benefit of a particular section. That is the very thing of which we in western Virginia have complained; the thing which probably more than anything else is the cause of this movement for a separation. And yet it is proposed now, while we are in the midst of the work of seeking a remedy for that evil, to fasten on us the same system under which that evil must inevitably be repeated and perpetuated. I hope we shall provide now, in the beginning, by the adoption of the section reported here, against this source of evil, of ruin to states and state credit.

Mr. Dering demanded the yeas and nays and they were ordered, and the vote being taken on Mr. Brown's amendment, it was rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Carskadon, Cook, Dolly, Hansley, Haymond, Hoback, Hagar, Irvine, Montague, McCutchen, Parker, Robinson, Ruffner, Sinsel, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Walker, Warder—23.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Caldwell, Dering, Dille, Harrison, Hubbs, Hervey, Lamb, Lauck, Mahon, O'Brien, Parsons, Paxton, Pomeroy, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle, Wilson—25.

The question recurred on Mr. Lamb's motion to authorize the legislature to incur debt if necessary for the erection of public buildings.

MR. SMITH. I wonder if it is intended to build any other public buildings than institutions for the deaf and blind. The gentleman from Ohio was talking about the need of a hospital for the insane, but has made no provision for it (Laughter).

MR. LAMB. The vote of the Convention just recorded indicates that the need of one is not so urgent as it seemed a few minutes ago.

I think, Mr. President, as we cannot give a definition to the words "public buildings" in this section with the necessary brevity, perhaps I had better withdraw the amendment for the present at

least. Afterwards it can be put into such form as will be unobjectionable, including insane hospital, as the need of one seems to weigh on the gentleman from Logan.

MR. SMITH. I am satisfied to build an insane hospital, if he or his constituents want it.

MR. LAMB. They don't need it. It should be located in the southwest.

MR. PAXTON. Is that amendment withdrawn?

MR. LAMB. I would prefer to withdraw it for the present at least with the consent of the Convention.

MR. SINSEL. Then I will offer an amendment.

THE PRESIDENT. We have to pass over this report a second time and we have had a long hitch here over it. The Chair would suggest you consult over this and wait till we pass over the report next time.

MR. BATTELLE. Allow me one word in answer to the inquiry of the gentlemen from Logan to say that the report of the Committee on Education as it passed does not provide for the erection of public buildings for the insane but for their education.

MR. SMITH. It recommended the fostering of such institutions but there is no authority to build public buildings. I don't want them myself and if we have no internal improvements I don't care about these things.

MR. SINSEL. I wish to offer this amendment: to insert after the word "revenue"

"but the legislature may aid the construction of a railroad from some point on the Northwestern Virginia Railroad to the Kentucky line, but shall not aid in the construction of any other railroad within the State."

MR. HERVEY. I would like to offer an amendment to that amendment: to add "and also a railroad leading from Wheeling to Wellsburg" (Laughter).

MR. SMITH. I shall vote with great pleasure for the amendment (Laughter).

MR. STUART of Doddridge. Just one moment, sir. I do not know that I can support the amendment of the gentleman from

Taylor; but I should like to say to this Convention that I fear after the vote we have just taken on the amendment offered by the gentleman from Kanawha has been the most fatal stab that has been yet given to the prospects of our new State. I hope the Convention will reflect and consider it. I hope the gentleman from Taylor will withdraw his amendment. I think I understand the feeling of a large portion of the people of the State of Virginia. If this provision is voted it will drive them from the new State. You are getting up an opposition to it you are little aware of at present, and this body had better reflect before they come to a determined decision.

MR. HARRISON. I must call the gentleman to order.

MR. STUART. I hope the gentleman from Taylor will withdraw it.

MR. HERVEY. Do you call this standing by your friends in the southwest?

MR. SINSEL. I will withdraw it for the present.

MR. HERVEY. I will withdraw mine, but with great reluctance (Laughter).

The Secretary read the section as originally reported.

MR. STUART of Doddridge. I move to strike out "corporation."

MR. HERVEY. There is no "corporation" in this section.

MR. STUART. I thought it was the 6th section.

The Chair put the question on the adoption of the section.

MR. BROWN of Kanawha. I move to strike out the words "to meet casual deficiencies"—in fact to strike out all the section providing that any debt may be contracted by this State for anything at all.

MR. HERVEY. I shall support that proposition (Laughter).

MR. PAXTON. The vote was being taken; the question had been put and the ayes had voted before the amendment was proposed. I think the amendment, therefore, is entirely out of order.

MR. BROWN. I rose as quickly as I could get the opportunity.

THE PRESIDENT. The Chair considers it a very unfortunate state of things when amendments come in so late. But I believe before the result of the vote is announced we may object.

MR. VAN WINKLE. The rule relates to discussions but I do not know that an amendment can be offered at that stage of the game.

THE PRESIDENT. The Chair would not be so certain about it.

MR. VAN WINKLE. The reason of the rule is this: that every gentleman who wishes to vote in the negative may give a reason for his vote. Even that is forbidden on the yeas and nays; but on an ordinary vote, I understand he may before he votes in the negative. In this case the gentleman has his opportunity to offer his amendment on the second reading.

THE PRESIDENT. The Chair would prefer that course should be taken.

MR. BROWN. To save any further difficulty, I will withdraw the amendment.

The question was put and the 5th section adopted as originally reported.

Section 6 was reported by the Secretary as follows:

26 "6. The credit of the State shall not be granted to, or in aid
27 of any county, city, town, township, corporation or person
28 whatever; nor shall the State ever assume or become responsi-
29 ble for the debts or liabilities of any county, city, town, town-
30 ship, corporation or person, unless incurred in time of war or
31 insurrection for the benefit of the State."

MR. PAXTON. I am willing to submit that section without any debate on it, I believe, on my part. It follows almost as a necessary sequence to the preceding section, which has just been adopted.

MR. STUART of Doddridge. I now move to strike out the words "corporation or person," in line 27.

MR. BROWN of Kanawha. We have had much said here about the effect of works of internal improvements and aid rendered by the State, even in the direct or indirect form to corporations. And we have had a number of states instanced to indicate wherein the policy had been ruinous to them. I wish to call the attention of this Convention to some facts because unless we're different from all other men, I am utterly at a loss to know why some causes that

produce certain results among other people shall not operate to produce similar effects among us. It has been urged here that the State of Pennsylvania and the State of Ohio having embarked on this system got themselves ruinously in debt and sold out their improvements at a sacrifice to the injury of the state. Now, I wish to call the attention of gentlemen to the fact that while the state may have lost a few dollars in the difference between what the works cost and what they sold for in the market, the wealth of the state was enhanced a hundred-fold by the operation of the works. Take the State of New York. Will any man who will candidly and carefully sit down and look at New York and the expenditures shown in digging the Erie Canal and other works there—but you need go no further than that single one, and it has added more to the wealth of New York than all the taxes she has paid from the time she began to the present day. It has raised her from a second or third-rate state that was far below Virginia until she is equal to three or four of it. It has turned into her heart and cities the commerce of the western world, and she has reaped the rewards from the tolls on that canal sufficient almost to relieve her from taxation. At the very time she entered on that work, George Washington, with that foresight that characterized that great and wise man foresaw the results that similar works in Virginia would do for her, his native state that he loved so well, and he planned to put it in operation; and it has been a Virginia policy and idea to connect the Atlantic and Ohio from that day to this in the execution of it; and the same results have not followed only because the work has not been completed to do what was done by De Witt Clinton in New York. Men raised the hue and cry in New York and attempted to break down that great man; and did for a time; but he finally carried it through. Identically the same principle there is the same principle here, and it ill becomes those who have reaped the rewards of internal improvements to raise a hue and cry against the system. As to Pennsylvania, it is true she went in debt forty millions and sold out for eight; but with the wealth thus given her by those improvements, likely more than eight hundred millions, her people are able to pay the debt, and pay without feeling it. Enough to buy all your picayune cities in the market. The same principle in Ohio out-strips Virginia but for this same principle of internal improvement that she inaugurated and carried out until she put it into operation; and although it involves her in debt, it enables her to pay it ten thousand times over. The same thing in Virginia. And, sir, but for this rebellion, this debt was nothing

in the commonwealth. The bonds sold for 91 and 92, and a few years ago sold for five dollars above par in the markets of New York. Why, then, you talk about Virginia with the whole country developed. She is now rich in all the wealth of an agricultural district, brought about by operation and by virtue of those internal improvements—that is to say made by the debt now saddled on the state. We complained in cases of the system because they used all the money on their side of the house.

We ask that this State be allowed to extend aid to corporations as the wisdom of the legislature and the interests of the State shall determine at the time; that the representatives of the people shall be the judges of the necessity and that wisdom; and I now stand here to denounce with every word and feeling of my nature this attempt to say that West Virginia shall never aid any corporation or any other institution that it may establish to carry on and conduct a work of internal improvement on which the wealth and prosperity and future glory of the State may depend. Why shall you tie yourselves? Are you afraid of yourselves? Are you slaves that you are afraid to trust your own men and your own minds? Whenever I feel that I have no confidence in myself then I will ask for an appropriation for an asylum and ask that I be sent there.

All I ask then is for the people of West Virginia in the Constitution to leave them where their fathers left them, to do as they please with their own money. He who denies them that right is not their friend in my opinion; friends who are very poor friends of the people; who have received as much as they can get and then tell those who have not been so fortunate that they are great advocates of internal improvements.

No, sir; the same rules that applied to other people will apply here; and all we ask in the world is to do as we please with our own. We ask for nobody else's. I hope then it will be the pleasure of the Convention to adopt this amendment of the gentleman from Doddridge to leave the State free to aid a corporation with the credit of the State by the guaranty of its bonds or otherwise.

MR. PAXTON. The part of this section it is proposed to strike out happens to be a part of the present Constitution of Virginia which I will read: "And the general assembly shall not pledge the power of the state, or bond it in any form for the faith or obligations of any company or corporation." I presume, sir, that is probably a sufficient answer to the gentleman from Kanawha. He has stood up for our Constitution as it is, almost uniformly. A

question I desire to ask him is this: If it happens that this State should ever engage us largely in works of internal improvement, they having been so immensely beneficial after having tested them, if it is so good a thing as represented by him in other states, why is it that they have condemned the whole system and provided in their constitutions just such restrictions as we provide in this report?

MR. SMITH. I would inquire whether the gentleman voted for or against the amendment extracted from the Constitution of Virginia?

MR. PAXTON. No, sir; I have never stood up here as the special friend and advocate of the present Constitution of Virginia.

MR. BROWN. I have only to say in regard to the Constitution of Virginia, there is much in it that can be better. Unfortunately the gentlemen are trying to strike out the good and retain the ill. Here is an effort made to preserve a feature imposed by the vote already passed.

MR. PAXTON. A provision similar to the one now before this body for its action may be found in the constitutions of New York, New Jersey, Pennsylvania, Maryland, Kentucky, Ohio, Indiana, Illinois, Michigan, Iowa, Wisconsin, Minnesota, and the provision I read from the Constitution of Virginia. I think, sir, it will not be amiss for us to profit by the wisdom of the people of those states. I do not mean to say a provision exactly like this, in the precise language, but the same in substance.

THE PRESIDENT. Those provisions are remedied in other places entirely and you are speaking of the constitution of '52.

MR. PAXTON. The later constitutions of the states named.

THE PRESIDENT. We all know that since that period the state has been constantly lending her credit to railroads and there is some clause that enables them to do so. We lent the credit of the state, as you will see, to the Southside Railroad, the Lynchburg, Danville, Petersburg, Norfolk, Central, Manassas Gap and others. There is something else that secures the privilege, because it has been done to my certain knowledge.

MR. CALDWELL. Is this a question of order?

THE PRESIDENT. No, sir; and the Chair apologizes for what it said.

MR. LAMB. I merely want to make a remark or two. The gentleman from Kanawha has referred us particularly to the State of New York and the State of Ohio and the immense benefit which this system of improvements has been to those states. I wish to say in reply to that that the only improvement in the State of New York which was made by the state money is the Erie Canal. That I believe was around the year 1822. In reference to that work, notwithstanding the immense advantage it has certainly been to the people of that state, we find there is a very heavy debt still existing although all that canal was in full operation; was not left an unfinished work but was completed and in operation in 1822. There is still a large debt in the State of New York, and the present debt of the state, I believe, is that canal debt. The benefits conferred by that work was peculiar and the case exceptional. The design was to tap the commerce of the great lakes and bring it to New York City. This was rendered possible and profitable because that city was a seaport and because the canal tapped the eastern water line of an enormous commerce. Perhaps nowhere else in the United States can you find a case where such large results would be possible even with a correspondingly great expenditure. This work was not part of any "system" on the part of the state. It was projected, I believe, and carried out through the energy and persistence of one man, who realized how necessary it was to their great metropolis and seaport.

But if we are to take the example of New York in one particular, why not take its example in another? If they have tested this system, if they have reaped immense advantages from it it has certainly been the result of advantages mainly, however, due to the works that were constructed by individual capital and individual enterprise. But if the internal improvements were made by the state and have been so immensely profitable as the gentleman from Kanawha would have us believe, why have they found it necessary to adopt this provision in their constitution which we now propose to put in the Constitution of this State? The Constitution of New York contains a provision that the "credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation." This is the result of their experience in regard to the matter. With all these immense advantages which they have found resulting from these improvements, they have found it is better to leave such improvements to be made by private capital and individual enterprise than to adopt this system of making improvements by the state bonds with its

necessary accompaniments, the extravagant appropriation of money, the throwing away of the wealth of the people and burdening them with debt; also that other necessary accompaniment which has been so well detailed, the infamous "logrolling" system which it inevitably produces.

We have also been referred to the State of Ohio as specially worthy of our imitation. Ohio made her canal, I believe, from the Ohio river to Lake Erie. What other work has she made? Her improvements with this exception have been the result of individual enterprise employing private capital—the improvements which now tell with such immense effect on the prosperity of the state. She has after her first experience wisely left them where it is wisdom to leave them to the result of individual capital and individual enterprise. But take her experience, too. She has found it necessary to incorporate into her constitution the same provision we now propose to you. The Constitution of Ohio provides that "the credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation whatever; nor shall the state ever hereafter become a joint owner or stockholder in any company or association in this state or elsewhere formed for any purpose whatever." They have tested this system thoroughly and this is the result of their experience.

Sir, you will find this provision, I take it, in the constitution of every prosperous state in this Union. You will find it I know in the constitutions of many of the other states. They have found this provision a necessary restriction upon the legislature. Not that they had not confidence in the people electing a legislature who would truly represent their wishes, but they had seen how this system had operated where improvements were made by the creation and use of state debt; and they wisely adopted in reference to the legislature the injunction: "Lead us not into temptation."

As I have said before, the remark that we have had all we wanted from the state and not wanted others to have nothing, that cannot apply at least to this section; for the improvements in which we are interested and by which we have benefited have been made in the way in which I say any wise system of improvements must be made. They have been made by the capital and enterprise of the parties that were particularly interested in them. They have not been made by the capital of the state. We have not had the aid of the state for these purposes. On the contrary, the only subscription that ever was made by the state to the Baltimore & Ohio Railroad she withdrew in the manner mentioned by the

gentleman from Wood this morning, taking advantage of the road not being completed to Cumberland in the time specified in the act; and from that period to the present, the Baltimore road has worked its way, so far as the State of Virginia was concerned, without taxing the treasury of the state.

MR. STUART of Doddridge. I must take issue with the gentleman who has just spoken. He cannot name a single prosperous state that has not been made so by this system of internal improvements. Not one that I know. It is useless for me to repeat that I have no direct interest in the motion I have made here; that I am looking to the interest and prosperity of the State and looking to the interest of these people that this policy is going to affect. We are asking the people here in the southwest to cut themselves loose from a certain people and come with us and form a new State; and at the same time you adopt a provision which utterly denies the prospect of having any internal improvements made, to develop their great resources. I am just as well assured as that I stand here that the action that is sought to be carried out here will drive those people from us just as sure as we stand on this floor. They have no other remedy on earth. They have not got capital to build these improvements, and where is it going to come from? If the State will not look after her own, do we expect strangers will come in and do it? A great part of the country south of the Northwestern Virginia road is a wilderness, land worth 50 cents on the dollar. Build a railroad in there and that land will be worth twenty dollars an acre. Fifteen years ago when I emigrated to Doddridge county I could turn around and buy land for 50 cents an acre. The building of the Northwestern road increased it five to ten-fold in value. One year after that road was built land that would not have brought more than fifty cents could not be bought for less than \$15 to \$20 an acre. This policy will keep our hills for deers and wildcats instead of inducing people to come in and develop the country.

MR. SINSEL. I presume it is known to every member of this Convention that the State of Virginia had been for many years trying to build the Virginia Central road. I think it is now done as far as Covington. That road is planned to run down the Kanawha valley to the mouth of the Big Sandy. If that road was completed today it would cut off more than half the trade from this Northwestern Virginia Railroad. The trade would come by Norfolk and

Richmond instead of Baltimore. It is well known our interests are identified with all our intercourse there, and by adopting this system that you propose you will deprive the Baltimore & Ohio Company in all probability from constructing a railroad from some point on the northwestern Virginia to the Kentucky line to meet that southern freight. You will force the completion of this through road or else trade will be cut off from the Baltimore company whenever you push it. By adopting the amendment it might be the State could give a little aid to the Baltimore or some other company that might engage in this enterprise, to tap the Kentucky line. But if they are to be shut up there, they will naturally seek an outlet to Richmond. They trade now, I believe, with Cincinnati to a great extent. If that road is completed they would trade with Richmond and Norfolk. If we would now extend a little help to some company, we would divert the freight from Cincinnati here and keep it from going to Richmond and bring it right through our midst.

MR. HERVEY. I presume this new State organization has not been gotten up on the principle that it is to be a charitable institution when organized—something like general commission to ascertain which section or locality is in the rear, and thereupon immediately levy a tax on the balance of the State as a contribution to bring it up to an equality with the rest. I do not understand that this new State is to be gotten up on the principle of Fourierism or anything of that sort. I do not understand, either, that it is to be started on the principle that any man or set of men have been bought up to submit to it or to stay in it. That is, that if you don't vote to push our section with so much money, we will abandon the new State, vote down the Constitution and get out of the country. I, sir, cannot use that argument. I don't think there is a member on this floor who represents a constituency which came into the new State with the purpose of being crammed exclusively at the public crib. There is other work to do in the new State besides putting the hand into the treasury. We have all got to put our shoulders to the wheel and put the State in motion and keep it in motion. And now, sir, in advance, before we have got the organization at all, we have the intimation to the effect that a portion of the new State, because they will not be fed with charities, will withdraw. I am sure there can be no such intention anywhere outside of this Convention. It is alleged that the hands of the people will be "tied." Who will tie their hands? Is not this a

convention of the people? Are we not sent here with full powers to judge and execute what we deem the welfare of our people requires? Is not that the work they have entrusted us with? Our work goes to them for approval. If they approve it, it becomes their own act. Who then will tie their hands if these wholesome and necessary restrictions are approved by them, as I have not a moment's doubt they will? They will tie their own hands, to keep the hands of schemers out of their treasury.

The gentleman from Doddridge has undertaken to unearth the fossilized remains of attempts in certain northern states to improve them by borrowing on state credit. Well I hope he is satisfied with the results of his resurrectionary work. Those old exploded systems have been buried a great many years, but it is still too soon to disinter the remains. They are still offensive.

And, now, sir, I deny emphatically the right of any particular portion of the state to claim that they have the rights of any other section of the state and that therefore the other sections are bound to appropriate the money that belongs to the whole for the benefit of their locality.

MR. HOBACK. I move we adjourn.

The motion was not agreed to.

MR. SMITH. After what has transpired I feel very little inclination to make any remarks on any subject that concerns the action of this Convention. I have myself thought she has defeated—utterly defeated—all hope of good that is to result from it; all hope of acceptance of it by the people. The Convention has incorporated a principle into the fundamental law of the land by which she is prevented from improving her own condition. It would be like a man buying a farm on condition that he shall not improve it; that he shall take the old sage field and briar-patch and live on sage and blackberries. That is exactly the proposition that has been voted on; and I say under these circumstances I feel but little anxiety about anything else that may occur. There is, however, in the proposition offered by the gentleman from Doddridge some little good that may grow out of it. It has been the practice of Virginia—the Virginia constitution is now quoted to grant aid, two-fifths or three-fifths to works of internal improvement. Those subscriptions have generally confined to railroads and macadamized turnpikes; and the motion of the gentleman, if it shall prevail will have the effect of giving power to the State of aiding

and assisting in constructing these humbler works which in this country have been so eminently successful. There are counties that I know of—one of which I now represent on this floor—in which there is not a turnpike that can be called a turnpike.

MR. CALDWELL. If he will amend his proposition so as to limit appropriations to these humbler works, I can go for it.

MR. SMITH. Well, we will try that after while. This proposition looks to that. We are a humble people and by permission of this section, we live obedient to their mandates. The old state have been liberal towards them and by improvements they have grown rich and they may lord it over us. I receive it as a boon at their hands. I am glad to hear there is even that much liberality towards that humble portion of the country which I represent; feel gratified that Wheeling and its vicinity are ready to extend to us the humble turnpike whilst it denies us the railroad that you have been blest with and with very little of your own money. Wheeling has a turnpike down the Ohio; one towards Zanesville; one out to Washington; this railroad here; they are verging to a common center. And what is it that has made Wheeling but these improvements? I do not complain that Wheeling has grown great from a humble village, and being a city she owes this strength to these very improvements.

MR. LAMB. The capital and energy of her own people have made Wheeling what she is. These have created business, and the improvements come to those who have business to give them.

MR. SMITH. The gentleman from Ohio on another occasion said she was now indebted and heavily indebted. She is now much abler to pay that debt than she was before. She is wealthy and growing into importance. What does she owe it to? This very spirit of internal improvements that seized her. I hope she will continue to grow; but I hope and trust she will grow more liberal and generous and just towards others who form a portion of this State. I regret to see such a spirit manifested by a city that has grown up and been fostered by the influence of internal improvements.

If you adopt this proposition of the gentleman from Doddridge, the State may be enabled to guarantee some little support to these humble improvements. There has been a great deal said about the constitutions of other states. The constitutional legislation of New

York and these other states has no application to the question before us now. When they commenced they were poor; they went on by the aid of the State and constructed works of improvement that have made them rich and they have resources within their own borders competent for every enterprise that may spring up. There is no necessity there now to call for the aid of the State. I know how Ohio state first built her great canal; and I heard a distinguished gentleman from Ohio say he never expected any return in actual tolls over and above the interest on the money expended; and that that canal had given the state a hundred millions of dollars; that wheat was then selling at 25 cents a bushel and it was now 75 cents to a dollar a bushel and all through the influence of that canal. She then received from twenty-five to fifty millions gain each year and in other growth of the agriculture of the state.

MR. VAN WINKLE. As this is Saturday evening, I can quote an eastern precedent that the negroes have holiday Saturday evening. I move we adjourn.

MR. HAYMOND. I wish to offer a resolution.

MR. VAN WINKLE. I withdraw the motion.

Mr. Haymond offered the following:

“Resolved, that the Legislature of West Virginia shall have the power after five years from the admittance of West Virginia into the Union to borrow money to any amount not exceeding ten millions of dollars for the purpose of building a railroad from the Pennsylvania line by way of Morgantown, to Charleston on the Kanawha.”

MR. SMITH. I shall vote against that. I will not accept any such boon as that, which seems to be offered in ridicule.

Mr. Van Winkle renewed his motion and the Convention adjourned.

XLV. MONDAY, FEBRUARY 3, 1862.

The Convention was opened with prayer by Rev. Gordon Battelle, a member of the Convention.

The journal having been read and approved,

MR. BATTELLE. I ask the indulgence of the house a moment to make a personal explanation which I deem due to myself and to the Chair—an explanation which I judge will give pain to nobody.

It will be remembered that some few days ago when the Chair stated, as a matter of order, that a gentleman offering a resolution or amendment or proposition was not thereby of necessity entitled to the floor above others. I took occasion at that time to express very decided dissent from the opinion of the Chair. Subsequent reflection, however, has convinced me that the Chair was right and I was wrong; and I wish as a matter of justice both to the Chair and myself to make the correction of my mistake as publicly as the error was made. I suppose I had in mind what has been the custom here when I expressed myself decidedly. That dissent was erroneous and in the point made by the Chair that a member offering a proposition or resolution was not of necessity entitled to the floor above others I wish to express my acquiescence, and having differed with the Chair I wish to correct the error in the same public way that the error was committed.

THE PRESIDENT. When the Convention adjourned it had under consideration the Report of the Committee on Taxation and Finance, the 6th section and the amendment offered by the gentleman from Doddridge. The question is on the adoption of that amendment.

MR. DERING. Mr. President, I ask that the Clerk may read the motion.

THE SECRETARY. Mr. Stuart of Doddridge moved to strike out "corporation or person," from the 27th line.

MR. DERING. Mr. President, I deem it my duty to oppose the motion of the gentleman from Doddridge. I am constrained to do so, on this occasion. My colleague is absent and my voice is the only one that can be raised in behalf of Monongalia on this sub-

ject. It is not that I expect to enlighten the Convention or influence or control a single vote on this floor, but merely to give an expression to opinions and the reasons why I cannot favor that motion. What is it proposed to do, sir? I hold, sir, that this amendment to this section would be infinitely worse in its bearings and results than the amendment proposed to the section we have just passed. It would be ruinous to the State if we should agree to strike out "corporations or person" in this section and thereby authorize the legislature to loan the credit of the State to corporations or individuals. What is a corporation? A soulless thing organized to make money for its projectors without regard to any other purpose. The gentleman from Doddridge and other gentlemen here want to lend and pledge the credit of the State to these soulless corporations, to cities and towns, corporations and persons. He proposes to incorporate in our organic law an invitation for all time to come for adventurers and cheats and companies organized for all sorts of questionable purposes throughout the whole country to come in and lay siege to our treasury and empty its coffers. The public invitation is to be inserted if these words are stricken out in our organic law, saying to companies and persons the world over, Come in, gentlemen; we are here pledged in the Constitution of our State to lend you our credit. How long do you think the State would have any credit worth lending? This very offer to scatter our obligations around to anybody that wanted them for any purpose would destroy their value. But it would destroy their value for good purposes as well as bad; and when we wanted money for some beneficial and really necessary purpose, capitalists would not entertain our application. What is the basis of our credit to start with? With the State not yet in existence, we are in the midst of an internecine war, with a bleeding country all around us, dependent for any possibility of State existence on the success of the national arms. When the rebellion is put down and the government re-established, our State admitted and recognized, we start with a load of debt as our heritage from the parent state as heavy as we can bear for the next generation. With very limited revenues in times of peace, we have to take up this burden with a disorganized state of finances which at the utmost can barely provide for interest and ordinary expenses. Yet we will have many extraordinary expenses to meet, such as the need of public buildings, even if we do not add a dollar to the debt we have to assume. I ask the members of the Convention if in such a state of facts, they are prepared to put out people into the hands of the

adventurers who will quickly gather around your legislature to take advantage of this deplorable folly if perpetrated as now proposed? I tell you gentlemen we have no credit to barter; no credit to offer to these soulless corporations and companies. I listened Saturday evening to the remarks of the gentleman from Kanawha with the anxious desire to hear from him some good reason why we should thus place this public invitation in the Constitution, but I listened in vain for a single reason with which I could go to my people as a reason for assenting to such a provision.

I ask the Convention to pause before they pledge the credit of the State to these companies who will be quick to come in to use and abuse it. The gentleman from Logan was very modest, very humble, very thankful that they would be permitted to build a mud turnpike. Put this permission in your Constitution and in digging for mud turnpikes he would find railroads under them, and he would get up railroad, salt and oil companies and all the various companies you could imagine, and he would find ways to convince the legislature these should have some state bonds to lubricate their machinery. Gentlemen from all parts of the country might with equal success form themselves into companies to improve us with all sorts of schemes and go to the capital for their share of the credit of the State. Are you willing to inaugurate that kind of a reign of recklessness and bankruptcy? I tell you the proposition to disembowel this section is infinitely worse than the other that the Convention refused to permit.

MR. RUFFNER. I do not intend to transgress on this house; but I cannot refrain from making an observation or two in reference to the course of this Convention on subjects similar to the one under consideration. It will be remembered, sir, that the new State proposed to be made is not fully represented here. There is a minority you may say that undertake without knowing what may be the sense of a majority when the time is fully ripe to curb the action of the representatives of the people in all time to come from such measures as may be deemed good for that majority. Will this Convention undertake to restrict from doing that which shall be their will? Will these gentlemen here who represent a particular feeling on the subject undertake to put such restrictions on the legislature and on the people? I warn them that this Convention may make a constitution that the people will not sanction; and what then will be the effect upon those who have been so urgent for the formation of a new State? Their great object will have

been defeated, and it is only on the ground that we might establish a state that I yielded my opposition undertaking the formation of a new State at this time; and I caution them that they are not secure in the grounds they have taken. They may carry this measure of restraining the legislature too far to meet the approbation of the people we represent; and I raise my voice against any such restrictions here as are attempted to be imposed on the legislation of the State.

MR. BROWN of Kanawha. There was the case of the member from Fayette referred to the Committee on Credentials. I think it is due to Fayette county that the case should be determined before we determine the rights of the people. I desire to hear a report from the committee.

MR. SINSEL. Mr. President, the committee had a meeting this morning and determined upon what they would report. We have not had time to make up the report as yet. We will report in the afternoon session, unless you will take a verbal report.

MR. BROWN of Kanawha. I would as soon have a verbal report as a written one. I think it is due to the gentleman and to his county that we should act and should not go on and determine questions and then admit the member afterwards.

MR. SINSEL. If the Convention desires the verbal report I can do it just now.

THE PRESIDENT. I suppose the report could be short and might be received—the substance of it, if there is no objection.

MR. DERING. I should prefer that we should have a specific written report in this case. It is a very important case and the facts ought to be made a matter of record. I desire to do justice, and I want all the facts spread before the Convention in reference to the admission of delegates that we can get. It will be but a short time to wait when we can get a specific detailed report.

MR. LAMB. I rather understand from what has been stated by the gentleman from Taylor that it was the understanding of the committee that no report would be made except a written one.

MR. SINSEL. Would be made by the afternoon.

MR. LAMB. Of course, it would not be proper in that state of the case for one of the members of the committee, contrary to their understanding in the committee to submit a verbal report.

MR. STUART of Doddridge. I would simply remark that there is nothing in the world in the report; that the chairman of the committee can report it in three or four words. I know so far as the minority report is concerned, there is no difficulty about that, and all the facts are before the Convention.

MR. BROWN of Kanawha. I move the Convention take up the subject and determine it at once.

MR. VAN WINKLE. I should like to know, if we are to receive a report, what it is. I want to know before receiving it as a question that might have something to do with receiving the report. I have no objections to vote after that that the gentlemen have leave to make it if he chooses to do so. To vote without receiving it is another question.

THE PRESIDENT. It is moved the chairman of the committee have leave to make the report now.

MR. SINSEL. Mr. President, we had a meeting this morning and through a misunderstanding, one of our members was not present. There was just four present. Two of the members of the committee think that the gentleman should not be received upon the petition submitted before them and the Convention should issue a writ of election to supply the vacancy of the member who resigned. The other two are in favor of admitting him right at once. That was the agreement they came to.

MR. STUART of Doddridge. The chairman of the committee has correctly reported the facts. One of the members was not present through mistake, and that member was opposed to the admission of the member from Fayette. So it is distinctly understood that the majority report against receiving the member and the other two would report in favor.

MR. SINSEL. Mr. President, the majority—though I do not report as a majority, myself and the gentleman from Preston were opposed to admission at this time and would respectfully recommend to the Convention the issuing of a writ of election to fill the vacancy as being the usual mode in such cases. We see no reason why we should deviate from a well-established principle in this particular case.

MR. BROWN of Preston. As a member of that committee, I desire that there may be no unfairness in this thing. The chairman

of the committee has stated that a member of the committee was not present at the meeting. In addition to what he has stated, I am apprised of the fact that that member had no notice of the meeting. He was notified that there would be a meeting here on Saturday evening and he came out here to meet the committee and could not find it. So I think really there is unfairness towards a member of the committee. When a committee is to meet, all the members should have notice. If they do not attend then, there may be a majority of the committee present and they can proceed to their business. But I hold it is necessary that every member of the committee should have notice of the time and place of meeting. The committee has had no opportunity to investigate this matter, and so far as I am concerned, I have not had a single particle of evidence from anybody except what has been before the Convention. Now, it does seem to me the committee ought at least to take time to investigate this matter or hear evidence from some source if it can be obtained; and certainly the absent member ought at least to have had notice of the meeting of the committee before any action on his part.

MR. STUART of Doddridge. These are the facts. It was admitted that this gentleman came on to fill the seat of Mr. Cassady and also recommended by Mr. Cassady, and came on with 13 petitioners. It was a stated fact that they were citizens of Fayette and Union men. What is the use of running around and investigating any further about it? I believe the gentleman from Taylor admits himself that these are the facts. It seems to me it is right and proper that this thing should be settled at once.

MR. VAN WINKLE. It seems to me this Convention should have enough respect for itself, for its dignity, not to be trifled with in this way. I move this matter be referred back to the Committee on Credentials, with instructions to ascertain whether this petition was circulated in Fayette county; whether it was presented to other than these thirteen and whether any to whom it was presented refused to sign. There is nothing here to show whether any effort was made to obtain another signature, that a majority of the citizens did not refuse to sign; nothing but the bare fact that thirteen signed the paper, nor whether those persons were in Fayette county at the time. Ascertain and report all the facts.

MR. STUART of Doddridge. I move to amend by disagreeing with the report of the committee, and that the member from Fayette be permitted to take his seat.

MR. LAMB. Mr. President, I would also be glad before this matter is acted upon to know whether the people of Fayette county have had any notice whatever of this proceeding. I take it that this Convention have not a right to elect a member from Fayette county, at least without their having some sort of notice of what is being done and expressing their sentiments in regard to the matter. The papers which are here presented are conclusive that the citizens of Fayette know nothing about this matter. The resignation of Mr. Cassady is dated 28th of January, some three days before this appointment is presented here, only four or five days ago does this resignation bear date, and immediately a paper is presented here signed by 13 individuals whose signatures have been obtained in a different part of the commonwealth without any date whatever; and it appears those signatures were not obtained in Fayette county. Now, under such circumstances we are asked to make this gentleman a representative of Fayette county in this body. I have no objection whatever to the individual, to his being a Union man and to these signers being Union men. Whilst that may be true, is this the way in which a representative of the people of Fayette county can be appointed? There is a white population in Fayette of 5700; and here some 13 persons—true Union men they may be, 13 out of 5700 whose signatures have been obtained in a distant part of the country, assume to appoint the representative from Fayette without the people there knowing anything about it.

The ordinance under which this body is constituted requires an election. We have dispensed with that ordinance in one case, and only one case, in which it was proper to do so. At least as to the other cases it is at least doubtful whether it was within our power and our right to dispense with it. In the case of the member who was received here from Calhoun it was distinctly shown to this Convention by affidavit that it had been impossible to hold an election in Calhoun at the time designated; that there was signatures here to a memorial appointing him far exceeding in number the whole vote of Calhoun county against the ordinance of secession; that those signatures were the signatures of citizens of Calhoun; that they in fact comprised a large majority of all the Union men in the county. Under such circumstances, accepting that fact distinctly shown here that it was impossible to hold the election in

that county, it was proper perhaps and right that we should dispense with the formality which had been required by the ordinance and admit the party claiming it to a seat. But in the case before us, is there any principle whatever which regulates the right of the people to representation under which you can claim that Mr. Ryan is entitled to a seat here to represent the people of Fayette county? There is no evidence before this Convention that since the 28th of January there would be any impossibility of holding an election in Fayette county. None whatever, and I take it the fact is not so. There is not a secession soldier anywheres in the county of Fayette, as I understand it, at present, and there would be no difficulty in holding an election, giving the people fair notice and having their will and wishes in the election of a proper representative to this body. Is there any evidence that these 13 men constitute all or a majority of the Union men in Fayette county, and can this Convention undertake to say that if notice was given to the people of Fayette of this proceeding that there may not be, not 13 but a hundred Union men in Fayette that would prefer somebody else? It may be that every Union man in Fayette would desire Mr. Ryan to be their representative, but they have not had any opportunity of expressing their wishes in regard to the matter; and if Mr. Ryan is appointed to his seat here it will be this Convention appointing the representative of Fayette county, not the Union men of that county, for they have had no opportunity of expressing their wishes to us. I hope the motion will be carried and that the committee will report specially on these points whether the people of Fayette have had any notice of this proceeding since the 28th of January when this proceeding had date, and whether this paper does express the will of the majority of the Union men of Fayette county. Under the circumstances in which it comes here, under the facts which are apparent, I say we have no right to constitute this gentleman the representative of Fayette county in this Convention.

MR. RUFFNER. Mr. Ryan came here some time ago with a petition from some seventy, perhaps more, citizens of Fayette recommending him to the legislature and setting forth his Union sentiments and all that sort of thing. The legislature could not, of course, receive him as a member, but that petition may be received as an endorsement of that gentleman by numerous citizens of Fayette.

MR. SIMMONS. How many male citizens?

MR. RUFFNER. I am not able to say. There was some ten or a dozen females who signed it (Laughter).

MR. STUART of Doddridge. I should be very sorry, Mr. President, at this time and day if this Convention should refuse this member a seat under the circumstances surrounding us. Why we should change our course from what has been pursued at this particular time and occasion is something I cannot understand. This is his case here. Endorsed, it is true, by but a few citizens of Fayette, but those men by whom he is endorsed are now this day fighting the battles of the country. I understand there are but few men in that county, and what few there are and most of them driven off, the most of them in the Union army. It would be exceedingly difficult even there this day to hold an election; and I doubt whether even if the gentleman from Ohio had the leisure to do so and he were delegated down there to hold an election whether he would be willing to risk himself to do it. I know I count myself pretty brave, but I doubt very much whether there could be any inducement held out to me this day to go down to Fayette and hold an election for a member to sit in this Convention. Then, sir, this man comes here endorsed not only by the Union men of Fayette but by men who are this day shouldering their muskets in defense of their country. And you are saying to Fayette, you shall be disfranchised; and if it is done this morning it is done under peculiar circumstances and one which I feel sorry for, I assure you. I hope the Convention will not pursue this course.

MR. DERING. I desire to do justice to this gentleman. I have no doubt of his loyalty and Unionism, because it seems he had been endorsed not only by the gentlemen but by the ladies; and anything the ladies would do would certainly be right.

MR. STUART. I understand there are no ladies on the petition.

MR. DERING. It has been so stated by a member of this Convention.

MR. RUFFNER. I understand only two.

MR. DERING. Very well; it is worth a great deal to have the approval of a couple of ladies. Although they are not entitled to vote, perhaps we will incorporate a provision that will entitle them to the right of suffrage. Let these credentials be referred

to the Committee on Credentials. A half day will not make much difference I presume. Let us have the facts and vote understandingly.

MR. BROWN of Kanawha. Consistency is a jewel. I must confess more than ordinary surprise at the manifestations of the Convention here this morning. What have we seen in this Convention? A Convention purporting to represent the people of the several counties numbering 44, proposing to form the organic law and determine the future destiny and the inalienable rights of a free people. We have seen this Convention adopting a principle recognized by the government that called us into existence; recognized by the government of the nation; the only principle on which we can stand here justified before God or man: and that is that men who are loyal to the country and exhibit that loyalty shall make no exhibition of their wishes in selecting the representatives who shall reorganize and maintain the principles of the government that they adhered to as the fundamental law by which we are to be guided. And in the execution of that principle we have seen a Convention assembled in this city altogether by the suffrages of about one-fifth of the people of the commonwealth assuming to act for the whole; we have seen this Convention assembled here, representing a voting population of perhaps 30,000—having been chosen by some 15,000—we have seen when members come into this Convention upon written papers, sent and delegated by a few people in several counties and asking that they may be permitted to represent them as their representative in forming the organic law that is proposed to be the government of the State, we have seen them admitted to fellowship, to all the rights and authorities of this Convention; we have seen the case of Mr. Cassady, who was the first man that presented himself upon a petition of about 23 members, we have seen him admitted here and go on to perform and discharge the duties upon that authority until other calls—the calls of his country, the mandates of the law and the powers that be, have kept him from our midst. We have seen the gentleman from Wyoming who came with him at the same time and who was admitted in the same way, received as a representative in this Convention of those people. We have seen the case of the gentleman from Nicholas; precisely similar circumstances; the case of the gentleman from Calhoun in precisely similar situation. And now for a gentleman to undertake to make a special plea to distinguish between the evidence on which one case rests and the

others, when there is no doubt of the true facts in both cases, it is impossible for gentlemen to stand up here and intimate it. The facts are equally clear of the truth of the case as presented. We have seen the gentleman from Logan also; and now at a very peculiar juncture of time we find the gentleman from Fayette here. And what is more, sir, while these gentlemen are questioning the very fact of the representative of the people of Fayette and the citizenship of those who have selected and appointed this delegate, they are the identical men in part who appointed the first delegate upon whose suffrages you have acted. The man stands here endorsed by the declarations of members of this Convention as a man who is above suspicion. As to signatures he has not only the men but the wives and daughters of perhaps the very men who are driven from their homes by the foe, perhaps battling in defense of their country's cause for the rights of their very homes they cannot stand there to defend, while here it is pretended by gentlemen to legislate for a free people and manacle the limbs of that people by constitutional provisions they abhor, while they exclude their representative from a participation in the very act. And that, too, on a principle which is violated at every step—a departure from that consistency which has been practiced in every solitary instance until the present. Go home and tell your constituents that when there was no question or controversy before the Convention these other delegates were admitted to represent their people without question; but that now at the moment when a question is before the Convention in which they are vitally interested this representative who comes here on just the same footing is refused admittance, sent home with a writ of election which cannot be executed till the constitutional question in which his people are concerned is settled and fixed. Then you are to present this Constitution to these people of Fayette, and though they vote unitedly against it, you say a majority shall fix this Constitution on their necks for all time to come, *nolens volens*, for weal or woe. Endorse that principle, gentlemen, and my word for it the Constitution is not worth the paper it is written on; and if you ever enforce it over any people whom you disfranchise you will have to do it at the point of the bayonet and at the cannon's mouth; for if anything on earth were here to rouse the eternal hostility of that people, it will be the monstrous injustice attempted to be practiced on them in the refusal to receive their representatives. I wish to see then whether gentlemen will depart from everything that has been voted heretofore. I want to know whether the people of Fay-

ette will have any more confidence in the gentleman that comes here or the Convention that seeks to vote him home when making a constitution for Fayette. Isn't it alike, the same constitution for the people of Fayette county as for the city of Wheeling? I want to know if they have not as full an interest in it as you have who are representing the people of these counties? No, sir, the people of my county and the people of Fayette as well as the people of every other county in this proposed new State which you are proposing to adopt and enforce on them, have a right to a voice in the making of it.

Now, gentlemen, I wish to say to this Convention, once for all, I feel very firmly a deep interest in this subject, and I do hope I may not have it to say when I go back to my people that the most glaring and monstrous injustice that was ever attempted to be perpetrated has been perpetrated on a portion of the people with whom I am eternally allied. I leave the question with you to determine it.

MR. LAMB. It is certainly a very extraordinary address we have had from the gentleman from Kanawha—a very extraordinary one. It is perfectly apparent from the papers that are here presented—and the gentleman does not pretend anything to the contrary—that the people of Fayette county have had no notice of this procedure whatever as it stands. On the face of these papers they have never had any notice and no opportunity to express their views or wishes further than the sentiments of these 13 are concerned. Yet it is denounced here as a perfect outrage of the rights of the people of Fayette that this Convention does not admit Mr. Ryan to a seat, without even the decent formality of having his credentials examined and reported on by the committee constituted to pass on the credentials of all the members of this body! This Convention is to be carried away by an appeal of that kind—perhaps I should say denunciation and threat—founded on such facts as these!

I do not think I ought to say anything more in regard to this matter. I will say, however, that a harangue of that kind made to this Convention is an outrage on its members. I have no reference, Mr. President, to any personal matter at all, but I have a right to speak of his argument and appeal as I think it ought to be spoken of.

This is the basis on which this appeal is made. These are the facts; and upon this it is to go forth that we are here to perpe-

trate an infamous outrage on the people of Fayette county! I am astonished, respecting the gentleman from Kanawha as I have hitherto respected him, that he can stand up before this Convention and make an argument or appeal of that kind. I want Fayette county represented here. The former member had the signatures of 42—not 23, as represented by the gentleman from Kanawha—of the Union men of that county; and it certainly was not apparent on the face of the papers in that case, as it is here, that the people of Fayette knew nothing of the proceeding. We had a right in that case to presume that they knew what was going on when they sent Mr. Cassady here. But at any rate, however that may be the question of consistency affects not me, for I voted for none of these admissions except the gentleman from Calhoun, whose credentials I think are abundantly sufficient.

MR. SINSEL. It seems to me the gentleman from Kanawha has overlooked a great deal that this Convention has done in admitting members here irregularly. Judging by the tone of the gentleman's remarks he considers that one section of the state is now about to commit a great outrage on the other section. He forgets that all these members who have been allowed to take seats in this body—the most responsible and important that can ever be held in a state—who have come here wholly without any recognized authority, and in some cases with very little backing of any kind, have been from his section of the state. And it would seem the only effect this generosity has had on the gentleman has been to stimulate him to inspire and organize a sectional feeling in his part of the state, of which he has just made such a violent display.

Now what are the facts? When we assembled here on the 26th of November, we found 44 members duly elected and certified to this body. Two or three gentlemen from the other extreme part of the state applied here on petitions. These were referred to the Committee on Credentials, who on examining them did not feel at liberty to take the responsibility of recommending them to seats in the Convention. They referred the matter to the Convention. The Convention, looking at all the surroundings, the difficulty they would have to encounter in holding elections, thought it prudent to admit them to seats, without a dissenting voice, I think. All the members who now seem to the gentleman to be perpetrating this outrage voted to admit those applicants. Well, the Convention supposed the thing would end there. But during the recess of the Convention it seems the news got out into those counties that had

no representatives, and here comes in three or four others. One came first: he was admitted without a dissenting voice. Then comes the gentleman from Logan, and he was admitted. All these coming from the same section of the State. Then at a more particular crisis than ever, when the Convention was excited to the very highest pitch over the basis of representation, comes two more right from the same section, and what did the Convention do? They admitted them without a word. And now, because members ask to have the proper committee examine the claims of this applicant to represent Fayette county, the member whose course seems to suggest sectionalism in this Convention denounces it as a great outrage on Fayette county. I think no people ever did act with more liberality in the world than the members from this end of the state, and I was glad to see it. What are the facts in the case that now arises here? They are altogether different. A member of this Convention resigned his position. Before his resignation is handed in, it is all arranged that he is to have a successor appointed in his place. I say it is irregular. Whenever a vacancy occurs, it is the business of this Convention to issue a writ of election and require that people send a man here of their choice. And I think that thing ought to be done without any imputation on our motives. I have acted from the purest motives and with the best feelings toward the southern end of this state and did what I thought right for them, and expect to do it to the bitter end; but I don't like to hear such imputations as those, intimating that we are doing it for political purposes, that must be the inference and nothing else. I disclaim any such intention.

MR. PARKER. I had the honor to be placed on the Committee on Credentials; and I have been governed so far in our investigations, in looking at the ordinance of the Convention that prescribes a certain way that the Convention shall be composed, that the delegates shall be elected. But the extraordinary difficulties in the way of carrying that out strictly soon presented itself to my mind and others on the committee; that it was impossible, in fact, in the state of the country to conform strictly to the regulations as there pointed out; and in the various cases that have come before the committee the rule that has governed me has been this inquiry: whether the gentleman who has presented himself is a man of character to be relied on, a true man and true Union man. When my mind has become satisfied of these facts, the next question is, is it the wish of the real Union men of the county that he comes here

as the representative of that Union sentiment, the Union portion of that county. Wherever I have been satisfied that is the case, I have felt it my duty to admit him.

Touching the right of the Convention to hold an election, my impression is the Convention would have the power to do it but that it cannot be executed. I would rather vote here directly on the question of admission.

MR. SHEETS. I do not know that any gentleman who has had anything to say on this subject doubts for a moment the character of the applicant. All who have spoken in regard to him testify to his high character and his loyalty. But the question is on the petition presented here, whether it is genuine. I do not consider it so and I hope this Convention will not. When this Convention re-assembled I was requested by a gentleman from Morgan to present a petition for him. He stated that he had been elected a member of the June convention—which I knew was a fact—but before setting off for the Convention he was driven from home by rebels and left and went across the river into Maryland and consequently was not able to come here to attend that convention having lost his credentials. When this Convention assembled he was in the city of Wheeling, and I could have presented a petition signed by a hundred good loyal men but I told the gentleman I could not present his petition unless he went to the county of Morgan and had it signed there by the loyal men in that county. He could not do it and consequently I could not present the petition. I am as much in favor of having every county represented on this floor as any other man but I want to see it done, not on a petition signed by ten or a dozen men, when the ordinance provided that an election should be held.

MR. SMITH. I have forborne, occupying the position I do in this house, speaking on this subject; but upon reflection I have come to the conclusion that if this amendment is not adopted it is equivalent to voting me out of the house. I have understood I was voted in on a petition on just the same course that is now being taken in this case; and if they reverse the principle now on which I was admitted I do not think in justice to myself that I ought to continue in this house. I was voted in on a petition, and I believe that petition was signed in Kanawha. I understand from the gentleman from Wyoming that he attempted to get into the county of Logan and he dare not go there. If he went there with anything

in his pocket he endangered his life, if it were carried through the county of Logan, such is the state of feeling there that a man who was caught with it on his person would have been hung up on the spot; and such is the state of feeling in Fayette. I tell the gentleman from Wheeling he would when he got into the borders of Fayette find a community filled with bandits where they have been during the whole season. You know nothing of the terrorism that prevails there. I have gone up there twice but I took care to keep on the north side of the river. I would not trust myself going up even to the border of Fayette and keep on the south side of the river.

MR. LAMB. Are not General Cox's forces in Fayette now?

MR. SMITH. I do not know but his forces may be there; but his pickets are daily shot, and the whole country is infested with that sort of warfare that endangers the life of every one. They are scouting about through the woods like an Indian hunter; and worse and more cruel than an Indian; war going on continually. The soldiers cannot arrest that system of plunder and slaughter and murder that is going on there every day; and I imagine if you were to take the petition under which I have a seat here very few would sign it in the county of Logan. They dare not sign it there, and it must come from the county of Logan. They came from Logan to Kanawha to sign the petition; they showed their interest by coming there. I tell you that is the worst section of the war, and I only want to express my astonishment at the gentleman for not offering that petition, if it has two hundred subscribers from Morgan. It was a total misconception of his duty; and if he had come here and presented it, and given his opinion against it, I could have voted for it. The very fact that it was signed out of the county is its greatest recommendation. It is signed by those who are driven from home, and although driven from it they ask a representation of their county; and if they go from their counties and sign a petition they evince the greater interest in the matter and greater desire. But if you vote this out, the very same principle puts me out. It puts the gentleman from Wyoming out and it puts others out, I understand, who came in without any reference to the committee. It is an equivalent to reversing the votes that admitted us, and I say we could not with self-respect stay in this house after this vote.

MR. DERING. We don't want to vote you out.

MR. SMITH. But you are reversing the vote that admitted me as a member here, and I stand here then condemned by a reversal action of this house. Is not that the fact? It is a pleasure to represent the people who ask me to represent them and while I am here and can with self-respect occupy a place on this floor I will do it and do them justice to the utmost of my ability, and I want to have the people of Fayette, where there are yet a few loyal men left come in and maintain their interests. I ask why, sir, refer this matter to a committee? How can they bring in any new light here to enlighten us? Must you go through the forms? Because your father traveled along a road in the olden time, must you travel the same road without the slightest increase of light? What do you want it for? It is to delay it. Do you intend to vote for it when it comes in? I ask the gentlemen from Ohio and Wood what course they took when others were voted in here, and why at this particular critical juncture of the affairs of this house make this exception? Why is to be *postponed* when the most important, the most vital, measure that can affect the interests of the State are under discussion and Fayette is not here represented? And why is it that they should take the most active and zealous interest in defeating that which I think involves the great interest of the State, that they at this particular juncture make this particular special objection to the admission of the member? I impugn no man's motives. As the story goes, it looks like a certain thing to a man "up a tree." I impugn no man's motives; it is not my practice; but I tell gentlemen who take this course that they subject themselves to imputation. However honorable they may be it does subject them to imputation that interest, the great absorbing question of interest, is involved and controls and rides over their judgment.

MR. VAN WINKLE. I was absent from the Convention the afternoon the case of the gentleman from Logan came up and was acted on, and I know nothing of the facts and circumstances connected with it. I therefore, of course, in any remarks I shall make have no reference to that case. I cannot say now, or attempt to repeat the evidence that was before the Convention in the former cases. It has always been with me merely a question of evidence. It is now nothing more. The resolution pending does not propose that a writ of election shall be issued. That may remain a subject for after consideration. What it does propose is that this shall go back to the committee to have them report the facts in the case. I have no other idea of the functions of a Committee on Credentials

except that, with such recommendation as they feel themselves authorized to give. But in this case we have the individual opinion simply of the members of the committee without any additional evidence to that furnished by the petition and of course entitled only to the same weight as that of any other gentleman in the Convention.

Now, sir, in reference to the first case from Fayette. I voted most cheerfully for the admission of that gentleman. I said then after hearing the evidence we had in that case, and the fact was palpable to every member of the Convention, that these counties were overrun at that time by an army. That I believed to be the best evidence the circumstances of the case admitted of that an election could not be held and that the petition did give us the will of that people and that an election, if it could be held, could do no more. I was willing then, sir, not to be tied down by the strict rendering of the law. I believe that where a law is made to effect a certain purpose and cannot effect the purpose but that the purpose can be effected in another manner, the latter ought to be considered as acting strictly according to law. But, sir, the case of the first application from Fayette, the gentleman was here with 44 signatures to the petition; and only three of those names are upon the present petition. I do not even know at this moment the name of the gentleman who desires to represent Fayette county here nor anything for or against him but what has been said by members on the floor, but I am satisfied entirely as to the character of the gentleman. I have no objection that this committee shall send for the gentleman from Fayette himself, and I believe it would be perfectly right to do so and take his own statement of this matter; and if any additional evidence can be thrown on it to hear that also and then come back to the Convention, and the Convention will be in a situation to judge what to do. But the Convention ought not to act in a case like this on mere ex parte statements. Let it have some form about it, not merely that members shall state their impressions about it derived from hearsay; but let the committee hear what is to be heard and then upon their report the Convention will be in position to judge.

On another occasion I had the honor of presenting the credentials of the gentleman from Calhoun. I believe previous to that every case had gone to the Committee on Credentials. That case came here under these circumstances. A petition was written and signed by 71 citizens of the county of Calhoun. It set forth facts that they had been unable to hold an election and other facts in

connection with it. As I said, it was signed by 71 citizens of that county; and then on the back of it an affidavit stated that the facts set forth were true on the testimony of two respectable gentlemen sworn to and certified by a justice of the peace. I had no particular interest in that case, but I stated that I would have taken the general course of referring it to the committee but as the committee was simply to collect evidence and as we had the whole evidence in the case before us there would be nothing for the committee to act on, and I moved the immediate consideration of the subject. The Convention sustained me in that and in admitting the member. Subsequently, other cases came up; but I did not, I think, vote, and made no opposition to their admission. But I had begun to think the thing was going too far, that the evidence at least ought to be known or imposition might be practiced on the Convention. And, now, sir, I ask in reference to the case before us that we should ascertain whether other citizens of Fayette have had an opportunity of signing this petition. How can we tell that this identical petition may have been presented to other citizens of Fayette county who refused to sign it? How do you know?

MR. HAGAR. I think it never was there.

MR. VAN WINKLE. It ought to have gone there. The gentleman from Ohio has shown you what these dates are. The resignation of Mr. Cassady was dated January 28. On the 31st this applicant was here. I do not care if all the citizens of Fayette are driven out of that county, whether they cannot be heard else, or that they are all in the army, or anything of that kind. But let us have it as a fact and not as a mere inference.

Now, I think I have asked nothing, sir, to subject me to those terrible imputations which have been made. We have asked nothing more than the simple facts laid before this Convention. I have reserved my right to vote according as those facts shall appear. Let the committee obtain the facts from all sources within their reach and lay them before the Convention in authoritative form and then we will be prepared to vote.

MR. HALL of Mason (Mr. Battelle in the chair). I believe it is customary to let the applicant's side be heard in defense of their claim. I would therefore move that the gentleman from Fayette be heard on the floor.

THE PRESIDING OFFICER. The gentleman from Mason moves that the gentleman from Fayette be heard on his application.

MR. VAN WINKLE. I am willing to hear the gentleman from Fayette after this committee have reported. Let us have the report and it may not be necessary.

MR. STUART of Doddridge. We have now spent more time than the money it will take to pay the member if admitted. We have all the facts that the committee can have. Let us settle the question at once.

MR. BROWN of Kanawha. I believe in one case that I could mention the member took his place on the floor and performed the duties of a member while the controversy is going on before the committee, and it has finally voted against his right to vote. Now it is a very different position by which we exclude first and then send the question to the committee.

MR. SMITH. In all cases where the admission of a member is contested, the universal rule, so far as I know, is for the member to take his seat and his credentials then be submitted. Admit the member and then commit his credentials to the committee. They will report, and when they do, he is here on the floor ready to be heard. But as Mr. Brown has justly said, we have reversed the rule as practiced in every other legislative assembly. We exclude the member altogether. You have pronounced by your previous action that such election as is presented here is legitimate and such as you will receive. On that past action the people of Fayette have acted and he is according to the rule a member of this house entitled on that petition to a seat here, and then you may present it to a committee. But in the meantime he is a member of the body until he is excluded.

MR. VAN WINKLE. I should like to call the attention of the gentleman to what is going on at this time. Mr. Upton of Alexandria, Mr. Segur from another district, and Mr. Foster from a district of North Carolina presented themselves at the House of Representatives for admission there at the beginning of the session, and I believe neither of them has been admitted to a seat; but their cases are in charge of the committee. The rule is very different from what has been stated. When a member goes there with a prima facie case, the certificate with the broad seal of the state, as in the case of New Jersey, he has the right to take his seat.

MR. SMITH. Is not Mr. Segur now a member of Congress?

MR. BROWN of Kanawha. How is it we see the speeches of Mr. Upton in the debates there reported? I have seen them from the beginning, his speeches in this very controversy.

MR. VAN WINKLE. Then, if that is so, they have gone there with *prima facie* credentials. They went there bringing something that purported to be a credential and on that were admitted to seats. But now, look at it. One-half the cases that arise before Congress are contested cases. The gentleman doesn't mean to say that both are allowed to take their seats and vote and draw pay and mileage? It is only those who go with credentials in due form. In a late case of contest before Congress the house gave permission to a certain gentleman, I forget his name, and he addressed them on the subject of his claims. Perhaps it was in the case of the senator from Indiana. But not until after the committee had acted on it.

Now, I do assure gentlemen it can make no difference whether this case is disposed of this morning or this evening. If the committee can sit in the recess and give us the facts, we can vote understandingly. If we have not such facts, we may be constrained to vote against admission.

MR. STUART of Doddridge. I want to insist on this Convention not to send this back to the committee. The motion is to receive this gentleman, and the objection of the gentleman from Wood is that he is willing to hear him after the committee reports. Let me appeal to that gentleman and say that committee have reported everything they can. Let us not delay this thing. We have got it up now and let us settle it. We have got to settle it.

MR. DERING. I do not see any necessity in reference to hearing the gentleman from Fayette. Why, sir, he can appear before the committee and be heard there, and we can all hear him after the report of the committee is made. The gentleman from Doddridge says we have the report. We have a partial report only. Only four members were present, the other not having been notified of the meeting. Irregular reports are made. They are neither official nor conclusive. It is important that the committee make a report. Let the committee meet at recess; let the gentleman from Fayette appear before them, and if it be the pleasure of the Convention, after hearing the report of the committee to hear from the applicant, I shall not object at all.

In reference to this whole question, we have consumed a good deal of time. It is pretty nearly recess time. I am willing to hold in abeyance any vote on the "vital question" the gentleman from Logan alluded to until we shall have tested the right of this claimant to a seat in this Convention. It seems to me to be due the Convention that we should have the report of the whole committee. The gentleman from Doddridge assumes to himself prescience in saying there will be no other facts before that committee. We do not know what facts might be presented to them during the recess. There may be other facts there, on which they may make a report entirely different. The mind of the gentleman from Doddridge then might be changed. It is due to the Convention—for its own self-respect, its dignity, that we should not act with such hot haste, even to promote the objects of the gentleman from Doddridge and his friends from the southwest in this so important a matter. And then we might hear the gentleman from Fayette also. We have no disposition to press these gentlemen out of the Convention; but we must not assert any principle here not founded on the principles of justice and right. We do not want to lose the members from that section of the country at all, sir. Let us hear all the facts and act understandingly, as dignified men who are doing the business of the people, and then, sir, I have no doubt we will do right.

MR. BROWN of Kanawha. We have had a partial report from the majority of the committee and a minority report which the house, by a vote announced by its officer, has received, and the motion is to recommit.

MR. VAN WINKLE. The motion was mine, that the committee have leave to make a report. That is all the action on it.

MR. BROWN of Kanawha. I understand the report was made. It was received. The gentleman from Monongalia suggested we might have our minds changed, the inference was by the introduction of testimony. Now, the claimant states, and his friends state they have nothing new to propose; they have stated in the Convention just what they would have to state before the committee, and to have it re-stated back to the Convention again cannot give it any more strength; for if the Convention do not believe the declarations of the members in the house, they would not believe it if the committee was to receive it in the committee room and re-endorse them. Therefore there can be nothing gained by the refer-

ence, as the gentleman from Doddridge urges, for all that is before the committee has already been before the Convention. I hope therefore it will be the pleasure of the house to act at once.

MR. PARKER. Everything except the statement of the gentleman from Fayette is already before the Convention. It is in a form which is unexceptionable as I understand it comes from a gentleman whose word is pledged. It seems to me the statement of Mr. Ryan to the whole Convention will be much more satisfactory than for him to make it in the committee room. I hope the motion of the gentleman from Mason will prevail.

MR. HERVEY. There is nothing in the world to prevent this committee from reporting. It is bound to report. It cannot make a report which is half and half. That committee is composed of five members. Three is a majority of five. If that commission is in session it can report. If one of the members chooses to absent himself or will not attend, of course, it cannot possibly make a report; but I presume the committee is able to discharge its duties, and I am in favor of requiring them to do that.

Mr. Hall's motion to permit Mr. Ryan to be heard before the Convention was put and agreed to.

MR. STUART of Doddridge. I hope there will be no motion on my amendment until the motion just adopted is carried out.

MR. VAN WINKLE. No; there must be a vote on my motion before the gentleman can be heard.

MR. STUART of Doddridge. I understand the object of the gentleman from Mason is that before my motion is put the gentleman be heard by the Convention.

MR. HALL of Mason. It was my object that the gentleman from Fayette be heard in a statement of his claim, replying to all interrogatories that might be put to him by members before the vote is taken on his admission. My motion was not an amendment to the motion of the gentleman from Doddridge.

MR. VAN WINKLE. I will withdraw any objections to it; but the Chair stated it as an amendment to the amendment offered by the gentleman from Doddridge.

MR. HALL of Mason. The object was simply this. I became satisfied many members here wanted to hear the applicant's own

statement before they voted. I was also aware that it was customary to give members who were applicants for a seat such privilege. I had seen it done again and again; and it is very often the case if a good show is made to a seat, though the body choose to refer the credentials to admit him to a seat while the committee is investigating his right.

THE PRESIDING OFFICER. The Chair then understands it to be the sense of the Convention that the proposition adopted is to be executed, independent of the other two; that this entitles the gentleman to be heard and be subject to the same rules governing the body. If there is no disagreement that will be the understanding of the Chair. The question recurring on the amendment offered by the gentleman from Doddridge.

MR. RYAN appeared within the bar of the Convention and said:

"I have of course been considerably interested while the discussion of my case has been going on. I have sometimes been somewhat amused at their ideas. I have felt rather sympathetic, especially when my character as a loyal man has been called into question. I do not know whether I would have time to relate all the circumstances in the ten minutes, but I will say what I can in that length of time.

"On the day of the election in our county it is well known that there was a great apathy against those men in favor of the Union who voted against the ordinance of secession. I was at the head of a body of voters that went to the polls and voted at the precinct where I was present; had kept up, or nearly so, with those on the other side of the question. I was told while there that there was a bucket of tar and feathers ready to be put on me; but with all that it was not done. Since that time I know I have been a loyal man; I have ever been a lover of the Union. I admire the stars and stripes of America; and it has ever been my principle to promote the interests of the cause of the Union.

"I was down at Wheeling on business in the forepart of the winter some time. I went back home again and gave out the appointment that I would speak on a certain day in the neighborhood where I live. I had some apprehensions in reference to the consequences; but there was a large concourse of people. They knew I had been at Wheeling and had heard a great deal in reference to the new State. There cannot be much news about anything there: no mail routes, and people were not able to arrive at the real facts

of the case. They came out on that day and I made a speech in favor of the government. And the Union people immediately after that speech was closed got up a petition and petitioned the house of delegates to receive me as a member, knowing they were represented in the Convention by Mr. Cassady. Well, they, of course, had to be very brief about it. It was known if it had been found out they would hang me. It was secretly done as brief as possible, and the very next day I was started to Wheeling. I came around and presented the petition. I knew it was the wish of the loyal men of that county. I was not received. Then I was told by members of the Convention that Mr. Cassady would not be able to get here and requested me to get his resignation and return again and take his seat during the rest of the session of the Convention. I called to see Mr. Cassady, and I acknowledge I was afraid to go into the county where I had been raised to request them to petition. And I thought if anybody in the world ought to be heard it ought to be those standing under the streaming banner of our country. I was told by Captain Cassady it was not necessary to go into the county; that those men would be honest and loyal. A gentleman told me he would take a petition and go around and get the names, and I would get it and take Captain Cassady's resignation and go up to Wheeling and there would be no difficulty whatever. Because I was afraid to go into the county. Not because I was afraid I would not have got the voice of the people. I believe I would have got every name but one. And I would be far from practicing an intrigue on this Convention by endeavoring to get a seat here unless I thought it was due to me and my constituents. I live among as loyal men as any in Virginia or anywhere else in the United States of America; and if I did not believe so I would not ask for a seat in this noble body.

"I took the petition and came back and presented it. I do not know whether there are any defects on the part of the petition or not. Another gentleman drew it and Captain Cassady thought it would be sufficient, and I could come and represent the people. So I came round.

"These are the facts in the case and I am before you to be disposed of. I am sorry to have caused so much discussion."

Mr. Stuart's motion to admit Mr. Ryan to a seat in the Convention was then put and agreed to; and he came forward to the Secretary's table and took the oath of office.

The Convention resumed consideration of the report of the Committee on Taxation and Finance, the question being on the 6th section and Mr. Stuart's amendment to it.

MR. STUART of Doddridge. I merely want to state the object of the motion. If the word "corporation" is not stricken out, the State cannot vote any aid to any corporation which has for its object the building of roads of any kind through our State. I understand if these words are stricken out the effect of this section will be that the State cannot vote any aid whatever to any corporation which has for its object the building of roads through our State. Now, gentlemen, I just only want to call your attention to what has heretofore been the action of our present state government. If it had not been for this three-fifths principle—the State giving so much and the citizens giving so much we would not have had hardly a solitary turnpike road in our country. A patch here and a patch there cleared out, would have been living on parched corn without any bread whatever. Now, I hold that the improvements we have had has been through state aid—at least most of our roads; and I believe roads in the county of Monongalia have been voted by the state aid on the three-fifths principle, and that if the state had not done that the gentleman would this day be without a road. I say, sir, in my state that the state has appropriated money, what is called the three-fifths principle; that we have built roads—what is called the Sistersville Road, the West Union & Weston Road, and many other roads, on that principle. Had it not been that the state gives that aid, we would this day be there without any road. I say there is no private corporation that could have built these roads. And now, Mr. President, with the state taxes for the purpose of carrying on this government I do think it is right we should look to the State in cases of necessity for aid. If that doesn't get it we may never have it. I admit my county is checkered up in this way, and I have very little interest in this; but I feel a general interest for the welfare of the entire new State and if we pursue this policy will be forever locked up and we will never have another improvement, another road; and I understand many of these counties that are within the boundary of the State of West Virginia are situated now just as my county was some 15 years ago; and I know if this section is not voted they will remain as they are, and the gentleman from Tucker who is now asking appropriations before the legislature to improve a road there in order that he may be able to get out of those mountains

in Tucker would be forever debarred hereafter, and he will never get a dollar to make that road. You lock yourselves up; you are there and there you will have to remain. I can get out, but I know the situation of many of those counties is such that they cannot. And it will be hereafter and forever more. We will never have any improvements. Our State must remain as it is. Emigration must be kept up, because everybody when they emigrate to a country inquires as to the facilities of getting to a market; and I understand we are going to build a wall up here that will deter everybody from coming. We will not improve ourselves nor let anybody else do it. I hope it will be the pleasure of the Convention to strike out those words.

MR. HERVEY. There are two propositions before this Convention either of which is far preferable to this. They have voted them down, and I presume this will share the fate of its illustrious predecessors. I would indeed be surprised if it did not. This Convention has said that the State shall not be a stockholder in these works; that the State shall not invest its means in these works; that that was a dangerous policy, an imprudent and improper policy; they have profited thus far by the example of other states. Now what is proposed? Why that the State shall endorse every improvement perhaps that may be sought to be entered upon or accomplished by the new State. It will become a general endorser for everybody. When this question was first raised the gentleman from Doddridge said that he was opposed to the State going in debt one dollar for works of internal improvement; he did not ask it. Now he is not only willing the State shall go in debt but that she shall endorse for corporations when she owns no stock in them. I hold that a man's bond makes him liable the moment he gives it.

MR. STUART of Doddridge. I was opposed to the State going in debt largely; but if they appropriate one year—but I did not want the debt too great, but on their paying the next year.

MR. HERVEY. That he was opposed to the State going in debt for works of internal improvement on her own account. But now, sir, he is willing that the State shall endorse ad infinitum; go in debt when she doesn't own any stock. Now, sir, if that is not acting in conflict with his professed position, I don't know anything about it. What matters it to me or to you whether you have borrowed money or not if you have given your bond for it. You are bound. Your obligation is out and you have nothing to show for it.

This policy, proposing that the State of West Virginia shall commence and go into a general system of endorsing for all mankind within the new State, in the discretion of the legislature. Well, now, I take it we are not prepared to do any such thing; that the people are not prepared for any such step as that. They expect if they pay their debts it will be about as much as they are prepared to accomplish. I went up into my county last Saturday evening. There is not a man in the county of Brooke that would approve such a policy; not one. They would have regarded the proposition of Saturday as a great public departure; but, sir, for the State to step in and become general endorser for all companies, they would regard as a death-blow to the interests of the new State. I shall not repeat any of the arguments which were used on another occasion for this proposition before the body on Saturday, but simply remark, sir, that by all odds it is the most dangerous proposition that has yet been before the Convention, and which I am satisfied the people of this new State would never tolerate.

MR. VAN WINKLE. I have not yet said anything on this and did not intend to. I was under the impression that the matter was well understood by the Convention, but the remarks of the gentleman from Doddridge have shown me it is not, and though they have been answered by the gentleman from Brooke, still I wish to add some comment to his.

The burden of the argument of the gentleman from Doddridge was that the State was depriving its people of any power to aid internal improvements in any way. Now, there is nothing here to prevent the State from appropriating money if it has it to aid any work of internal improvement nor in any way prevent the State levying taxes to raise that money. Here is where we contend is the great safety for the people. When a thing of that kind is done, it is to be accompanied by the taxes, unless there should be an accumulation in the treasury which is appropriated for such purpose. But if the legislature has to levy an extra tax to pay it every time it makes an appropriation to some such scheme it will make them very careful how they make such appropriations. But they can do it if they have the money to pay or if they are willing to levy taxes and raise the money.

The section on which we have already acted prohibits by its terms the legislature from borrowing money for the purpose of building internal improvements and from plunging the State into debt for the benefit of a particular section. When one work of in-

ternal improvement is to be built promises are made to build others, or they are all pooled together, the friends of one agreeing to support the others, so that by mutual support all are carried through. It is this corrupt system, called log-rolling, that has constituted the great evil attending all work of this kind when entrusted to the discretion of the legislature. No legislature has ever been found to withstand the temptation of it. Gentlemen here who were in the June convention may remember the member from Randolph telling what had been done in the neighborhood of Richmond. He showed wherever there was one railroad there were two; that in every direction running out of the city of Richmond, there were two competing roads running nearly side by side in both of which the state was a stockholder, and that I think he said in every case. We all know there are two roads running from Richmond to Washington; there is the Central running to Covington, and the Lynchburg road running to some place. That is the way in which this thing is abused. Instead of being satisfied with one road they have two roads everywhere within a few miles of each other. It is to prevent abuses of this kind that this section has been drawn. Gentlemen must not say I am sectional in my views or ascribe anything of that kind to me. Whatever has been the question before this house I have opposed with all my force anything which makes the legislature a sort of bargain shop; which is to introduce these private solicitations of members. And I am justified in it by the Constitution which requires a three-fifths vote to carry any of these appropriations.

Now, sir, this section simply proposes that the credit of the State shall not be lent, and to make it utterly impossible, that you shall endorse the bonds of a company; and I say if there is any bad way in which the State could get into debt—any way worse than others—it is this. The State has no control as when the debt is redeemable; it is not expected to provide for the interest unless the company fails to do so; the State does not know when her interest, or principal either, is coming on her. When the company fails to meet this interest, the whole debt is due. When the State could guarantee a million dollars and that company should fall through, then suddenly the State is called on to raise that million. Gentlemen have all felt the folly of endorsing even for their friends. They know those obligations come on them in an hour when least expected; and while their property is sufficient yet coming suddenly it is very apt to ruin the endorser, who thought he was doing a good thing for his friend. Now, sir, this is what is sought to be

prevented in another section which we have not yet reached. The State is prohibited from becoming a stockholder; but in this section there is nothing to prohibit the State, if she has the money from making any of these works of internal improvement. The only thing is that the money has got to be raised by taxation or paid from surplus on hand if there is any. She cannot go into debt to raise it, nor aid in the construction by guaranteeing the credit of the company. If the Convention have properly refused to make an exception of corporations in the 5th section, then I think there is ten times more reason to reject the amendment now offered. The gentleman proposes simply to strike out "corporation or person." Then you would leave the State precluded from aiding a county, city or town within its borders and make this exception in favor of corporations in which other parties are interested. The county, the city or town is an integral part of the State. You forbid the State to, lend its credit to them but you permit it to a corporation composed of individuals. There are existing guaranties of the State now which it will have to pay and which may come upon it suddenly, even if it was in a situation to meet it. We are now endeavoring to protect our new State; and one of the things that meet it in the very beginning—the thing that is to be more fatal to it perhaps than anything else if we do not meet with success—which is to hang on us like a dead rot if we do meet with success for years and the most favorable circumstances that can be—is this debt of the State of Virginia, or our portion of it, so improvidently contracted. And gentlemen here are asked, with that example before them, with the example of other states that have fallen into the same trap, gentlemen are asked to perpetuate in this new State the very evil which this whole movement is a life and death struggle to get away from. Here with a debt of some \$44,000,000 at least \$30,000,000 of it for internal improvements and without hardly any of it being of any use or likely to be useful, showing that under all circumstances the money was improvidently squandered; showing that it was partially appropriated, for they all know—that of all the \$30,000,000 or \$40,000,000 spent for this purpose not one dollar has fallen this side of the Allegheny mountains, and one-fourth of this whole state is left without one dollar of appropriations and \$30,000,000 spent, mostly in the valley. And we are asked to perpetuate such a policy as this!

Now, I submit it to members whether if they would be even inclined to reconsider their vote and insert the exception in favor of corporations in the 5th section, I would ask them not by this

amendment to give the legislature power to make an uncertain debt which may distress the people of the State infinitely more than a debt deliberately contracted by itself. I would call upon members by all that they hold dear to themselves and their families to vote down this proposition at least.

Mr. Dering called for the yeas and nays and the call was seconded.

MR. BROWN of Kanawha. The gentleman from Wood as I understood him declares they are asked to re-establish here in the west that policy of which we have complained as practiced in the east. He has characterized the policy of internal improvements as adopted by Virginia as improvident. I must take issue with the gentleman there. I maintain that the internal improvement policy adopted by the State of Virginia was both wise and patriotic.

MR. VAN WINKLE. It was the application of it that I alluded to.

MR. BROWN of Kanawha. Its application; that I have complained of. I do not wish to abandon that policy in the west. I only wish—it is one of the great motives that impel our people to this separation that application of a just, wise and patriotic policy that has been endorsed by the noblest spirits of the land, inaugurated by the father of his country and carried out by others, is only that the application of that policy may be just and equal; that the errors of its application may be created, corrected in the new as we have seen by experience its errors in the old. We ask no injustice in its application. All we ask is that the Constitution shall not be tied up in such way that when the case commends itself to the representatives of the people as a wise and politic measure and that two-thirds of the representatives of the people shall endorse by their votes, the policy, its application and execution, that they shall find there are no constitutional barriers to prevent them from acting. That is all we ask. We ask no injustice, no inequality. We propose nothing of the kind. We have sustained the provision in the Constitution that every appropriation shall receive the sanction of two-thirds of the members or a majority at least—if I recollect aright—a majority of the whole delegation of the State placed on the record before the bill can pass. Well, sir, all that we ask is that if a majority of the representatives shall come up and fully, carefully and deliberately for a measure, and see and approve it, that the representatives of the people shall not find their hands

tied and have to go back to their constituents and say, we could have done this for the prosperity of our people and yours and the development of the resources of the State, but we found ourselves tied by that constitutional convention that assembled in Wheeling that prohibited us from doing the very thing you want and which we say is wise and proper. We ask nothing more and will not with my consent take anything less.

MR. SMITH. I desire to repeat here that there has been a very unwise policy pursued by Virginia and that large amounts of money have been squandered and erroneously voted to works of improvement. Now, in my section of country I am not aware of any of that system of logrolling which is referred to. I do not think we ever got a dirt road by any system of logrolling at all and I had always heard there was a great deal of it. I always opposed it. I always insisted that the state would act most wisely to take the leading permanent roads, complete them and then engage in reimbursing herself out of their proceeds. I did not know until we got to discussing this question where that system of logrolling came from. We have had it clearly enunciated in this house by the gentleman from Monongalia. When I charged them with having all they desired, every road they wished, all that would satisfy them to the utmost, well, says he, how did we get it? Why, sir, we would vote three millions to old Virginia and get a dirt road. That is the way he says we got it. We would vote them large amounts there and get a dirt road here. Now this immense debt that has been contracted, and by contracting this immense debt of the state they have got all they want and now say, having inaugurated the system and carried it out in this extravagant mode—paid such immense sums for it—now we will stop it. We inaugurated the system; we know its evils, though it has been a blessing to us, for we have got all we wanted, the poor favor of a dirt road, three millions to old Virginia, and now, gentlemen, you who did not engage in this system of internal improvement, who did not inaugurate this system of logrolling; got your roads without that system at all; but we never engaged in it; we will prevent you from logrolling. We have experienced its evils, for we have tried it ourselves very successfully so far as we are concerned and very unsuccessfully for the other portion of western Virginia; and now to prevent it in the future we will not allow you the privilege of improving the country. I do not think those who have encouraged that miserable system ought to come in here and complain of it when they have

got all they demanded of it, when we must pay our proportion of this very three millions. I do not think it is a very good argument coming from that side of the house. But here, where there is danger of logrolling, all northwest Virginia have got all they want. They do not desire any more. They are all saturated with the blood of the state; and it will become a question of the northern part of the state and the southern part; it will come up; we of our part of the state will resist you and will not need your vote; for it is not logrolling, it is a trial of strength before the legislature.

Now, I do desire to preserve in this Constitution a feature that will at least permit the construction of these humble works of internal improvement; and I say from what I have seen even in the gentleman's county, the progress of improvement, even these dirt roads, that it is actual policy if the roads never return one cent, to construct them. Even these dirt roads enhance the value of property in the country they pass through to a very large extent, and then they are valued and taxes are paid upon them; and the increased taxes on the land will perhaps treble the amount of interest involved by the State. It will pay, for the increase of taxes will pay interest and reduce the debt besides returning to the country an immense amount of wealth among the farming interest and inviting population and improvements and progress of the State. And this State, being a new State, ought to encourage that with a determination to improve the State, not to manacle its hands and say we shall not improve anything, but it ought to be done prudently. I don't believe for four or five years there ought to be a dollar voted for works of internal improvement. The State ought to be well established and its funds and credit established. Then we ought to engage prudently in a course of improvement; and the first thing that ought to be done would be to build roads that will enable one portion of it to get out some thoroughfare wherever they can go. Here you have got the great Ohio river; you have this railroad and a railroad from Parkersburg; and all this section of country is supplied and checkered over with dirt roads leading to these thoroughfares, and you may well say; I want no more. But you have contracted a debt to the State of Virginia in getting them and you have magnified that debt by giving too much for it to old Virginia, our portion of which we have to assume. You have got all the benefit; we none; and you say we shall not in any future time have any benefit for it. And I ask you is it justice to deal with the southern portion of the state in that way? Where they need it; where it will enhance the value of property and increase

population and give such distinct advantages to the country, you tie your hands and say you shall not do it.

The next section is horrible, and I say all it needs in the next section is to put this further clause into it that no individual shall subscribe to a road, and then complete the system of destruction. That is the system that you are introducing in starting out this new State and quoting New York and Ohio and all those other states that have incurred heavy debts and now wish to hold it and have a new principle. We are not in condition to adopt that principle.

MR. DERING. I listened to the gentleman Saturday evening. I have listened to him again this morning. He still harps on the little appropriations made for mud turnpikes in our section of the state. I have to say to the gentleman that these little appropriations for mud turnpikes in my county, this section of the state, were given in return for millions voted away to the east by the controlling cabal in the legislature. It was the only plan we could resort to get anything. We had to go into the logrolling system; and the members of the southwestern section of the state did the same thing. I believe the very innocent and virtuous gentleman who has just addressed us was in the legislature for several years and had his share in it. A comparison of the statistics in the reports of the Auditor of the State of Virginia will show that the southwestern section was as deep in the mud as we in the mire on that subject. Sir, they had their appropriations for Coal river, for the James river and Kanawha Company; and now, sir, with all the humility the gentleman from Logan has exhibited in being thankful for only a turnpike in his section of the state, I am afraid if we would dig down under that turnpike we would find a railroad after a little, if the Convention should strike out "corporation or person" from the section now before us. I call upon the Convention to beware how they do this. These gentlemen, with all their humility, from the southwestern section, will dig down and find railroads under their turnpikes. They will get up companies to develop their salt and oil and make turnpikes and outlets for the southwestern section, on the credit of the State, if we strike out "corporations" here—provided any credit should survive that action. I put it to this Convention whether they are willing that this State shall become a general endorser for every company that shall choose to come into it and set up business on its own hook; whether our State shall take it on itself, in our present prostrated

condition, to endorse for every company that may come into the State and want to set up business? I have a great deal of confidence in the integrity of our legislature, but I am not willing to entrust them with this power and place the people of the country in the hands of such companies as may be formed. We know not what may be the character of the individuals who form them. They may come in and get the endorsement of the State, work their operations a while, get their pockets full of money and leave the country and leave the State to foot the bills. Are you willing to put the whole people of the State on any such venture? I for one, in the name of the people of Monongalia, and of the whole people of this State, protest against any such action. I trust it will be the pleasure of the Convention to vote down the amendment of the gentleman from Doddridge. We do not ask to impose any conditions on our southwestern friends that we will not abide by ourselves. We say hold this thing in abeyance and in a few years if we maintain the credit and good repute of the State, all these matters of development and outlets will take care of themselves; but if this should not prove true, and it should appear after a time that the people of the State can safely entrust this power to the legislature, it is always in their power to amend the Constitution so as to authorize it. I ask nothing more.

MR. BROWN of Kanawha. How do you propose to let us know and understand that you will do it then? By putting it in the Constitution that we shall not?

MR. DERING. We put this restriction in the Constitution for the present, until we get able to dispense with it. Then if the people want this system they can ask the legislature for an amendment to the Constitution. When we get the ability to do it, we will do it. But we don't go for bonding the credit of the State in advance. We have not yet got an existence as a state; yet the gentleman before we are born proposes to publish an invitation in our Constitution to shark companies from abroad to come in and prey on our infant credit. Let us wait until we get to be a state and then it will be time to feed these corporations. In the name of consistency, I call upon this Convention to stand fast and vote against striking out this safe-guard.

MR. SMITH. The gentleman from Monongalia does not seem to understand the point to which I intended to give my argument direction. I stated that he had sold three millions of dollars for

dirt roads, for fifty thousand dollars. I meant to say that the gentleman from Monongalia must have been a most ardent supporter of internal improvements.

MR. DERING. I am at the proper time.

MR. SMITH. Of the system of internal improvements; and you give us the best evidence of that by showing you would sacrifice the interests of the State to carry it out; and you have a dirt road that would cost \$50,000 and would give three millions to old Virginia. Now, how happens it when you say you have all you want that there is such a total revulsion of opinion?

MR. DERING. I did not say we had all we wanted.

MR. VAN WINKLE. I did not say we had all we wanted.

MR. SMITH. But this notion that you have a tissue of roads—dirt roads in all your counties—

MR. VAN WINKLE. No more than you have in yours.

MR. SMITH. There is none in Logan.

MR. VAN WINKLE. But the gentleman does not live in Logan.

MR. SMITH. None in Wyoming; there is a little one in Raleigh; but that is about all. I don't know but there is one in Mercer. We have no logrolling there; we never had any. You understood it a great deal better than we did; and I have heard you were pretty cute, too, in other respects.

MR. DERING. The gentleman has exhausted his privilege and we will have to reply if he is allowed to go on.

MR. LAMB. Mr. President, I do not intend to discuss this question. The main question is sufficiently well understood by us; but I do wish this question understood. It is persistently misrepresented by the gentleman from Kanawha, and not intentionally, of course, but misrepresented, I take it, entirely by the gentleman from Doddridge. It is to prevent, they say, this State from ever hereafter aiding in the construction of even a dirt road. Now, as I read the section, it prevents no such thing. These dirt roads have not been made by bonding the credit of the State. They have been made by appropriation however those appropriations have been obtained. This section would only prevent the legislature from bonding the credit of the State to private corporations for this purpose

or any other. The very roads to which the gentleman from Monongalia refers I take it were never made by lending the credit of the state but by subscriptions of stock which the state paid for as other subscribers did.

MR. BROWN of Kanawha. How did the state raise the money that was appropriated but by the sale of her bonds for the very purpose?

MR. LAMB. Where has the state given her bonds for improvements of this character? It is for the construction of these great and gigantic improvements.

MR. BROWN of Kanawha. I have known but one turnpike that I was present there in Jackson court where the bonds have been issued by the authorities to the company for that very road. I do not know any other way.

MR. LAMB. Where does that turnpike start from?

MR. BROWN. From Ravenswood and Parkersburg, and went to Charleston.

MR. LAMB. Terminated in Kanawha, of course. I do not know what the gentleman from Kanawha may have succeeded in getting the state to do; but I do know what has been the practice here, so far as we have had any dirt roads in this northwest. There is nothing here that would prevent the State from giving any proper aid to such improvements.

In regard to this logrolling system, perhaps it is better for all of us to drop that subject. Certainly if we go to compare notes about that matter, the gentleman from Kanawha and that section of country may be found quite as deep in the mire as the rest of us.

MR. SMITH. No, sir.

MR. LAMB. Yes, sir; the facts are on record.

In reference to another matter connected with this I would, however, say one word. It does seem to me singular—most singular—the gentlemen here advocating a system which must forever paralyze the prosperity of the new State, and advocating it avowedly on sectional grounds; a system, too, which if they succeed in engrafting it in our Constitution will not only *not* aid them in accomplishing their object but will put those objects for-

ever out of the power of western Virginia to accomplish. Engraft this system here upon your new State and you overthrow at the outset the credit of the State forever. Operate under that system and you may get a little piece of a railroad finished "ending nowhere"; but as certain as the sun shines you break down the State in the attempt and carry through no great work. It never will be accomplished. The objects for which the gentlemen here are aiming never will be accomplished, unless in the mode in which the Baltimore & Ohio Railroad and the other great improvements here in the northwest have been done—by the aid of individual capital and individual enterprise. With the aid which may be obtained from that quarter, those works may be secured, may be ultimately carried through. The Baltimore road will be vastly interested in the improvements which the gentlemen from Kanawha want so much: the city of Cincinnati would be vastly benefited by it, and the capitalists there and in other quarters may come to your aid. But embark the State of West Virginia in it, with the miserable result of this system of logrolling, and by the experience we have had and have seen in other states, and you break down the prosperity of West Virginia forever without accomplishing the object you are so anxious to obtain.

MR. HALL of Mason. I have so far taken no part in this debate; but I protest against the manner in which it has been carried on. We have been charged here with raising an issue, with advocating appropriations to internal improvements. There has not been a remark, as I know, in the southern part of the state asking for or advocating one cent as an appropriation to any internal improvement. We have made no such issue with you. We have set up no such claims. The only thing we have asked is that the legislature in the hereinafter be left untrammelled, free to take such action on this subject as they please. The gentleman from Brooke, to my great surprise, charged us with raising a sectional issue, with a sectional purpose. Why, sir, we have made no issue with them. We have sought to put nothing in the Constitution on the subject of internal improvements. We have asked that the Constitution be left free in such connection; that the legislature if in its wisdom hereafter should think it advisable to appropriate to internal improvements should not by action of this Convention be trammelled in the manner my friend from Brooke desires. We have made no application for any improvements; have only insisted that the legislature should not be trammelled in this manner. That is all

we south have asked. And yet the question has been continually argued in this house as though we were claiming appropriations for internal improvements that shall ruin the State with indebtedness. We do not anticipate any appropriation shortly being made; we are not demanding it. All we ask is that the legislature in its wisdom be left free to act on that subject. My friend from Monongalia has taken the ground which would seem to say that no man who should succeed him in Monongalia was to be trusted at all. Now, is it possible that we are to come to the conclusion that our successors in the legislature are to have no wisdom? That we are to send fools who are to run wild after all schemes of improvement; that our credit is to be destroyed; our means to be destroyed; that they are to run wild with everything. I protest in the name of the southern part of the state against any charge being made against us as having advocated internal improvements. But we do insist that the necessities of our country, the advantages of any part of it, require the appropriation of a dollar there shall be nothing in the Constitution to prohibit it. That is all we claim.

MR. HERVEY. Very true, sir, that the gentleman from Mason says, that this Convention cannot make one dollar for appropriation. The power of appropriating money does not rest in this Convention. The question is shall the legislature have the power? Upon that there are honest differences of opinion. Past experience in this state has taught us a lesson. Under the effects of that lesson we have been smarting and shall continue to smart until we just tell the corporations we will not supply you. For there is no telling otherwise where it will end. It is against this iniquitous system we have fought and shall continue to fight. We did not make the sectional issue. We have deplored it. We have besought gentlemen on this floor to throw aside those sectional feelings and issues; that this was not a time to be undertaking to get our hands into the treasury of the state; that this is the time to form a Constitution; that we were willing to stand henceforth and forever against conferring any power that is to prostitute the funds of the State and load the people down with burdens they were unable to bear. That sectional issue was not raised by us.

MR. BROWN of Kanawha. Raised by representation.

MR. HERVEY. The first man who made the appeal on a sectional basis was the gentleman from Doddridge. Now, sir, it is too late in this controversy to turn round and charge us with having

made that sectional issue. I deny that is any necessity for a sectional issue.

MR. STUART of Doddridge. I did not want the southwest to be charged with anything the northwest can be guilty of. I live in the northwest.

MR. HERVEY. The point is this; that our party did not make that sectional issue. That is the point. Why lick up these people they say? The gentleman from Kanawha and the gentleman from Logan both take the same position. There has certainly, Mr. President, come to be a wonderful scum over their eyes somehow or other of members in discussing this question. They charge one section with having received all the benefits heretofore and now that they are willing to play quit, whereas the statistics show that is not the fact. Did not the gentleman from Harrison show on Saturday that certain sections of the southwest had been benefited largely? It is not denied. It has not been denied that so far as the stock of the State is concerned, the southern part of this proposed State has received dollar for dollar as much as the other part of the State. Why talk about the Baltimore & Ohio Railroad? Why about Parkersburg? Were they built by the state? They were built on precisely the plan which is sought to be incorporated in this Constitution; by private enterprise. Why, sir, did the people of the northwest build this road for the purpose of crippling the southwest? One would think so to listen to the speeches from southwestern members. They didn't build it at all. The state didn't build it. The state never put a dollar into it. It was built by a foreign company; built because the needs of trade demanded it. I hope the gentlemen from Kanawha and all other gentlemen who need them may have the same kind of roads built in the same way.

The same old cat-in-the-meal-tub has come up again this morning. The member who last addressed us disclaims with much indignation the charge (which nobody has made) that his party is seeking to appropriate money for internal improvements. Oh, no. They are only asking this Convention to leave the door open so they can appropriate it at a future time. Not even that; for to appropriate money, they would first have to raise it by taxation, and that would be too honest and severe a process. But they want the bars left down so they can appropriate the State's credits; which is a far more dangerous and fatal process.

It is a proposition to endorse bonds. They understand that to mean precisely the same thing as the appropriation of money,

without the trouble of procuring it. It means the payment of money by the State. That is the true, the correct interpretation, sir: the payment of money by the State account for these works. The Convention has said the State shall not become a stockholder. It is now asked that she shall untie her restrictions and scatter her money broadcast, shall have no repayment, no interest on her investment, but throw it out promiscuously.

Again they assume that the southwest is to be damaged by this section as reported, by a refusal to strike out "corporations." Why? Because the legislature, they say, can be trusted to act wisely hereafter. The gentleman from Kanawha says the previous internal improvement policy in Virginia was wise and beneficial. Well, the gentleman from Kanawha is a good-humored fellow; but, upon my soul, I believe he was joking that time; for that is the first endorsement from a gentleman coming from such a high position, of such fine talents and vast observation who thought the previous policy of this state was wise and beneficial. What has the gentleman from Logan been complaining about, if it has been wise and beneficial; country has not been benefited? Now, sir, I understand exactly what the gentleman from Logan understands by a wise and beneficial system: that is to say, that if we inaugurate the old and exploded system which has broken us down we will have a wise and beneficial system from the standpoint of those who hope to use it for their particular purposes. With that view it is proposed to be re-inaugurated.

THE PRESIDING OFFICER. The Chair would inquire whether the gentleman from Brooke has spoken before to this question?

MR. HERVEY. Once before.

THE PRESIDING OFFICER. He has occupied his time.

MR. HALL of Mason. Is this Convention acquainted with the application to Baltimore under which that road was made—how we of the Kanawha valley were treated in that case? I happen to have some acquaintance with that matter. My friend from Logan had something to do with it. We both had votes on that subject. The history of that concern is this:

Baltimore applied, first for the right-of-way up the valley of Virginia, through Winchester, to Covington; thence to the Ohio river at the mouth of the great Kanawha. That delegation was before the legislature. I see a gentleman here from Preston who

perhaps knows something of it. When presented to the Virginia legislature upon that application, every member along the line of this road voted no. Every man. Every man above the county of Wood voted no; and in Wood. Well, we lost it. We only got 42 out of a house of 150 for it. They said, you will ruin Richmond; Richmond must be built up. Northwestern men made speeches advocating the great necessity of voting against that; and did vote against us. We lost our application. Application then came for this railroad with the restriction that it should not strike the Ohio river lower than Moundsville, or perhaps Fishing creek. Then what did we do in the Kanawha valley? We came to your rescue. I voted for it as a member of the house of delegates. The gentleman before me (Mr. Smith) voted for it as a senator. We got you the votes. It was made. And now, how do you expect to treat us in return? We are not here applying for an appropriation to make a road. No such thing. We are only applying that you shall not tie our hands and send us home, hands tied forever upon that subject.

Well, now after while the county of Wood applied for right-of-way. Wheeling fought it and fought her with extreme industry. Everything from this portion of the state voted against the application for the Northwestern Virginia Railroad except the gentleman from Tyler, Mr. Stephenson. I have a vote to have this line. But not one man above the line of that road except Jim Stephenson of Wood county. We again came to the rescue and voted for Parkersburg to get the road.

These are facts that the journals will prove. And now they propose to put a section in the Constitution that would prevent the State from endorsing our bonds or giving one dollar of relief no odds under how favorable circumstances. That policy is advocated by gentlemen from this part of the State and, to my surprise, by the gentleman from Wood too, because we protest against that going into the Constitution the gentleman from the county of Brooke insists that if we don't take the affront we are making a sectional issue. I hope it will be the pleasure of the Convention not to put the restrictive feature in our Constitution.

MR. VAN WINKLE. The gentlemen have got two railroad charters this year, with the aid of the county of Wood, I believe. So that account is balanced.

The hour for it having arrived, the Convention took a recess.

AFTERNOON SESSION.

The Convention re-assembled at the appointed hour and resumed consideration of the 6th section of the report on taxation and finance, the immediate question being on the motion of Mr. Stuart of Doddridge to strike out of line 27 the words "corporations or."

MR. STEVENSON of Wood. I think it is a public duty which I owe to the county which I have the honor to represent in part to give some of the reasons for the vote which I intend to cast on this amendment. In doing so, sir, I can assure the gentlemen of the Convention that I am actuated by no local or county feeling whatever. If I were, sir—if I could act in cases of this kind from motives of that character, I believe I would favor the amendment now pending, for I believe in the general scramble which will take place under a provision of that kind for the public money my own county would fare at least as well as any other. And let me say, sir, that I think every member of this Convention should take a broader view of this question, should look, if he can, beyond the narrow horizon of his own county or his own district: for, sir, in making a constitution for the entire people of this new State it seems to me that that policy which will induce members of this Convention to act purely in regard to their own locality is about as narrow as the neck of a vinegar bottle.

Now, sir, it has been asserted so very positively—and I believe only by the gentlemen who favor this amendment—that if you allow this prohibitory provision to remain in the Constitution as reported by the committee you give "a stab" at the best interests of the new State. Let me say, sir, that we who differ with those gentlemen and who believe that prohibitory clause ought to stand as reported by the committee would say just as emphatically and I believe with much stronger reasons that if you strike out that provision from the report of the committee, you have inflicted a fatal stab on the best interests of this new State, both for the present and for the future. Gentlemen tell us that unless the State is allowed to lend her credit to these corporations, not to make mud turnpikes alone but to every conceivable kind of internal improvement that may be projected by the interests of speculators, it will keep back the growth of the State. Sir, we say with equal interest and, I believe, much more cogent reasoning, at least it so strikes my mind, that if you do allow the State thus to abuse her credit and the credit of her people, it will produce the very result which these gentlemen suppose the opposite course would produce. Now, sir,

where is the difference between us? It has been established in this Convention and not disputed within my memory at least, established as clearly as any fact can be by arithmetic that the credit of this State is such and our finances are such now and must be for many years in the future, as to render it impossible that the State can lend its credit to these public works without proving a want of faith to the creditors who have the prior claim on all her resources, and a want of faith to the best interests of its own people. It has been here proved again and again, and it has been admitted, too, that this same curse of lending the credit of the state has worked the financial ruin and bankruptcy not only of the corporations in many cases to which this credit was loaned but to the people of the state generally. And there has not, I believe, been an exception; and the gentlemen admit this. And yet they tell us in the same breath that after all, the public in these states were benefited by these public improvements. Let me say, sir, that there is a fallacy in that argument, which has the appearance of soundness at first sight but is not sound in reality. Gentlemen tell us these states have grown rich and powerful notwithstanding the financial misfortunes and bankruptcy which has overtaken them in consequence of their extended credit to these corporations, and that the property in these states has increased from ten to a hundred-fold. Let us grant it all. Do you pretend to say that increase in the value of property, the wealth and prosperity of these states is to be attributed to the fact that they entered on a system of internal improvements or loaned their credit to others who did so? Why, sir, for one dollar that has been invested judiciously in internal improvements in these states by the state there has been \$1000 invested in enterprises by private undertakings, and it is attributable mainly to that fact that these states have gained their wealth and have become so populous and powerful in every department of trade and industry within their limits. It is rather in spite of mismanagement of their internal affairs by the authorities of the state that they have grown thus rich, not because the state entered on these public improvements. Let me tell you, sir, another fact in the history of these states and it is this, and the gentlemen forgot to mention it: that in consequence of the enormous burdens of taxation imposed upon the people of these states and upon the capital of these states wherever it can be found within their limits, in consequence of the state becoming involved either directly or indirectly in these public improvements, hundreds of thousands and millions of dollars of active capital has been driven out of these

states into others to escape ruinous taxation. That will be the result in this new State if we enter on this same policy.

My argument the other day was this, and gentlemen have not fairly answered it; perhaps it was not worth their attention. But I will repeat it and ask its consideration by my friends from those other counties that are filled up on this question of improvements. I tell you, gentlemen, that if you incorporate the policy that is proposed by this amendment in this Constitution that it will not accomplish the purposes which these gentlemen tell you it will accomplish. Just the moment you strike out this prohibitory provision, you open up an artery that will bleed this new State to death.

MR. SOPER. I hope there are no gentlemen in this Convention influenced by sectional feelings and that the question now before us will be approached with soberness and a determination to exercise our best judgment as to the vote we are to give. We have been told that the states around us, New York, Pennsylvania and Ohio, have now got constitutions containing a provision very similar to the one we have under consideration. We have been told that the State of Virginia has gone on appropriating money very extravagantly for internal improvements, but I have not heard any gentleman say that this money has been distributed and applied in an economical and proper manner. The gentleman from Kanawha spoke of the State of New York, its great canal, the energy and perseverance that accomplished the work; and remarked that even that work met with opposition in the state. So it did, sir. I recollect well about it. The result was this. All along the North river were flourishing farms. When they came in competition with the west, their produce was depreciated in value; their lands consequently depreciated, and not a man had gained but had incurred debts expecting to realize out of the produce shipped by the canal money enough to pay out. In many instances they became ruined. When you went into the interior of the state where turnpikes had been constructed, along each there was a continual throng of teams and there towns and villages were growing up. Whenever that canal went into operation those towns and villages depreciated, went down; those men engaged in transportation and otherwise using the roads, the farms around them from which they had been in the habit of supplying those towns with produce, all met with great loss in their business and in their property. This, sir, created a very great opposition to the canal.

Gentlemen, the Erie Canal was a great work—not so much for

the State of New York as for this western country. Had that canal disarranged all the commerce and values in produce in the State of New York, it would still have been recognized as a great public benefaction. For the City of New York was built up by it. There is immense capital, and every part of the Union is benefited by the growth and concentration of capital in this great metropolis. So that the Erie Canal was really, in its scope and effect, more a national work than a state improvement. The whole western country was benefited, for it opened a short and cheap route to carry their produce to the seaboard. But, sir, in time the people in the interior of the state, who were hurt for a time, by the disarrangement of their business and values, were pacified in time. They were told lateral canals should be built to carry their produce to the main canal, and they settled down in that expectation. Some half dozen lateral canals were projected immediately and in several counties were put in construction; but, sir, every one of these lateral canals proved to be a dead letter; the incomes from them never was sufficient to sustain them.

Well, sir, I want to apply the lesson of that here. We have heard that our present legislature have granted a charter for a railroad from the Northwestern Virginia Road to Charleston. Let me say a railroad like that never will do business enough to keep it in repair; that the whole capital and accumulating interest upon it year after year will be a dead loss. It does not lead into a country that can give it business; it will not be a link, as the Erie Canal is, in a natural thoroughfare of commerce thousands of miles long. The commerce of this country moves mainly east and west and must do so for a long time to come. Such a line would connect with no business at the southern terminus. Because it gives no promise of success, foreign capital cannot be enlisted in such a work; and the capital identified with the Baltimore road cannot, because it is plain the produce to be transported over a road from Charleston to the Northwestern road would not bring revenue enough to keep the road in repair. Yet it would bring to the Baltimore road some travel which would pass over its entire length, and that may make it an object to the people having an interest in the Baltimore road; and that is the only way it can ever be constructed.

The State of New York went on with the lateral canals, and after that with railroads and plank roads until she found herself millions in debt. After thirty years experimenting in this way, the people rose up and demanded an amended constitution and in-

structed a majority of their representatives to incorporate in that constitution a prohibition against lending the credit of the state to construct any works at the expense of the state.

Sir, if the people of Virginia this day could look at their true situation and could profit by the experience of other states, that is what they would do. They would demand a convention, just as they did in New York; they would prohibit the legislature from continuing the contraction of these debts. That, sir, is the voice of experience. You heard it from Pennsylvania and Ohio, wherever the experiment has been made. It is a very good rule to pay as we go; a safe way of getting along. Be careful not to contract a debt unless we can see to a reasonable certainty the means of meeting it when it becomes due. Now this is no truer doctrine in relation to individuals than it is to every department of public affairs, state, county, town—everything. I don't care where you go with it, the rule is universal.

Now, what course ought we to pursue in western Virginia? Every man cannot have a river-bottom farm. A large portion of our population must go upon the hills, and these have got to work hard and save, persevere and accumulate. Every acre they clear and fence is adding so much to wealth of the country and themselves. In the process of time, they will have the means within themselves of accomplishing the advantages they want. Not, I grant you in the construction of railroads, but in the building of these turnpikes; and whenever a county increases in population, industry, and wealth in that proportion will its means increase for neighborhood accommodation and afford reason for outside capital to penetrate the country with railroads. Whenever you have got any surplus moneys, you can take and give them to those new counties that are struggling to get along and aid and assist them in their neighborhood accommodations. It ought to be done; and I trust there will never be a legislature in this State but what will be willing to extend to any portion of the State where the people are representing themselves in that way. But let it be a donation. Is there any return from the turnpikes to the state for money expended? Not a dollar. It is all gone; and that is the way it would be under the new State, because the money would be given at once and the country would be benefited by it and there would be the end of it.

The vote on Mr. Stuart's motion was then taken and it was rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Cook, Dolly, Hansley, Hoback, Hagar, Irvine, Montague, McCutchen, Parker, Robinson, Ruffner, Ryan, Sinsel, Stephenson of Clay, Smith, Taylor, Walker, Warder—21.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Dering, Dille, Haymond, Harrison, Hubbs, Hervey, Lamb, Mahon, O'Brien, Parsons, Paxton, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Van Winkle, Wilson—22.

MR. HAYMOND. I have a substitute which I will offer now for section 6:

“Resolved, that the Legislature of West Virginia shall have the right and power to borrow from time to time as may be wanted for internal improvements the sum of \$4,000,000; which sum is not to be exceeded at any time except in time of war or insurrection; but no loan shall be made until five years after the admittance of the State into the Union.”

MR. HERVEY. I would inquire whether that four millions shall be the aggregate of all the State debt?

MR. HAYMOND. Of all we have the right to borrow.

MR. SOPER. I will offer an amendment, to add: “nor until a vote of the people shall authorize it.”

MR. HERVEY. I propose an amendment to the amendment: “that said four millions shall include the proper portion of the State debt of West Virginia.”

THE PRESIDENT. The Chair would have some doubts about the propriety of this last motion. The substitute is only an amendment. The Chair would suggest that if the other carries or falls it can be followed by the further amendment if the gentleman desires.

The question is on the amendment offered by the gentleman from Tyler.

MR. SOPER. I hope there will be no amendment offered here with a view of authorizing the contraction of a State debt, unless that can receive before it is done the sanction of the people. It is in point of fact a mortgage on the estates of the people. They will have to furnish the money. I am unwilling that my constituents shall be placed in any position by which it will be in the power of the legislature, without having authority from them, to encumber

them with debt that will last all their lives, and probably posterity for several generations after. Now, we all of us profess to be governed by the wishes and will of the people, and why ought we not before we engage in a matter of this importance which is to settle a debt on the people receive from them an approval? It appears to me it is absolutely necessary that it should be so. If this money is ever to be raised off the people the people ought also to have the direction of its obligation—when, where and to whom and for what purposes; and I would not leave this matter to the legislature. Not that I call in question the integrity of the legislature; not that, but I have heard gentlemen talking about “logrolling”; we have heard them tell about the extravagant legislation of former days; and it is to prevent anything of this kind in a hasty manner, and let the people understand it beforehand so that they can vote understandingly. In Richmond there was some three or four millions of dollars appropriated for railroad purposes. Well there were a few thousand voted for turnpikes. And I suppose that of the moneys expended on this side of the Allegheny mountains for turnpikes the people are paying three dollars for every dollar they got put into turnpikes.

Now, sir, if this thing must be forced upon us; if we must involve this State in ruinous debt, let it be done by the people themselves. Let them understand what they are called on to authorize their legislators to do before ever they act in the premises. I will not give my sanction to any power whatever in any legislature to incur a debt which shall be binding on the State and people until they have had an expression from the people to that effect. I hope therefore, sir, that the amendment I have offered will prevail.

MR. HAYMOND. I am opposed to the amendment. I am for giving the legislature some power. We have provided for one; and it was entirely unnecessary to have a legislature unless we are willing to give them some power. I am opposed to the amendment on the ground that they could not make a single appropriation without calling on the people for votes to repair a bridge or anything of the kind. Why, we should have an election almost every day.

The amendment offered by Mr. Soper was agreed to.

MR. SMITH. I move a reconsideration of that vote. I voted under a mistake and several of us did. I thought it was Mr. Haymond's amendment I was voting on.

The motion to reconsider was agreed to.

Mr. Lamb called for the yeas and nays on Mr. Soper's amendment and they were ordered and taken and the amendment rejected by the following vote:

YEAS—Messrs. Brumfield, Battelle, Cook, Dering, Dille, Harrison, Hubbs, Hervey, Lamb, Mahon, O'Brien, Parsons, Paxton, Simmons, Stevenson of Wood, Stewart of Wirt, Soper, Van Winkle, Wilson—19.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brooks, Chapman, Dolly, Hansley, Haymond, Hoback, Hagar, Irvine, Montague, McCutchen, Parker, Robinson, Ryan, Sinsel, Stephenson of Clay, Stuart of Doddridge, Sheets, Smith, Taylor, Walker, Warder—24.

MR. VAN WINKLE. I offer the following amendment, sir:

"The amount so borrowed shall be expended in equal sums in the several senatorial districts of the State."

If the amendment of the gentleman from Marion is to be adopted, then the one I have offered is most certainly a proper one to go with it. With my experience in reference to these appropriations for internal improvements, their unequal distribution, I believe that is the great burden of complaint in the west on that subject and therefore I think something like the amendment proposed by me should go with it if it is to be adopted. It would be almost impossible to confine it to the counties because you could not perhaps in all cases confine a road to one county; but the senatorial districts embrace a large and nearly equally populous territory, all of whom might possibly be accommodated by the leading roads.

I would suggest to the gentleman from Marion that the language of his resolution is a little obscure. It does not say whether the debt he proposes to authorize is never to exceed four millions, or whether the whole debt of the State is never to exceed that. He leaves it to be inferred. I think there cannot be a fairer proposition than this I have offered for an equitable distribution of this appropriation if the proposition of the gentleman from Marion is to be adopted.

MR. STUART of Doddridge. I rise for explanation. It will be recollected in the last vote—it did not occur to me at the time—that I had paired off with the gentleman from Hancock.

THE PRESIDENT. The Chair would suggest to the gentleman that a change of his vote would not alter the result.

MR. STUART of Doddridge. The amendment offered by the gentleman from Wood is more objectionable than all the other amendments and propositions that I have seen come before this body, and if it was not that I know that gentleman would not be guilty of making a buncombe amendment and speeches I should think he was not serious. Here is an amendment offered by the gentleman from Marion limiting the legislature to four million of dollars that may hereafter be expended in internal improvements; not to exceed that amount. The gentleman from Wood comes up here with an amendment that this amount shall be equally expended among the different senatorial districts. The gentleman seems to consider that we have no common interest at all, no interest in the State at large, but it must be confined to the senatorial districts. Now, if it becomes necessary in future legislation to appropriate, say, \$100,000 to build an improvement necessary to the State at large that appropriation cannot be made unless there is a similar appropriation made for every senatorial district; and he says if the people are to be taxed he wants uniformity. I understand it is expected the State of West Virginia will be compelled to pay her equal quota of the public debt of Virginia; and it might be said here that other districts of this State should turn round to the gentleman from Wood and say, you have received more than any of the other senatorial districts, and should be made to pay a greater proportion of this public debt. If it works one way, it ought to work the other. We see two of the largest improvements ever made in northwestern Virginia center in the town of Parkersburg. We see the northwestern railroad, which was diverted from its proper channel and the northwestern turnpike road located there at an expense amounting to hundreds of thousands of dollars; and then the Staunton and Parkersburg centering there. I would say not less than a half million dollars has been expended looking to the improvement of Parkersburg directly, sir. Then, sirs, you ought to account for all this amount if it is necessary you should receive an equal portion of the money that may be appropriated, because if you want to equalize this matter the debt ought to be equalized as well as the money that should be hereafter appropriated. Now, we might want to macadamize a road from some point on the northwestern road some place running down to the southwest—to Charleston. We might want that road macadamized. And it is

hardly equalled by a railroad, let me say to gentlemen; the north-western turnpike, which was built at enormous expense to the state; cost almost as much as a railroad. A great many people are under the impression to this day that we would have been better there with that road without the railroad. Then, sirs, we have improvements run through our country which cost our State hundreds of thousands of dollars; but if it does become necessary to appropriate money for the purpose of improving some other part of our State, I do not think there should be a restriction put here that there should be then appropriated as much to my senatorial district as you appropriate to where they have no roads at all. I hope it will be the pleasure of the Convention to vote down this amendment even if you vote down the substitute of the gentleman from Marion. With the amendment of the gentleman from Wood tacked on to it, it would be totally worthless. I say there is no legislature that ever existed that would appropriate a hundred thousand dollars for building some road where the State necessities required it when at the same time it required them to appropriate the same amount for every senatorial district when there was no necessities requiring it there. And it is virtually saying, sir, that the State of West Virginia shall never engage in any internal improvement system at all and never appropriate one dollar of money for building up a road or any improvement of the kind. I have seen from the onset that the gentleman is utterly opposed to the appropriation of one dollar to the State, and this amendment is in line with that purpose. You may as well just say in so many words that the state legislature shall never hereafter appropriate one dollar of money to any internal improvement as to adopt the amendment of the gentleman from Wood now. For common reason teaches us that that must be the effect of it.

MR. HAYMOND. I discover that my vote was counted. I might possibly have said "aye," but I meant "no." If it can be altered I would rather have it done.

MR. PAXTON. I understand the gentleman from Doddridge to say those on this floor who have been sustaining this report are opposed to an appropriation for works of internal improvement. Now, I am not aware that any gentleman on this floor has indicated any opposition to works of internal improvement. On the contrary, every gentleman so far as I have heard an expression has expressed himself as decidedly friendly to such works. I do recollect, however, distinctly that the gentleman from Doddridge when

a section here was under consideration said that he was a friend of internal improvements but he was utterly opposed to the State ever contracting a debt for this purpose. All that this section proposes is to prevent the State from contracting a debt for internal improvements. It proposes to do the very thing that the gentleman has contended for and says he is friendly to; simply prevents the State from contracting debts for internal improvements but does not prevent the appropriation of any amount of money to that purpose. I am therefore unable to comprehend precisely the position of the gentleman from Doddridge. It seems to me this question has been discussed here by gentlemen who have differed from the committee as if works of internal improvement never could be made and never had been made except on State account. I beg to inquire of gentlemen how the great network of railroads that cover the great states of this Union have been made? If by the states I should like to have them point out. Who made the great network of railroads in New York, Pennsylvania, Ohio, Indiana, Illinois? Not one of them made on state account; invariably made by private enterprise with individual capital. And I contend now, and I refer to the history of these matters to carry me out in it that individual capital and enterprise will always be found ready whenever it can be shown that any work will be profitable; that the demands of commerce require it. Whenever that is the case, I say individual enterprise and capital will always be ready and forthcoming. I say further that when the demands of commerce will not require it, it will result in financial disaster to whoever undertakes a work of that character, whether it be state or individual.

Now, sir, I would just make one further remark: I hope this Convention, after the expression they gave on section 5 against the creating of state debt for works of internal improvement will maintain their consistency and carry this principle through, and that we shall not have adopted in this State what has been universally condemned wherever it has been tried; that we shall inaugurate in this State a credit and rotten system of internal improvement on State account. Because it has proved itself so wherever it has been undertaken. Debt is piled on debt, and debt piled on debt, no one caring for the amount provided he can secure for himself some share of the spoils or for his particular section for his personal advantage in politics.

MR. BROWN of Kanawha. I do not know how far the gentleman is correct in his history of this plan of legislating. I do not

think that has been the character of our people. I don't believe our people have ever been so reckless of their means. A great many assertions have been made here about the corruption of this system of logrolling. I was never in the legislature; never had any hand in it. I don't believe the declarations in respect to it are correct, and I believe the Legislature of Virginia have been as pure and upright and correct a legislature as ever sat in any state or country—men who are just as far above corruption as this body or any other; who had the interests of the people as much at stake, who were as saving of money as the most economical; who knew the ability of their constituents to pay. Now, sir, I don't believe the Legislature of Virginia would even have been affected with ignorance about matters that concerned it. A legislature better knows the people's needs. That our state has a debt is nothing new nor strange. It is just what every business and enterprising people would have in just precisely the same situation. That we now find ourselves in a revolution, and prostration because of that revolution an attempted separation and dismemberment of the state because of that revolution, not because of that debt, has no reference whatever nor does it impinge in the slightest degree on the correctness and proper course pursued by the state prior to this thing sprung on us—having no connection whatever with the system of internal improvements. Now, one of the difficulties, it is said, with the internal improvements by Virginia was that they were unprofitable. That is not true as to these that are completed. I venture to say nowhere in the United States internal improvements made by the state are more profitably developed or have returned to the treasury more net profits than the railroads in the State of Virginia that are completed. She has embarked on a large system, for she is a large state and has had difficulties and obstacles to overcome that no other state has had to overcome. Why, sir, when you go into one of these Western states it is a very different matter from contending with mountain barriers, and it only is the public interest that is able to overcome these obstacles. If you could sweep away these mountain barriers and make a plain out of this rolling country, then you would not need the state to accomplish this great object; but the Creator has reared them there and it is the part of man in a compact state to remove them; and it is because these works of improvement have not been completed that so many of them are unprofitable. When they are completed they will be profitable. So there is no objection to the system and the gentleman wholly fails to show any. The gentleman from Wood

now proposes to distribute this fund equally. But if the legislature wants to make an appropriation to some object that is not local in interest that is confined however to a limited territory, to make an equal distribution as he proposes, if the appropriation at all it would have to be duplicated for each senatorial district. In some of these districts are three or four counties; in some six or eight; one a little state; the other a garden patch. If you act on that principle there is no need of a state at all. Have as many states as there are senatorial districts. But I am not certain the people would be satisfied in their districts; because they will then legislate in reference to their peculiar interest. But is not that the logrolling system carried out to destruction? In order to do it you must appropriate nine dollars more in order to appropriate the one dollar that you wish to and thus encumber the State with an unnecessary debt nine times greater than is needed, and pay the interest on it until you are able to redeem the whole. Is not that the inevitable result? Is not that ten times worse than leaving the discretion? Whenever the gentleman adopts that plan he ought to bring in these senatorial districts into a hotchpotch and credit those that have received. Now, let us carry this thing fairly. Leave it to the people. If the people's representatives say it is right and proper do not tie their hands. If it is not right and proper they will be condemned and turned out and other people put in will manage the people's affairs better.

MR. BROOKS. I seldom have a reason that I am unwilling to give. It is not that I am opposed to internal improvements. To tell the truth about it I feel very anxious in some respects. We need a good road up through our own country. I would be glad to see it right through our county and on out through some southern counties from our section. I would be glad to see a railroad from some point on the northwestern road to Charleston and on to Kentucky. But my desires must not overrun the present aspect of things; hence I say I am influenced in my views by the barrenness of our country and our present perilous condition.

I have not been able in reading this report to discover anything that would hinder the legislature of the proposed new State whenever they were a mind to appropriate for a public improvement or an internal improvement from making such appropriation. Therefore I have favored it, believing that if our State be improved, not one or two districts of it, I would like to see it. But to talk about loaning the credit of our State before it comes into

being and in our present condition, when we have no credit, seems to me worse than vain. Where is our credit? What kind of credit can we have if organized into a new State? From our connection with the old state, a heavy debt rests upon us, and we know that we must bear our part of that debt. This we cannot repudiate, but as honest men must shoulder the responsibility and take our part of that public debt and pay it. Well, this is not going to be accomplished in five years as the substitute contemplates; not, I fear, in twice that.

When we look at the present condition of our country, what is it? It is almost a perfect desolation. Here are facts that have been controlling to me; and when we have been talking about our credit and prosperity I could not refrain from reflecting upon those facts that some of our best counties have been praying the legislature to exempt them from taxation; not able to pay their taxes in consequence of the disasters that have fallen on us. If our best counties are not able to pay taxes, and we just going into business with such a weight of public business on us, such a load of public debt to assume, where is the prospect of a credit? Who would credit people in this condition? Whence would we borrow money when we are not able to pay our taxes to keep up the government at home?

These are some of the considerations that I have been governed by. And while I see the country prostrate and wounded and bleeding at every pore, I shall be contented to vote to support the report of the committee. And though it has been intimated to me that my constituents would frown on me, yet if I cannot set myself right on that principle they ought to frown on me. But when I go home and tell them I voted not to permit the legislature to lend the credit of the State to corporations for internal improvement purposes, they will say: "You did right."

These are my reasons; this is my judgment. If I am wrong I cannot help it. I follow my judgment, for it is the best guide I have. I shall vote against the amendment; against the substitute; for the report of the committee as it is.

MR. HAYMOND. The gentleman is mistaken when he takes up the idea that we are going to pay this foreign debt in five years. It is considered by some that on a fair settlement with eastern Virginia we will not owe them one dollar, and I do not think, sir, we will owe them a single dollar. Some suppose if we settle on cer-

tain conditions we may owe five or six millions of dollars. Now, I will say to the gentleman that if we owe this much the bondholders will jump at our bonds of 34 years, and he need not expect to have to pay them in five years. The bondholders will beg them, be glad of the chance. But I don't think on a fair settlement we shall owe them one dollar. Sir, these appropriations for the improvements made in eastern Virginia have been taken off of us all. The farm has been improved east of the mountains and they shall pay for the improvements.

MR. LAMB. After the remarks which have been made by the gentleman from Upshur—who has really embodied in his remarks the substance of pretty much everything that has been said on this side of the house, it would be unnecessary for me to say anything further. But upon the special question which is here presented of authorizing the State to contract a debt of four millions, I want to say a word or two. The gentleman who offers the substitute bases it upon the supposition that we are to pay no portion of the debt now due by the State. The substitute itself carries that on the face of it. No man looking upon the present conditions in this State will suppose for one moment that you can raise for many a year to come over \$240,000 of the revenue that is paid in the State of Virginia. The whole revenue, already estimated last year before the commencement of these troubles was about twice that amount. But certainly you will not be able hereafter in the condition of things to which we have been subject to raise one-half as much as heretofore. Suppose your revenue be \$240,000, which I think is the very outside, that is six per cent interest on a debt of four millions, and supposing you can borrow at six per cent would just take the whole of it. This is the proposition just submitted by the gentleman from Marion. Under such circumstances, in our condition, can gentlemen really expect to accomplish their objects by the aid of State credit? Must they not see that these objects, if accomplished at all, must be accomplished by individual credit and enterprise? And let me tell you that when the prosperity of this State is restored—if such should be the case—with the immense wealth that is awaiting development, individual credit and capital and enterprise will seek it; and from this source these improvements, as everywhere made throughout this vast country, which has really worked and proved beneficial to the world, which has really worked a great improvement in the people—from this source alone you must receive it. The gentleman from Kanawha

has told us the internal improvements of Virginia were so profitable. I believe this state has invested something like thirty millions of dollars in these improvements. I know the auditor at Richmond has reported that for purposes of taxation on the first of January last the public debt of the State was \$35,800,000, and that there was then resting liabilities upon the treasury of this state to the amount of further \$7,500,000 on account of appropriations during the last session. This will make something like \$43,000,000 or \$44,000,000 of debt, of which not less than thirty millions has been invested in these internal improvements besides the amount which has been expended on them out of the taxes collected and the amount of interest which has been paid. And, now, gentlemen, what has been the revenues of the state from these internal improvements? In the same statement we have the receipts from internal improvements. Not one dollar in dividends from any of these works; but the immense sum of \$35,000 estimated as the produce of the tax of one mill per mile on the railroad and canal travel and one-half of one per cent on the gross amount received by the state. Not one cent to the state and \$35,000 from the product of this tax. And this is the profitable character of the Virginia improvements in which the property of this state has been invested in a debt for which every man's farm and horse is mortgaged and may be sold.

I have repeated, perhaps often enough, but I say again, gentlemen; give them all they want and they can only accomplish the ruin of West Virginia by loading her down with debt; they cannot accomplish the object they are aiming at. If that is to be accomplished it must be because the wants of commerce demand it. If the wealth is there to be developed, individual capital and individual enterprise will seek it and develop it. But do not, for a purpose which you cannot accomplish, don't load down the energies of this commonwealth. Leave her untrammelled; don't load down our people with taxation by an enormous debt. Then you may expect capital and wealth and population to be brought into the State. In the city of Wheeling the great difficulty we are laboring under now is just the onerous taxation to which we are subjected on account of the debts which we contracted in our delusion. Don't, gentlemen, be deluded as we have been. This day, if that taxation were off of us, the energies of this people—for they have energy—would accomplish more for the improvement of this city in a year even under the present state of things than we can expect for ten years to come.

MR. SMITH. I didn't like to disturb the gentleman, but it did strike me the whole of his argument was out of order. I understand the question now to be the amendment of the gentleman from Wood to the amendment offered by the gentleman from Marion; whether this money should be equally distributed among the senatorial districts. An argument to show that it ought not to be divided is the whole question at issue and the argument of the gentleman has been entirely confined to the propriety of the amendment itself, whether the four millions should be loaned or not.

MR. LAMB. In considering the propriety of amending a resolution, the propriety of the resolution is necessarily at issue.

MR. SMITH. That is, admitting the amendment of the gentleman from Marion to exist, ought it not then to be amended by this amendment.

MR. VAN WINKLE. Is the gentleman discussing a question of order?

MR. SMITH. I am only giving my opinion of the course of this argument—that it is irregular. The question is on this amendment offered by the gentleman from Wood to be attached to the amendment of the gentleman from Marion. I say it ought not. It is incongruous. They cannot exist together; they are in conflict with each other. The amendment of the gentleman from Marion is that the legislature shall have power to borrow from time to time, as may be wanted, four million dollars. The gentleman says that must be divided amongst the districts. Well, some districts do not want it. It is to be borrowed from time to time as wanted, and then you cannot borrow at all if some of it is not wanted. I therefore say the amendment is wholly defective. I imagine my friend from Wood, who knows as much about legislation as most men, has heard of such a thing as offering an amendment to cripple the original, so that the whole would become so obnoxious that you cannot maintain it when amended. Now, I think there is a question raised determining the proposition whether any sum shall ever be expended for internal improvement or not. Why cripple it with this obnoxious amendment? It is to be borrowed as it is wanted; it must be wanted by every district, and when all the districts concur in desiring it then it is wanted and not till then. It is divided equally from time to time. The question now is the amendment to the amendment and I have nothing more to say about it. What has been said by the gentleman from Kanawha, I am willing

to rest this. I look upon it as an effort to defeat the main amendment and prevent a fair expression of opinion on it without having it so obnoxious that no one can take it; to engraft an obnoxious amendment and then ask the house to vote on it. Take the amendment as it is; take the sense of the Convention on that amendment, and don't occupy our time with crippling this amendment. It is defeating it by inches and by indirection.

MR. HERVEY. The gentleman from Logan never thought about that point of order when the gentleman from Kanawha was making a strong internal improvement argument.

MR. SMITH. The gentleman from Kanawha undertook to show that the thing was incompatible with this amendment.

MR. HERVEY. The gentleman from Kanawha undertook an argument in favor of these systems of internal improvements and cited the case of New York and others and alleged they abandoned these works of internal improvement when these had made them rich; from those alleged facts argued that we should follow in their wake until we got rich and then we could abandon it. In reply to that I have to say that the State of Virginia has followed in the wake of those states, but not until she has got rich—until she has become bankrupt. And it is proposed to continue that system here and get rich by lending our credit. I voted for the amendment of the gentleman from Tyler. I shall vote for this and then shall vote against the whole of it. I shall vote for what I consider and believe to be the best in the event, we should unfortunately adopt the original proposition.

Now, sir, it has been shown clearly by the gentleman from Ohio that the existing debt of thirty millions is onerous and oppressive, and when we come to adopt and take our portion of that debt we will have a debt of four to six millions of dollars. Now we are asked to add to that four millions of dollars for the benefit of corporations that have schemes they wish to promote at the public expense. Let us profit a little by the experience and example of some of these other states. What did Ohio do after she dropped this system? She put a provision in her constitution that that state, with three millions of people, cannot contract a debt over \$750,000 except to redeem a pre-existing liability of the state, or in case of insurrection or invasion. Now, sir, there is the great State of Ohio numbering three millions of people has prohibited the State of Ohio, their representatives, from contracting a debt

exceeding this sum. Yet with a population numbering scarcely one-tenth, we are asked to open the flood-gates of our State's credit to the policy Ohio has abandoned and fortified against. Sir, this proposition to leave this whole question to the people was defeated a little while ago. That is where we proposed to put it. Now, sir, I do not intend to allege anything against the morals of Virginia's system. The gentleman from Kanawha has great admiration for it. He says it is pure and patriotic. I don't intend to make any attack on that feature of it. But take the fruits of it. "By their fruits ye shall know them." Take the results of that pure and patriotic and admirable policy. Is it such as we should follow here. I care not about impugning motives except thus far; that there has been—no man pretends to deny—a system of logrolling in the legislature by which certain great sectional interests have been combined to put appropriations through which could not have been passed except by such combination of rival interests. Who denies that? Will anybody pretend that that is not dishonest and corrupt, dangerous to public interests and public morals?

I shall vote for the proposition of the gentleman from Wood and then vote against the original proposition.

MR. HAYMOND. I understand from the gentleman still that we are certainly to have a foreign debt of some five or six or seven million dollars, and that at the end of five years we are certain to add four millions more. That is not correct. We are just telling the people that after five years they shall have the right to do as they please. That is all we are asking for; asking that the legislature—the people—in five years shall do just what they please to do and have the liberty to do it. It is no more than right, and we should ask nothing more. It is right for the people of the country to have their liberties and they intend to do it. I tell you, gentlemen of the southwest, now is the time. Hear from the northwest. I tell you now is the time to stand by the people. I am not here as a member of this Convention alone from the county of Marion. I am here as a citizen of the contemplated State of West Virginia. In a great question of this kind, I never look to county or town. I am looking to the whole State. We never can build up a great State here if we put everything in one section. We must look over the whole. And, sirs, you must go south, east and sometimes combine here all up together. We must clear out her hills; make her roads, invite capitalists from abroad to come and dig the minerals from our hills. That is what you want, and you never can get

them to come and clear your farms and make your roads. No, sir, no. You ought not to ask them. We ought to do that much for ourselves. If we cannot do it, we ought never, never to have a road or anything else. I say let us make the roads and clear the farms and invite capital to come amongst us and take the mineral from the hills. Our hills are full. Sir, there is mineral enough in West Virginia to make this the most powerful and wealthy state in this country. I ask the gentlemen from the southwest to stand by this call. I am from the north, but I can look abroad. I never will look to the counties or towns. Gentlemen said my people would not sustain me here. Gentlemen, I know the people of Marion. They are as liberal a set of people as ever lived. They have railroads and turnpikes and they know what their convenience is. They know that their lands have gone up, doubled or more in value. They know that these lands are increasing the taxes of your State. Make railroads and turnpikes throughout the southwest, what will be the result? Why, your taxes in Wheeling will come down. Their lands will increase in value and it will increase the revenue to the State. It is all nonsense about not improving this farm of ours that we are just cutting loose from eastern Virginia. Sirs, I wanted to cut loose from her for many years that we might improve the farm, and I now go for improving it. Sirs, it is idle to talk about not improving this great farm of ours; idle talk to say, let us wait for capital. We have been waiting for men of capital to come in and have got poor. You must improve your farm yourself and make your roads. Then capital will come among you and take your mineral from your hills, and when they do that, sir, we will be a great and mighty people; when manufactures spring up in every valley and on every hill then you will see the great State of West Virginia coming out.

I call upon the southwestern men to stand by me here today and let us carry this point. Sir, I did not come here to represent the little county of Marion, I came here as a member of this Convention to form a constitution for West Virginia; and, so help me God, sir, if I don't intend to do it!

MR. VAN WINKLE. I do not contend that my amendment is perfectly congruous with the substitute of the gentleman from Marion. He proposes to borrow money from time to time, or in any other way. My amendment simply says that if it should develop that one senatorial district has got its proportion, then they stop appropriating to that senatorial district. That is all. Then it is as

ambulatory as the substitute of the gentleman from Marion. That money may be borrowed as wanted and fed to this district or that; but when one has got its fair share then it stops. I think these imputations on a gentleman's motives and what they do and all that are very apt in making the old saying applicable, that when the devil was sick the devil a monk would be; but when the devil got well the devil a monk was he. We are all apt to resent these things when they pinch us a little. This amendment I profess to have offered in good faith. If the substitute of the gentleman from Marion should carry, then I want something of this kind connected with it. I am not in favor of the substitute, because I am in favor of the report as it stands and think the interests of the State would be protected by it. But I have a right to try by amendment to make the proposition of the gentleman from Marion less objectionable to me than it is in the original form.

MR. STUART of Doddridge. I must say it strikes me the amendment is for the purpose of killing the substitute; and if you will watch the argument of my friend from Ohio you will see what the object is. Instead of arguing for the amendment the gentleman from Wood argued against the substitute, knowing that if his amendment was adopted, that was as good a way as any of killing the substitute.

MR. VAN WINKLE. Well, sir, if the gentleman from Doddridge has the power of entering into my breast to tell what my motive is, he knows more than I may know myself. It is usual in parliamentary bodies that when a gentleman disclaims a thing, his disclaimer is accepted as true.

MR. STUART of Doddridge. I merely meant that the gentleman misconstrues his amendment. That amendment distributes the money equally.

MR. VAN WINKLE. The gentleman said in so many words that I had offered the amendment for the purpose of killing the substitute.

The vote was taken on Mr. Van Winkle's amendment and it was rejected by the following vote:

YEAS—Messrs. Battelle, Dering, Dille, Harrison, Hubbs, Hervey, Lamb, Parsons, Paxton, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle—16.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Chapman, Caldwell, Carskadon, Cook, Dolly, Hansley, Haymond, Hagar, Hoback, Irvine, Montague, McCutchen, O'Brien, Powell, Parker, Robinson, Ryan, Sinsel, Smith, Taylor, Walker, Warder, Wilson—28.

MR. HARRISON. I consider this virtually the same thing we voted on Saturday; and when I reflect on the large public debt that is already hanging over us and the fact that if we can pay that off in a reasonable time we can then go to work and make these internal improvements. I shall continue to record my vote against any change in the section as reported by the committee.

The whole argument on this matter appears to be predicated on the fact that we are making appropriation now for internal improvements. It seems the entire argument of the gentleman from Ohio was based on the presumption. I want to disabuse the minds of the gentlemen of the Convention of that impression. I know we all understand that is not the case, but it is so frequently argued here and repeated over and over again. We are not proposing to appropriate one dollar of money. It is only leaving this question with the legislature. We are largely in debt; forty million dollars. Well, we don't propose to make it one dollar more. There is not a member of this Convention I suppose that would be willing to vote for ten dollars. There is not a member that is advocating this principle that would vote to appropriate ten dollars. To my friend from Upshur: I would like to have his attention a moment. I am just down from the legislature. I find that Upshur there is appealing to our present legislature for ten thousand dollars to finish macadamizing their road from Clarksburg to Buckhannon.

MR. BROOKS. Not through me.

MR. STUART of Doddridge. They make it appear there is a great necessity—military necessity; that they are there in the mud up to their chins, and that if there is not something done for poor Upshur she will be swamped and never get out of it. Well, sir, the legislature reflected that although the necessity of Upshur was so great, under the circumstances, with that debt hanging over us, the legislature wanted to see its way out first. They refused your appropriation.

MR. BROOKS. That was right.

MR. STUART. Just so; but the time may come round when it will not be right. I am not a clairvoyant that can see into the future what may be the necessities, but these gentlemen seem to look ahead a great deal farther than I can; but I would say if I was a legislator, as I am at present, I would avoid most any appropriation here in West Virginia until we can see our way clear, and I take it for granted that will be the course of our future legislators. We are a little State. You can almost ride across it in a day. Our interests are identified with your interests. It is not to be supposed we will appropriate money here unless the necessities of the State require it, and if they do, here we have our hands tied up by a constitutional provision that they cannot do it, although the people may want it. To get the authority to do it they will have to change and tear up their Constitution. How wise and prudent we have got to be. We can see away ahead that the legislature is going to squander our money. It is not ours. It is the State's. I presume these legislators will come directly from the people and know what their wants are; and if they want an improvement it should not be our policy to tie the hands of the legislature.

To the county of Upshur, again: You are dreadfully in the mud; and I really think that before five years rolls around you will want a little appropriation and if I am in the legislature I will recommend them to appropriate it when I see the necessity of it; but, sir, you just say it shall not be done.

MR. LAMB. Amid all this distortion and attempted obscuration of the simple truth, I hope the members of this Convention will not lose sight of the fundamental fact that there is nothing in this section as reported by the Committee on Taxation and Finance to prevent the future legislatures of West Virginia from appropriating money for this or that work if they have got it. We leave the legislature perfect control of all the money that may be in the treasury of the state. All we ask is that they shall be forbidden to contract debt for such purposes.

(At this juncture the gas in the hall went out, and the Convention adjourned.)

XLVI. TUESDAY, FEBRUARY 4, 1862.

The Convention was opened with prayer by Rev. Josiah Simmons, member from Randolph.

Mr. Battelle, Chairman of the Committee on Education, submitted the second report of that committee, and asked that it be laid on the table and printed. So ordered. Following is the report as submitted:

SECOND REPORT OF THE COMMITTEE ON EDUCATION.

The Committee on Education recommend the adoption of the following as a part of the Constitution.

G. BATTELLE, Chairman.

1 "1. The right to enter upon or bring actions for the recovery
2 of lands lying within this State, shall, for the term of twenty-
3 one years next after this Constitution goes into operation, be
4 limited to seven years next after the time when such right ac-
5 crues or shall accrue; saving to persons of unsound mind or
6 under the age of twenty-one years, the right to make such en-
7 try or bring such actions within one year after the removal of
8 their respective disabilities, and not afterwards, notwithstand-
9 ing the said seven years shall have expired; but no such ac-
10 tion instituted previously to the time this Constitution goes in-
11 to operation shall be affected by any of the provisions of this
12 section. After the expiration of the said term of twenty-one
13 years the limitations of such entries and actions shall be pre-
14 scribed by law.

15 "2. All lands lying within this State which have not been en-
16 tered for taxation, or upon which taxes have not been paid to
17 the State of Virginia or this State for more than five years,
18 shall be deemed and declared forfeited, and forever irredeem-
19 able, and such forfeiture shall not be released. No grant or
20 patent for forfeited, waste or unappropriated lands, shall issue
21 after this Constitution goes into operation, except upon surveys
22 made according to law and duly returned to the land office pre-
23 viously thereto; but all such lands shall be publicly sold under
24 decrees rendered by the circuit court for the county in which
25 the same, or the greater part thereof, may lie, upon proceed-
26 ings in the nature of proceedings in rem therein instituted, in
27 such manner as shall be prescribed by law.

28 "3. The money received for lands sold under the preceding
29 section, after deducting the costs and expenses of the proceed-
30 ings and sale, shall be deposited in the treasury of the State.
31 When forfeited lands are sold, the excess of the proceeds there-
32 of deposited in the treasury as aforesaid, over the taxes and
33 damages charged and chargeable thereto under the laws of the

34 State of Virginia and of this State, shall be paid to the re-
35 spective former owners thereof, who shall prove themselves en-
36 titled to such excess before the circuit court which decreed
37 the sale of the same, by proceedings instituted in such court
38 within five years next after such sale, in such manner as shall
39 be prescribed by law. Appeals from the decisions of circuit
40 courts in such cases to the court of appeals shall be allowed
41 if applied for within one year next after the decree of sale by
42 or for any person claiming an interest in the land sold, as own-
43 er of any part thereof; but the proceedings of the circuit
44 courts leading to the sale of such lands shall not be otherwise
45 re-examined or drawn in question in any court of the State,
46 unless fraud or collusion, or the actual payment of all taxes and
47 damages, charged and chargeable to the land sold, previously
48 to the institution of the proceedings against, the same, be alleged
49 and proved by the claimant, and then only in the court where
50 such proceedings were had.

51 "4. All money being the proceeds of forfeited, waste and
52 unappropriated lands deposited in the treasury, and not re-
53 claimed by the former owner as aforesaid, shall be carried to
54 the credit of a separate fund, to be called the school fund."

THE PRESIDENT. When the Convention adjourned it had under consideration the substitute offered by the gentleman from Marion (Mr. Haymond) for the 6th section of the report of the Committee on Taxation and Finance. The question is on the substitute.

MR. DERING. Do I understand that this is to be added to the 6th section?

THE PRESIDENT. It is a substitute.

MR. DERING. Then if that resolution be passed, then the 6th section will be stricken out?

THE PRESIDENT. Yes, sir. The Chair would remark that there has been a good deal of discussion on this question and he hopes gentlemen will recollect their privilege. The Chair does not recollect who all have spoken on this subject, but where gentlemen have exhausted their privilege he hopes they will remember it.

MR. POMEROY. I design simply to state what I understand to be the state of this question. In the 5th section we provide that the State shall not contract debts, and we have already adopted that section. The 6th section is against the State contracting liabilities, I cannot conceive how the substitute of my friend from Marion could properly take the place of this section. If it should be the will of the Convention to vote his substitute, as it is now offered and

pending, it appears plain to my mind that they should in the first place vote down the substitute and adopt the section as it stands; and then if they see proper to give that power to the legislature, adopt it as a separate and distinct section. It appears to me the 6th section is one of such a character that this cannot be properly considered a substitute for it. If the gentleman wishes to present it as a separate and distinct section afterwards, that might be done; but I do not see how we can possibly, after having adopted the 5th section vote for this to come in as a substitute for the 6th. I do not see how those who voted to sustain the 5th section as part of the report can now vote to adopt this as a substitute for the 6th. We have in the 5th section said that no debt shall be contracted for this State except for certain purposes of an imperative nature; and having voted it I do not see how we can fail something very similar to the 6th section in addition to the 5th; and this substitute is not by any means the same kind of a thing at all and does not cover the ground that the 6th section does. Of course, it is not designed by the mover to do so. I am decidedly in favor of sustaining this report as it is and especially of sustaining this 6th section as reported, and therefore I am opposed to the substitute.

MR. HAYMOND. I desire to say a few words more on this subject this morning. The gentlemen on the other side have contended appropriating money to make internal improvements afterward. They have argued, sir, that we were about to appropriate a large amount for the purpose of inaugurating internal improvements. This is not our intention. We ask only that the rising generation who are to come afterwards shall have the right to improve their property. This, sir, is not a contest for dollars and cents, it is a contest for liberty (Laughter). For liberty and nothing else; and I call upon friends from the south to rally round this question that it is the last blow struck at liberty (Laughter). Sirs, it cuts down the enterprise, the energy and future prosperity and glory of western Virginia. Tell your people, sir, that they shall never appropriate one dollar to carry on improvements and, sir, you strike a blow at liberty. Sirs, I would say to the people of the panhandle that I have the highest respect for them; they are an industrious people; they have improved their farm; they have built up their towns; built up this mighty city here on the banks of the beautiful Ohio. And how did they do it? They had the national road, their railroads all around them. Sir, they are now in palaces; and we are asking them to let the future generations that are coming after

us to have the same right to improve their property as we have done. That is all we are asking. I am sorry, sir, my distinguished friend from Hancock has left me on this question. I know, sir, he has a soul within his bosom as big as a mountain, (Laughter) and I know if he was not led on by other men he would be with us today. Sir, as I told you yesterday I wish to see this new State come into existence with a liberal constitution; with a constitution that will encourage all inducement to industry. Sir, if you engraft into your Constitution a clause prohibiting them from improving this country what will be the result? Why, sir, we shall fold our arms and say to the world that we are tied up; that this Convention has thrown around us an iron band which we cannot burst asunder. Sirs, I tell you gentlemen of the south to stand by me here this day in defense of liberty, for that is the only cause we are pleading. And I say to the people of this commonwealth that this question is entirely the question of liberty or no liberty. There are men here who say the future generations shall not have the right to do as they please; not have the right to improve their farm, to improve their country by roads, manufactures and all this kind of thing. I cannot see how they can go this way. Look on this side and you see manufactures in every direction and railroads all around it. Are they not willing to extend us the liberality to the country and help us raise this State to its greatness? This State, if we nurse her as Wheeling has been nursed will become the great state of this Union. It is known throughout this continent that West Virginia is the best manufacturing country in the world. Sirs, we have the greatest water-power in any country; and all we want is the right to improve it. We are not asking for a dollar—not a single dollar; and so I hope the resolution will pass and give us the right to do that which we want to do. I say again, sir, that this is not a contest for dollars and cents, and it is for liberty and nothing else.

MR. DERING. I don't desire to make a speech on this question because the argument has gone over and everything pertaining to this question of internal improvements has been iterated and reiterated again and again. But, sir, I must say to the gentleman from Marion that I cannot vote for his substitute. I cannot maintain my own consistency, sir, and vote for his substitute; and I say, Mr. President, to this Convention, after the spirit that has been exhibited in our votes on this question it seems to me it is our duty to vote down this substitute. The gentleman from Marion says it is not a question of dollars and cents but a question of "lib-

erty." I beg leave to differ with him and will reverse his proposition and say most emphatically that it is not a question of liberty but is a question of slavery and a question of dollars and cents. If we inaugurate this substitute which the gentleman from Marion has presented, it enslaves, forever puts in bond or bankruptcy the State of West Virginia. If we start out with the debt we owe on our shoulders, we will stagger and perhaps fall with this additional four million put on the tax-payers of West Virginia.

MR. HAYMOND. We are not asking for a dollar.

MR. DERING. Not asking for a dollar when he asks you to authorize an appropriation of four millions?

MR. HAYMOND. If the gentleman please, whom do we ask for the appropriation?

MR. DERING. You ask that this Convention give the authority to the legislature to appropriate four millions. The gentleman's proposition is so plain the Convention will see it is no argumentation between him and me.

The gentleman again calls upon the people of the south to stand up to him. For myself I can say that I know no south, no east, no west nor north in this new commonwealth nor in this Convention representing it. I look upon as one people, having a common interest and one common destiny, I look upon the Constitution we are making that it is to throw its broad mantle of protection over the whole people of western Virginia; and if I know myself, I love my brethren in southwest Virginia with heart and soul as I love eastern and western Virginia; and I beg gentlemen not to make sectional turmoil in this Convention. We are one people and whatever is for the weal of one is for the weal of every other part of this State. Whatever produces disaster to one part operates disastrously to the whole. I trust this Convention will rise above mere sectional rivalries to the dignity of a state that looks only to the stars and stripes as the great and protecting flag that will secure the welfare of the people of the whole of western Virginia. I trust it will not be the pleasure of the Convention after having passed section upon section ignoring this subject of internal improvements for the present to adopt the substitute of the gentleman from Marion.

MR. HAGAR. I agree with the gentleman from Monongalia that we are and should be one people; should bear each other's bur-

dens and feel that we are one in prosperity and interest, and all this. But while I agree with him in that I beg to differ with him in some few things. It does seem to me, if I understand the substitute that it is not a mere call on the legislature to borrow four million dollars to make some internal improvements somewhere in the western part of this State. If I understood it so, I would go against it might and main. I understand it is only to give the legislature the power after five years shall elapse, if they see fit, five years after our State is received into the Union, if it ever is, if in their judgment, direct from the people well acquainted with the State of West Virginia—if in their judgment they think it is best for the people east, west, north and south, embracing all the territory of our little new State—if they think it is best to borrow money to be appropriated to make internal improvements, I think they ought to have that privilege. Yet I am opposed to this appeal that has been made calling upon the southwest to rally. This is my sentiment: that if you want a railroad anywhere in the southwestern part of the State and the legislature see fit, they can assist in making it. If there is an internal improvement wanting in the southwest where we live and in the judgment of the legislature, direct from the people, after five years have elapsed that it is best for the State, best for us as one band of brethren in this common cause of internal improvements and benefit that will bring prosperity and wealth into our State, let them have the power. I believe a great deal in the wisdom of this Convention, but I believe the legislature we will have five years after the State is admitted will have just as much sense as we have now. If we can learn nothing in five years, we had better quit trying to make constitutions and frame laws. My friends from Ohio and Wood and other intelligent gentlemen may not be in the legislature then, but there will be other men here and it will be their object to pursue that course that will meet the approbation of the citizens of West Virginia and be to their advantage in making internal improvements. If not, they are not obliged to borrow a dollar, when the five years elapse; not obliged to go to New York to sell the bonds to borrow four million dollars. I believe in the legislature having as much sense as we have and having just as much interest in the welfare of the people. If we want a railroad in the State, let us see that we encourage internal improvements by giving the legislature the privilege to make them, to invite others to come to their aid. If we want any other internal improvements, let us not tie the hands of those men who five years in the future, or six or eight or ten

years in the future may say it is important; give them the privilege to borrow. Give them the money to use as they may deem proper. She is poor now, and the impression would be made on the men from a distance that it was enslaved. Don't believe it; it is not representing western Virginia right before the world. It is true we are a small State, but there is some wealth in it; but we expect to pay our debts, clear out our farms and have our public buildings and internal improvements and do the best we can. I don't believe we should represent that such men will know nothing about the benefit of the people and consequently their hands must be tied by the organic law inserted in this Constitution.

MR. BATTELLE. Not with the expectation of influencing any one to vote here but for the simple purpose of giving a reason that shall control my vote on this question, I beg leave to say, most emphatically and earnestly, that the vote I expect to give on this question, in accordance with what I have already given, is not a sectional vote. If I know myself, I am incapable—at least I claim to be—of being influenced by motives of that sort. I am a West Virginian, and in my humble way I belong to the whole State. My all, and all that I hope to be and have is bound up with this people for weal or woe, to enjoy with them, or suffer with them, what may be in God's providence before us. And, for one, I beg leave to protest against any such construction being attributed to the vote which I may feel called upon to give in this case. Nor do I wish my vote to be regarded as a vote against internal improvements. I am an internal improvement man all through; and I claim to have in my way—I will not say as large an interest but as certainly an interest—in seeing the resources, energies and capacities of West Virginia developed as any other man here. I have a deep and abiding interest in seeing that, but it is simply because in my judgment the measure that is proposed by the other side—that it is proposed to engraft in the Constitution—will not secure that end but, on the other hand, defeat it, that I am constrained to vote against it. I do not understand the provision as reported by the committee to prohibit appropriations, or the appropriation of means, to works of internal improvements either by individuals or by the State. It certainly does not forbid individuals or associations from engaging in that work; and, as I understand it, does not prohibit the State from engaging in that work whenever its capacities and resources may be sufficient to enable it to do so. What I understand the prohibitions of the section as reported to mean is that it prohibits the

State from contracting debt for that end. I suppose we have all heard the incident in reference to that distinguished Virginia statesman, John Randolph, which runs, I believe, somehow in this shape: It is said that on one occasion when he was before the body of which he was a member a measure something like this was under discussion. He arose and made this speech—it was the beginning of it, the whole of it. In his peculiar sharp tone which I shall not attempt to imitate, he said: “Mr. Speaker, I have discovered the philosopher’s stone; pay as you go.” And down he sat. That was the whole of his speech. And I think there are individuals and communities, and states, all over the world, certainly all over our part of it, who have discovered that same philosopher’s stone. The rule when applied to individual affairs is a very safe one. I know a man—I think I know him better than anybody else in the world—who commenced his career in life poor—and who has held his own remarkably well in that respect (Laughter)—who established that years ago as an unvarying rule, that when he needed that which he did not have the means to pay for, he went without it (A voice: “A very good rule.”) and when he was able to pay for that which he needed, he purchased it. And to my certain knowledge, in the case of that individual it has saved him more than once from utter financial bankruptcy and perhaps from ruin in other regards. I take it that a rule which is a wise and safe one in reference to individuals is eminently wise in reference to states, for the reason that an individual, after all, is apt to be more watchful of his own affairs than are individuals who are entrusted with the affairs of the public. This ought not to be so, but all experience shows it is. It is so easy for us all to rely upon the expected facilities for paying borrowed money; always so much easier to pay a debt in the future than to pay it today. Temptations are so strong for us all to put our hands into the pile hoping that somehow or other, we may not know exactly how, the means are to come to pay.

The sum, then, with me, Mr. President, is this: I am not opposed to internal improvements; I am not opposed to the making of internal improvements by the State whenever it may be wise for her to lend her aid for the purpose of promoting such works. All that I am opposed to is that state shall contract debts; and especially so in view of our peculiar circumstances, for the purpose of engaging in these works. I am very much afraid such a course will lead to the result so very frequently pointed out by gentlemen on this floor in reference to other questions, that it will be the

means by which we should outright slay the goose that lays the golden egg.

These are some of the reasons which will control me in the vote I expect to give.

MR. BROWN or Kanawha. The gentleman from Ohio, in illustration of his position has given an incident and remark of Mr. Randolph. I do not think the gentleman could have selected a more unfortunate example exemplifying the present subject. Mr. Randolph was always distinguished for his quickness of wit and his sarcasm; but for his wisdom, never. An aristocratic statesman, if he had any reputation at all—and I presume the gentleman does not admire him more than I do—I would ask the gentleman to point to a solitary statesman-like suggestion that ever came from Mr. Randolph. He was a man powerful to tear down; but to build up, his house was all corn-cobs. We are here dealing with a practical thing he knew little about. The gentleman says what applies to the citizen in regard to his daily vocation—to pay as he goes—is a wise policy to be pursued by the State. Now, our whole system of transactions of the business of the State and the public, and all the great enterprises of this country are on right the converse proposition. Your country is filled with banks; and the bank is as much an institution as republicanism. They accommodate those who have enterprises but not capital in order that they may obtain the means by which to put in operation the great schemes that are projected and execute that which is not their own but which by their energies they will return with fourfold. No, sir; the idea is fallacious; a mere fallacy to chain and bind the limbs of young Hercules and prevent him exerting the physical powers nature had given him.

It has been urged that there is no distinction between this and the one that was voted down. That was an unlimited power in the legislature to incur any amount of indebtedness they might see fit. Gentlemen horrified at the idea of going in debt more than they were worth, have voted that proposition down. They say this is identically the same. Gentlemen say West Virginia is not worth and cannot meet four million dollars; cannot meet the interest on it at any time. Is any man to traduce the character of this young giant—this young Hercules that shall spring forth Pallas-like with same declaration, that it is to manacle us with chains of debt at the same time that that debt proposed is to be expended inside of the State to develop the resources, the energy, the lands and property of the country? Why, sir, it is idle. It seems to me to any rea-

soning man that very statement carries its own refutation. As well might gentlemen argue that the farmer by the expenditure of half his farm in tilling and cultivating it impoverishes himself and ruins his farm. And then, sir, he says he is a friend of internal improvements. If you expend nothing more than what you have in the treasury, will you ever expend anything? Because every economical and well-administered government has nothing in its treasury. Not one red cent ought to rest in the coffers of a government because it is a corrupting fund. You should first determine on the wisdom of a measure and then raise taxes to supply what it requires. If ever you wait till your treasury has four millions of dollars in the coffers, then you will have corruption all around, and you will never have a dollar of it for improvements. If you enter on a system of internal improvements the benefits of which are not to be derived to the people of today; if you make a railroad or turnpike or canal through your country, it develops its resources and enriches all the people along its borders. What is the justice of tacking a work on the present generation when that work is to last as long as the commonwealth and all the people in its borders shall be benefited thereafter? For a thousand years hence they shall transport their wealth of every description over it. Why shall you tax the whole of that burden on this generation when thousands hereafter to come are to enjoy its benefits? Why not, in the only feasible way that sensible men have ever yet devised, borrow the means and make it and distribute the burden over generations to come who shall receive benefits precisely as you do, and burthen none with what they are not able to bear? This is the plan of sensible men in all ages and will be continued as long as men have their senses.

(Here the President's hammer fell.)

MR. HARRISON. My friend from the county of Kanawha repudiates John Randolph and his maxims. Well the truth is the truth, no matter who utters it. The gentleman did not attack the fact, but the utterer of that fact. Ben Franklin was considered a pretty sound financier. He thought a penny saved was as good as a penny earned; a patch more honorable than a rip; it was better for a man to wear his ragged coat than to go in debt for a new one, and thereby in the end have no coat at all; that little boats should keep near shore, while larger boats might venture more. Old Ben was said to be a good economist; and it is considered that the wise utterances of poor Richard, like those I have quoted, had an im-

mense influence in fortifying and building up the courage and finances of our revolutionary forefathers in their resistance to the greatest and richest power in the old world. But, sir, the farmer is alluded to. If he spends one-half what his farm is worth in improving it, his farm is worth as much afterwards as before. I do not deny that proposition. Is that the proposition, however? Not by a good deal. The first question is can he meet the mortgage he had to put on the farm to secure this improvement? If not he will lose the whole farm. But the proposition as applied is that three-fourths of the farmers in the State shall contribute perhaps one-half or more of what they are worth, not to improve their own farms but to improve somebody else's farms. Now, if the proposition is brought down to every man's door; if it was made feasible that by voting the four millions of dollars and thereby benefiting every farm that is to be taxed for the construction of a work of internal improvement, that his own farm was so near it that it would result in a great enhancement of its value, then the proposition would be good. But, sir, that is not the operation of these things. The proposition is to lay under contribution three-fourths or four-fifths of the farms in the new State to construct works of internal improvement for the other one-fourth or one-fifth. Is that fair? Is it sound policy?

The men of the southwest have been appealed to. I don't apprehend that this is going to produce any great effect. Does every man in the southwest believe that if this four millions clause happens to be engrafted on the Constitution that thereby he is sure of a road and a railroad, too? Well, sir, if a general system of railroads by which any section of the State is going to be benefited is going to be constructed by a credit of four millions of dollars, then I think the man who can do it will be entitled to a patent right for having discovered the cheapest method of railroad building that has ever yet been invented. Four million bonds, even if they were worth their face, would be but a drop in the bucket. There is not any money in it, Mr. President. It reminds me of the little boy who alleged that he and his brothers made five dollars every Sunday by trading hats. But there was no money in the operation.

The question on Mr. Haymond's substitute was taken, and the substitute rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Cook, Dolly, Hansley, Haymond, Hoback, Hagar, Irvine,

Montague, McCutchen, O'Brien, Robinson, Ryan, Sinsel, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Walker, Warder—22.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Caldwell, Dering, Dille, Harrison, Hubbs, Hervey, Lamb, Mahon, Parsons, Powell, Pomeroy, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle, Wilson—23.

The 6th section was adopted and the 7th was reported as follows:

32 "7. No county, township, city, town or other municipal cor-
33 poration, by vote of its citizens or otherwise, shall become a
34 stockholder in any joint-stock company, corporation or associ-
35 ation whatever; or raise money for, or loan its credit to, or in
36 aid of, any such company, corporation or association."

MR. SMITH. I move to strike out the whole section. The denial of all resources has been consummated, and now this iron-backed majority seem determined to deny us our own rights. The legislature are expressly, according to the notions of gentlemen, to be forever prohibited from aiding the country—the interior portion of the country from improving their condition. Now, not content with that, they put the cord around ourselves and say you shall not help yourselves. No county, no city, no corporation of any sort shall for the improvement of its own section advance one cent of money, shall do nothing to help itself, nothing to advance its own interest. They have not the poor privilege of improving their own county. That is to be denied to them. Why, sir, was there ever a body, was there ever a people, that showed such utter disregard of the spirit of improvement as is here? You may as well say to the farmer he shan't improve farm because he may get in debt; you may as well say to the mechanic he shall not be a stockholder in a company if he has to go in debt for it. What is the difference? You are taking under your hands the protection and guardianship of counties. You gentlemen of the northwest, who seem determined to strike down that portion of the State that have come up to aid and assist you, confine it to your own country but don't come down into our section and say you shall not have it. Every improvement in my country almost that has been made has been effected through the instrumentality of the county courts subscribing to the work; and yourself, sir, (to Mr. Mahon) the only improvement you have in the county of Jackson is made by the aid of the county court; and the county of Kanawha also subscribed to the same

work that leads from Charleston to Ravenswood by the resistance (assistance?) of that gentleman (Mr. Mahon). That is, by a county subscription. And now you are to deny the counties the right to make a road through their country; and who have such feelings of opposition to improvement that you wish to bind them, bind yourselves. We are willing to trust ourselves. If you are unwilling to trust yourselves, confine it to a line: take here the road from Parkersburg to Grafton and let that be the line beyond which the people themselves through their representatives have declared they are not willing to trust the people with their own business. On the other side of that line they are willing and ready to do it. Take that from us and you cut off the principle hope that there is in that part of the country of making any improvement at all.

I have said that this report looks like a studied effort to strike down every species of internal improvement. It seems to have been directed to that end. It wants only one thing. There is imperfection in your system—a great imperfection—that you do not take charge of individual responsibility in these counties. You should protect them against their own indiscretion and folly and say they should not be permitted to subscribe. Introduce that principle into your measure and your system of self-defection, self-immolation, is perfect. You thus have a perfect system. If this is the way in which this people is to be treated, although I may have been an ardent supporter of this new State, I say here candidly that I would prefer remaining as we are; but I would ask to be attached to the State of Kentucky in preference to living in a state where the majority of that state declare the principle that man, counties and corporations are not to be trusted; that they shall not have the right to improve themselves. I do say, without intending any disrespect to any one, that I never have seen a proposition that shocked and astonished me more than this does. In this new country, in this new State where—at least in our country—we have no roads, we have no means of capital, no means of building but by the aggregate capital of the county, that aggregation of capital is cut off from us by this measure on the main clay improvement itself, what it does get it must get by direct taxation on the people, and that is very small. The counties of Roane, Gilmer, Calhoun—all those counties needing improvement have no individual wealth. It must be raised by aggregation. Gentlemen, do you want to destroy us? If you want to sever us in affection from you and pass that measure, should you consummate perfectly, there can be no affection existing between the southwestern section of this State

and the north, if this is the way in which we are to be treated; and we cannot—I will not say we will not but I will say we ought not—to unite with you if we are treated in this way. I call upon you to beware of the course which you are taking. We will bear much and sustain this State, but we cannot bear all the ills which a stubborn unyielding majority choose to thrust upon us. We will bear as much as men can bear, but that we cannot bear. I am a friend to the new State. I have maintained it in my own county and wherever I have gone; but I never dreamed of such a spirit as this; though I was told the northwest would “ride over you rough shod.” I never believed it. But this course of proceeding makes me feel sad, and I speak in sober sadness and deeply regret the course which you are pursuing.

MR. VAN WINKLE. Mr. President, it has generally been my disposition when in any deliberative body I find opinion so closely divided as it has been in this place to be willing to assent to any fair and reasonable compromise that might be proposed in good faith, understanding always by compromise that something was yielded in such cases on both sides. I hold in my hand an amendment which I am about to offer to this section in the spirit of compromise and which I will read for information:

After the word “corporation,” in lines 32 and 33, insert these words: “unless by authority of a vote of a majority of its citizens voting at an election held for the purpose after thirty days notice, subject to such general regulations as may be prescribed by law.”

Those terms being complied with they may then become a stock-holder as indicated. I beg, however, to observe that in proposing this amendment I think I sacrifice none of the principles for which I have contended. It is a very different thing and I think will tend to illustrate what I have contended for when other evils have been before this body, that is the propriety of confiding to counties and subdivisions of counties all matters that they may properly do for themselves. Now, sir, in the legislature if we should inaugurate the same scheme or mode of making internal improvements that has prevailed in this state for many years, the members of that body voting away, as it were, other people's money, unless people are very differently situated from what I am myself, those economical considerations which should attend the spending of money do not present themselves half as forcibly as if they were about to spend their own money. Now, sir, I am ready to assert the necessity, the desirableness of improvements;

and I am also willing that the people of each county should have it in their power to aid themselves in any local work they think desirable that does not produce greater evils than the benefits to be derived. This proposes then to place this restriction upon it: First, that after the county authorities have decided, so far as they are concerned, in favor of aiding any improvement which is making by an incorporation or association with the means of the county, they give thirty days notice that at the expiration of that time an election will be held for the purpose of testing the views of the citizens of the county on the propriety of making a subscription of a stated amount to say a joint-stock company or incorporation. On that day every voter will be supposed to have had notice and will be there to vote according to his own sense and judgment of the matter. If a majority of the citizens sanction the project then the board of supervisors will put it in force. Now you see every citizen when he comes up to vote on such a subject will not have before him a question of somebody else paying his money, or of someone being paid in future ages; but he will know that according to his means every man in the county and sooner or later he himself will be called on to shoulder his part of the burden. If under these circumstances the citizens of the county are willing to encounter the burden, of course they will have only themselves to blame if they make a mistake. They cannot say other people have been spending their money. They will, however, take the subject into consideration, as every man will when a matter comes close home to him, and will give it their best deliberation, and in ninety-nine cases in a hundred they will decide it correctly according to their interest. This, sir, also puts a stop to that political gambling which has characterized our state legislation for years. This objection cannot I think arise in a county, in an election district, wherever a man is able to judge for himself and where the matter directly affects him and he has a direct vote in regard to it. The thing cannot be done without the co-operation of a majority of the voters. Therefore we have every guaranty that if done it will be done judiciously; and further that any project that is for the real good of the county will be approved by the majority. If the project is a wild one, brought forward in time of excitement, something that looks well on the face, such as men too frequently give their assent to without due examination, the mode of proceeding tends to bring them back to calm reflection and the consequences of what they are about to do will certainly stare them in the face. It would first go before the board of supervisors, then the people of the county

would have thirty days to consider and discuss it before the day of election. This is time for the fever to cool off and to enable them to think deliberately and with a view to their best interests of what they will do. If a majority come up and vote for it the thing will be carried into effect.

I offer this amendment in entire good faith and in the spirit of compromise and I trust it will be so received. I wish before I sit down to say that while I have no objection to gentlemen making what capital they can out of repeated assertions, as repeatedly contradicted that the northwest want nothing, I beg the gentlemen here in case they should be future legislators of the State that they will remember that the northwest does want a great deal. They call it northwest Virginia; but my people are in the middle of the new State. There are three senatorial districts lying north and three lying south; and I want gentlemen particularly to remember when they hereafter occupy that responsible position that we want as much as any other quarter; they want all they can get and then they will not have enough. But while this is true, we are not threatening to sever ourselves from the rest of the State, to destroy the harmony of this movement and defeat it, if we don't get this.

I offer the amendment indicated, sir. When there is a motion to strike out an entire section, the friends of the section have a right to amend it, to relieve it of the objection if they can. I suppose that will not be questioned; and if the amendment prevails the motion to strike out will then be put. The fact is a motion to strike out is scarcely permissible. The question occurs on the adoption of the section. Those who want to strike it out vote no on that question. But anyhow that motion cannot interfere with the right to amend.

THE PRESIDENT. The Chair would at any rate be disposed to give an opportunity to amend the section. He would have some doubts, however, really in relation to the motion. The motion of the gentleman from Kanawha is only—

MR. VAN WINKLE. The motion of the gentleman from Logan is to strike out the whole section. We go on to amend it. The motion to strike out is really the question, shall the section be retained?

THE PRESIDENT. The Chair entertains the amendment.

MR. HERVEY. I shall sustain the amendment of the gentleman from Wood. It obviates the objection which has been raised by the gentleman from Logan. I am perfectly satisfied with the section as it stands. I am satisfied our county—I suppose, however, no member on this floor has a right to speak for any county but his own—our county would be opposed entirely to borrowing money upon its own account.

MR. HAGAR. They would not vote for it if they were against it.

MR. HERVEY. There have been too many experiences against the propriety of allowing even counties or corporations by vote of the people to borrow money, either for works of internal improvements or anything else. I have no threats to make, either, if this proposition is voted down. I have been in the habit of concluding that majorities govern in this republic; that a majority of the people properly expressed under a republican form of government is the law. I have never yet recognized the idea that when differences arise the minority had any right to control the majority. That idea was the pretext for this rebellion. However ardently men may support the opposition yet, sir, in conformity to this great American republican principle, that majorities shall govern, no injustice is done, no right invaded, when that rule prevails. I defy any man to show where any right has been invaded in this report or in adoption of it by this body thus far or show why a minority should override the majority. But, sir, I am perfectly willing that the county of Kanawha or any other county, shall borrow money just as much as they please under regulations which secure to every voter the right of giving effect to his assent or dissent, as done in the addition to this section proposed by the member from Wood. While I believe as firmly as I believe anything in the world, that it would be the very worst step a county or state could take past experience has shown, yet I am entirely content, sir, that any county shall have the opportunity to involve itself if its people by a vote fairly expressed choose to do so.

Then, sir, holding these views—first, the great cardinal principle that majorities shall govern in this country, I am perfectly willing to apply that principle to these counties and let them be the sole judge in the matter before us. I shall then vote for the amendment of the gentleman from Wood.

MR. LAMB. I shall very cheerfully support the amendment of the member from Wood; and should it be adopted support the section thus amended by my vote. I may, however, be allowed to say that here in Ohio county we have had a pretty full experience of the effects of this measure. I do not think any citizen of Ohio county will ever hereafter be found voting in favor of loading the county or city down with debt for any work whatever. We have tried that matter effectually. But we have no right to say the people in other counties shall not have the liberty to try the experiment too, as we have done. If they will not learn from our experience, they should have the opportunity of learning from their own.

The question was put on Mr. Van Winkle's amendment, and it was adopted.

MR. SINSEL. I would like to know how you are going to regulate the elections—going to let men, women and children vote? A majority of "citizens" it says.

MR. VAN WINKLE. Change it to "voters" if you please. The committee can make the correction.

The question was taken on the adoption of the section and it was adopted.

MR. SMITH. I wanted to make some remarks.

MR. LAMB. I move a reconsideration.

The motion to reconsider was agreed to.

MR. SMITH. One objection I have to this is that you are prescribing in the Constitution, in a clumsy and imperfect way, the mode in which these elections shall be held. It is an improper place to put it. If it is to be left to the people, why not leave the legislature to prescribe a plan for doing it, lay down the system and direct who are to vote, what portion of the people are to vote, where they are to vote, how they are to vote and all about it? It does seem to me that there is a disposition here to crowd into this Constitution every matter that belongs to the legislature. Why the necessity of prescribing in the Constitution? Who is to present this to the people, where is the system under which it is to be presented, by what authority is it to be presented? You have taken the subject into your own hands. You prescribe it by constitutional provision. If you wanted to put it into the Constitution the

section could have been amended better than this—greatly better than this. Strike out “or otherwise” and leave the balance of it to the legislature. I will ask the Secretary to read the amendment again.

The Secretary complied with the request.

MR. SMITH. Now there is going into the minutiae and then winding up and saying the legislature is to prescribe the plan. Why not leave the whole subject to the legislature? Strike out the whole section and then the whole subject is left to the legislature, and one county may petition for a law of its own and may indicate the sort of form they desire, the sort of proceeding they desire. The legislature can accommodate itself to the wishes of every county as it is presented to them by the people. If Wheeling doesn't want to raise money in this way, she can reject it. She can say I don't want to apply for any such express provision. The counties cannot do it without authority of the legislature; they are dependent on the legislature for the privilege of doing it, and each county may apply as it desires it, or they may form a regulation by which every county may at its own will and pleasure have a plan by general law and any county coming within the directions of the general law may without any application to the legislature proceed upon it. Leave the whole subject to the legislature and it is then simple, and the counties that want it may avail themselves of it, and those who do not intend to avail themselves of it need not. But here you put it into the Constitution and you prescribe to some extent the manner of proceeding, and then after doing that you add “and as may be prescribed by law.” Why not leave the whole subject to the legislature and not thrust it into the Constitution? It does look to me—I do not charge it upon gentlemen—it does look to me like an effort to cripple the subject in the Constitution. Why introduce that section unless it is for that purpose? They talk about the spirit of compromise. When you talk about compromising, do yield something. When you do yield it do it with grace and liberality and in such form as is most acceptable to those to whom it is yielded. Here is a great deal yielded to us to soothe and satisfy us after what we consider a great injustice done us.

I make use of these remarks without censure on anybody; but I feel that it is injustice.

MR. LAMB. I do not know that I understand the quality of the gentleman's objections. It does seem to me the section as it stands,

with the amendment incorporated, is precisely what he wants if it is his purpose to deal fairly, honestly with the people in the counties. What details are embodied in the section, the amendment? Nothing whatever except that the people are to vote on these propositions for a loan, and they are to have thirty days notice. Everything else is to be under such general regulations as shall be prescribed by law. The section as amended evidently contemplates that a general law shall be passed which shall authorize counties, towns, etc. to contract debts in those cases whenever the people at an election, of which proper notice shall be given shall see proper to authorize it. I don't see how a plainer or simpler provision could be made on the subject. It does not enter into details. This matter must all be regulated by the legislature. Only two things are prescribed: that the people shall have the opportunity of voting upon it, and of the time and place of voting, they shall have thirty days notice. Now this is the whole restriction imposed here; and is there any possible objection to that restriction? The matter is then to be subject to general regulations by law. That is, I take it, that the legislature are to pass a general law for the holding of these elections anywhere that the people may desire and that the manner in which notice shall be given and all other necessary details will be embraced in that law; so that any county, city or town can hold such an election when it sees fit without further application to the legislature, and vote these loans if they see proper. Could you have a more general and extensive authority granted on this subject? It is not subject, it seems to me, to the objection which I myself have made repeatedly of entering too much into detail. As I have already stated, there are but two requirements: one that the people must consent to it; the other that they shall have thirty days notice of an election at which they may express their will. I think if the gentleman from Logan will look upon the section, not with the eye of suspicion, with which he seems to regard everything that comes from this quarter, but trust to his own good sense in the construction of it, he will be satisfied this accomplishes all he is aiming at.

MR. SMITH. I would call the gentleman's attention to the latter clause of that section. The first applies to the taking of stock in it, the latter clause is a distinct provision as the other part of it. Whether this amendment being inserted in the first clause applies to the second as well?

MR. LAMB. I know the gentleman, as a lawyer, will bear me out in saying this amendment applies as well to the latter clause as to the first; that the amendment which is inserted governs all that succeeds it. That at least is the intention of it; and I think that is the evident construction of it. Most certainly I do not think there is any ambiguity here.

MR. SMITH. Not the least in the world.

MR. LAMB. It applies as much to the latter clause of the section as to the former; applies to the whole matter and is in its proper position.

MR. SMITH. Mr. President, it strikes me that a fair and just interpretation of that section is that the amendment as inserted applies only to the first clause forbidding the county, etc. to become a stockholder; that if it was to apply to the latter clause, about raising money, etc., it should be placed after the second clause or repeated in that connection.

MR. LAMB. I see no objection at all to putting this any place in the section that will make its meaning clearer, if there can be any question about its application to the whole section, or repeating it in connection with the second clause.

MR. VAN WINKLE. It applies as much to the second as to the first.

MR. SMITH. No, sir; I beg leave to differ with the gentleman; I do not think it does. It applies expressly to the first and it is continued in the latter without repeating it; giving two distinct subjects, one with the qualification, the other without it.

MR. VAN WINKLE. Strike out the semi-colon and put a comma, as there could be no difference of opinion as to the interpretation. I have no objection to putting the amendment at the end, but then you would have to alter the phraseology of the preceding. I think it is not liable to the objection the gentleman raises. It was intended that the restriction should apply to both clauses, as to becoming a stockholder and as to raising money.

MR. SMITH. My view of the whole section is that it is drawn so distinctly, with distinct purpose to cripple corporations, that the section is not capable of being amended to carry out the views of the gentleman. If a distinct independent section should be put in, it would be different. But it is so utterly defective in itself, I

do not believe it can be amended so as to present the meaning. There is a leading mind which drew it that gives a direction to it in opposition to any sort of local aid to corporations; and now it is attempted to correct it by amendments that do not avail. I think it can be better done by drawing up a new section and striking this out. I would greatly prefer a section that would look to this plain object. This is looking to another and letting it have that other object; and now it is intended to take another direction. If you do give us the poor privilege of subscribing by counties, give it to us in such form as we want. I think it is better to leave it to the legislature, and I don't see why it should be inserted in the fundamental law. I object to it on that ground also. The whole matter is much more properly left to the legislature.

MR. HARRISON. I think the objection to the construction of this section by the gentleman from Logan can be completely obviated by striking out in line 34 "joint stock company," do away with the semi-colon and substitute "joint stock" for "such" in line 36. I merely suggest it.

MR. BROWN of Kanawha. At the first blush, it struck me there was some force in the objection taken by the gentleman from Logan; but when I re-read this section with a change of the semi-colon, I confess I am not able to see that the sense is not as indicated by the gentleman from Ohio; and whether there be any difficulty about the real meaning of the qualification of the sentence in the section, I understand the gentleman to say distinctly that the object is that it shall apply to both clauses as fully as to one, if it even were to be obtained by a repetition of the words, which I think is unnecessary and can be avoided and for the elegance of the section would be better without than with it.

MR. HARRISON. The first clause is to forbid them from becoming a stockholder; the second from lending credit in any other way. Now I thought that amendment was a friendly thing to do, because it permits any of these bodies to do all these things if their people vote for it.

MR. BROWN of Kanawha. I do not see the objection to the amendment and I confess it relieves the section very much to my mind of its objectionable features, because if I understand the amendment, it reverses just exactly what was in the mind of the draftsman of the section from a positive prohibition to a conditional permission. So that it is a half-way departure from the section as

it stood. While I am not prepared to support the section as amended, yet I must confess that it does change to a very great extent much of the objectionable features; and therefore I shall not seek to make any opposition to it on the ground of opposition to the phraseology of the amendment as proposed, because I see the idea is intended to be the same.

MR. SOPER. I am opposed to the section entirely and shall vote for striking it out. I think there will be no beneficial results coming from it. It will only embarrass the people within the counties. The legislature undoubtedly will by general laws define the powers of the county board of supervisors; and if it becomes necessary to raise money in a county for any particular object not within the scope of those general laws a special application will have to be made to the legislature for it. I have always found, sir, that the interest of the people of a county so far as guarding from improper taxation rests safely in the hands of the board of supervisors. They are elected annually; they come from all portions of the people and they are always very careful and competent to express the views of their constituents on all those questions. Now, sir, look at the county I represent. We have a turnpike, which my friend from Doddridge alluded to the other day, running from the northwestern turnpike and terminating at the river. With subscriptions we gave to it an aid we obtained from the State. We never were able to build it fully. When the northwestern railroad terminating at Parkersburg went into operation it drew from our road a considerable of its revenue. It took from our towns a large portion of the business, depreciating our property and in some degree retarding our prosperity. With this we found no fault because in the course of time it improved currents of trade in our part of the country and it benefited other portions. But, now, sir, the late freshets have swept away our bridges and the income of our road is barely sufficient to keep it in repair aside from erecting bridges. Applications I understand to the legislature for relief cannot be had. They have been made at the present legislature where the state is the high stockholder in similar companies. The legislature have refused to contribute aid. The result will be, sir, that in the county of Tyler we shall have to ask the state to release its interest to our county and then we shall have to raise money upon the county to erect those bridges; and it may become necessary to raise the money required needing one, two or three years to repay. If we were under our new State organization the

board of supervisors would direct and manage all this matter. I want nothing in the Constitution that will prohibit them from doing it. The State I think ought to be left entirely without any hamper in this matter. I believe the interests of the people, of the State and its prosperity would be benefited by striking out this section entirely. This is my present view of it and I shall so vote.

MR. STEVENSON of Wood. I would call the attention of my friend from Tyler to one fact in which he supposes the danger which is anticipated here may be prevented by the adoption of the county and township organization which we have adopted here, and that fact is this: that in these other states which all have that system of county and township organizations that have found that that peculiar organization has led to this very difficulty; and hence in these very states, for instance the State of Ohio, and I do not know but the State of New York, but certainly the State of Ohio and the State of Pennsylvania, where this township organization prevails, they run into the very difficulties to a very great extent which this section is intended to obviate; and they have, naturally, in at least these two cases, and they are very prominent ones, incorporated this very provision, word for word, in their constitutions. So that it would seem that where this new system (new to us) is adopted we are more likely to run into these dangers than under the old system. Hence I think there is eminent propriety in retaining the provision, especially as it has been modified.

Now, sir, the gentleman from Ohio alluded to the peculiar working out of this plan of loaning the credit of the county to these corporations in the city of Wheeling and in the adjoining country. There is one fact that just occurs to me and that is a very strong one. In the city of Pittsburgh and in western Pennsylvania,—and, indeed, I believe, all through Pennsylvania—when these internal improvements were projected by different parties, by a majority of the people, at least in many counties, that their tendency would be to increase to a very great extent the prosperity of those cities, and quite a number of lines of railroad improvements were projected. This system of allowing the officers of a county to lend the credit of these counties to these improvements was then in effect. There was not the safeguard which this amendment provides; there was not this safeguard that the question should be first submitted to the people, but their supervisors (or as termed “commissioners”) of the county had the power to endorse and issue the bonds of the county and give this credit for the purpose of running

these improvements through those counties. They did so, and I believe it was urged, as it has been urged here, that it would really benefit the counties which were then loaning their credit to these corporations. Now, sir, what was the result? In western Pennsylvania, in the middle counties and I believe all east to the Allegheny mountains—at least most of them, liberally issued their bonds and gave the credit of these counties to these improvements. I can only remember some of these improvements and the result. The Central Railroad received the credit of these counties and cities and of the towns to very large amount. The Pittsburgh and Connellsville Railroad received some extension from the counties; the Pittsburgh and Steubenville road did, the Pittsburgh, Fort Wayne & Chicago road received some; the Allegheny Valley road some; the Chartiers Valley some; and it looked at the time as if every one of these improvements would pay the stockholders the counties, townships and cities included; and hence they never thought the possibility would arise in which those very counties and cities should become involved in the debt of these corporations. What was the result? But one of these many lines of public improvement ever paid the interest on their bonds, and that was the Central Pennsylvania road. The Pittsburgh and Connellsville, Pittsburgh and Steubenville, Fort Wayne & Chicago, Allegheny Valley and Chartiers Valley—every one of them failed to pay the interest on their bonds; with result, sir, that the people in those counties, townships and cities—why, in an unsuspecting moment, it fell upon them like a clap of thunder from a clear sky—were mulcted in the interest and bonded debt of every one of these corporations. That is the way it will work here if you strike out that provision. But if you retain this provision and allow the question to be submitted to the people of the county, city or township, as the case may be, so that if they run into this with their eyes open, the responsibility will be with them and they will suffer the consequences, if there should be any unpleasant consequences. Let me say, sir, that there is nothing in this provision that will prevent any amount of improvement you want in your counties. Nothing at all. The question will be left with the people locally. There is nothing here to prevent any man, or every man, in any county in the State subscribing all he is worth and borrowing all he can, and putting it into any turnpike or railroad that may run through his own farm or county. There is the utmost latitude given for all the local public improvement they may desire. But it does seem to me the preservation of this principle is necessary, that the local officers shall not have the

power to lend the credit of their counties, cities or townships without a vote of the people whose property is to be mortgaged by such action; and for one I shall vote to reserve this safeguard to the people of the counties. Experience shows that they always need it.

MR. MAHON. I would say here that since this amendment, I believe I am satisfied with it. I think I am prepared to vote for it. I believe, too, that the members of this Convention will bear me out that I have given them very little trouble in speaking. I have made no violent attacks on any person; I have cast my vote and in all the votes that I have cast in this Convention I have done it from an open conviction of right. I have cast those votes independently believing the votes I cast were for the benefit of the people whom I represent in this Convention. But this morning, to my astonishment, I seemed to be attacked directly by the gentleman from Logan in reference to a vote yet to be taken. He says: "You (the gentleman from Jackson) are now tying our hands, or wishing to tie our hands, in order that the counties shall not improve their property." I have cast no such vote in this Convention. I have not spoken on the question; I have never said a word on the subject, and yet I am attacked and it is said I am about to tie the hands of my friends in my adjoining county in the vote about to be taken. I have not done it. But I admit that we have a mud turnpike and he says it goes right before my door. That is so. However, the door has been put there since the pike went along (Laughter).

But I would say here, Mr. President, I object to the system of county appropriations without the consent of the people, and I object to it on this ground. He says the county of Jackson made an appropriation to build these roads. What those appropriations were, I know not when and what amount; but I do know that the Jackson county court did appropriate \$3,000 to support secession soldiers. I know they did that, after there was a vote in Jackson county of 325 majority against it! That is why we oppose this kind of thing; not because I am unwilling to have all the improvement necessary, but it is to keep the minority from ruling and trampling over the majority. Now, I esteem and respect my friend from Logan; have always been on the best terms with him; looked up to him as a father and instructor; but why I should receive this attack—well it is understood here. It is, I suppose, that in all conscience and in good faith I could not vote in reference to internal improvements just as my friend voted. I say here to this Conven-

tion now and I hope I will ever be able to say, no gentleman in this Convention can drive me from what I believe to be right. I have voted conscientiously and I will still vote so in everything that comes before the Convention. I will go before my constituents and leave them to justify or condemn me; and no member of this Convention must try to lead or drive me from what I believe to be right. And therefore, I say, Mr. President, I feel like supporting the present amendment.

MR. HERVEY. This is a very clear proposition as it stands. I cannot see, really, any objection to it. I can understand the objection those who want to lend local aid would have to the section in its original form; but in the position in which the subject is placed now by the amendment, I do not see how any objection can be raised against it at all. I was in favor of the suggestion of the gentleman from Logan, that these counties, if they saw proper, by a majority of their votes, might take on themselves a debt. Now, I am willing to support that proposition. The gentleman from Logan still complains. He is hard to please. But I am marching up to his help if he desires it. But like the gentleman from Jackson, I always do my own thinking and my own voting. Always. I see nothing objectionable in this proposition as it now stands. It meets the entire demand of all the members, so far as I have heard them express it on this floor. I cannot see why there should be any objection. The people certainly are the safe depository of all power. We have voted continually to refer this whole question to the people; and failing to that we must do the next best thing that we can. I will support the proposition.

MR. LAMB. If the gentleman from Logan and the gentleman from Kanawha prefer to strike out the proposition entirely, I, for one, have no objection. I presume the legislature in that event will not authorize any county to contract a debt without a vote of its citizens. But we offer this in good faith; and I do not want to take advantage even of the proposition of the gentleman from Logan. He will recollect one thing: if you strike out the whole section the legislature may prohibit this contracting of debts by counties and towns entirely. It is transferring the question from the Convention to the legislature. They may prohibit it entirely as well as authorize. If you adopt the amendment which we have proposed, when the vote is taken on 30 days notice and the question has been decided in the affirmative, the county has the thing in its control, whether the legislature are willing or not. In a word, the

legislature has nothing to do with it except to make the general regulations under which these elections shall be held. I want him to understand what will be the effect of putting the thing in the shape he desires it. Strike out the whole section, the legislature will have authority to prohibit this thing entirely—to make a law providing exactly the same thing this section as originally reported provided. It will only be transferring the contest to the legislature instead of settling it here.

MR. DERING. I am decidedly in favor of fixing the amendment to suit the gentleman from Logan. I am willing if you let this section stand as it is with this amendment that the legislature shall prescribe by law the mode of the election, and I think that is about in substance what he wants. I am willing that the amendment of the gentleman from Wood, so far as I am concerned, shall be so modified as that the legislature shall prescribe the mode in which the election shall be held. I am desirous of getting them on their own ground and doing for them all they ask in reference to this matter in a spirit of compromise.

The question was taken on Mr. Smith's motion to strike out the 7th section, and it was agreed to.

The 8th section was reported as follows:

37 "8. The legislature may at any time direct a sale of the
38 stocks owned by the State in banks and other corporations;
39 but the proceeds of such sale shall be applied to the liquidation
40 of the public debt; and hereafter the State shall not become a
41 stockholder in any bank or other association or corporation."

MR. STUART of Doddridge. I move to amend by striking out all after "debt" in the 40th line.

MR. VAN WINKLE. This rests on the same principles as the long discussions we have had here. I do not think it worth while to detain the Convention with any remarks on the subject. It involves the same principles as those on which we voted yesterday and Saturday.

MR. STUART of Doddridge. I do not consider it so and I was perfectly willing to take a silent vote on it so far as I am concerned. I do not like the gentleman from Wood to place a misconstruction on it. I want it distinctly understood the Convention has not settled this question at all. I understand our present state has stocks in most of the banks of the state. They have a voice in the regula-

tion of our currency so far as bank paper is concerned, and the governor of the state has the appointment of some of the directors in these banks. If you leave these banking privileges entirely to the corporations then they will have the entire control of the money themselves and the government will have no regulation over it at all. I think it is good policy that if we have a system the State should have a voice in the directors of that bank. I believe our present regulations gives the state the appointment of a majority of the directors.

MR. HERVEY. I hope this latter clause will not be stricken out. I do not think the state connection with the banks has been a beneficial principle, and it has been long and often alleged that the government should be separated from the banks and the banks from the government, taking away this great controlling and dominant influence from the banks. It is well known, sir, that the state very often appoints those to superintend the affairs of a bank who have no interest whatever in its concerns, don't own a dollar of stock, derive no profits; and yet, sir, they are foisted in on the concern and control its operations. The worst feature of the whole is that they are almost universally partisans, men of the same political complexion to the appointing power. If he is a Whig, he appoints Whigs; if a democrat, he appoints democrats, as directors. If he is secesh, he appoints secesh directors. In a word the control is used for party purposes. The other general clause presents the same question we have discussed heretofore; prohibits the State from being a stockholder in any association or corporation; prevents the State from being a stockholder in these works of internal improvement over which we have been fighting so much. I presume members of the Convention retain about their original views on that question.

MR. BROWN of Kanawha. I am not acquainted with the political affiliations of my friend from Brooke; but heretofore, sir, he has mistaken the fundamental principles that have been involved in the enunciation that I understand him to make in regard to the separation of the government from the banks. The separation of the state governments and the banks in their currency I think has never been a political object by any intelligent party; and if it were I think the good sense and intelligence of the people would soon consign it to the tomb of the Capulets. That such a project has been one of federal politics in which the connection of the national government and some institutions have been to some extend

the subject of controversy and difficulty is unquestionable. But here is a case that is wholly different in its nature and purpose and in its operation. What objection can he urge against the supervision and control by the State government of the banks that it charters which are to furnish currency for its own people? Why charter a bank at all? Is it that the gentlemen who are in the corporation shall speculate on the franchises that are secured to them on the necessities of the people? Is that the great object that superinduces the representatives of the people to confer special privileges on chartered corporations? I imagine not. That their profits are incident to the franchise is certain both from experience and common sense; and the great object that induces the granting of the franchise is for the public good; and the very object of the public good requires that the public interest should be continually controlled by the public representatives who themselves are responsible to the public. The very reason for having a currency and having that guarded by the representatives of the people for the benefit of the public is the very same reason to my mind that requires that the State should have a right to be a party interested in these corporations; and thereby have a right to control, regulate and manage them.

There is nothing in which the people are more interested than in the currency; and since gentlemen seem to think this now involves the identically same question that has been involved in the controversy about internal improvements, I would simply say the whole argument of the gentleman who has opposed granting power to the legislature, or rather saying nothing about it and leaving to the legislature—to whom belongs all authority that is not prohibited by the Constitution—we are asking no grant, have asked none; we are only opposing their prohibiting the legislature from doing what they see fit in regard to internal improvements and the same thing here.

The great argument urged by the gentleman was that they apprehended an indebtedness would be incurred; that they were all friends of internal improvements; and the great ground of opposition was that it was to run the State in debt. Who ever heard of a state's losing anything by its indebtedness. I ask the gentleman from Brooke to point me to a bank in which the state has lost any great amount of money by banking operations. Will he also tell me of all the profit she has derived by purchase of stocks in the banks of the State the solvency of which was created by the very fact that she was a stockholder in them. Today but for the revolution

that has been precipitated upon us I would rather have her stock and guaranteed bonds and her bank notes than any state in this Union, because her whole policy and system has been to pursue the even tenor of her way with an eye single to her future prosperity and safety.

I say then why shall you deny in this Constitution the right of the State to be a stockholder in your banks that are to secure the currency to the people in which every man is interested. The argument fails; the reasons cut each others throat; and yet the same line of policy is pursued with a strange inconsistency that I cannot reconcile.

MR. STEVENSON of Wood. The gentleman discussed this motion to strike out as if it had reference exclusively to banks. I wish to call attention to the fact that it has not but that it covers the entire question we have been discussing for two days. The section reads that "hereafter the State shall not become a stockholder in any bank or other association or corporation." I suppose they expect to have other corporations and associations in this new State besides banks. I understand all these great corporate companies, mining and manufacturing companies, and so on through the whole catalogue, are covered by this clause. If you strike this out it simply means this and nothing else: that the State may invest the money of its citizens in any or all of these associations or corporations. If that is stricken out, you are at sea on that question as much as if you had stricken out every other section you have adopted here. It involves unquestionably the same principle but in different words. They may tell us they are not likely to incur debt. Why, sir, if the State invests a million dollars in this railroad and five hundred thousand in that steel manufacturing company, a million in a turnpike or a number of them, and these do not happen to make any return, doesn't the State lose the money she has put in? Will it be said she did not put up any money; she only issued her bonds; borrowed the money? Will it not require money to pay the bonds when they come due? And how can they be paid except by laying taxation on the property throughout the State? It comes back at last to the tax-payer. If that is not the very same question we have been talking about I am not capable of comprehending the question at all. It is the same thing in different words; because the people can be just as effectually ruined and made bankrupt if that provision is stricken out as if you had not a prohibitory clause on that subject in your Constitution—

just as effectually. I would give very little for the other sections if that provision is stricken out.

I wish simply to call the attention of members to the fact that is not the reference only to banks in which the state now has stock. I should be in favor of retaining that, because I think it is a very incorrect principle, though it may have worked no great harm in a limited case and under peculiar circumstances. Yet, sir, as a general principle it is not the rule it is the exception. That is a general principle where a government like ours becomes connected with these shaving-shops—these shinplaster manufacturers, sir—they are the losers in the end. This new State commences its career under a different kind of circumstances than those which have surrounded it heretofore. I am afraid, sir, that if we remain connected with these banking institutions, we will run into the same difficulties that the thing has generally produced in other places. Even if it had worked well to some extent heretofore, I do not think that is a conclusive argument in favor of connecting this new State government, started on different principles, with an entirely different territorial organization and different set of provisions in many respects in its Constitution to govern all these relations and these actions. I think the purity of banking institutions—if there can be such a term applied to them—will be better preserved by disconnecting them from the State government; and I am certain the interest of the people will be as well looked after and better cared for if they are disconnected from these banking institutions.

But, sir, I say most unhesitatingly in regard to these other improvements that just the moment you adopt the principle in this Constitution that will allow this new State to become a dabbler in the stocks of incorporated companies from that very day the fate of the prosperity of the people of this new State is sealed. I am just as firmly convinced of that fact almost as I am of my existence. And that is the reason I have insisted, with some reluctance I will admit, upon the incorporation in this Constitution of these prohibitory provisions in reference to matters of that kind; and I tell gentlemen here that if they vote to strike out these words they have knocked the life out of the very principle they have been contending for for several days.

MR. DERING. My friend from Doddridge understands parliamentary tactics admirably. He is an old stager at the business, and we should be careful how we strike out anything in this report

that pertains to corporations. I know his ingenuity, and this motion of his covers the whole thing we have been battling for. The State may become the partner in all the companies, associations and corporations in this State if you strike out this feature. The gentleman from Kanawha says the State should be permitted to participate in the stocks of our banks, etc. I for one favor an eternal divorce between the banking institutions and the State. I am opposed to the State becoming a banker. Let the State regulate by law the charters of the banks, and the banks will move on performing their legitimate duties and the State in its sphere will move on, controlling and regulating the spheres in which they shall move. The gentleman from Kanawha said sum up the advantages which banks have been to the state they would be great. If my friend from Doddridge would go into a calculation and examine the statistics on that subject and arrive at his conclusions I don't know whether the State would not come out considerably the loser. I remember the banks of Virginia equal in credit to that of almost any other state; but, sir, this thing of mixing up the state policy with the banking policy of the state has gone to the detriment of both the state and the banks. The state has pledged its stocks; permitted banking institutions to go into operation on the credit of their stocks. Why, sir, just as state stocks went up and down so the banks went up and down. And how much is the stocks of the banks that were based on this principle worth today? I would not give two cents to the dollar for it, sir. You find the very institutions mixed up with the state connected with that principle winding up their concerns and asking to be chartered upon independent principles. Sir, I am opposed to any alliance of state and bank. I trust that the banks will be held in their proper sphere and the legislature, in its independence and disinterested action, will so legislate in reference to them as to promote not only the interests of the people but of the banks themselves. I do not want our new State to become a great banking corporation and ally itself to the various corporations that may be instituted and originated herein. Let us sever the connections that have held them together for so long a period and we will start out on new and independent principles that shall lead to prosperity for time to come.

MR. STUART of Doddridge. Although the State may have hundreds of thousands of dollars; may be perfectly able to make these improvements, if you don't strike this out you are saying the State shall not do it under any circumstances. I have conversed with

some gentlemen, who say they are willing to do it under restrictions. Now, if the State is hereafter not to become a stockholder in any incorporation, of course she cannot appropriate money for any improvement, because she is not to be a stockholder.

MR. DERING. She can appropriate it.

MR. STUART. Very well. We don't anticipate that the State will ever be engaged in any of these improvements entirely on the credit of the State. It has never been done heretofore; but that she would come up to the aid of these corporations, and private individuals who would be willing to give their means as far as able.

Then, sir, if you don't strike this out you are saying the State should not appropriate money although they have it in the treasury.

MR. DERING. Cannot we give the money, if we have it as you say?

MR. STUART. I do not want to give it. I want if there is any profit in it I want the State to have the profit. If it pays, I don't want to give it too liberally.

MR. DERING. I want to give it.

MR. STUART. I do not, sir. We want, if the State is in a situation to give it, to make the appropriation, and if it happens to be a paying institution that the State then pays. I don't expect the State ever will give a hundred thousand dollars to any incorporation. If she makes an appropriation it will be with the expectation that the improvement will pay some time. But that is not the question. You say now although our treasury may be overflowing the State shall never appropriate a dollar to an incorporation unless they give it.

MR. STEVENSON of Wood. I only want to say it must be either an illusion or a delusion that leads my friend from Doddridge to go on arguing that it is not allowing the State to incur a debt if we allow her to become a stockholder in a corporation. How else is she to acquire her interest? Is she not to give an obligation for it? We have said the credit of the State shall not be granted to or in aid of, nor shall the State ever assume or become responsible for, the debts or liabilities of these corporations. I want to show you this is the same thing. The State invests half a million in some one of these corporations, and if it fails the money is lost. The State has given

her bonds or endorsed bonds, at least puts that much in the corporation. It has to be paid. If the money was borrowed it has to be paid; and if she had the money it is lost. I want to know who loses it. Don't the people of the State lose it? Wasn't it their money? Can the State have any money that is not the money of the people of the State? It is the very same thing we have been battling against here.

MR. BROWN of Kanawha. The argument of the gentleman from Wood strikes me very strangely, the gentleman has professed to be a friend of internal improvements; only just keep us from the indebtedness and we are with you. We have fixed in the Constitution that this State shall incur no debt on that account. If there is anything fixed, I think that is a fixed fact. Then starting from that point that this State never can incur a debt. Then how do you propose to effect the object? There is but one of two ways in which it can be done. One is to appoint your own officer and agent and go on and appropriate the public funds to make the work, to pay it out by the day and keep an account and render it to the Auditor. The other is by aiding a stock company, whereby you bring to your aid other individuals with the assurance that they will not waste their moneys. Which of these two will you pursue? The State of West Virginia, if it is ever formed, will have I presume the public works that belonged to the old state within the borders of the new. There is a railroad laid out without the rails upon it made by the State of Virginia out of the treasury of the state. What shall you do with it? Wait till you get money enough to appropriate it, ten dollars at a time until you finish it? How do you propose to render that efficient? If you say you shall not take that work and give it to a corporation for stock to the extent of the work and let the corporation go on and complete the work. Why every other man of common sense would say that is the only sensible way of doing. That is the only way in which the State of Virginia has ever made a solitary improvement except the expenditure on the Blue Ridge tunnel and the Covington and Ohio road.

MR. HARRISON. It would seem to me the views of the gentlemen from Kanawha and Doddridge, from what they have said on this question do present to this Convention the question, now complete unequivocal question, for their determination, whether it will permit this State ever to make any internal improvements as state works. In the 5th and 6th sections that have been acted on, I voted

in favor of the sections because I was opposed to the State going in debt for any public improvements, and that has been the principal objection. It seems to me the motion of the gentleman from Doddridge should be divided. There may be a good many of us prepared to vote that the State shall not become a stockholder in any bank but may not be willing to go so far as to say she shall not make any internal improvement by an annual appropriation and planking up the money. I suggest to some gentleman who is more familiar with parliamentary usage than I am that a motion ought to be made to take the vote first on the question whether the State shall become a stockholder in any bank, and then upon the other question; because I think the other question does bring before the Convention the simple question, shall the State ever make any improvements by paying the money? I understand the term "stockholder" to mean the having a share in any company or association and paying money at the time of entering into the contract.

MR. STEVENSON of Wood. Not all the money.

MR. HARRISON. Yes; pay up all the money.

MR. STEVENSON. Generally paid in installments.

MR. VAN WINKLE. A stockholder pays \$2 at the time of subscribing.

MR. HARRISON. Well, let us have a division on the bank question anyhow. I move a division of the question.

MR. STUART of Doddridge. I would move then to strike out "banks."

The motion was rejected by the following vote.

YEAS—Messrs. John Hall (President), Brown of Kanawha, Brumfield, Chapman, Cook, Dolly, Hansley, Hoback, Haymond, Hagar, Irvine, Montague, McCutchen, Robinson, Ryan, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Walker, Warder—21.

NAYS—Messrs. Brown of Preston, Brooks, Battelle, Caldwell, Dering, Dille, Harrison, Hubbs, Hervey, Mahon, Parsons, Powell, Parker, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle—23.

Mr. Stuart of Doddridge then moved to strike out after "bank" in the 41st line.

MR. HERVEY. This is no feature. We do not seek to incorporate anything in this Constitution that is not known in the history of the constitutions of the United States. I have within the last three or four months had time to look at the constitutions of but very few states. I find in the Constitution of Indiana that the state shall not be a stockholder in any bank, "nor shall the credit of the state ever be given or loaned in aid of any person, association or incorporation, nor shall the state herself ever become a stockholder in any association or corporation." Michigan: "The state shall not subscribe to or be interested in the stock of any company, corporation or association." Missouri: "The state shall not be part owner of the stock or property belonging to any corporation." Texas: "The state shall not be a part owner of stock belonging to any corporation." Wisconsin: "The credit of the state shall never be given or loaned in aid of any individual, association or corporation." California: "The credit of the state shall not in any manner be given or loaned to or in aid of any individual association or corporation; nor shall the state directly or indirectly become a stockholder in any association or corporation."

I hope gentlemen will discuss and regard this question on public grounds alone and not charge that their "rights" are sought to be invaded. The citations from the various constitutions of other states prove the very reverse, and show that the policy of the younger states is to the effect that the credit of the state should not be even loaned to individuals, corporations or associations.

MR. SMITH. I know the house is very weary, but I appeal to the friends of internal improvements—every gentleman who has spoken here says he is a friend of internal improvements, that is if we are to take their declarations on this floor; they are friends of internal improvement, but I think they are evidencing the fact very singularly by refusing to strike out these words.

The Secretary reported section 8.

MR. STUART of Doddridge. The amendment is to strike out all after "bank" in the 41st line.

The vote on this motion was taken and it was rejected by the following vote.

YEAS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Cook, Dolly, Hansley, Haymond, Hoback, Hagar, Irvine,

Montague, McCutchen, Robinson, Ryan, Sinsel, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Walker—21.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Caldwell, Dering, Dille, Harrison, Hubbs, Hervey, Lamb, Mahon, O'Brien, Parsons, Powell, Pomeroy, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle, Wilson—24.

The hour having arrived, the Convention took a recess.

AFTERNOON SESSION, FEBRUARY 4, 1862.

The Convention re-assembled.

THE PRESIDENT. When the Convention took a recess it had under consideration the adoption of the 8th section of the report of the Committee on Taxation and Finance.

MR. SMITH. I feel exceedingly anxious that a constitution should be formed that would be satisfactory to the country and that we shall not leave here with heartburnings among ourselves. Where there is, as there evidently is in this house, an almost equal division on the questions that have engaged us for the last few days, I think it is a matter of serious consideration enough to give this subject a further consideration and take a course, if practicable to suit all parties in the Convention. I would be exceedingly gratified if something could be done to suit all parts of the house. As it is, there is a deep, fixed disquietude in the minds of all. I know I feel that way myself. Generally I consider myself an individual of very good temper; but when I find my temper so much weakened as it is on this occasion, I feel there is a deep sentiment of hostility in my mind towards the proceedings. I do not wish to entertain those feelings I desire to adopt some course if it be possible that would suit all; and I do think if there ever was an occasion when there should be a spirit of yielding and of compromise among the members this is the occasion in which it should occur and should exist. Entertaining those feelings, desiring so heartily as I do to adopt that which will be approved by all with almost unanimous concurrence of opinion, I make of my own motion, without having consulted anything but my own judgment, my own sense of duty, I recommend that this whole subject be again referred to to a special committee. There are reasons for this reference. I look at the committee that framed this report. That committee has not a member in the minority. I do not suppose the committee was ap-

pointed with reference to their opinions; but it so happened that here is a report returned to this house by unanimous vote of the committee, not one of them in opposition to it, as I believe. This it does seem to me, is not giving a fair opportunity to what may be called a large minority—almost an equality; and I think this subject should undergo a revisal by a committee selected from all parts of the State, in which the sentiments of all may be heard and some attempt at a compromise made that would be satisfactory to all. I believe it can be compromised and adjusted if that spirit prevails which is proper to prevail in such cases as this. But as it stands, I say to this house that it will produce a sensation in my quarter of the country that will repel this Constitution, ardently, derisively. I know, Mr. President, that you are aware of the fact that your constituents will not sustain it. I know that the people of the extreme west and the south will not sustain it. You may carry your Constitution by a small majority; but with what sort of force does it go into Congress; what sort of influence is there to sustain it when it goes there? Here is a divided people on the very adoption of the Constitution among themselves. And if we do send it back and do get opposition to it, why that will be the result. I now speak not for myself but for this State which I do say I am eager and anxious to sustain and which I must say and have said I cannot sustain with the provisions here.

I therefore make the proposition that this report be recommitted. There was I understand a question of difficulty among the members which was submitted to a committee, and that was at once reconciled in the committee; not two hours engaged in it, brought into this house and accepted and received with almost unanimity. Now, may not something be done? Is it not due to us to give us an opportunity to be heard in committee on this question of limiting the committee to one side of this internal improvement question, of bringing a report into this house without a minority having been heard in the committee? I ask it and submit it in good faith and hope it will be adopted. I move to recommit.

MR. DERING. The chairman of that committee is not here. I have the honor of being one of the members of it. While I appreciate the motives that actuate the gentleman from Logan very highly it does seem to me it would not do to set this precedent in reference to a report which we have nearly passed through after careful and prolonged discussion, on which the minority have been abundantly heard. This report was very carefully considered in

committee before offered to the Convention. There were dissenting opinions in reference to some provisions incorporated in the report as first prepared. These provisions were modified to meet the objections and so as to meet the views of the whole committee. This report has been before this Convention nearly three days. It has undergone an investigation and contest almost unparalleled in the history of any report submitted here. It has been warred upon from the very first introduction of it in this Convention up to the present time. The gentlemen who objected to sections of this report have sometimes succeeded. They have stricken out a whole section of this report. The Convention has examined it in all its phases and bearings; and it seems to me that now after we have got nearly through the report to ask this Convention to recommit those sections that have been passed upon by the Convention—not to recommit but to send them to a special and select committee, is a reflection on the committee that brought in this report—no less a reflection on the Convention itself, who have adopted all but the last section after a most exhaustive discussion of it. You are asked to set a precedent in reference to this report that may be followed up in reference to every other report that has been submitted to this Convention. Now, sir, on the second reading of this report it is open to amendment. Any gentleman will then have the right to come up and object to any of its provisions, and it seems to me that will be the time and place to adjust this report so that it will as nearly as possible meet the views of all the members of the Convention. Why, Mr. President, we have not had a report before us that some of its provisions has not been objected to. And yet should we get up and make a motion to refer those reports to a special committee? If you do this there is no telling when we will get through the business of this Convention. I am as willing to meet the gentlemen on that section—upon this and every other section, in order to harmonize and adjust all things to meet the views of all as nearly as possible; but it is simply impossible to present anything to this Convention on which the whole fifty will agree. It is simply impossible to adjust any law that will meet the approbation of every body or the entire approbation of this body. Had it not then better be proceeded with, every section passed or amended as we shall see proper? Let it pass to its second reading, and then let the gentleman from Logan or his friends, or any other gentleman get up and make their objections; and I think it can be harmonized; and where there is no parting with principle, where they do not ask for a departure from principle, I am willing to meet him

half way. But, sir, where principles are at stake it will be asking too much of this Convention that the majority shall concede and depart from principle at the demand of the minority. My desire, sir, above all others, is to get a constitution that will meet the approbation of all our people, but it is utterly impossible. Where there is such a fundamental and radical difference as there is here between the principles which the Convention have adopted in regard to the financial conduct of this new State and the methods proposed by the minority, it is impossible to find common ground. It must be one or the other; and if the majority is not to decide, then we are all at sea. Let us do the best we can and go on with our business. I trust we will get through shortly and submit our Constitution to the people.

MR. HERVEY. This report is almost completed, all, I believe except the last section, which cannot create any difficulty in the Convention; and now when the report is almost finished, to ask to recommit the subject is something I am hardly prepared to meet on the spur of the moment. When this Convention was organized it authorized the President to organize certain standing committees. The President proceeded in the discharge of that duty and appointed these committees. Now, sir, it was my understanding at the time these committees were gotten up that the members of those committees were from different sections of the State; and that question has never been raised before, has never been thought of till now. I presume the President of this Convention in appointing that committee did his duty; I have no doubt of it, not only with reference to this committee but with reference to all the committees. Sir, it does not make any difference what kind of a report is brought in here, this Convention will adopt it unless it approves it. Is it to be supposed that because you get up another committee, who bring in another sort of report that therefore the members would be under the necessity of supporting any proposition so brought in, or that they would support it if it did meet their approval? What has been the fact in regard to reports heretofore? Why, sir, we have sometimes amended them so that the committee hardly knew them when we got through—hardly bore any resemblance to the original report. If there was anything of vital interest at stake in this question; if there was any right of the people invaded in this report, then it would be a different question. If, for instance, it was unfair in its operations, or something of that sort; if it was unequal in its taxation; if some prin-

ciple of representation or taxation involved; if it was unequal and unjust, then there would be some propriety perhaps in referring it back. But that is by no means clear. The whole question, all the principles involved, have been exhaustively thrashed out here for days; the whole matter is fresh in the minds of the Convention; the whole question is understood from beginning to end; and the Convention can never be better prepared to decide the issue than now, than it was when it adopted, one after another, the principles which a majority approve as the governing principles for the conduct of this new State. Is it to be supposed that any other report brought in now could change the opinion of this Convention?

I hope, sir, there will be no recommitment and no new committee. If it is recommitted at all, it properly belongs to the committee having the report in charge. I deny that this house has any right at this period of its session to dissolve one of its standing committees and constitute a new one. The proposition is before the Convention. The Convention have already conceded what the gentleman from Logan asked. The gentleman from Wood tendered it as a compromise. In doing so he defined a compromise as a case where something was yielded by both sides. But this concession was all on one side; and now we see in what spirit it is received. The gentleman from Logan asked that counties be allowed to subscribe as they pleased to these works. The concession was made; and now he demands that the majority shall abandon all the ground established after an exhaustive discussion of two days and send the whole question back to committee.

MR. BROWN of Kanawha. I have had no consultation with any gentleman relative to the proposition before the house; had not thought of it until I heard the gentleman who made it speaking on the floor in regard to it. This is unlike any other question, except one, that we have had before us. We have been at one time very near the point we now are. In the legislative committee in the effort to settle that equilibrium, after the house were unable to agree and we were then approaching the very difficulties and dangers we are now so near, this Convention reconsidered its action and felt a disposition to agree and harmonize; thought it was proper and wise; and they did it, and referred the matter—that which had not been passed upon and that which had been passed upon—back to the committee and added another member to it. Although there was objection raised I believe it was withdrawn and

that committee assembled in good faith with a sincere purpose to endeavor to harmonize the diversities of opinion known to exist.

MR. HERVEY. Was it not referred to the same committee?

MR. BROWN. Yes, sir, with the addition of one member. There all sections of the State were represented on that committee, though the section to which the minority belonged in that case, as in this was in the minority in the committee, and although one member was added continued in the minority. That committee went to work with a real earnest desire to accomplish something and they did it, and I believe did it to the satisfaction of all sides; if not exactly what each would have preferred, yet what all can agree upon without any sacrifice of principle; and this Convention endorsed the action of that committee. Well, now, sir, we have attained the very same point in this case that we did in that; arising, too, out of a difficulty precisely of the sort in its bearing. It is a question, as in that case, that involved the local interests of the State; and that sectional interest has been manifested here perhaps to a stronger degree than in that case. Now, I am satisfied the gentleman who made this proposition intended no disrespect to the members of the committee; and I confess I could not, if I were a member of any committee, feeling that I was treated with disrespect, if for the purpose of harmonizing a difficulty that committee did not create and which arose out of the nature of things, circumstances and localities of the peoples who are found to differ in interest and to some extent in feelings—now the question is, will you widen that breach, or as patriots and statesmen seek to heal it?

Why, sir, can anybody be blind to the fact that no free people yet, as a people, were ever ruled by another people? Can any man be so blind as to suppose that any people or section having a majority could ever expect to carry their Constitution or law over another people if that other people all opposed it? Can any statesman in this incipient effort to form and erect a new commonwealth be blind to the fact that it is absolutely essential to success, to peace and harmony that you heal these differences and restore harmony among this body as well as among the sections that are represented? Now, I don't pretend to say that it can be done. I hope it can be. I am willing to labor to the last and trust that it will be. I believe it will be more likely to be done by the appointment of a committee as proposed with the avowed purpose to do the best they can, in a spirit of compromise, having seen where the shoe

pinches and what the call is, than you can by attempting to force on this proceeding before the Convention.

And I believe another thing: that when a committee have agreed to come into this house and tell the house that they have affected an agreement, it will have a great weight before the members of this house. I feel well assured that the proposition submitted to the Committee on the Legislative Department and returned to this house as the agreed report of that body could not have been carried as it was carried if there had been no such report. That committee yielded something in reconstructing that report that they would not have yielded, and no power on earth could have forced them to yield if it had not been taken by the power of the majority and carried over their heads. Now, it were better gentlemen should learn a little by experience and recognize that majorities are not absolute and that there are other rights to be guaranteed. It were well, I will say, for gentlemen to remember, while perhaps there may be majority of one or two on this floor, there are four or five counties lying in the same section of the State not represented here whose interests are identified with those, and who if there were representatives here would turn the majority on to the other side. How would this Convention feel in sending to that Constitution embracing provisions that they were all opposed to, carrying a proposition against their will by a minority representation? I don't think it would add strength. I think therefore it is the part of wisdom to take the course the gentleman from Logan has proposed, and if it can accomplish any good, let us adopt it. If it utterly fails, then we are where we now are. We have then to take the worst and determine our future course when the whole field will be before us. For myself, I am resolved to sit here and do my duty as honestly as I can and as fearlessly, and do everything I can to bring about the erection of a new State and the making of a Constitution as well as I can. If I cannot, then, sir, I shall yield to that and to the alternative as determinedly as I do this now.

MR. POMEROY. I cannot conceive any similarity between the motion just made and the motion made in regard to the legislative committee. In fact, there is no similarity in the essential features of the two propositions. That was to refer a part of the report that had not been acted on and adopted by the Convention back to the same committee in order that they might make some alterations; but we did not refer back the part we had adopted at all.

They had no privilege given them when that report was recommit-
ted to open up the questions that had already been decided by the
Convention. And then there is something said in regard to the
report they brought in. Well, the report they brought in the sec-
ond time was just the same as they had brought in before. One
gentleman on the committee (the gentleman from Taylor) made
the identical alteration in the report that was the main one before
the body, that the number of the house of delegates be increased
from 46 to 47. No person felt disposed to stick on that point of in-
creasing the number by one. The number 54 had been tried and
met with a similar result. The only difference we made was in
relation to that number and some little and unimportant changes
about how the counties should elect their delegates in districts. If
we establish the precedent of referring back a report that has
nearly all been adopted, where are we likely to end? Some gen-
tleman said on the floor that they did not expect we would end be-
fore the 4th of July. Now, I can only speak for myself. If the
gentleman's motion was only to recommit to that committee that
part of the report which has not been acted on I would have no ob-
jection to that personally. We could go on with something else.
But suppose you appoint a new committee—I don't know that the
members of this committee would feel anyways bad about that—
what would be the result? If they were men who had voted on
the different sides of this question substantially as we have voted
time and again—for we voted Saturday as we voted today—so far
as the principle is concerned—you bring in two reports, and how
much nearer are you to a conclusion than you are now? The Con-
vention, as has been stated, would not be at all under obligations to
adopt the report. Now, if the gentleman had made his motion to
recommit, that part not acted on, I would have no serious objec-
tions to that; but to recommit to this new committee, with the feel-
ings manifested towards it, ought not to be entertained. When I
came here I did not expect to carry everything I should advocate.
I have not been so fortunate as to do so, and they thought I was
doing wrong by not acting with them. Well, now we ought to go
on harmoniously about these things and with the best feelings to-
wards each other. I cannot conceive what this committee could do.
You cannot in my opinion recommit that part of the report adopted
by the Convention unless you reconsider the votes by which it
was done. You have already adopted it by vote of the Convention,
adopted one section as amended, and stricken one out. How can

you take them up without reconsidering the votes by which they have been adopted?

Well, now, in regard to the gentlemen on the committee, I have never examined carefully, but I understand one gentleman who was on the committee opposed the main features of their report. I suppose the same is true in regard to every report that has been made to this body. Now they might get a committee divided so that they could not harmonize. The result would be two reports, and the reports would have to be taken up and acted on. If we have the report of the majority, why, of course, we will not adopt the report of the minority. The same ground will have to be all traveled over again. Not having entered into this discussion and taken no part in it except simply to record my vote, and to make a suggestion this morning in regard to the substitute of the gentleman from Marion, I think if the gentleman from Logan would reflect on this he would either be in favor of recommitting that portion only not acted on or of going on as suggested by the gentleman from Monongalia.

MR. MAHON. I feel deeply interested in having this difficulty adjusted if possible. I say if it is possible for this Convention to appoint a new committee, to reconsider this whole subject again; and if there was any probability or prospect of having it brought into this Convention, that we might pass resolutions offered by such committee in harmony and peace that would be calculated to meet the views of the different counties, I would be exceedingly glad. I am not prepared now to say or even think it is possible. But it may be possible and I am exceedingly anxious to extend the hand of friendship to those who view this matter differently from myself, and say to them I am willing to concede everything I possibly can in order that we may harmonize, that after we have framed this Constitution it may go before the people with our united approval. I admit, sir, that it is not reasonable to suppose we can all carry our point. But had the opposite party, those who voted against me, carried I should not have taken it so hard nor said one word. It is because I am on the side of liberty that I extend the hand of friendship in this act, saying that if it can be compromised, where we do not violate a sacred principle, we are ready to meet you, so we will not be bound to sacrifice what we conceive to be a sacred principle. I have no disposition whatever to defeat any measure that you cherish. God forbid that I should do so merely to be opposed to any measure. If the gentlemen on the other side think it is possible

we can have a report that we can harmonize on I am willing to vote for them to go back into the hands of such a committee.

MR. STEVENSON of Wood. I will move to amend the motion made by the gentleman from Logan that the report be recommitted to the Committee on Taxation and Finance. I think that will probably accomplish the purpose, if it can be accomplished at all, which the gentleman desires. That committee is, of course, or ought to be, better posted in reference to the matters that will come before it on this question, and particularly after the matter has been so extensively discussed, than a special committee could be; and I have not the least doubt—I don't know who is on the committee—that those gentlemen will adjust these difficulties if they are adjustable at all as well as any special committee. Now it was the same course we pursued in reference to apportionment. We referred it back to the same committee, and although a majority of that committee was opposed to the view taken here by the minority, they reported a provision that was satisfactory to the entire Convention. Now, if we wish to throw oil on the troubled waters this is the only way we can do it; and if without violating what appears to be right on their side, this committee can change this report so as to meet these difficulties, I think they will do it. That far I will go, but I shall vote against referring to a special committee.

MR. HAGAR. I favor the amendment. I am opposed to having a special committee. It is like persons when they have a trial before the justice of the peace wanting to take it up before another. The committee that have acted on this knows as much about it as any men that could have been selected. I would be satisfied to refer that part that has not been passed upon. I don't like to hear so much south and north, so much east and west. We are one people, should be one; our interests are one and our feelings should be. However, I have no objection to referring the whole report to the same committee; and if they see proper let them choose one to act in concert with them from the east, or west or north or south part of the State, wherever they please. I am opposed to appointing another committee, and I am satisfied there is not a man in this Convention that desires peace and harmony more than I do. Our zeal is apt to run us into extravagance on either side. I have no objection, of course, of the report being referred to the same committee; and if they think proper I would be satisfied to refer only the last two sections and let all that have been passed upon stand as it is. Then if they saw cause to add another section to it and could best adapt

it to the necessity of the whole State and bring a compromise about let them do it. I favor the amendment.

MR. SMITH. I offer this proposition from the very best motives in the world. I appealed sincerely and candidly to the Convention to adopt some measures that would heal the wounds that I feared had been inflicted on a portion of the State. I fear this will work disastrously if something is not done. I recollect being in the convention at Richmond when the great "basis" question came up there, when the convention was warmed up into a state of excitement and anger which exceeded anything I ever saw. A gentleman not on the side of the house that I belonged to but one who belonged to the opposing side got up and proposed a resolution of reconciliation. He proposed a committee to report a compromise. That was accepted by the convention and quieted its excitement. The interests involved there were much greater than those involved here; but I even now say that so far as I am concerned I feel almost as much solicitude about this as I did on that occasion. I hope it will be the pleasure of the house when an offer was made for peace and harmony to see it accepted on all sides; and I regret to say my respected friend from Monongalia rises first in his place to reject it; and much more did I feel surprised when the minister of peace himself rises in opposition. I hope and trust it may be the pleasure of this Convention to make an effort at reconciliation, to compromise this difficulty. I objected to the committee, not that I am reflecting on the committee or any member of it or those who appointed it; but it has happened that there is a committee from one section of the country, and not one of them except my friend from Marion but is in opposition to it; and I think if you refer it to the other committee, there ought to be a report of the other portion of the State by an enlargement of that committee. I am not particular as to manner it is done and I do not think it is any reflection to ask another. I am willing that my friend from Ohio or my friend from Wood shall be appointed on the committee. But I do ask as a right to have every portion of the State represented in that committee; and when they get through in good faith without feeling or passion, with a determination to compromise, I believe they can hit upon a compromise. I never yet have entered into a body of that sort with a determination on the part of all to give on each side that they could not come to some conclusion that would be satisfactory to them. I hope it will be the pleasure of the house to adopt this proposition which I have offered, and I care not if it

is in the form offered by the gentleman from Wood if additions are made to that committee. But to send it back to a committee who have formed it entirely without any representation from any other quarter of the State, I do not think it would result in anything good. There ought to be on this question representation from every part of the State. There is not at this time on this floor any of that committee to represent the country to which I belong. I regret that my friend from Brooke, who I think is a good-natured man—I am astonished now to see him get up in this house and resist a proposition so just and proper in every respect; and as to committing the whole report nothing is more usual. This report will come in, if it is made, as a substitute for that which is now before the house. The whole subject will then be before them, and everything can be adjusted and made whole. That is the only way in which it can be done. The amendment of one branch of it may come in conflict with another branch. The committee that takes it into consideration ought to have it all before them and I hope no man in this house who seeks to accommodate all parts of the State will raise objections to a proposition so reasonable. I ask it because I want to be satisfied. It will save time. If the committee come to an adjustment it will be accepted; there will be no further discussion of the subject in the house. Here is my friend from Marshall who offered an amendment and agreed that an amendment should be added for the benefit of the humbler roads that are now by this last amendment hopelessly excluded from all favor whatever in all time to come.

MR. HERVEY. The hardship that I thought the motion of the gentleman from Logan inflicted on this committee was this: that it was disgracing this committee. The President appointed this committee among others. They have gone on in the discharge of their labors and have performed those labors admirably and ably. And, now, sir,—I am sure the gentleman meant it; it strikes too hard, sir—the coming in of a proposition to discharge a committee of this Convention, appointed as all the other committees were by the President of the Convention, because their conclusion on the most important economic question this body has to deal with does not suit the gentleman from Logan. Therefore they are to be disbanded, after the Convention has adopted all their report but one section, about which there is no controversy. It would be saying to the whole country that the committee cannot discharge its duties—and perhaps that the Convention does not know its own mind

when voting. The Convention has adopted more of this report in proportion to the amount gone over than any other committee report presented here, I believe. Now, sir, in view of that fact, the fact that the Convention has almost literally walked in the footprints of this committee, and that to maintain our principles we have had to fight the gentleman from Logan all the time like fury, it seems to me he is asking a good deal.

MR. DERING. I would just suggest to him that I think a proposition will be made that will perhaps meet the approbation of the Convention.

The President remarked that the Chair was not sensitive on the subject of changing the composition of the committee.

Mr. Brown of Kanawha said if he thought the appointment of a special committee would reflect on the action of the Chair, or on the committee appointed by him, he should vote against it promptly. He hoped the gentleman from Brooke would not press that subject.

MR. DERING. The committee never thought of any sectional issue in their report until it was discussed in the Convention. He did not believe the President had any such thought in his mind when he appointed the committee. There was no such sectional issue in the Convention until raised by the two gentlemen from Kanawha and Logan. The committee made its report, as the President had the committee, simply with a view to the welfare of the whole State. Nothing like a sectional feeling existed for a moment in the committee. We canvassed the subject thoroughly, as we thought; and we thought what we were doing was for the benefit of the people. The majority of the Convention, despite all that had been done to increase the vote from the southwest, had endorsed the action of the committee.

Mr. Stevenson of Wood proposed that the report be referred to the committee that had reported it, Finance and Taxation.

Mr. Smith hoped they would appoint a new committee.

MR. LAMB. There are two main principles in this report which, for one, I could not compromise away. The first is embodied in the 1st section, that "no one species of property shall be taxed higher than any other of equal value." I do hope, whether this matter is referred or not, that this Convention will regard that principle as so essential that it must be the foundation stone on which

your system of taxation and finance must rest. So far as I am concerned, I look upon it as equally essential for the future prosperity of the new State that we should provide against the creation of debt. If these two principles can be preserved, I am prepared to enter on any compromise. But, for one, I must say that as long as my voice is here raised in this Convention, I do regard these two principles as essential and principles that cannot properly be abandoned without involving the most essential interests of the new State in ruin. Anything else, if this matter is to be referred to this committee, that can be conceded for the sake of compromise, I might be willing to yield.

MR. SINSEL. I would suggest that the first two sections should not be recommitted. Leave them just as they are. We have acted on them, after a long debate; let them stand as they are.

MR. DERING. I regret exceedingly that the chairman of our committee is not here. I have no objections myself to part of that report being recommitted to the friends of the gentlemen from Kanawha and Logan; nor have I any objection to having Mr. Lamb added to the number. I know that he will be efficient, and will make a good member of the committee, and it is very desirable to have the benefit of his knowledge and experience on this subject. While I agree to all that let me say in advance as a humble member of that committee, I am willing to hear propositions for compromise; yet as I said a while ago, I will adhere to principle as far as I can. I do not desire to compromise any principle. I am very willing, however, that the report shall be referred back, with additions to the committee, for a conference, and report our action whatever it may be.

MR. SMITH. So far as I am concerned, I have no sort of objection to modify my proposition so far as to accept the first and second sections. I have made no particular war on them. The principle meets my approbation.

MR. LAMB. A gentleman suggested that I should be appointed on the committee. I thought it fair to give him notice of what I deem the essential features of this plan, so that he might if he thought proper withdraw the suggestion.

MR. SMITH. I know no man in this house that I would rather have there; and I think that he will enter into it in the same spirit that others do.

MR. BROWN of Kanawha. What is the proposition?

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Wood to the motion made by the gentleman from Kanawha.

MR. SMITH. I accept the proposition of the gentleman from Wood, provided three others are added to the committee; and I ask now that it be recommitted with the addition of three members to the committee.

MR. STEVENSON of Wood. How will the three persons be named?

MR. HERVEY. The committee is an odd number now, and the addition of three would make an even number. I would move to add Mr. Van Winkle.

MR. VAN WINKLE. I must decline, sir. I offered a compromise this morning, which was repelled somewhat slightly.

MR. HERVEY. I will nominate Mr. Stevenson, then.

MR. BROOKS. I am willing, for my part that the report shall go back to a special committee or to the original committee; but I ask for my own part to be released from serving on the committee, and that will make the number nine.

MR. HERVEY. I hope not.

MR. BROWN of Kanawha. As I have announced, I was always willing to discharge my part and to enter on it with a desire to accomplish the end proposed, and that is a compromise, but I confess I feel disinclined to enter upon it on this occasion; and one of the chief reasons that induces me is the fact that other gentlemen have announced that they cannot compromise principle. I see in the declaration that it is principle alone that is concerned, and the intimation is that there is but one principle, and that they are on the right side. I cannot see one hope of a compromise. That is a settled question, and I do not wish to undertake a vain effort on my part. I am satisfied no compromise can be affected unless entered upon in the spirit of compromise: none. And I therefore hope the Convention will not place me on the committee. I am employed as laboriously, perhaps, as any gentleman in the house, and I hope some other gentleman will be appointed.

MR. HAYMOND. I was a member of that committee, and I am satisfied from what I know of the committee that it is absolutely necessary to send this report back to them. I was the only man that differed from them in this report. I told the President that I was in opposition to them in relation to internal improvements; that I thought the State ought to be allowed to use its credit to some extent; that when the report came into the Convention, I should pursue that course. I have done it. I have done my duty and we have been beaten. The resolution I offered yesterday was offered as a compromise. It was a compromise which should have been accepted. It was asking that the people, after five years, if they desired, should have the right to borrow four million dollars. That is all we ask. Four million dollars is a small amount for a state to borrow, to carry on internal improvements. It would have been a very small debt. I do think, sirs, if you are referring this back to a committee, it would be better to appoint a new committee of say some five or nine. I do not think it would be any disgrace to the present committee. Their views are known. If my resolution had succeeded, all would have been right and this Constitution would have gone home to the people with flying colors. But, sir, the gentlemen tell you the people in the country never will consent to be tied up hand and foot. Sirs, they may vote for this Constitution but they will tear it asunder before ten years. No people ever lived that knew how to enjoy liberty that would suffer themselves to be bound hand and foot. The people of West Virginia I tell you never will submit to this Constitution as it has been fixed here to-day. They may, as I say, vote for it for the purpose of being admitted into the Union, but I tell you they will tear it asunder.

MR. DERING. I don't like to trouble the Convention so often on this subject, but I desire to say that I do trust the Convention, having seen the feeling manifested throughout this whole discussion, will adopt this plan of settling this matter. I am willing to listen to the experience and wisdom of our venerable friend and that our committee shall have the aid of the gentleman from Kanawha and the gentleman from Ohio. Let us meet together. It seems to me we might bring in something that would be acceptable to the Convention. I trust you will give it a trial. I desire above all other things that throughout all our action here we shall act in a spirit of compromise and harmony. We all want the Constitution and the new State and we must have some harmony of action and some little compromise at least before we can have it.

Cries of "Question! Question!"

MR. STEVENSON of Wood. The motion would be now simply to recommit the report except the 1st and 2nd sections, which it is agreed are to remain as they are; recommit the balance of the report on Taxation and Finance. Add the gentlemen from Kanawha, Logan and Ohio to the committee. If it is necessary to have another member, I should like to be excused myself and suggest the member from Brooke.

MR. HERVEY. I am a member of that committee, sir.

MR. STEVENSON. I presume there will be no difficulty on account of the even number.

MR. BROWN of Kanawha. I approved of the first proposition of the member from Logan only for the purpose of endeavoring to harmonize conflicting interests, when the action of that committee had been endorsed by the house and when there was every reason to believe the whole report would be adopted. It is therefore a matter that is past the supervision of the house. The question now is to secure harmony and satisfy many of the members. I consider it a foregone conclusion as it stands. The committee was endorsed by the majority so that nothing can have any reference to the committee. I am here desiring to harmonize these conflicting interests and divisions in the house. Now to aid that either there ought to be an entire equality by reference back to the committee without any new members on it at all or it ought to be, as the gentleman has proposed, a new committee; a special committee for the special purpose of attempting to harmonize these conflicting interests, not for having remedied the matters in consideration of the report; and that that ought to be appointed from the two sides even. Unless the committee is appointed on those terms, I cannot vote for it and am very decided in my wishes and feelings about it that I do not wish to serve on the committee and therefore must decline.

MR. POMEROY. Such vote is a matter of courtesy and kindness. It has always been customary not to take any special action without the presence of the chairman. I understand distinctly that Mr. Paxton paired off with Mr. Paxton simply on the votes where it was well known how both parties would vote. But here is a proposition to add to the committee in the absence of the chairman. One or two gentlemen on that committee have already intimated they cannot serve if those additions are made. Now,

would it not be proper to defer action until the chairman of the committee could be present and give his views about the addition to the committee? May it not be that as many men as you add to the committee you lose from the other. I would be rather in favor of the remarks of the gentleman from Kanawha, that if that is going to be the state of the case there should be a new committee. Well, then, just this remark. If it was important, in the first place, that the committee have an odd number on it it is equally as important when you recommit important matters to it. Therefore, I hope the gentleman from Wood and the other members will forego any feeling they might have on the subject and will all serve also. But I would suggest to the gentlemen if it would not be proper to wait on the chairman who paired off today. Would not it be well enough to wait till he could be present in his seat?

Mr. Brumfield offered the following amendment:

"Whereas, There is dissatisfaction in the Convention, in order to bring about satisfaction,

"RESOLVED, therefore, That this Convention be divided and those in the majority to take from their body and those in the minority to pick from theirs four men, and the eight to pick out one which will make a committee of nine, and that the report of the Committee on Taxation and Finance be committed to them as soon as possible."

Mr. Stuart of Doddridge moved that the whole subject be laid on the table for the present, and the motion was agreed to.

Mr. Harrison moved that the Convention take up the report of the Committee on the Executive Department.

The motion was agreed to and the Convention proceeded to the consideration of the second report of the Committee on the Executive Department.

Mr. Stuart of Doddridge moved to strike out "four" years and insert "two" as the length of the governor's term.

MR. LAMB. Before knowing how to vote on that question I would like to know what disposition can be made of the 5th and 6th lines. If he be elected for two years only the clause which makes him ineligible for a second term ought to be omitted. I move to amend the amendment by striking out from the word "two" in the 4th line to the end of the 6th line.

MR. POMEROY. I am in favor of that motion. If the people believe he is the best man I am in favor of re-electing him, but I am opposed to any man being elected to the office of governor for the term of four years.

MR. BROWN of Preston. Here is another difficulty. He shall hold his office for the term of four years to commence on the first day of January next succeeding his election. I believe it was understood the legislature was to be the judges of the election of this officer. The Convention has fixed the third Tuesday of January as the day upon which that legislature shall assemble. I think the time ought to be changed here or there ought to be a condition made to this time; ought to be accommodated to the other time indicated.

MR. BROWN of Kanawha. If I understand the proposition, I shall favor the amendment, for it is striking out a feature that I object to in toto. It is a restriction on the people after electing a man and finding him fit for the service, a prohibition against re-electing him; a prohibition in both clauses of the sentence. I hope to see those lines stricken out.

MR. STUART of Doddridge. I withdraw my motion to amend by striking out "four" until the motion of the gentleman from Ohio be taken.

MR. DILLE. I would suggest that the chairman of the committee is now here and I think as a matter of courtesy he ought to present the sections as they are placed before the house previous to any amendments.

MR. CALDWELL. I will call attention, however, to the fact that this report was made as early as about the middle of December previous to the action of the Convention on the time the legislature should convene; and therefore it was anticipating that the sessions of the legislature would be as they are now in Virginia, commence on the first Monday of December, we fixed the period on the first day of January. With the additional remark, however, that the time of the meeting of the legislature being changed necessarily some amendment should be made as to the time of the commencement of the office of governor. That time, however, I do not propose to fix but leave it to the Convention to determine what would be the best time. The other questions before the Convention were brought to some extent before the committee. The first in refer-

ence to the office of governor. The committee having decided that his term should be four years they thought it was proper to make the governor ineligible for the next four. If it is the wish of the Convention to shorten to two years, then I think there would be propriety in striking out as proposed by the gentleman from Ohio. For myself, it was my opinion as well as that of every member of the committee that four years was about the period that should be designated for the term of this office of governor, that he should not be re-elected at the end of four. It struck the committee that it might be possible that a person might be occupying that situation and from improper motives would be wielding the influence of his office for some improper and undue motives, and therefore this other part of the section was introduced. For myself, I am indifferent whether the term of this office is to be four years or two. If it is to be four I think the Convention will see the necessity of this interregnum. If for two only, why he might be eligible for re-election.

MR. POMEROY. The only amendment now before us is to strike out as proposed by Mr. Lamb.

THE PRESIDENT. The gentleman having withdrawn his amendment, the amendment to it would, of course fall.

MR. LAMB. I renew the motion.

MR. POMEROY. I am decidedly in favor of that.

Mr. Lamb's amendment was agreed to.

MR. STUART of Doddridge. Now, Mr. President, I move to strike out "four" and insert "two", as the term of the governor.

MR. STEVENSON of Wood. I would offer to amend by inserting "three."

MR. STUART. Three years will not work in well with the rest of the Constitution. There are 21 states in which the term of the governor does not exceed two years.

The motion to strike out "four" was agreed to; the motion to insert "three" was rejected, and the motion to insert "two" was adopted.

Mr. Powell moved to strike out the first day of January and insert the 4th day of July.

MR. VAN WINKLE. I would suggest that under the circumstances it would be better to strike out and leave it blank for the present. The governor's election cannot be pronounced upon until the legislature meets and we have not fixed that. It is some late day in January.

Mr. Powell moved to strike out the first day of January and it was agreed to.

MR. VAN WINKLE. It can be filled after we have got to that part of the report which treats of the returns of the governor's election.

The section as amended was adopted.

In section 2 Mr. Stuart of Doddridge moved to strike out: "a county forming a part of this".

Mr. Brown of Preston moved to insert after "years": "and is a citizen of the United States."

MR. LAMB. That is all provided for in the report of the Committee on Fundamental Provisions.

MR. VAN WINKLE. It provides that all the officers shall have been a resident of this State for five years and that they must be citizens of the United States.

MR. BROWN of Kanawha. He should also be a citizen of the State.

Mr. Van Winkle moved to pass by the second section.

Mr. Brown of Kanawha wanted to settle it now and was in favor of fixing the age at thirty years.

Mr. Van Winkle said he had no objection, that the vote should be taken on the number.

Mr. Stuart of Doddridge thought it was better to settle the thing at once.

Mr. Caldwell suggested to Mr. Stuart to insert "in some part of this State", simply striking out as Mr. Stuart proposed.

Mr. Van Winkle moved to strike out "thirty."

Mr. Lamb favored the motion.

Mr. Stevenson of Wood was for retaining that number in the report.

The motion was rejected, and the second section was adopted.

Mr. Stuart of Doddridge moved to strike out in the third section "five hundred" so as to leave the salary of the governor "two thousand dollars."

Mr. Stevenson of Wood moved to make it \$1800.

The motion to strike out \$500, leaving the salary \$2000 was agreed to.

MR. VAN WINKLE. Mr. President, your honor was a little too quick for me. I meant to make a remark or two before the first striking out. I call the attention of the Convention to the fact that in fixing the salary of the governor we must take into consideration that he is subject to expenses which none of the other officers whose salaries we have provided are liable to. He must remove to the seat of government and remain there permanently. He has got to provide his own house and that of a better quality than most of us have occasion to in our private houses. Strangers of distinction have to be entertained by the governor. The present salary in Virginia, I believe, is \$5,000 besides the house and furniture. A gentleman from Richmond told me they believed the governors generally could not save one dollar out of it. Now in the economical system we have introduced, we have fixed the salary of the judges of the supreme court of appeals at \$2000. I certainly trust the highest executive officer in the State will not be fixed at anything less. It is true our governor is not in ordinary times a very responsible office, not entrusted with much discretionary power; has very little appointing power except in the military and his duties are more or less onerous according to circumstances. I know that the duties of the present Governor have been exceedingly arduous; his term was but for a short one; he has removed his family here, hired a house and fitted it up. He would not have been justified for the few months he expected to do it; but it might be desirable even now if the Governor was living in a different way from what he is. If you estimate the services of other officers at so much, you ought to add \$1000 to the governor's salary for the extra expenses to which he is subject. Considering, however, that the term is placed at only two years, those expenses will be the more onerous. I don't think that \$500 additional for the two years would be any com-

pensation for the additional expense he would be subjected to. But, gentlemen, the term of the present Governor of the state is four years, the house to live in and that house furnished at the expense of the state. These things ought to be taken into consideration. I merely wish to present the case before the Convention and apprise them that this cutting down of the governor will make it difficult to get the place filled with any but a very rich man; and then he must be a rich man who would be willing to throw his money away for the sake of the honor. We are I hope going to bring things down if we can to a more practical scale, more in accordance with the ability of the State; but we ought to be just if we do not be liberal. I think the example of the surrounding states if we could get at that would be some indication to us. They have lowered and raised and lowered and raised their members of the legislature, governor and judges in Ohio, so that you can hardly tell what it is, I believe; but as it was said here in the discussion on the judiciary the common-pleas judges of Ohio got \$750; and yet I learned from a gentleman of that state with whom I was in conversation the other day that they get \$2500 and the supreme court judges get \$3000. So that we have acted against the facts in one case anyhow.

I just throw out these remarks that the Convention may take them into consideration. I trust it will not go below the \$2000 under any circumstances. I think it ought to be more.

MR. BROWN of Kanawha. I concur with the gentleman from Wood. I desire to see this State, if it ever is a State, a respectable and decent State; and I desire to see officers, whoever they may be, representatives of the State, live in the style they should, the governor at the capital so we may at least find him, with a salary that he can give one his breakfast and entertain with at least the decency an ordinary private citizen can. It almost seems to me humiliating that the people of a great State are to have their highest executive officer living on a salary about double what a large number of clerks in the capital would receive, and be obliged to entertain the public and discharge the social duties of the position in addition to his public duties in a way that would not discredit the State. Capable bank clerks or other bank officers get better salaries than you propose here to pay to the governor of your State. What gentleman with the dignity and character to fit him for the position would be willing to go to your capital and keep open house and try to do it on the salary you propose, or on the other hand live in the niggardly style he would have to if he lived within his salary? How

can you ask such a man to pay his own expenses required by his position for the credit of the State and do the work for nothing? I believe the governor has no very arduous labors to perform in times of peace; but whether much or little he is required to live at the capital and support a style of living creditable to the State. I voted against striking out \$2500, and I think the Convention have manifested a disposition to run this thing into the ground.

MR. VAN WINKLE. As this is a question of numbers, I suppose any number may be suggested. I move \$2400.

THE PRESIDENT. The Chair would have some doubts about the amendment at this time. The purpose could be effected as well by refusing to put \$1800 or \$2000 in with a view of putting in the larger number.

MR. VAN WINKLE. When a blank is to be filled, it is usual to suggest any number and then the rule is to take the question on the highest number first.

MR. HAGAR. I go against extravagant salaries. I have tried to judge as best I could and do what I thought was right in these things. I am against the amendment to the amendment. I think it is too little. My object is to give a respectable compensation to all our officers. There is but little pride about me in reference to my State but to have a governor serve us for \$1800 it would very near be a disgrace. I am opposed to the amendment.

MR. HAYMOND. I have been thinking, Mr. President, after voting for \$2000, that since I have heard today what I have I will take the lesser number. We have been told today by the gentleman from Wood and other people that there never would be a single dollar to spare for internal improvements (Laughter). No, sir; no, not a single dollar could we have; and now we are on the salaries the thing is changed. Salaries are going up (Laughter). Sir, there was no money two hours ago. The gentleman from Wood tells us a governor cannot live at Richmond with \$5000. Sirs, I believe him right. I believe if you will give those men there \$10,000 they will not have a dollar left. That is the place where they paid a \$900 bill for Mr. Meminger of South Carolina for the wine he drank in a few nights. I have not any doubt about the Governor spending \$5000 in Richmond. But I tell you I am going for the \$1800. That is what the Governor of Ohio gets. Eighteen hundred dollars once paid the greatest man in Ohio. There was Chase and

a number of such men who were Governor of Ohio for \$1800 a year, in that wealthy state. I think this new State ought to put up with the governor's salary of \$1800 a year, and that is what I shall vote for.

MR. STEVENSON of Wood. I intended to submit the amendment without any discussion; but some gentlemen seem disposed to discuss the matter as a very "niggardly" question (not the "nigger" question, however). I do not offer the amendment with any ambitious motive but because I believe it is enough for the governor, and because I think it is as much as the people in this new State can afford for the first governor, or for a dozen governors afterwards. When the judgeship question was up the other day, gentlemen argued that the judge had to perform much more arduous duties than the governor had to perform. I suppose now we will be told that the governor has a great deal more than the judges. In times of peace the governor has very little to do; and if he is a man of industry, he can turn his attention sometimes, particularly in the infancy of our State, to some other matters that may assist him to get a living if he cannot live on \$1800 a year. I expect it will be impossible to refer to a state in this Union that when they were in the condition of this new State of West Virginia gave their governor's office as much as \$1800 a year. I think when Ohio was much more populous than this new State of ours, they gave their governor, I think, \$900 a year. And so with the other states when they were commenced. At the present time that very state just across the river here, with its population of between two and three millions of persons and where the governor will have ten times the amount of duty he will have in this new State, he gets but \$1800 a year.

MR. SINSEL. Permit a question? Will not it take the whole time of the governor here just as it does in a big state?

MR. STEVENSON of Wood. Why, he may not stay here all the time. A man can reside here at the seat of government if he sees proper and if his official business only occupies his attention one month in the year, he has got eleven months that he can occupy himself at something else. Now, sir, when Ohio can get the services of such men as the present Governor and a number of governors which they have had before him, among the first intellects in this country for \$1800 or \$2000 a year, a state immensely rich and populous, I think it is entirely out of place, looking at the condition

of the people in this new State, with a population of only a quarter million, to say that we shall start out with these high salaries. If we have, or after we get this immense network of internal improvements which we are going to get, and had all this natural wealth found in this new State developed and a population here equal to half that of Ohio, it would be very proper and consistent to talk then about giving the governor \$2000 a year. But I tell you, gentlemen, you are making one of the greatest mistakes that you will make in the formation of this Constitution by adopting this principle of high salaries in the commencement of this new State. No, sir, I favor the amendment and offer it because I think that a governor in this new State of ours ought to be satisfied at \$1600 or \$1800 a year; and I know that we can get good men in the State to fill the office for that amount.

MR. LAMB. Will you inform us whether the Governor of Ohio is or is not furnished with a house?

MR. STEVENSON of Wood. I do not know whether he has a house or not. I suppose he has, probably. But if he has a house to live in at \$1800 a year, why, sir, let me make a comparison with the State of Ohio, with the amount of wealth that is almost incalculable and the ability to fit that house, yet with a population four or five times as great as ours, they could pay that many times as much as we could, yet they don't do it. Gentlemen talk about our governors being capable of entertaining the people of the State when they come to see him. Let people who go to see the governor of this new State of ours entertain themselves and let the governor and every other officer endeavor to conform their living, somewhat at least, to the character of the people who elect them; not to live in style of magnificance when the people of the State are not able to support them in that style. I want the governors and judges and all the other officers in this new State, particularly as we commence it, to be something like the balance of the State.

MR. BROWN of Kanawha. I desire, for information, to know if the gentleman knows that the Governor of Ohio only gets \$1800; because that has been a statement in regard to judges and it turns out to be incorrect. Now, I don't believe it is less than \$3000 or can be.

MR. HAYMOND. I received a letter from a gentleman from the State of Ohio. I had written to him to know, and he told me the Governor got \$1800.

MR. STEVENSON of Wood. I think I may say almost positively that is the salary. I don't know whether he has a house to live in or not, or a horse and buggy.

MR. VAN WINKLE. I would ask, very respectfully, the President of the Convention to tell us whether he has a house to live in.

THE PRESIDENT. I was at the Governor's house last summer. It is a magnificent house, which as I understood, with all the grounds around it, belongs to the state.

MR. BATTELLE. I believe in economy and am opposed to all extravagance, but I believe if West Virginia is able to have a governor at all she is able to pay him an adequate compensation, and it strikes me that the probabilities are that the man you elect governor under this Constitution will have actually more work to do ten-fold than the Governor of Ohio during the same time; and I need only refer in proof of this to the condition of our territory and the condition it is likely to be in for months and, I may say, years to come. There is force in the suggestion that the governor, whoever he may be, will be under the necessity of receiving and entertaining a great deal of company, a great many strangers who will come to him—parties, individuals, companies, associations or their officers—seeking information as to the geography or resources of the country—and it is desirable that the governor should be able to make a creditable and respectable appearance and show the proper hospitality as the representative of the State. Above all and beyond all, I take it that this State is able to pay what is an adequate compensation for services and to support its own dignity in the person of its official head at the seat of government. I undertake to say from my own observation in reference to the gentleman who fills the gubernatorial office of the restored Government of Virginia, that he works as hard as any man in the commonwealth; and as I said before the incumbent under this Constitution will necessarily have a great deal of constant labor to perform; and it does strike me that if the salaries of the judges which we have passed are adequate and proper salaries the propriety of making the salary of the Governor at least \$2000 cannot be gainsayed. I think that would be a fair compensation. There is still another reason in reference to the case of the judge. He leaves his profession and for a respectable term of years he is settled in his profession, whereas the governor leaves a lucrative profession and it may be the popular will or whim may retire him at the end of his

first term of two years. It takes time after an interval even as short as that to gather up the threads of either a profession or business. So that in taking the executive chair he had done so at a great loss and sacrifice.

I am, as I said, opposed to anything like extravagance, and equally opposed to anything niggardly or mean.

MR. STUART of Doddridge. It would cost the governor every dollar of \$2000 and he would lose his time as a matter of patriotism. Now, let us be reasonable. Let us pay to the governor just what we think he can live on, nothing at all except to pay his expenses. If we reduce it below \$2000 he cannot live on it at all.

Mr. Powell called for the yeas and nays on the motion to make the salary \$1800. The question was taken and the motion rejected by the following vote:

YEAS—Messrs. Brown of Preston, Dille, Hansley, Haymond, Hubbs, Hoback, Parsons, Powell, Ryan, Stevenson of Wood, Walker—11.

NAYS—Messrs. John Hall (President), Brown of Kanawha, Brumfield, Battelle, Chapman, Caldwell, Cook, Dering, Dolly, Harrison, Hervey, Hagar, Irvine, Lamb, Robinson, Sinsel, Montague, McCutchen, Parker, Pomeroy, Simmons, Stephenson of Clay, Stuart of Doddridge, Sheets, Smith, Taylor, Trainer, Van Winkle, Warder, Wilson—30.

The question recurring on the motion to make the governor's salary \$2000, it was agreed to and the section as amended adopted, and the Convention adjourned.

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XLVII. WEDNESDAY, FEBRUARY 5, 1862.

The Convention was opened with prayer by Rev. Gordon Battelle, member from Ohio county.

The President stated that the business before the Convention when it adjourned last evening was the consideration of the 4th section of the second report of the Committee on the Executive Department.

The 4th section was reported as follows:

"4. The governor shall be the commander-in-chief of the military forces of the State; shall have power to call out the militia to repel invasion, suppress insurrection and enforce the execution of the laws; shall conduct in person, or in such manner as may be prescribed by law, all intercourse with other and foreign states; and during the recess of the legislature, shall fill temporarily all vacancies in office not otherwise provided for, by commissions to expire at the end of thirty days after the commencement of the succeeding session of the legislature. He shall take care that the laws be faithfully executed; communicate to the legislature at each session thereof the condition of the commonwealth; recommend to the consideration of the members such measures as he may deem expedient; and convene the legislature in extra session when in his opinion the interest of the commonwealth may require it. He shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment, and, except when the prosecution has been carried on by the house of delegates, to grant reprieves and pardons, after conviction; but he shall communicate to the legislature at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons for remitting, commuting or granting the same."

MR. BATTELLE. I believe we are considering it sentence by sentence.

THE PRESIDENT. That has been the course pursued on the others.

MR. BROWN of Kanawha. I think it would be better to proceed by clauses. I would inquire of the chairman whether any such intercourse as here indicated is conducted by the governors of any of the states. It seems to me that is peculiarly the province of the United States. I will not make any motion to strike this out but I rose merely for the purpose of making the inquiry.

MR. STEVENSON of Wood. The chairman of the committee does not seem to be present. I am not certain but my impression is that this is the language of the present constitution. I have not got a copy here.

MR. HARRISON. It is not in the present constitution.

MR. HERVEY. Does not the Constitution of the United States make provision for conducting the intercourse with foreign states?

MR. BATTELLE. I move to strike out the words "and foreign."

MR. HERVEY. I was going to read the existing provision in the

Constitution, but as the governor can only exercise his power in obedience to the law, which law must of course be constitutional, I see no impropriety at all in retaining it. If a controversy should arise between this State and any foreign state, unless there is a special person designated by the Constitution who shall act as representative of the State, we would have no representative.

MR. BATTELLE. I now renew the motion to strike out the words "and foreign." I think the suggestion of the gentleman from Kanawha is well taken; and that inasmuch as this is a function committed by the Constitution of the United States to the Government of the United States there is no necessity for it here. I move to strike it out as merely unnecessary.

MR. STEVENSON of Wood. Mr. President, I am not certain that the amendment ought to be carried. My impression now is from what little I have known about the connections of states with circumstances sometimes arising in which the executive of a state has some business such as is proposed here with those states. I cannot recollect just now the case. I think, however, that probably the case which has attracted a good deal of attention in Pennsylvania in regard to state bonds which have been disposed of in European markets and which has excited a great deal of controversy in state courts there has required the intervention of the executive of that state in these matters; and my recollection is that some difficulties occurred in some of the southern states some years ago in reference to their commerce, in which the resident consul of the foreign nations and the executives of those states had frequent exchanges of correspondence. In some of these cases the matter in controversy was finally referred to the general government, but not in all of them. I do not think there is any provision that prevents action of this kind on the part of governors of the states. If it is necessary at all even in some cases I can see no impropriety whatever in leaving it in the section as it is reported. If we strike it out we might get into what would be a difficulty. I think the fact of this having been in the Constitution and regarded as proper by those who put it there and not seriously objected to since, that that is probably another reason why it should be retained. I think it would be safer probably to keep it here, and on the second reading if it is found really unnecessary there will be no difficulty about striking it out.

The question was taken on Mr. Battelle's motion, and it was rejected.

MR. BATTELLE. I wish to call attention to the provision authorizing the governor to convene the legislature. That is very different, as I understand it, from the present Constitution of Virginia.

THE PRESIDENT. That can be very well reached on the next reading.

MR. BATTELLE. I should prefer, Mr. Chairman, to reach it now, if it can be done without any violation of order. I am not satisfied in my own mind whether the provision is best as it stands here, or best in the former constitution. I simply wish to call the attention of members to the difference. The present requires a majority of the members of the legislature. I doubt very much the expediency of putting it in the power of one man to convene the legislature just whenever he pleases, to put the whole land in a muss, it may be.

MR. STUART of Doddridge. He has the same power under the old constitution. The provisions both are here. In the old constitution, "he may convene the general assembly on application of a majority of the members of both houses, when in his opinion, etc."

MR. BATTELLE. I waive the point, sir.

MR. STEVENSON of Wood. I was going to call attention to the 15th section of the legislative report, which embraces the same idea.

The section as amended was then adopted, and section 5 reported:

42 "5. The governor may require information in writing from
43 the officers of the Executive Department, upon any subject
44 pertaining to their respective offices, and also the opinion in
45 writing of the attorney general upon any question of law
46 relating to the business of the Executive Department."

The section was adopted without amendment.

Sections 6 and 7 were read and adopted without change, as follows:

47 "6. Returns of the election of governor shall be made in the
48 manner and by the persons designated by the legislature, to
49 the secretary of the commonwealth, who shall deliver them to
50 the speaker of the house of delegates, on the first day of the
51 next session of the legislature, who shall, within ten days
52 thereafter, in the presence of a majority of each house of the
53 legislature open the said returns, when the votes shall be

54 counted. The person having the highest number of votes, if
55 duly qualified, shall be declared elected; but if two or more
56 shall have the highest and an equal number of votes, one of
57 them shall thereupon be chosen governor by the joint vote of
58 the two houses. Contested elections for governor shall be
59 decided by a like vote, and the mode of proceeding in such
60 cases shall be prescribed by law.

61 "7. In case of the removal of the governor from office, or
62 of his death, failure to qualify within the time prescribed by
63 law, resignation, removal from the seat of government, or in-
64 ability to discharge the duties of the office, the said office, with
65 its compensation, duties and authority, shall devolve upon the
66 president of the senate, and in case of his inability, or failure
67 from any cause to act, on the speaker of the house of dele-
68 gates; and the legislature shall provide by law for the dis-
69 charge of the executive functions in other necessary cases."

Section 8 was reported as follows:

70 "8. A secretary of the commonwealth, treasurer, and an
71 auditor shall be elected at the same time and for the same term
72 as the governor, their compensation and duties, and the mode
73 of making returns of their election shall be prescribed by the
74 legislature."

MR. BROWN of Preston. I move to make this read "secretary
of the State."

MR. BROWN of Kanawha. I think it was the understanding
that the word "state" was to be substituted for "commonwealth"
throughout.

THE PRESIDENT. The Secretary has adopted "state" through-
out instead of "commonwealth."

MR. STUART of Doddridge. I move to strike out "common-
wealth" and insert "state" wherever it occurs.

THE PRESIDENT. The Chair understood the gentleman from
Preston as making that motion.

MR. STUART. I understood as a matter of course "state" would
be inserted in lieu of "commonwealth."

MR. VAN WINKLE. Gentlemen were requested to make that
correction throughout on the printed reports.

MR. STUART. Then I make that motion. My object is to fix
the salaries of these officers as we fix the salaries of all others.

MR. POMEROY. I am in favor of that. I move the blank in regard to the salary of the secretary of state be filled with \$1600.

SEVERAL MEMBERS. There is no blank.

MR. HARRISON. We shall have to provide another clause for these salaries.

MR. POWELL. I move to amend by saying his compensation shall be \$1200.

MR. VAN WINKLE. I would suggest that in fixing the compensation of these officers we ought to define their duties. This section provides that the compensation and duties shall be prescribed by the legislature.

MR. BROWN of Kanawha. I am in the dark. I do not know what are the labors and duties of these officers though I have had some intercourse with them. If I were to judge of the office by the salaries of the relative offices heretofore paid, I believe now one of these officers should be paid about \$2000 to compare with the governor's, which is \$5000. As three is to five, so is the new to the old. Why then we should have this down to \$700 or \$800, I suppose. A man could not live on it. I don't suppose these officers ought to have the same salary as the governor. I confess myself a good deal in the fog what to do about it.

MR. STEVENSON of Wood. I would have preferred myself that this secretary had been left to the legislature, but it appears we have got to fix all the salaries in the Constitution, and if it is to be done, why I am in favor of a reasonable salary but not a very high one, as I have been in all other cases. I suppose the duties of this officer will be something such as are performed in other states. Well, I discover that officer in Ohio gets \$1400 a year at present. The Auditor gets \$1600; Treasurer \$1500, Attorney General \$1000, Governor \$1800. I think, sir, twelve to fourteen hundred; the latter I think would be sufficient. I would prefer to leave it to the legislature, but if we are to fix it I shall go I believe as high as \$1400 for the office of Secretary; not any higher.

MR. STUART of Doddridge. I presume the duties of the treasurer, auditor and secretary will be very much the same as at present, and I am very much opposed to these sliding salaries. It will be recollected that under our present law, until the ordinance of the Convention changed it the salary of the Auditor of Public Accounts

was \$3000; that it had been \$2000 and a legislature or two previous in order to accommodate a certain gentleman raised it from \$2000 to \$3000—Mr. Bennett; I suppose you all recollect about it. It was thought necessary to retain the services of Mr. Bennett and the salary was raised from \$2000 to \$3000. That was done by a kind of logrolling with the legislature down at Richmond winter before last. I want to place this thing entirely out of the reach of the legislature, and let us fix the compensation. Let it be a reasonable one and that will be the end of it and there will be no more logrolling or interference with the legislature for the purpose of getting these salaries raised. I have no doubt the first legislature will fix these salaries quite low and as soon as things become settled down and the people lose sight of it you will see these salaries raised above the governor's; and I have not any doubt if we do not fix this too, it will be \$2000 and perhaps in time \$2500 or \$3000.

THE PRESIDING OFFICER (Mr. Pomeroy in the chair). The Chair understands the motion before the house to be that of the gentleman from Brooke, to fix this salary at \$1600, and that of the gentleman from Harrison to make it \$1200. The best way would be to take one of these figures at a time, first on the motion of the gentleman from Harrison, to make the salary \$1200.

The question was taken on the motion to make it \$1200 and it was rejected.

MR. STEVENSON of Wood. I move to make it \$1400.

MR. BATTELLE. There is force in the suggestion since it has been made that we are rather going it blind here. I do not know, for one, what a secretary of state is expected to do under the new Constitution; whether he is a mere clerk such as would be obtained to do business in a first-class business house; whether along with that he requires large experience and learning in state affairs; and until we are informed from some source either by writing it down in the Constitution or by some other accredited authority what he is to do, I am not prepared to say what we ought to do. I would like to hear from gentlemen learned in these matters.

MR. BROWN of Kanawha. I am like the gentleman from Ohio. I do not know exactly the duties of the secretary, but I suppose he is really nothing more than another name for a clerk of the Executive Department. But I was inquiring what the present Secretary gets and it is remarked it is \$1250.

MR. CARSKADON. I was told this morning it was \$1500—Secretary and Auditor each.

MR. SIMMONS. The present Auditor gets \$2000.

MR. BROWN of Kanawha. I wish to vote for a competent salary for the officer to discharge the duties and it occurred to me that, when the executive head was put down to \$2000, it was an undue disproportion between the offices fixing the clerk at nearly the same price, and I hope gentlemen will give us some experience on the subject.

MR. VAN WINKLE. I have not only the difficulty of ignorance in regard to the duties of this office; but there is another consideration that seems to be lost sight of by many of the members of this Convention. Nothing is to be allowed for except the mere time in the discharge of the duties. Nothing is said, nothing is thought of the different responsibilities of the different offices. Now, sir, men all the world over expect to be paid when they assume responsibilities. Speaking about the auditor of the old state, if his office ought to be compensated by \$2000 fifteen or twenty years ago, \$5000 would be a small compensation now. I do not say what he ought or ought not to get. I only say the responsibilities under the old state have been greatly increased from the very fact that the state has undertaken to issue coupon bonds. There is a tremendous responsibility on the officer having charge of them. Again, since the state has been accumulating so vast a debt, for which the bonds of the state being in circulation for millions and millions, interest to be paid on them at the proper time, and so on, the duties and responsibilities upon that officer have been greatly increased. The secretary of state is something more than a mere ministerial officer. He has the great seal of the state, if I am not mistaken, in his charge; the responsibility of seeing that it is only affixed to the proper documents. He countersigns all the acts of the governor; keeps the records of the Executive Department. And while the actual labor, perhaps, or the difficulty of the labor is not as great as that performed in the auditor's office, except for the amount of responsibility, I see no particular reason for discrimination in the salaries of these three officers. That responsibility is a matter that men expect to be paid for. You compel all these officers to give bond in heavy sums for the faithful discharge of their duties and because you put them under heavy responsibility for many things. It is a very different thing from going as clerk into a mercantile es-

tablishment; from being a mere writer, for instance, in a lawyer's office; a very different thing from many other duties that are daily done by men who would be qualified for these. It has always been usual, and always should be usual, to take these responsibilities into consideration and pay for them. If you have responsible duties to discharge you want responsible men to discharge them, and it is no use of thinking you can get fit men for these places as you would hire men by the day to shovel coal or something of that kind. If you fix your salaries too low the result is you get inferior men in the offices, because men whose capacities are better suited to the office will not take it at a low sum for the State when they can get a much higher sum in private employ. It is only men of property who can give heavy bonds, and such men are not going to accept heavy liability for a salary which is about equivalent to "working for nothing and boarding yourself." I think you run great danger if you fix your salaries too low of having incompetent men in all your offices. You run that risk anyhow, and always will as long as the world stands, but some things we can guard against and some we cannot. I think we ought to offer a sufficient reward as an inducement for men of sufficient abilities to accept the office. That ought to guide us in reference to every office to which we affix a salary.

I would like to ask the chairman of the Judiciary Committee whether any provision is made in that report for the compensation of the attorney general.

MR. BROWN of Kanawha. I do not remember without referring to it.

MR. VAN WINKLE. Well it is not, perhaps, necessary now.

MR. STEVENSON of Wood. I was going to say just this: if it would suit the Convention to take the vote on the lowest number, as we have commenced in that way, I would withdraw my amendment of \$1400 so that the gentleman from Doddridge could get his vote on the \$1300 with an understanding that I would renew it if it carried.

Mr. Stevenson, there being no objection, withdrew his motion to make the salary of the secretary of state \$1400, and Mr. Stuart of Doddridge moved to make it \$1300.

Mr. Harrison read from the ordinance of the June convention the provisions fixing the compensation of certain state officers.

These officers he remarked now constitute a Board of Public Works and the first auditor discharges the duties of the second auditor.

The question was taken on Mr. Stuart's motion to fix the Secretary's salary at \$1300 and it was agreed to.

Mr. Stuart of Doddridge moved to fix the salary of the treasurer at \$1300.

Mr. Hervey moved to amend by making it \$1500.

Mr. Stuart said the legislature would be overrun at \$1300, and the great difficulty would be in selecting from the applicants.

MR. CALDWELL. I understand the gentleman to say the legislature would be overrun at \$1300 with applicants for this office. I do not know that the Convention have decided that the legislature shall have the appointing power. It is contemplated by this section that the treasurer is to be elected as the governor and other officers are.

MR. STUART of Doddridge. I am corrected, sir. I was thinking of the present constitution.

MR. CALDWELL. The 10th section makes the governor, treasurer and auditor a board of internal improvements and board of public works. If we are to have one, it will throw further duties on the treasurer, whose compensation we are about to fix; and for that reason alone it seems to me there ought to be a difference between the compensation of the treasurer and the secretary. I would favor making the salary \$1500.

MR. STUART of Doddridge. We are going to sell out what little public works we have and never going to make any more; and what on earth use will we have for a board of public works? And I believe the gentleman was for that up to the hub.

MR. CALDWELL. At the instance of the gentleman yesterday this was laid on the table, and it has been shown to me this morning that I am willing to go into a compromise.

MR. STUART of Doddridge. Still I do not think there is any great need of a board of public works; and I think this compensation is ample and sufficient for the treasurer who will have very little to do in our new State.

MR. BROWN of Kanawha. While in this case I am at a loss to know exactly what to do beyond the question of the labors, but it does occur to me that although we may make no very great improvements yet we will be compelled to have a board of public works, and there will be some duties and no little annoyance attendant on this office, and that \$1300 is insufficient compensation for an officer who will discharge the duties of the treasurer and who will be required to live at the capital in the meantime.

Now, sir, there is another idea, and that is that these officers are all proposed to be elected by the people. The result of that is that there will be an everlasting change and the more competent the officer the more certain almost of being turned out at the end of the term, and it will bring in new officers every term who will have to go from their homes to the capital with their families or leave them at home, while the old officers will have to tear up and go back. This will produce a great deal of inconvenience and expense. If these officers were elected by the legislature they would, ordinarily, be continued through a number of years. When a man has made his arrangements at a place, has selected his clerks and done all these things necessary to put the office into operation, it would seem wise not to disturb these arrangements too frequently. Again if these officers are to be chosen at popular elections, whenever we start your governor, your secretary, treasurer and auditor will have to be named by party nominations and put on the state ticket; they have got to canvass the State and the whole controversy becomes then a party concern. I think there are a great many objections to it; and in every view of the case I cannot see that \$1300 is a sufficient salary.

MR. VAN WINKLE. I am a good deal of the opinion of the gentleman from Kanawha. I think all the officers named in this section are simply ministerial officers. I am not aware that there is any political power or patronage attached to either of them; and, therefore, while I have been very earnest about the people electing those officers who had some political power attached to them, or who dealt with purely local matters, I am not in favor of electing either mere ministerial officers nor in favor of making their terms as I would make those of officers of a different character. I do not know that in the fiscal office, that of the auditor, there is any political power; and, sir, if I could have my way I would have the auditor a mere clerk during good behavior, because I think the knowledge a man acquires in the discharge of a duty of this kind is very

valuable to the public; and it is general now in the departments at Washington and at Richmond that there is some old clerk who is depended upon for almost everything when a new officer comes in. I do not propose to make that proposition here; but I think we are getting in the dark attempting to fix salaries of officers whose duties we do not know and giving it in the power of the legislature to change those duties without any power over the salaries. I suggest if it would not be a considerable saving of time to strike out the word "compensation" and leave that to the legislature.

MR. BROWN of Kanawha. I would say, in reply to the remarks of the gentleman from Wood that having entered on the fixing of salaries in the Constitution, I can see, it strikes me, that there are many reasons why we should continue, not only to avoid the anomaly of the case but to avoid the objections of the gentleman from Doddridge that after an officer gets in he solicits increases of his salary from the legislature. I believe in a fixed salary; that when a man comes into office, knowing what the salary is, he should not ask for increase.

MR. LAMB. Mr. President, the Committee on the Legislative Department supposed they had already obviated the objection which is made by the gentleman from Doddridge and repeated by the gentleman from Kanawha, when they had provided that the salary and compensation of any public officer shall not be increased or diminished during his term of office. While he continues in the service, therefore, he cannot be an applicant to the legislature for an increase of salary. It strikes me this does away with the only reason which exists for taking this matter out of the hands of the legislature. If there is anything that is proper for legislative action it strikes me it is the salaries of these subordinate officers; and if we are to go on and regulate these small matters, when are we to get through? What sort of a constitution are you going to present to the people? I should be very much in favor of reconsidering the matter and leaving the section in this respect as originally reported.

MR. STEVENSON of Wood. I wish only to say, sir, that if the Convention insist on fixing the salary I shall myself vote against the \$1500 amendment with the view, however, of getting in \$1400 if that should not be carried. I will go that high but no higher. It seems to me the offices then may be graded from the secretary

up to auditor by saying the treasurer shall have \$1400, the secretary \$1300 and the auditor \$1500.

MR. STUART of Doddridge. You will recollect that the secretary's labors are much greater than the treasurer's.

MR. STEVENSON of Wood. I myself, like other members, do not know but the gentleman from Doddridge may be right on the subject, but I am not certain what the duties will be. I, of course, would be willing to give the treasurer no more than the secretary gets; and that is another reason why I should vote against \$1500 for the auditor, if that is the case.

MR. BATTELLE. I believe I voted to strike out the word "compensation."

MR. STUART of Doddridge. I believe not.

MR. BATTELLE. I feel to say positively I did. I know I did not vote against it.

THE PRESIDING OFFICER. The Chair would have doubt whether a motion to reconsider would be in order after an amendment to the amendment is pending before the body; would think it is not until this motion is disposed of.

MR. VAN WINKLE. I think it would while the amendment pending relates to the subject to be reconsidered.

MR. DERING. What is the object of reconsideration?

MR. BATTELLE. That I have felt since the question has been raised great doubt as to what is my own duty. I do not know what these officers are to receive, for I do not know what they are to do and I suppose we cannot know until the legislature defines their duties. My object in proposing to make a reconsideration of that was that the compensation might be left as reported by the committee and the whole subject referred to the legislature. But as I said before I cannot say positively that I voted in favor of it.

THE PRESIDING OFFICER. Hence you do not make the motion.

MR. STEWART of Wirt. I move the reconsideration.

MR. STUART of Doddridge. On that question I would say to my friend from the county of Ohio that these officers all have clerks; in proportion as business accumulates additional clerks are given

them. They are mostly gentlemen of leisure and the work is always done by their clerks. The office itself is a sinecure.

MR. HAYMOND. I am opposed to reconsidering. I think we had best fix the salaries, and then I would be in favor of the legislature electing them.

MR. BROWN of Kanawha. Is it competent to reconsider while another question is before the house?

THE PRESIDING OFFICER. The Chair thought not, but the explanation of the gentleman from Wood was that the reconsideration would be proper so long as it relates to the exact question under consideration.

MR. BROWN of Kanawha. I would hope that the Chair would stand to its decision.

MR. VAN WINKLE. I will read the rule on the subject:

“When a motion has been once made it shall be in order for any member to move for a reconsideration of it, and such motion shall take precedence of all other questions except a motion to adjourn.”

The vote was taken on the motion to reconsider and it was rejected.

The question recurred on the motion of Mr. Hervey to make the salary of the auditor \$1500.

MR. SMITH. I will offer a substitute for the whole section if it is in order.

THE PRESIDING OFFICER. It will not be in order while this motion is pending.

MR. STUART of Doddridge. I will withdraw my motion in order to hear the gentleman's substitute.

MR. HERVEY. I will withdraw mine with the understanding that I have the right to renew it.

MR. SMITH. I will read what I propose:

“A secretary of the state, an auditor and a treasurer shall be elected by the joint vote of the legislature, to hold their offices for the term of one year, and shall be allowed such compensation as

may from time to time be prescribed by the legislature, but the compensation for any term after election shall not be diminished."

MR. LAMB. I would suggest that the last clause is unnecessary. We have already adopted a similar provision in regard to all public officers.

MR. SMITH. I think there is abundant evidence manifested here today to justify that substitute. You hear gentlemen get up on all sides and ask what are the duties of these officers, and not one of them can tell you. They do not know the duties that they have to perform and are utterly unable to state what salary ought to be allowed, because they do not understand the duties. Now, if so enlightened a body as this Convention shall be in such straits as is shown here to ascertain what the duties are I should like to know how you can call upon a people to vote for them throughout the broad extent of the commonwealth. Let the selection and the fixing of compensation rest with the legislature, who will know what their duties are, their capacity for the offices, their fitness for it. Besides, each is merely a ministerial officer. The legislature are supervising it. They have to report to that body. They have a review of all the duties they have to perform in their reports. They see it, they know it and can vote more intelligently than the people can. But this is an age of economy; and I must congratulate my friends from other quarters of the country to see them showing some degree of liberality in this matter. Some of them particularly who have been so persistent in opposition to everything like expenditure of money. But this is an age of economy, and this professes to be a body seeking to establish the principles of economy. Now, I understand there is a gentleman here who is able to tell us how much it will cost the State to elect by vote each and every one of these officers. There is to be at every precinct commissioners and clerks and of those appointed to keep the poll-books and have them returned; and by the time you begin to calculate you will ascertain it will take the amount of the salaries to elect them—or take a large portion. My friend on my right here has made the calculation. But they are purely ministerial officers; and in the convention at Richmond, despite the rage in that body for political election, all concurred in the opinion that these officers ought to be submitted to the legislature. They were deemed the most competent to judge of it; that it was purely a ministerial, not political, office. The governor is but the others are not. Merely clerks of the State. They have no other duties than to record business that

comes before them, and for these clerkships you raise a hue and cry all over the State and have candidates for auditor, and secretary of the commonwealth and treasurer traveling from county to county electioneering for this office. It is I think very unfortunate to say the least of it to commit this to the people, and it is expensive, too, I imagine.

MR. DERING. I am sorry to differ with my old friend again from Logan. I am decidedly in favor of letting the people elect all these officers. Why, sir, you elect your governors and judges by the people; and you elect all the subordinate officers of the State by the people; and in this age of progress I go for enlarging the powers of the people instead of diminishing them. The old maxim that the power is always stealing from the many to the few is illustrated in the substitute of the gentleman from Logan. I desire, sir, most emphatically, to say that I shall oppose the substitute on that ground, that we add to the power of the people and save expense. I think it will be a very small item if the three are elected at the same time the governor is elected. It will require very little additional expense. And it seems to me, sir, if the people have intelligence enough to elect a judge, they have intelligence enough to elect a governor; and if they have intelligence enough to elect a governor, they have enough to select these subordinate executive officers. Sir, the people will not be satisfied unless you permit them to select their own servants. I have confidence in their intelligence and honesty; and I believe they will be willing and able to bear the little additional burden that will be put upon them in the way of expenses. I trust it will not be the pleasure of this Convention to adopt the substitute of the gentleman from Logan.

The question was taken on the substitute, and it was rejected.

MR. HERVEY. I now renew the motion to make the salary of the treasurer \$1500.

MR. STUART of Doddridge. Then I amend with \$1200, because the duties of the treasurer are nothing like those of the secretary. Twelve hundred is amply sufficient for a treasurer, and I believe we fixed the salary of the Secretary at \$1300.

MR. VAN WINKLE. Cannot the gentleman from Doddridge see a difference between the responsibility of the two offices? The treasury is a much more responsible office. Got to give a very heavy bond; got the handling of the finances of the State. Cer-

tainly it seems to me responsibility ought to be paid for. It has to be in private life.

MR. STUART of Doddridge. Don't handle a dollar only as it passes through the auditor's hands. The auditor has to give the same security.

MR. VAN WINKLE. I understand that.

The question was taken on \$1200 and it was rejected.

Mr. Stevenson of Wood moved to make it \$1300; but the motion was rejected.

Mr. Powell moved that the salary of the treasurer be \$1400, and it was agreed to.

MR. MAHON. I move now that the salary of the auditor of state be \$1800.

MR. STEVENSON of Wood. I will amend that by saying \$1500.

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brumfield, Battelle, Chapman, Carskadon, Cook, Dering, Dille, Dolly, Hansley, Haymond, Hubbs, Hervey, Hoback, Hagar, Irvine, Lamb, Montague, McCutchen, Parsons, Powell, Robinson, Ryan, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Trainer, Walker, Warder, Wilson—35.

NAYS—Messrs. Brooks, Caldwell, Harrison, Lamb, Mahon, O'Brien, Pomeroy, Sinsel, Smith, Taylor, Van Winkle, John Hall (President)—12.

MR. HERVEY. I move to add at the end of the section: "The powers and duties of the secretary of state, treasurer and auditor shall be such as they now are or may be hereafter prescribed by law."

MR. VAN WINKLE. That does not change the section. "Now" means the day the Constitution is adopted. "Now are" is anywhere.

MR. CALDWELL. I ask the attention of the member from Brooke to this fact: Suppose he is to perform his duties as prescribed in the Constitution of Virginia—the duties of these officers shall be as they are now prescribed by the Constitution and laws of Virginia. I beg him that we are not to be governed by the Constitu-

tion and laws of Virginia, so far as I am aware, and that there will be no duties prescribed "now."

MR. HERVEY. I cannot see that there is any impropriety in the addition to the section. If I understand the report of the committee on the subject of the Legislative Department they have reported a provision precisely to this effect, that the laws now in force in this commonwealth shall remain in force until they are changed hereafter by law, and this provision is now in our present constitution. The third section of the constitution, after specifying some of the duties says "and such other duties as may be prescribed by law." And then the 13th, "the powers and duties shall be as they now are or may be hereafter prescribed by law." Well, now, that is precisely a parallel case.

MR. LAMB. The main idea of the gentleman from Brooke is eminently proper, but this is not the place for it. We must have some place in the Constitution a provision that the laws which are in force in the State of Virginia shall remain in force in the new State until they are properly altered by the legislature. But we must have a general provision of that kind, but here is not the proper place to insert it.

The 8th section was then adopted and the 9th reported as follows:

75 "9. The legislature shall have power to establish a land
76 office whenever it shall be deemed expedient, assign the duties
77 thereof to a proper officer, and prescribe his compensation,
78 term of, and manner of appointment to, office."

MR. VAN WINKLE. I move to strike out that section. It will be remembered by most of the members of the Convention we offered, and not knowing how else to dispose of it had referred to the Committee on Education because the proceeds were to go to the school fund, a provision for the disposition of all the waste, forfeited and unappropriated lands that fall within the new State. The scheme offered was not an untried one. It was in force under the laws of the state from 1838 until 1848, and operated very beneficially in quieting land titles, and within my personal experience has done an immense amount of good. Some of us tried to get a provision introduced into the constitution of 1850. A committee on the subject consisted of my friend from Logan, the late Governor Wise and some other gentlemen who were equally earnest on the subject. I think, sir, I have already stated, perhaps, when I offered this

proposition, my own belief that if we can succeed in extricating the land titles from the almost inextricable confusion into which they have fallen, or if we can cut the Gordian knot, we will confer a greater benefit, or as great a benefit on this new State as we could by any other single measure. Various causes are assigned as tending to prevent immigration to this portion of the State. I think I would be justified in saying, sir, from my personal experience that the reputation of our land titles in the first place deters many from looking to West Virginia at all as a place of settlement; and that, secondly, when they come here and have picked out a piece of land, why somebody will advise them that there is some outstanding title and they are deterred from this and go elsewhere. I have in my hand, sir, a part of a letter written to me in the convention of 1850-51 by a very distinguished gentleman on the committee on this subject, a late governor of the state. I suppose from the style, at any rate, it will be understood who the writer is. I do not wish as it is a private letter to have it go to the public, although I think it may be entirely proper as it was written in advocacy of our cause, to read the opening part of it. It is a suggestion in relation to lands in Virginia:

“First stop all sales of land under patent. The whole system as at present in operation is one of gross fraud and incompatible with the honor and dignity of the state. Throughout the whole western portion of the state, every sale of lands for forty years past has been fraudulent *ab initio*; and it is no excuse to say that the *maxim caveat emptor* justifies. The state knew that her own field books showed more land sold than she owned and her sales should have ceased long ago. And yet she has been selling her land over and over again until she has shingled her whole western domain about two and half deep in it. Now comes the old patentee and sweeps away the new titles by the sworn statements of state officers. And yet the state having thus taken money from several patentees for the same lands now turns on them with an insolence that would be insufferable in a private individual and tells them she will sell their land again for taxes. If the patentee offers to pay his taxes which have been in arrears for some time he is again told by the state he can pay all his taxes, principal and interest and that he can yet have back only a part of his lands. This is running the poker up to the hilt—and being paid for heating it too.”

He then goes on and advises what is best to be done, in accordance with the action of the committee of 1850, and what is proposed here. Yesterday, I think, the Committee on Education reported, as their second report, the provision I have indicated, which went into the hands of the printers. I would ask the Con-

vention to strike this section out here as the whole subject will come up when that report is before us. I do believe the only way which would be effectual for straightening all these land titles within a few years is proposed in that report. I would call upon my friend from Logan who is much more expert than I to state what it may please him to say in reference to both the operation of this land office and the operation of the scheme that was in operation from 1838 to 1844. I think he can make the members of this Convention understand that by adopting something like the latter they can do their constituents and the State at large more good than by any single measure they can adopt. They can save an immensity of litigation and bad feeling in the neighborhoods wherever the matter is controverted and lead indirectly to the rapid settlement of the State. And I have very little doubt that if we could once get it reported abroad that a system was in operation, or still better that titles had been straightened out, the price of lands would at once rise one hundred per cent. Take off that bad reputation in any way, and you will find our lands have been depressed in price by these fears in reference to titles, and in such way have the records been kept that it is almost impossible for a man to state how many outstanding titles there may be to a piece of land. You cannot certainly do it in a land office. There is more difficulty in the matter the more it is contemplated by allowing a man to locate wherever he pleased and the records do not furnish the evidence of these locations in a way that is accessible. I trust it will at least be the pleasure of the Convention to strike this section out and let that subject come up on the report of the Committee on Education as an independent proposition.

MR. CALDWELL. In view of the fact that this proposition that is brought out in the remarks of the gentleman has not been taken up and considered, and I presume that with other members as well as myself the proposition is not distinctly understood—I have some recollection of it and have a favorable impression in regard to it—but as it has not been acted on, there would be an impropriety in striking out this section, because that proposition may not be adopted by the Convention, and then if this section is stricken out we might be put to difficulty of establishing this office of registry or land office. I think it would be better to pass by this section until the proposition of the gentleman is considered, and if it is adopted then as a matter of necessity this section will have to be stricken out. I propose to pass it by until the Convention takes

action on the other report involving the proposition the gentleman speaks of.

MR. SMITH. I should have risen to sustain the motion of the gentleman from Wood though I had not been personally called upon. I most heartily concur in the propriety of striking out this section.

The land system of Virginia began in '77, I believe; and that system authorized any person to go to the register's office and buy a land warrant and go into the country and locate that land just wherever he pleased to have it surveyed and get a patent for it. Well, it became a subject of speculation. I had very little compassion for those who got it, because they went into it generally for speculation, to get large titles and send them abroad for sale. But it has operated badly in this country and that more than any other cause existing I think has delayed the advancement in population and wealth of western Virginia. People were afraid to buy lands; afraid to improve them; afraid to build on them, lest some greedy speculator should come in at the moment they were improved and snatch the land from them; and whole sections of country have entirely been kept in wilderness, where if this system had not existed, there would have been a dense population under any good well-established and secure system of legislation on the subject. This matter occupied the attention of the legislature from that period down to 1831, by innumerable acts of the legislature trying to correct the wrong, and finally in 1831 it was ascertained and determined that this Gordian knot must be snapped at once by legislative power. There was an act passed which forfeited all these delinquent lands. Well, that act was found inefficient. It provided that all lands that were returned delinquent were forfeited. But a large amount of land was never returned delinquent because it had never been entered for taxation. Immense tracts of land that had never been on the commissioners' books at all. In 1835 an act was passed which embraced every possible class of land and secured its forfeiture whether it had been or had not been entered; and afterwards it is distinguished by lands forfeited for delinquency and lands forfeited for non-entry. This land became absolutely forfeited in case of delinquency in 1834, and in case on non-entries absolutely on the 1st of July, 1836. In the winter of 1836-7 there was a delinquent law giving the power to district courts to sell this land; but there was some imperfection in that law, and by the act of 1838 that law was amended and this for-

feited land was directed to be sold by the Commissioner of Forfeited and Delinquent Lands. In that act of 1838 there was a provision that the land office should be closed, or to this extent, that no patent should issue on any lands afterwards surveyed. It was absolutely closed now. You will see the reason of it. The act of 1838 appointed commissioners in every county of western Virginia whose duty it was to hunt up all lands forfeited under these several acts and report them to the court who would direct a survey of them. The evidence of forfeiture and a plat of the land were reduced before the court and the court then ordered the sale of this land. The sale was made, reported to court, confirmed and deeds ordered to be given by the commissioner to the purchaser of this land.

After this act was passed prohibiting these patents to issue, but before these sales had commenced, the legislature, in its wisdom, as some would say—in its folly, as I say—repealed that act that prohibited the issuing of new grants by the registrar. The Commissioner of Forfeited and Delinquent Lands was making his titles, the people in the country at the same time were going about with their land warrants and laying them on the very same land. And here were a couple of title-makers, one in Richmond, the other in each county of the state; and this created a new batch of land suits. The act of 1835 was intended to put an end to this—to close up this whole matter and secure the titles, not create any more conflicting titles such as had existed antecedent to that time; but by the repeal of the last section of the act of 1838 a vast number of patents were issued on new surveys, and these new surveys, and these grants made by the commissioner of the counties became subjects of conflict. I have had more land suits, and I have defended and prosecuted more suits growing out of this conflict arising between the land office and the commissioners than I ever had before in land law. They are innumerable; and you look at the reports of the court of appeals and you will find case upon case settling these conflicts of titles growing out between the two laboratories engaged in patent making.

Now I say it was a great legislative error to repeal the act of 1838 and now we have come up to the very same thing again. We want to stop this and to make the matter complete the legislature or some other tribunal ought to place the whole of these forfeited lands, of those forfeited and those liable to entry and survey, put them in the hands of the circuit courts; let the circuit courts take such proceedings as were taken by the act of 1838. Let the

court sell the lands, let everybody come in and buy them at their fair value and let that value go to the State, or to the owner if you think proper or make some provision that he may at some time or other get a portion of it. But I don't propose going into details. My object is merely to give of the facts to show the folly of this land office. It is an expense to the State—an unnecessary expense. You would have to pay a registrar \$2000 or \$1500, gentlemen, and only to inaugurate lawsuits about lands and disturb the titles of the country. The great object in this country is to secure and quiet land titles, and wherever you disturb them you make them uncertain, you deal a death-blow to increase of population and wealth, and if you do establish these, here will be again, and continue to be open lands perhaps that are sold and difficulties arise between those titles that have been made by the commissioner and those that may be made by the land office. And another difficulty will arise. Here will be two people that will go and enter the same land. Well, that will be the fruitful subject of caveats and ejectments and all that sort of controversy in courts about land that ought to be stopped. Why let one try to get it and another try to get the same land and get into law and difficulty about it? Put the whole of it, every foot of forfeited land, in the hands of the courts where it may be publicly sold and where there will be no conflict of title. By adopting this policy I think you will be doing a great service to the country; but by opening this land office you will do immense mischief to the land titles of the country. I do not know that there is any, I do not suppose there is, a foot of land in western Virginia that ought to be entered. There may be some that might be the subject of forfeiture. But I don't believe the greediness of land speculators has left a foot of unsurveyed land. The whole of it is now taken up and there is no necessity for an office of that kind. There might be a provision where if a grant was ever made by the commonwealth the matter should be in the hands of the secretary of state and governor to issue such patents as might be required. But you don't want an independent office of registry. It has done mischief enough, God knows, already in this country.

MR. VAN WINKLE. I would like to ask whether the decisions of the court of appeals have not confirmed these sales in such ways as to make the titles given by the commissioners and declare them good and valid titles?

MR. SMITH. Yes, sir, I believe the decisions in the court of appeals have given strength and vigor to all these titles made by the commissioner equal to any other title now existing; and I believe I would rather have a title now such as were made under the act of 1838. I have never seen one defeated for want of title. The court of appeals have said that law was constitutional. They have tested its constitutionality most directly and positively; and the titles are acknowledged on all hands to be good; and such is the effect of the various laws that have been made that every single forfeited title—they are all vested in the first purchaser at a delinquent sale, and it thus aggregates all the titles in that which is obtained by the purchaser at the commissioner's sale under the act of 1838. I believe now they constitute the best titles in this country. That view of the case has been sustained by the court of appeals, and, in fact, almost every question that can arise on this series of land laws has been settled.

MR. CALDWELL. I hope that question will prevail. The committee did not contemplate the establishment of a land office but they thought it might be expedient at some time and hence proposed it here. I hope it will be passed by.

MR. SMITH. I would suggest whether the legislature has not the whole subject under their charge, and may they not make provisions?

MR. VAN WINKLE. I can apprise the chairman that the Committee on Fundamental Provisions have reported a provision preserving all the rights that have been acquired in reference to grants from the State, to show that the adoption of this Constitution is not to affect any acquired, even inchoate, right; and I think the suggestion of the gentleman from Logan, if it is necessary to provide who may issue these grants, that it may be done when you come to consider the second report of the Committee on Education (which is now printed and has just been laid on our desks), is a good one. I have no objection to pass by until this report on education comes up; but it must be with a distinct understanding, so far as I am concerned that I will not go for establishing that land office.

MR. BROWN of Kanawha. I have two objections to this section. The first is that this is in so many words concurring specifically with an affair which the legislature has charge of and is therefore useless. The legislature unquestionably has the power to

establish a land office, to appoint a registrar of that office, without any such special grant as here delegated; and if there were no other reason at all, that would be sufficient to induce me to vote to strike it out. But there is a stronger reason: that is, that this would seem to imply a sort of direction to the legislature to do the very thing that I don't want them to do. I have no doubt the same experience showed not only the propriety but the necessity of closing the Virginia land office forever. That had become an instrument of fraud and oppression, of unmixed evil with very little good. I know, sir, that in all my own instances as a land-holder, in order to secure myself against annoyance in this operation of the land office, a man is absolutely compelled to go and purchase the return entry of his own lands, going to the expense of surveying his own land, and going into the state office to obtain a patent for that which has been his own all his life, in order to keep somebody else from doing the same thing. Well, now, that ought to be ended. The simple question then is to strike this out. When the proposition comes up on the report of the educational committee, the question will be in review as to the proper course to take in regard to the subject.

MR. HARRISON. I hope they will just at this time not pass it by but put the seal of extinction on this plan. I entirely concur with the remarks of the gentlemen who have spoken on this and I only beg leave to add that short experience, if it is worth anything and that it is proper for us now at this time to strike out and kill it forever.

The Convention refused to pass by and the question recurred on the motion of Mr. Van Winkle to strike out the section.

MR. CALDWELL. I know myself, from my own observation and experience, I know of persons residing in this city and of citizens of my county, and I think I might designate some in each of the counties along the Ohio river, who have been purchasers of this forfeited and delinquent lands—very large tracts; and for some reason or other they have permitted them to become forfeited again. Now, I have not much doubt that even in the region of the country where the gentleman from Logan comes there are large bodies of these lands that have been forfeited and liable to entry. Now, sir, you see the difficulty in which the whole question is involved: When, for instance, the gentleman from Logan may have a hundred thousand acres of land in this position, of which he does

not regard the taxation important, he will suffer it to remain in that position and liable to entry by persons who may choose to migrate into that section of country. Well, sir, if we have not a land office, how are they to avail themselves of their right of entry? How can others who would desire to locate those lands get at them? We are not satisfied with the titles of these gentlemen; therefore, we will not purchase one of them. They are forfeited to the commonwealth; and under this old commonwealth we might secure patent that would enable us to get title to this land. I would much prefer this proposition of the gentleman from Wood to have been considered first by this Convention. Then it might have been determined that the legislature could not have had even the authority to establish a land office. I cannot help but think cases may arise in which there may be the necessity of establishing a land office for some purpose or other by the legislature. This provision only authorizes the legislature when it shall deem it expedient to establish a land office and assign the duties of the office to some proper officer, contemplating that in time the duties may not be so arduous but they may be performed by some other executive officer. Let it remain then with the legislature to judge and determine of this. And if they see fit to establish a land office, give them the authority and power to do it. That is all this provision asks, and I think it is one that may be granted.

MR. SMITH. If that were true which the gentleman supposes to be true then there is propriety and force in his remarks. But he is under a total misconception of the law in his reply. He says that lands that have been sold under the act of 1838 have been forfeited since. Now, that has been an error to some extent, and I have known some lawyers who gave that opinion, and on which opinion there has been a number of entries, and very improperly. Now, under the land law of Virginia there is not a foot of land forfeited for non-entry or for delinquency since the 1st of April, 1831. The acts themselves confined the forfeiture expressly to that period, and there can be no forfeiture to any lands you purchase at delinquent sale. The act of 1836 also put it on the same footing as forfeitures of 1831. It was there expressly provided that forfeitures for non-entry should not take place for any period after the 1st of April, 1831. There is not one foot of that land that was bought since 1831 that is liable to entry or that can be entered under the law. Not a foot of it. It all has relation to a period antecedent to 1831; and therefore there is no necessity for making

a provision for forfeitures of lands sold under the act of 1838. There is no necessity for making provision for this for there is no forfeiture and no liability to any entry of those lands. Now, in the county of Nicholas, under the advice, as I was informed, of a distinguished lawyer there, some friends in my county had some 20,000 or 30,000 acres of land bought at delinquent sale in 1841-2-3. Under his interpretation of the law the gentleman went to Nicholas and went to work and entered all that land as forfeited. I heard of it, and I wrote a letter to the authorities telling them the entries were of no value. Well they asked them to withdraw their return and save their money. They were very stubborn and a lawyer went to my friend—Sam Price, who is an excellent land lawyer, and laughed him out of countenance, and he quit it. Now, that is one of a few cases where this has occurred. There can be no forfeiture and no necessity for a land office on that account at all. And I tell the gentleman to go home and tell his constituents that so far as my estate is worth anything, it shall be a guaranty of all forfeitures of land sold under that law; and if they will pay me a reasonable fee, I will come and defend them and save them against any such forfeiture. But if you let it lie fifty years it is liable to be sold as delinquent land under the general law.

MR. VAN WINKLE. The case spoken of by the chairman of the committee, if there were a hundred thousand acres or any other quantity of land in Marshall, would be one for the operation of what I myself consider this proposed beneficial provision. Instead of allowing entries and other land returns on this land, supposing it was forfeited and interfering with one another, the commissioner would go and ascertain all the facts and report them to the court. If in the opinion of the court the land was forfeited the court would so declare and order that land to be sold at public auction in parcels. Every citizen then has a right to come in and become a purchaser. When he has purchased, the court orders the deed to be made by the commissioner. Then he has got all the title that ever vested in the commonwealth in reference to that land; and there is nothing under the sun that can set aside his deed to that land, unless they do show an actual payment of taxes or fraud on the part of the commissioner.

MR. SMITH. They cannot do that.

MR. VAN WINKLE. Now, sir, it would be much better to preserve peace and quiet and the parties would get an infinitely better

title and it would save all heart-burning. If any provision is necessary to insure that those who have heretofore bought and located land-warrants may get the proper deed, I am perfectly willing that should be inserted if it can be done, however, when the subject comes up under the report of the Committee on Education.

MR. STUART of Doddridge. I would inquire of the gentleman from Logan where these lands are sold for delinquent taxes and the State becomes a purchaser, then is that land liable to entry?

MR. SMITH. No, sir. No land is liable to entry except for delinquency or non-entry before 1831; and until it is absolutely sold it is not liable to entry at all under the law.

MR. CALDWELL. I will just say in a hasty reading of this second report of the Committee on Education, I like its provisions very well; and while I think the majority of the Convention will agree with me that this provision may be adopted, we are rather forestalling the thing, I think. There ought to be action on this proposition before we determine to dispense with the authority of the legislature to establish a land office. The second clause of this provision seems to contemplate that there are forfeited lands and that grants may be issued for them, because that prohibits, after adoption of this house, any grants or patents for such lands. I am satisfied, sir, that I was not in error when I expressed the opinion that there were such lands in the state. To what extent they are I cannot say. I am verily of the opinion that there are some in my section of country that are. The gentleman from Logan, however, thinks it cannot be so. I merely advert to the fact that the gentleman from Wood is not exactly clear on that question because if it was not the fact this provision would not be in this section forbidding any grants or patents being issued for such lands. I rather think it is better that the Convention should take up this section and consider it; and if it is adopted, why, then, perhaps there might be propriety in striking out the section in this executive report.

MR. VAN WINKLE. I have already stated that even if this proposition of mine as reported is rejected I shall still vote for striking out the land office.

The motion to strike out the 9th section was put and it was agreed to.

The 10th section was reported as follows and adopted without discussion:

"10. The legislature shall have power to vest the management and control of the works of internal improvement of the State, the disposition and investment of the fund arising therefrom, or that may be created for that purpose, in the governor, treasurer and auditor, and to prescribe their duties as a Board of Public Works."

Section 11 was reported as follows:

"11. The legislature shall have power to provide for the organization of the militia and the appointment of militia officers; but no officer below the rank of brigadier general shall be appointed by the legislature."

MR. VAN WINKLE. The gentleman from Ohio (Mr. Lamb) left with me an amendment which he designed offering here with request to offer it, and in which I believe I concur. It is to strike out all after the semicolon in line 87 and insert: "but the governor shall nominate, and by and with the advice and consent of the senate shall appoint, all military officers above the rank of colonel." I do not suppose I am the appropriate person to advocate this, though it strikes me favorably. I have but little familiarity with military matters.

MR. CALDWELL. I am no part of a military man. I have never mustered in my life, even. This provision is taken from the present Constitution of Virginia. I like the amendment proposed. I think that in the appointment of all these officers by the governor, that they are properly invested in the governor with the advice and consent of the senate. Being of that opinion, I shall at least, although chairman of the committee, make no objection to the amendment. I do not know what the opinions of the members may be, but as one I favor the amendment.

The amendment was agreed to and the section so amended adopted.

The 12th section was reported as follows:

"12. Commissions and grants shall run in the name of the Commonwealth of West Virginia and bear teste by the governor, with the seal of the commonwealth annexed."

Mr. Brown of Preston moved to strike out "and grants."

Mr. Caldwell moved to strike out the section and it was agreed to.

The report was then laid on the table to be printed as amended before final action.

MR. BROWN of Kanawha. I move to return to the report of the Committee on the Judiciary and finish a section left undetermined there.

The motion was agreed to.

MR. BROWN of Kanawha. The Convention had under consideration the 7th section and adopted so much of it as determined the jurisdiction of the court of appeals, but left undetermined the question as to the jurisdiction of the circuit courts. I now offer the following as a substitute for the additional section heretofore offered by me:

“The circuit courts shall have the supervision and control of all inferior tribunals, by *mandamus*, *prohibition* or *certiorari*. They shall also, except in cases confided exclusively by this Constitution to some other tribunal, have original and general jurisdiction of all matters whatsoever at law, where the amount in controversy, exclusive of costs, exceeds twenty dollars, and of all cases in equity, and of crimes and misdemeanors. They shall also have appellate jurisdiction in all cases civil and criminal, when an appeal, writ of error or supercedeas may be allowed to the judgment or proceedings of any inferior tribunal. And they shall also have such other jurisdiction, whether supervisory, original, appellate or concurrent, as may be prescribed by law.”

This section contemplates a number of tribunals in the State whose specific jurisdiction is given and which have no jurisdiction whatever except that specifically conferred. The circuit courts—as are the circuit courts of Virginia—are intended by this provision to cover all the other conceivable jurisdiction that is left undivided and any attempt to add an enumeration of it will wholly fail. The circuit courts at present have a supervisory jurisdiction over all the inferior tribunals by writ of *mandamus*, *prohibition* and *certiorari*. While it just of its own volition refuses to decide his case at all, the writ of *mandamus* therefore lies in the superior court to compel that jurisdiction to go forward and discharge its duty. In all such cases the superintending power of the superior court is always at hand, by writ of *prohibition* to prohibit it from doing what it has no lawful right to do.

At the usual hour, the Convention took a recess.

AFTERNOON SESSION.

The Convention re-assembled, and resumed consideration of the report of the Committee on the Judiciary, the question being on the substitute offered by Mr. Brown of Kanawha for the additional section previously offered by him defining the jurisdiction of the circuit courts.

The question was put and the substitute adopted as an additional section.

The 2nd section, which had been passed by, was taken up and reported as follows:

- 7 "2. The State shall be divided into nine circuits, as follows:
8 1. The counties of Hancock, Brooke, Ohio and Marshall shall
9 constitute the first circuit.
10 2. The counties of Monongalia, Preston, Tucker and Taylor
11 shall constitute the second circuit.
12 3. The counties of Marion, Harrison and Barbour shall
13 constitute the third circuit.
14 4. The counties of Wetzel, Tyler, Pleasants, Ritchie, Dod-
15 dridge and Gilmer shall constitute the fourth circuit.
16 5. The counties of Randolph, Upshur, Lewis, Braxton,
17 Webster and Nicholas shall constitute the fifth circuit.
18 6. The counties of Wood, Wirt, Calhoun, Roane, Jackson
19 and Clay shall constitute the sixth circuit.
20 7. The counties of Kanawha, Mason, Putnam and Fayette
21 shall constitute the seventh circuit.
22 8. The counties of Cabell, Wayne, Boone, Logan, Wyo-
23 ming and Raleigh shall constitute the eight circuit.
24 9. The counties of Pocahontas, Greenbrier, Monroe,
25 Mercer and McDowell shall constitute the ninth circuit."

Mr. Brown of Kanawha moved to transpose the counties of Barbour and Taylor.

Mr. Dering opposed, and Mr. Brown explained that it was a mere suggestion.

MR. STEVENSON of Wood. I do not wish to suggest any change in this arrangement of judicial circuits unless I thought it was really proper and right, but it does seem to me injustice is done in this arrangement of the 6th circuit. Clay county belongs naturally, it seems to me, both geographically and by its trading relations to the counties in the 7th circuit. It would make the number of counties equal in the two circuits. It will make the population larger in the 7th; but it has been argued here, and I think correctly,

that the amount of law business that goes into the courts does not depend on the population entirely. Now, if gentlemen will examine the map here, they will find but two counties in the 6th circuit which can be reached by river—Wood and Jackson. That leaves four counties, if we keep Clay which have to be reached over the most difficult avenues of travel in the country. It seems to me we ought to look as well to the amount of labor in traveling over the circuit as well as to the amount of specific judicial labor to be done by the circuit judges. Now I believe all the counties in the 7th circuit, Kanawha, Mason, Putnam and Fayette, I think they can all probably be reached by water. My impression is that they lie on the Kanawha river.

MR. HAGAR. Fayette cannot.

MR. STEVENSON. At all events they are much more easy to cover than the other counties which I have alluded to in the 6th circuit; not only that they can be reached by the river but have the accommodation of roads in that country. Now, sir, to reach Clay from Wood is something like trying to reach the North Pole or the equator. Again, sir, the Elk river runs through Clay county, and the travel and trade of the people of that county is run by that river down into Charleston until it empties into the Kanawha; so that I think, sir, Clay belongs properly in that circuit. If it is added to that circuit it will be an accommodation to the people of Clay. While it will be an accommodation to the people of Clay, will it impose an unnecessary task upon the gentleman who may act as judge of that circuit, either physical or mental? I think not. He can reach all the other counties as I have endeavored to show more easily than any of the counties can be reached in the other circuits except Wood and Jackson, and the amount of mental labor he will have will not be so great as that in the other circuit.

I move that Clay county be placed in the 7th circuit.

MR. BROWN of Kanawha. The gentleman seems to think it would be an accommodation to the people of Clay to have that county added to the Kanawha circuit. Now, I suppose the people no matter where they trade or what their business is do their business at the court house; and as the judge lives one place or another it is wholly immaterial to the people who bring their suits in his court. I am not able to perceive any reason why a people are advantaged by having the county attached to another circuit so far as business is concerned. The whole question is dependent on the

judge; and going on the hypothesis that we will have competent judges in all these circuits there is no difference between them. But there is a very strong reason why this should not be done—not because the people of Clay, or of Kanawha are any more allied to each other than Kanawha and any other adjacent county; not because there is any dissimilarity in the people, for this has nothing to do with the lawsuits and the man who decides them. But there is no justice to the Kanawha circuit in this. In the first place it has a larger population than Wood circuit with Clay in it. There is therefore a larger number to bring their suits than in the other circuit. But apart from that there is more business, I maintain, wherever it shall be examined carefully and critically, in Mason and Kanawha than in the whole Wood circuit put together; and therefore to take from the less and attach to the larger and thus diminish the less and increase the labors of the larger is manifest injustice. The only objection urged I see of any force is that a judge has more traveling to do. Why, sir, the travel is not equal to the travel in the circuit on the other side of the Kanawha circuit. There are six counties and much larger in territory—almost half as much more, and the country altogether more inaccessible. I have traveled through them all. There is no comparison to it. And yet you cannot avoid it from the very nature of the case. And the court usually sitting there two months at a session; and that, too, when the county courts sat four times a year in Kanawha.

Then there is no reason for it in the question of population or on the score of business. There is no reason for it in any way unless the object be to lighten the one and so encumber the other that it will be impossible for one man to do the business of the circuit.

The question on the motion to transfer Clay from the 6th to the 7th circuit was put and decided in the negative.

Mr. Van Winkle proposed to substitute the senatorial districts for these judicial circuits. He said those districts were laid out with reference to the circumstances which ought to govern in this case and which these circuits were not. They were laid out on the basis of equality of population, and he thought population was a very good criterion of the business, and he did not believe better districts could be arranged.

He moved the substitution proposed, but the motion was not agreed to, and the section as originally reported was adopted.

Mr. Lamb offered the following as an additional section:

"The legislature may establish courts of limited jurisdiction within any city of the State."

MR. LAMB. As we are adopting a constitution which we hope may be permanent and cannot see well what the necessities of the future may require, I think it would be judicious perhaps to leave that authority within the scope of the legislative power.

The additional section was adopted.

The report being completed, was laid on the table and ordered to be printed as amended.

Mr. Van Winkle moved to take up the report of the Committee on County Organization.

The motion was agreed to and Mr. Van Winkle moved to insert in the 8th section, at the end of the first sentence the following: "Jurisdiction of all misdemeanors and breaches of the peace, punishable by a fine not exceeding ten dollars or imprisonment for not more than thirty days, may be by law vested in justices of the peace."

The amendment was agreed to and Mr. Van Winkle offered the following as an additional section:

"Either party to a civil suit brought before a justice of the peace, when the value in controversy or the damages claimed exceeds twenty dollars, and the defendant in such cases of misdemeanor or breach of the peace as may by law be recognizable by a single justice, when the penalty is imprisonment or a fine exceeding five dollars, shall be entitled to a trial by six jurors, under such regulations as may be prescribed by law."

Mr. Soper moved to amend the same by inserting after the word "civil," in the first line, the words "or criminal," and striking out all after the word "peace," in the second line, to the word "shall," in the 8th line.

Mr. Stuart of Doddridge moved to amend the amendment by striking out the word "six," and inserting "one," which was rejected.

And pending the consideration of the amendment of Mr. Soper,

On motion of Mr. Hagar, the Convention adjourned.

XLVIII. THURSDAY, FEBRUARY 6, 1862.

The Convention met at 9 o'clock A. M. and was opened with prayer by Rev. Mr. McCutchen, a member.

After reading and approval of the journal,

Mr. Pomeroy offered the following, which was adopted:

**Resolved*, That hereafter, until otherwise ordered, this Convention will meet at 3 o'clock, P. M.

The question then being upon Mr. Soper's amendment, offered last night to the additional section of Mr. Van Winkle, the yeas and nays were demanded, and the demand being sustained, the amendment was rejected—yeas 18, nays 25.

And, on motion of Mr. Brumfield, the vote was recorded as follows:

YEAS—Messrs. Brumfield, Chapman, Dolly, Hansley, Hubbs, Hervey, Montague, Mahon, Parker, Pomeroy, Simmons, Stevenson of Wood, Stewart of Wirt, Soper, Taylor, Walker, Warder, Wilson—18.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brooks, Caldwell, Carskadon, Dering, Dille, Haymond, Harrison, Hagar, Irvine, Lamb, Lauck, McCutchen, Parsons, Powell, Robinson, Ryan, Sinsel, Stephenson of Clay, Stuart of Doddridge, Sheets, Trainer, Van Winkle—25.

Mr. Van Winkle, by general consent, moved to modify his additional section, by inserting after the word "entitled," "if demanded," which was agreed to.

And the question being upon the adoption of the section, the yeas and nays were demanded, which demand being sustained, the section was adopted—yeas 30, nays 14.

And on motion of Mr. Mahon, the vote was recorded as follows:

*See note Vol. II, page 219.

YEAS—Messrs. John Hall (President), Brooks, Brumfield, Battelle, Chapman, Dolly, Hansley, Hubbs, Hervey, Hagar, Lamb, Lauck, Montague, Mahon, McCutchen, Powell, Parker, Pomeroy, Ryan, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Sheets, Soper, Taylor, Van Winkle, Walker, Warder, Wilson—30.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Caldwell, Carskadon, Dering, Dille, Haymond, Harrison, Irvine, Parsons, Robinson, Sinsel, Stuart of Doddridge, Trainer—14.

Mr. Brown of Kanawha moved to amend the 8th section of the report of the Committee on County Organization, by adding at the end thereof the following:

“but in all cases an appeal, writ of error, *supersedeas* or *certiorari*, shall be from the judgment or proceedings of the board of supervisors, a justice of the peace, recorder, or corporation or other inferior court, to the circuit court of the county in which the case may be; excepting, however, judgment of justices of the peace in assumpsit, debt, detinue and trover, and for fine, where the amount does not exceed ten dollars, unless in cases involving freedom or the validity of a law, or the right of a corporation or a county to levy tolls or taxes.”

Mr. Van Winkle moved to amend the amendment by striking out the words “the board of supervisors” in the third line, which was agreed to.

Mr. Stuart of Doddridge, moved further to amend the same by striking out the words “and for fine,” which was decided in the negative.

The amendment of Mr. Brown of Kanawha, as amended, was then adopted.

And, on motion of Mr. Brown of Kanawha, the words “subject, however, to an appeal to the circuit court of the county, where the value in controversy exceeds ten dollars,” in the 93rd and 94th lines, in the 7th section, were stricken out.

Mr. Caldwell then moved to take up the additional section to said report heretofore submitted by him, which was adopted.

By general consent, all after the word "curators" was stricken out.

Mr. Brown of Kanawha, moved to amend said section by adding after the word "curators," in the 8th line, the following: "to administer oaths, to take acknowledgment of deeds and other writings, and the relinquishment of dower," which was agreed to, and the section, as amended, was adopted.

And, on motion of Mr. Van Winkle, the said report was laid on the table and ordered to be printed as amended.

Mr. Battelle moved to take up the second report of the Committee on Education, which being put was determined in the affirmative.

SECOND REPORT OF THE COMMITTEE ON EDUCATION.

(Submitted February 4, 1862.)

The Committee on Education recommend the adoption of the following as a part of the Constitution.

G. Battelle, chairman.

- 1 "1. The right to enter upon or bring actions for the recovery
2 of lands lying within this State, shall, for the term of twenty-
3 one years next after this Constitution goes into operation, be
4 limited to seven years next after the time when such right ac-
5 crues or shall accrue; saving to persons of unsound mind or
6 under the age of twenty-one years, the right to make such en-
7 try or bring such actions within one year after the removal of
8 their respective disabilities, and not afterwards, notwithstand-
9 ing the said seven years shall have expired; but no such ac-
10 tion instituted previously to the time this Constitution goes in-
11 to operation shall be affected by any of the provisions of this
12 section. After the expiration of the said term of twenty-one
13 years the limitation of such entries and actions shall be pre-
14 scribed by law.
- 15 "2. All lands lying within this State which have not been en-
16 tered for taxation, or upon which taxes have not been paid to
17 the State of Virginia or this State for more than five years,
18 shall be deemed and declared forfeited, and forever irredeem-

19 able, and such forfeiture shall not be released. No grant or
20 patent for forfeited, waste or unappropriated lands, shall issue
21 after this Constitution goes into operation, except upon surveys
22 made according to law and duly returned to the land office pre-
23 viously thereto; but all such lands shall be publicly sold under
24 decrees rendered by the circuit court for the county in which
25 the same, or the greater part thereof, may lie, upon proceed-
26 ings in the nature of proceedings *in rem* therein instituted, in
27 such manner as shall be prescribed by law.

28 "3. The money received for lands sold under the preceding
29 section, after deducting the costs and expenses of the pro-
30 ceedings and sale, shall be deposited in the treasury of the State.
31 When forfeited lands are sold, the excess of the proceeds there-
32 of deposited in the treasury as aforesaid, over the taxes and
33 damages charged and chargeable thereto under the laws of the
34 State of Virginia and of this State, shall be paid to the re-
35 spective former owners thereof, who shall prove themselves en-
36 titled to such excess before the circuit court which decreed
37 the sale of the same, by proceedings instituted in such court
38 within five years next after such sale, in such manner as shall
39 be prescribed by law. Appeals from the decisions of circuit
40 courts in such cases to the court of appeals shall be allowed
41 if applied for within one year next after the decree of sale by
42 or for any person claiming an interest in the land sold, as own-
43 er of any part thereof; but the proceedings of the circuit
44 courts leading to the sale of such lands shall not be otherwise
45 re-examined or drawn in question in any court of the State,
46 unless fraud or collusion, or the actual payment of all taxes and
47 damages, charged and chargeable to the land sold, previously
48 to the institution of the proceedings against the same, be alleged
49 and proved by the claimant, and then only in the court where
50 such proceedings were had.

51 "4. All money being the proceeds of forfeited, waste and
52 unappropriated lands deposited in the treasury, and not re-
53 claimed by the former owner as aforesaid, shall be carried to
54 the credit of a separate fund, to be called the school fund.

*The 1st section was read, whereupon,

Mr. Brown of Kanawha moved to strike out the whole
section.

And at the usual hour, the Convention took a recess.

3 o'clock, P. M.

The Convention re-assembled.

Mr. Smith offered the following substitute for the
second report of the Committee on Education:

*See note Vol. II, page 219.

"1. No entry or survey on land in this State made after this Constitution is adopted by the people, and receives the consent of the Legislature of Virginia and of the Congress of the United States, shall be valid; and in all cases where an entry or survey has been made before that time, and then, or thereafter, so perfected as to entitle the locator to a grant, the legislature shall make provision by law for issuing the same.

"2. The legislature shall make provision for the sale of all lands in the State forfeited for nonpayment of taxes for the year 1831, or any year previous thereto, or for the failure of the owners to have the same entered and charged with taxes for the year 1831, or any preceding year, as well as for all waste and unappropriated lands by proceedings to be had in the circuit courts of the county where such lands, or the greater part thereof may lie."

Mr. Caldwell moved that the substitute be laid on the table and printed, and that the report be passed by for the present, which was agreed to.

Mr. Lamb moved to take up the report of the Committee on County Organization, and the motion was decided in the affirmative.

Mr. Lamb then submitted the following additional section thereto, which was adopted:

"Nothing contained in this article shall impair or affect the charter of any municipal corporation, or restrict the power of the legislature to create or regulate such corporations."

Said report was then laid on the table and ordered to be printed as amended.

Mr. Van Winkle then moved to take up the two reports of the Committee on Fundamental and General Provisions, which was agreed to.

Mr. Van Winkle then moved the adoption of the 7th section of the 1st report, as amended, which had been heretofore passed by.

Mr. Soper moved further to amend the same by adding at the end thereof the words "except surveyors of highways," and the question being put was decided in the negative.

The 7th section was then adopted as amended.

The 9th section, heretofore passed by, was then taken up and amended so as to read as follows:

"All citizens entitled to vote, and no other persons, may be elected to any State, county or municipal office; but the judges must have attained the age of thirty-five years; the governor the age of thirty years; and the attorney general and senators the age of twenty-five years, at the beginning of their respective terms of service, and must have been citizens of the State for five years next preceding, or at the time this Constitution goes into operation."

The 1st section of the second report was then read and adopted.

Mr. Van Winkle moved to insert between the 1st and 2nd sections, the following additional section:

"All elections of State and county officers shall be held on the day of ."

Mr. Brown, of Kanawha, moved to fill the blank with "fourth Thursday of May."

Mr. Harrison moved to amend by filling the blank with "fourth Thursday of October;" and the question being upon the amendment to the amendment, it was decided in the affirmative.

The said additional section was then adopted as amended.

On motion of Mr. Van Winkle the blank, in the 10th line, was filled by inserting the "first day of January."

Mr. Soper then moved further to amend the 2nd section by striking out the words "and appointments," in the 11th line, and inserting in lieu of the words "by special elections," the words "in such manner as may be prescribed by law."

The 2nd section was then adopted as amended.

Upon the reading of the 3rd section,

Mr. Soper moved to insert after the word "crime," in the 17th line, the words "not cognizable by a justice of

the peace," which was agreed to; after which the 3rd section, as amended, was adopted.

The 4th section being read,

Mr. Lamb moved to amend by striking out the words "having in view the overthrow of the government thereof," which motion was agreed to; after which the section was adopted.

The 5th, 6th, 7th, 8th, and 9th sections were then respectively read and adopted as reported.

The 10th section was read, when,

Mr. Van Winkle moved to amend by adding at the end of the fourth sentence the words "or to imprisonment," which was disagreed to.

Mr. Stuart of Doddridge moved to strike out the fourth sentence, which was put and decided in the affirmative.

And, on motion of Mr. Irvine, the fifth sentence was stricken out.

The question then being upon the adoption of the 10th section, as amended, it was agreed to.

And, on motion of Mr. Battelle, the Convention adjourned.

* * * * *

XLIX. FRIDAY, FEBRUARY 7TH, 1862.

The Convention met at 9 o'clock, A. M.

Prayer by Rev. Mr. Pomeroy.

Journal read and approved.

The second report of the Committee on Fundamental and General Provisions, submitted January 30th, was taken up, the report being as follows:

The Committee on Fundamental and General Provisions respectfully report the following additional provisions, and recommend their insertion in the Constitution.

By order of the Committee,

P. G. Van Winkle, chairman.

1 "1. All officers elected or appointed under this Constitution
2 may be removed from office for misconduct, incompetence, or
neg-
3 lect of duty, in such manner as may be prescribed by law, and
4 unless so removed, shall continue to discharge the duties of
5 their respective offices until their successors are elected or ap-
6 pointed and qualified.

7 "2. The terms of all state and county officers, and of the
8 members of both houses of the legislature, not elected or
9 appointed to fill a vacancy, shall, unless herein otherwise pro-
10 vided, begin on the day of next succeeding
11 their election. All elections and appointments to fill vacan-
12 cies shall be for the unexpired term. All vacancies in elective
13 offices shall be filled by special elections.

14 "3. The privilege of the writ of *habeas corpus* shall not be
15 suspended, except when, in time of invasion, insurrection or
other
16 public danger, the public safety may require it. No person
17 shall be held to answer for treason, felony or other crime, un-
18 less on presentment or indictment of a grand jury. No bill
19 of attainder, *ex post facto* law, or law impairing the obligation
20 of a contract, shall be passed.

21 "4. No law abridging freedom of speech or of the press shall
be
22 passed, but the legislature may provide for the restraint and
23 punishment of the publishing and vending of obscene books,
24 papers and pictures, and of libel and defamation of character,
and
25 for the recovery, in civil actions, by the aggrieved party, of suit-
26 able damages for such libel and defamation. Attempts to justify
27 and uphold an armed invasion of the State, or an organized in-
28 surrection therein, having in view the overthrow of the govern-
29 ment thereof, during the continuance of such invasion or in-
30 surrection, by publicly speaking, writing or printing, or by
31 publishing or circulating such writing or printing, may be, by
32 law, declared a misdemeanor, and punished accordingly.

33 "5. Private property shall not be taken for public use without
34 just compensation. No person, in time of peace, shall be de-
35 prived of life, liberty or property without due process of law.
36 The military shall be subordinate to the civil power.

37 "6. The right of the citizens to be secure in their houses, per-
38 sons, papers and effects, against unreasonable searches and
seizures,

39 shall not be violated. No warrant shall issue but upon proba-
40 ble cause, supported by oath or affirmation, and particularly
41 describing the place to be searched and the persons and things
42 to be seized.

43 "7. In suits at common law, where the value in controversy
ex-
44 ceeds twenty dollars, the right of trial by jury, unless waived
45 by the parties, shall be preserved. No fact tried by a jury,
46 shall be otherwise re-examined in any case than according to
47 the rules of the common law.

48 "8. The trial of crimes and misdemeanors, unless herein
other-
49 wise provided, shall be by jury, and shall be held publicly, and
50 without unreasonable delay, in the county where the alleged
51 offense was committed, unless, upon petition of the accused,
52 and for good cause shown, or in consequence of the existence
53 of war or insurrection in such county, it is removed to some
54 other county. In all such trials the accused shall be informed
55 of the character and cause of the accusation, and be confront-
56 ed with the witnesses against him, and shall have the assistance
57 of counsel for his defense, and compulsory process for obtain-
58 ing witnesses in his favor.

59 "9. In all criminal prosecutions, the jury shall be the judges
of
60 both the law and the fact. In prosecutions and civil suits
61 for libel, the truth may be given in evidence; and if it shall
62 appear to the jury that the matter charged as libelous is true,
63 and was published with good motives, and for justifiable ends,
64 the verdict shall be for the defendant.

65 "10. Excessive bail shall not be required, or excessive fines im-
66 posed, or cruel and unusual punishment inflicted. Penalties
67 shall be proportioned to the character and degree of the of-
68 fence. No person shall be compelled to be a witness against
69 himself, or be twice put in jeopardy for the same offence. No
70 citizen shall be subjected to corporal punishment, except to
71 death by hanging, for treason, murder, rape or arson. All
72 prisoners shall be bailable by sufficient sureties, except in cap-
73 ital cases where the proof is evident or the presumption great.

74 "11. The enumeration in this Constitution of certain rights
and
75 privileges shall not be construed to impair or deny others re-
76 tained by, or inherent in, the citizens of the State.

77 "12. Such parts of the common law, and of the laws of the
State
78 of Virginia, as are in force within the boundaries of the State
79 of West Virginia when this Constitution goes into operation,
80 and are not repugnant thereto, shall be and continue, the law
81 of this State, until altered or repealed by the legislature.
82 Nothing herein contained shall affect grants of lands, legally
83 issued by the Commonwealth of Virginia before the seven-

84 tenth day of April, in the year one thousand eight hundred
85 and sixty-one, or subsequently thereto, by authority of the re-
86 stored government thereof, or any inchoate or imperfect right
87 to such grants. All civil and criminal suits and proceedings
88 pending in the county or circuit courts theretofore held with-
89 in the said boundaries when this Constitution goes into opera-
90 tion, shall be docketed and thereafter proceeded in the cir-
91 cuit court of the proper county; and all such suits and proceed-
92 ings then pending in the supreme court of appeals of the State
93 of Virginia, if the defendant resides within the said boundaries,
94 and the plaintiff is entitled to prosecute in this State, shall be
95 docketed, and thereafter proceeded in, in the Supreme Court
96 of Appeals thereof.

The 11th section was read and adopted. The 12th having been read, it was, on motion of Mr. Van Winkle amended as follows:

*Insert the words "and district," before the word "court," in the 92nd line, and insert after the word "defendant," in the 93rd line, the words, "in the court below," and insert after the word "boundaries," in the same line, the following: "or the subject of the suit is land or other property situated or being therein."

Mr. Parker moved to amend the said section by adding after the word "legislature," at the end of the 81st line, the following:

"All offences against the law of Virginia, committed within the boundaries of the State before this Constitution goes into operation, shall be cognizable in the courts of this State, in the same manner they would be if committed within this State after the adoption of this Constitution."

And the question being upon the adoption of this amendment, it was decided in the affirmative.

Mr. Smith then moved to strike out the second sentence of said section, which was agreed to.

Mr. Smith submitted the substitute heretofore offered by him for the second report of the Committee on Education, and moved that it be adopted as additional sections to the report of the Committee on Fundamental and General Provisions.

The 1st section thereof was amended and adopted as follows:

“No entry by warrant on land in this State shall be made after this Constitution goes into operation; and in all cases where an entry has been made before that time, and there, or thereafter so perfected as to entitle the locator to a grant, the legislature shall make provision by law for issuing the same.”

The second section was read, when,

Mr. Brown of Kanawha moved to amend the same by striking out the words “or the greater part thereof,” in the 14th and 15th lines, which was agreed to.

The word “as” after taxes was stricken out by general consent, and the section was adopted.

And, on motion of Mr. Van Winkle, the reports were laid on the table for the present.

Mr. Lamb moved that the Convention take up, on its second reading, the report of the Committee on the Legislative Department, which motion was adopted.

Following is the report, (as amended by the Convention):

REPORT OF THE COMMITTEE ON THE LEGISLATIVE DEPARTMENT,

As Amended by the Convention.

- 1 1. The legislative power of the State shall be vested in a
2 senate and house of delegates. The style of their acts shall
3 be, “Be it enacted by the Legislature of West Virginia.”
- 4 2. The senate shall be composed of eighteen, and the
5 house of delegates of forty-seven members, subject to be in-
6 creased according to the provision hereinafter contained,
7 but after the first election no two senators shall be elected in
8 the same county.
- 9 3. The term of office of senators shall be two years, and
10 that of delegates one year—commencing, in each case, on
11 the 4th day of July succeeding their election, except that the
12 terms of the senators and delegates first elected shall com-
13 mence twenty days after their election. The senators first
14 elected shall divide themselves into two classes, one senator
15 from every district being assigned to each class; and of these
16 classes, the first, to be designated by lot, in such manner as
17 the senate may determine, shall hold their offices for one year,
18 and the second for two years; so that, after the first election,

19 one-half of the senators shall be elected annually. Vacancies
20 in either branch shall be filled by election, for the unexpired
21 term, in such manner as shall be prescribed by law.

22 4. For the election of senators, the State shall be divided
23 into nine senatorial districts; which number shall not be di-
24 minished, but may be increased as hereinafter provided. Ev-
25 ery district shall choose two senators. The districts shall be
26 equal, as nearly as possible, in white population, according to
27 the returns of the United States census. They shall be
28 compact—formed of contiguous territory—and be bounded
29 by county lines. After every census hereafter taken by au-
30 thority of the United States, the legislature shall alter the
31 senatorial districts, so far as may be necessary to make them
32 conformable to the foregoing provisions.

33 5. The legislature may at any time, by law, divide any
34 senatorial district, by county lines or otherwise, into two
35 sections, which shall be equal, as nearly as possible, in white
36 population. If such division be made, each of the sections
37 shall elect one senator, instead of the district electing two;
38 and the senators so to be elected shall be classified in such
39 manner as the senate may determine.

40 6. Until the senatorial districts be altered by the legisla-
41 ture after the next census, the counties of Hancock, Brooke,
42 and Ohio shall constitute the 1st senatorial district; Mar-
43 shall, Wetzel and Marion the 2nd; Monongalia, Preston
44 and Taylor the 3rd; Pleasants, Tyler, Ritchie, Dod-
45 dridge and Harrison the 4th; Wood, Jackson, Wirt, Ro-
46 ane, Calhoun and Gilmer the 5th; Barbour, Tucker, Lewis,
47 Braxton, Upshur and Randolph the 6th; Mason, Putnam,
48 Kanawha, Clay and Nicholas the 7th; Cabell, Wayne,
49 Boone, Logan, Wyoming, Mercer and McDowell the 8th,
50 and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and
51 Monroe the 9th.

52 7. For the election of delegates, every county containing
53 a white population of less than half the ratio of representa-
54 tion for the house of delegates, shall, at each apportionment
55 be attached to some contiguous county or counties, to form a
56 delegate district.

57 8. When two or more counties are formed into a delegate
58 district by the legislature, they shall provide by law that
59 the delegates to be chosen by the voters of the district shall
60 be, in rotation, residents of each county, for a greater or less
61 number of terms, proportioned, as nearly as can be conveni-
62 ently done, according to the white population of the several
63 counties in the district.

64 9. After every census hereafter taken by authority of the
65 United States, the delegates shall be apportioned as follows:

66 The ratio of representation for the house of delegates
67 shall be ascertained by dividing the whole white population of
68 the State by the number of which the house is to consist,

69 and rejecting the fraction of a unit, if any, resulting from
70 such division.

71 Dividing the white population of every delegate district,
72 and of every county not included in a delegate district, by
73 the ratio thus ascertained, there shall then be assigned to each
74 a number of delegates equal to the quotient obtained by this
75 division of its white population, excluding the fractional re-
76 mainder.

77 The additional delegates which may be necessary to make
78 up the number of which the house is to consist shall
79 then be assigned to those delegate districts, and coun-
80 ties not included in a delegate district, which would other-
81 wise have the largest fractions unrepresented. But every
82 delegate district, and county not included in a delegate dis-
83 trict, shall be entitled to at least one delegate.

84 10. Until a new apportionment be declared, the counties of
85 Pleasants and Wood shall form the 1st delegate district;
86 Calhoun and Gilmer the 2nd; Clay and Nicholas the 3rd; Web-
87 ster and Pocahontas the 4th; Tucker and Randolph the 5th;
88 and McDowell, Wyoming and Raleigh the 6th. The 1st dele-
89 gate district shall choose two delegates, and the other five
90 one each.

91 11. The delegates to be chosen by the 1st delegate district
92 shall, for the first term be both residents of the county of
93 Wood, and for the 2nd term one shall be a resident of Wood and
94 the other of Pleasants county, and so in rotation. The dele-
95 gate to be chosen by the 2nd delegate district shall, for the
96 first term, be a resident of Gilmer, and for the second, of Cal-
97 houn county. The delegate to be chosen by the 3rd delegate
98 district shall, for the first two terms, be a resident of Nicholas
99 and for the third term of Clay county. The delegate to be
100 chosen by the 4th delegate district shall, for the first two
101 terms, be a resident of Pocahontas, and for the third term of
102 Webster county. The delegate to be chosen by the 5th dele-
103 gate district shall, for the first three terms by a resident of
104 Randolph, and for the fourth term of Tucker county. And the
105 delegate to be chosen by the 6th delegate district shall for
106 the first term to be a resident of Raleigh, for the second term
107 of Wyoming, for the third term of Raleigh, for the fourth
108 term of Wyoming, and for the fifth term of McDowell coun-
109 ty—and so, in each case, in rotation.

110 12. Until a new apportionment be declared, the appor-
111 tionment of delegates to the counties not included in dele-
112 gate districts shall be as follows:

113 To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge,
114 Fayette, Hancock, Jackson, Lewis, Logan, Mason, Mercer,
115 Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne,
116 Wetzel and Wirt counties, one delegate each.

117 To Harrison, Kanawha, Marion, Marshall, Monongalia, and
118 Preston counties, two delegates each.

119 To Ohio county, three delegates.

120 To Greenbrier and Monroe counties together, three dele-
121 gates; of whom, for the first term, two shall be residents of
122 Greenbrier, and one of Monroe county; and for the second
123 term, two shall be residents of Monroe and one of Green-
124 brier county; and so in rotation.

125 13. If the counties of Pendleton, Hardy, Hampshire and
126 Morgan become part of this State, they shall, until the next
127 apportionment, constitute the tenth senatorial district, and
128 choose two senators. And if the counties of Frederick,
129 Berkeley and Jefferson become part of the State, they shall,
130 until the next apportionment, constitute the eleventh sena-
131 torial district and choose two senators. And the number of
132 the senate shall be, in the first case, twenty, and in the last
133 twenty-two, instead of eighteen.

134 14. If the seven last named counties become part of this
135 State, the apportionment of delegates to the same, shall,
136 until the next apportionment, be as follows: To Pendleton
137 and Hardy, one each; to Hampshire, Frederick and Jefferson
138 two each; and the counties of Morgan and Berkeley
139 shall form the seventh delegate district, and choose two
140 delegates; of whom, for the first term, one shall be a resi-
141 dent of Berkeley and the other of Morgan county; and for
142 the second term, both shall be residents of Berkeley county,
143 and so in rotation.

144 But if the counties of Pendleton, Hardy, Hampshire and
145 Morgan become part of this State, and Frederick, Berkeley
146 and Jefferson do not, then Pendleton, Hardy, and Morgan
147 counties shall each choose one delegate, and Hampshire two,
148 until the next apportionment.

149 The number of the house of delegates shall, instead of
150 forty-seven, be in the first case, fifty-seven, and in the last
151 case, fifty-two.

152 15. The arrangement of the senatorial and delegate dis-
153 tricts and apportionment of delegates shall hereafter be de-
154 clared by law, as soon as possible after each succeeding cen-
155 sus taken by authority of the United States. When so de-
156 clared, they shall apply to the first general election for mem-
157 bers of the legislature to be thereafter held, and shall con-
158 tinue in force, unchanged, until such districts be altered, and
159 delegates be apportioned under the succeeding census.

160 16. No new county shall be formed having an area of less
161 than four hundred and fifty square miles. Nor shall a new
162 county be formed if another county be thereby reduced be-
163 low that area; or if any territory be thereby taken from a
164 county containing less than four hundred and fifty square
165 miles.

166 And no new county shall be formed containing a white
167 population of less than four thousand. Nor shall a new
168 county be formed if the white population of another county

169 be thereby reduced below that number; or if any county
170 containing less than four thousand white inhabitants be there-
171 by reduced in area. But the legislature may, at any time,
172 include any county containing less than four thousand white
173 inhabitants within an adjoining county or counties as part
174 thereof.

175 17. Additional territory may be admitted into and become
176 part of this State, with the consent of the Legislature there-
177 of. And in such case, the legislature shall provide by law
178 for the representation of the white inhabitants thereof in
179 the senate and house of delegates, in conformity with the
180 principles set forth in this Constitution. And the number
181 of members of which each branch of the legislature is to
182 consist, shall thereafter be increased by the representation as-
183 signed to such additional territory.

184 18. The legislature shall have power to provide for a
185 registry of voters, and to prescribe the manner of conducting
186 and making returns of elections, and of determining con-
187 tested elections. They shall have power to pass all laws
188 necessary or proper to prevent intimidation, disorder or vio-
189 lence at elections, or corruption or fraud in voting.

190 19. No person shall be a senator who shall not have at-
191 tained to the age of twenty-five years; or who shall not have
192 resided within the senatorial district for which he was chosen
193 two years next preceding his election. And no person shall
194 be a delegate who was not, at the time of his election, en-
195 titled to vote in the delegate district or county for which he
196 was chosen.

197 Nor shall any person holding an office of profit under this
198 State or the United States be a member of either branch of
199 the legislature.

200 No person who may have collected, or been entrusted with
201 public money, whether state, county, township or municipal,
202 shall be eligible to the legislature, or to any office of honor,
203 trust or profit, under this State, until he shall have duly ac-
204 counted for and paid over such money according to law.

205 If a senator or delegate remove from the district or
206 county, for which he was chosen, his office shall be thereby
207 vacated.

208 20. Any citizen of this State, who shall, after the adop-
209 tion of this Constitution, either in or out of the State, fight a
210 duel with deadly weapons, or send or accept a challenge so
211 to do; or who shall act as second, or knowingly aid or assist
212 in such duel, shall ever thereafter be incapable of holding
213 any office of honor, trust or profit under this State.

214 21. The legislature shall meet once in every year, and
215 not oftener, unless convened by the governor. Unless ano-
216 ther time be prescribed by law, the regular session shall begin
217 on the third Tuesday of January.

218 22. The governor may convene the legislature by proc-

219 lamation, whenever, in his opinion, the public safety or wel-
220 fare shall require it. It shall be his duty to convene them,
221 on application of a majority of members elected to each
222 branch.

223 23. The seat of government shall be at the city of Wheel-
224 ing, until the legislature shall establish a permanent seat of
225 government by law.

226 24. When, by reason of war, insurrection, contagious or
227 epidemic diseases, or for other cause, the legislature, in the
228 opinion of the governor, cannot safely meet at the seat of
229 government, the governor, by proclamation, may convene
230 them at another place.

231 25. No session of the legislature, after the first, shall
232 continue longer than forty-five days, without the concurrence
233 of three-fifths of the members elected to each branch.

234 26. Neither branch, during the session shall adjourn for
235 more than two days, without the consent of the other. Nor
236 shall either, without the consent of the other, adjourn to any
237 other place than that in which the legislature is then sitting.

238 27. Each branch shall be the judge of the elections, quali-
239 fications and returns of its own members.

240 28. A majority of each branch shall constitute a quorum
241 to do business. But a smaller number may adjourn from
242 day to day, and compel the attendance of absent members in
243 such manner as shall be prescribed by law.

244 29. The senate shall choose from their own body a presi-
245 dent, and the house of delegates one of their own number as
246 speaker. Each branch shall appoint its own officers and re-
247 move them at pleasure; and shall determine its own rules of
248 proceeding.

249 30. Each branch may punish its own members for disor-
250 derly behavior; and, with the concurrence of two-thirds of
251 the members present, expel a member, but not a second time
252 for the same offense.

253 31. Each branch shall have the power necessary to pro-
254 vide for its own safety, and the undisturbed transaction of its
255 own business, and may punish, by imprisonment, any person,
256 not a member, for disrespectful behavior in its presence; for
257 obstructing any of its proceedings, or any of its officers in the
258 discharge of his duties; or for any assault, threatening or
259 abuse of a member for words spoken in debate. But such
260 imprisonment shall cease at the termination of the session,
261 and shall not prevent the punishment of any offense by the or-
262 dinary course of law.

263 32. For words spoken in debate, or any report, motion or
264 proposition made, in either branch, a member shall not be
265 questioned in any other place.

266 33. Members of the legislature shall, in all cases, except
267 treason, felony, and breach of the peace, be privileged from
268 arrest during the session, and for ten days before and after the
269 same.

270 34. Senators and delegates shall receive for their services
271 a compensation not exceeding three dollars a day during
272 the session of the legislature, and also ten cents for every
273 mile they shall travel in going to and returning from the
274 place of meeting, on the most direct route. The president
275 of the senate and speaker of the house of delegates shall,
276 respectively, receive an additional compensation of two dol-
277 lars a day.

278 35. Bills and resolutions may originate in either branch,
279 to be approved, amended or rejected by the other.

280 36. No bill shall become a law until it has been fully and
281 distinctly read, on three different days, in each branch; un-
282 less in cases of urgency, three-fourths of the members pres-
283 ent dispense with this rule.

284 37. No law shall embrace more than one object, which
285 shall be expressed in its title.

286 38. On the passage of every bill, the vote shall be taken by
287 yeas and nays, and be entered on the journal; and no bill
288 shall be passed by either branch without the affirmative vote
289 of a majority of the members elected thereto.

290 39. The presiding officers of each branch shall sign, prior
291 to adjournment, all bills and joint resolutions passed by the
292 legislature.

293 40. Each branch shall keep a journal of its proceedings,
294 and cause the same to be published from time to time; and
295 the yeas and nays on any question, if called for by one-fifth
296 of those present, shall be entered on the journal.

297 41. The legislature, in cases not provided for in this Con-
298 stitution, shall prescribe by general laws the terms of office,
299 powers, duties and compensation of all public officers and
300 agents, and the manner in which they shall be elected, ap-
301 pointed and removed. They shall provide, by general laws,
302 for the removal of officers, by impeachment or otherwise.

303 42. No extra compensation shall be granted or allowed by
304 the legislature to any public officer, agent or contractor, af-
305 ter the services shall have been rendered, or the contract en-
306 tered into. Nor shall the salary or compensation of any
307 public officer be increased or diminished during his term of
308 office.

309 43. Any officer of the State may be impeached for mal-
310 administration, corruption, incompetency, neglect of duty or
311 any high crime or misdemeanor.

312 The house of delegates shall have the sole power of impeach-
313 ment. The senate shall have the sole power to try impeach-
314 ments. When sitting for that purpose, the senators shall be
315 on oath or affirmation; and no person shall be convicted with-
316 out the concurrence of two-thirds of the members present.

317 Judgment in case of impeachment shall not extend further
318 than to removal from office, and disqualification to hold any
319 office of honor, trust or profit under the State; but the party
320 convicted shall, nevertheless, be liable and subject to indict-

321 ment, trial, judgment and punishment according to law.
322 The senate may sit during the recess of the legislature
323 for the trial of impeachments.

324 44. No act to incorporate any joint stock company, or to
325 confer additional privileges on the same, shall be passed, un-
326 less public notice of the intended application for such act be
327 given under such regulations as shall be prescribed by law.

328 45. No man shall be compelled to frequent or support any
329 religious worship, place or ministry whatsoever; nor shall any
330 man be enforced, restrained, molested or burthened in his
331 body or goods, or otherwise suffer on account of his religious
332 opinions or belief; but all men shall be free to profess, and
333 by argument to maintain, their opinions in matters of religion;
334 and the same shall in no wise affect, diminish or enlarge
335 their civil capacities. And the legislature shall not pre-
336 scribe any religious test whatever; or confer any peculiar
337 privileges or advantages on any sect or denomination; or
338 pass any law requiring or authorizing any religious society,
339 or the people of any district within this State, to levy on
340 themselves or others, any tax for the erection or repair of any
341 house for public worship, or for the support of any church or
342 ministry; but it shall be left free to every person to select
343 his religious instructor, and to make, for his support, such pri-
344 vate contract as he shall please.

345 46. The legislature shall not grant a charter of incor-
346 poration to any church or religious denomination; but
347 may provide by general laws for securing the title of church
348 property so that it shall be held and used for the purposes
349 intended.

350 47. The legislature shall confer on the courts the power to
351 grant divorces, change the names of persons, and direct the
352 sales of estates belonging to infants and other persons under
353 legal disabilities; but shall not, by special legislation, grant
354 relief in such cases.

355 48. The legislature shall pass laws to protect the property
356 of the wife against the acts and debts of the husband.

357 49. No Convention shall be called, having authority to
358 alter the Constitution of the State, unless it be in pursuance
359 of a law passed by the affirmative vote of a majority of the
360 members elected to each branch of the legislature, and pro-
361 viding that polls shall be held throughout the State, on some
362 day therein specified, which shall be not less than three
363 months after the passage of such law, for the purpose of
364 taking the sense of the voters on the question of calling a
365 Convention. And such Convention shall not be held unless
366 a majority of the votes cast at such polls be in favor of call-
367 ing the same; nor shall members be elected to such Conven-
368 tion, until at least one month after the result of the polls
369 shall be duly ascertained, declared and published. And all
370 acts and ordinances of said Convention shall be submitted
371 to the voters of the State for ratification, or rejection, and

372 shall have no validity whatever until they are ratified, and in
373 no event shall they by any shift or device, be made to have
374 any retrospective operation or effect.

375 50. And amendment to the Constitution of the State may
376 be proposed in either branch of the legislature; and if the
377 same, being read on three several days in each branch, be
378 agreed to, on its third reading, by a majority of the members
379 elected thereto, the proposed amendment, with the yeas and
380 nays thereon, shall be entered on the journals, and referred
381 to the legislature at the first session to be held after the
382 next general election; and shall be published, at least three
383 months before such election, in some newspaper in every
384 county in which a newspaper is printed. And if the pro-
385 posed amendment be agreed to, during such session, by a
386 majority of the members elected to each branch, it shall be
387 the duty of the legislature to provide by law for submitting
388 the same to the voters of the State, for ratification or rejec-
389 tion. And if a majority of the qualified voters, voting upon
390 the question, at the polls held pursuant to such law, ratify the
391 proposed amendment, it shall be in force, from the time of
392 such ratification, as part of the Constitution of the State.
393 If two or more amendments be submitted at the same time
394 to the voters of the State, they shall be submitted in such
395 manner that the vote on the ratification or rejection thereof
396 shall be taken on each of the proposed amendments separate-
397 ly.

398 51. The legislature may make laws regulating or prohib-
399 iting the sale of intoxicating liquors within the limits of this
400 State.

401 52. The legislature shall pass general laws whereby any
402 number of persons associated for mining, manufacturing,
403 insuring, or other purpose useful to the public, excepting
404 banks of circulation and the construction of works of inter-
405 nal improvement, may become a corporation, on complying
406 with the terms and conditions thereby prescribed; and no
407 special act incorporating, or granting peculiar privileges to
408 any joint stock company or association, not having in view
409 the issuing of bills to circulate as money or the construction
410 of some work of internal improvement, shall be passed, ex-
411 cept where the object cannot be attained under such general
412 laws. But no company or association, authorized by this
413 section, shall issue bills to circulate as money. And no
414 charter of incorporation shall be granted under such gen-
415 eral laws, unless the right be reserved to alter or amend the
416 same at the pleasure of the legislature, to be declared by
417 general laws.

418 53. The whole number of members to which the State may
419 at any time be entitled in the House of Representatives of
420 the United States, shall be apportioned as nearly as may be
421 among the several counties of the State, according to their
422 respective numbers; which shall be determined by adding to

423 the whole number of free persons, including those bound to
424 service for a term of years, and excluding Indians not taxed,
425 three-fifths of all other persons.

426 54. In the apportionment, the State shall be divided into
427 districts, corresponding in number with the representatives to
428 which it may be entitled in the House of Representatives of
429 the Congress of the United States, which shall be formed
430 respectively of contiguous counties, be compact, and include,
431 as nearly as may be, an equal number of the population,
432 upon which is based representation in the House of Repre-
433 sentatives of the United States.

Upon the reading of the report, Mr. Dille moved to amend in line 2 by striking out "delegates" and substituting "representatives." The motion was not agreed to.

Mr. Lamb moved to amend the second section by striking out all *after the word "year," in the 10th line to the end of the sentence, which motion was adopted.

And, on motion of Mr. Lamb, the last sentence of the 2nd section was stricken out.

Mr. Stuart of Doddridge, moved to strike out the words "or otherwise," in the 34th line, which was disagreed to.

Mr. Irvine moved to amend the 86th line, by inserting after the word "Gilmer," the word "Wirt," and the 88th line by inserting after the word "1st," the words "and 2nd," and the 89th line, by inserting after the word "shall," the word "each," and strike out "five," and insert "four."

Pending the consideration of which, the Convention, at the usual hour, took a recess.

3 O'CLOCK, P. M.

The Convention reassembled.

The amendment of Mr. Irvine, pending when the Convention took a recess, was rejected.

Mr. Hoback moved to amend by striking out of the 88th line the word "McDowell," which was disagreed to.

*See note Vol. II, page 219.

Mr. Stephenson of Clay, moved to strike out the whole of the 1st section, and upon this question the yeas and nays were demanded, and the demand being sustained, the motion was disagreed to—yeas 17, nays 22.

And, on motion of Mr. Stephenson of Clay, the vote was recorded, as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Cook, Haymond, Hoback, Hagar, Irvine, Lamb, Montague, Powell, Robinson, Ryan, Stephenson of Clay, Soper, Walker, Warder, Wilson—17.

NAYS—Messrs. Brown of Preston, Brumfield, Chapman, Caldwell, Carskadon, Dering, Dille, Dolly, Hubbs, Hervey, Lauck, Montague, Parsons, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Smith, Taylor, Trainer, Van Winkle—22.

Mr. Hoback moved to strike out all after the word "county," in the 104th line, to the end of the 109th line, which was rejected.

Mr. Stephenson of Clay, moved to strike out the third sentence of the 11th section, which was disagreed to.

Mr. Lauck moved to amend the 119th line so as to require the city of Wheeling to elect two delegates, and the county of Ohio one delegate, which was decided in the negative.

On motion of Mr. Lamb the 16th section was transferred to the report of the Committee on County Organization.

Mr. Brown of Kanawha, moved to strike out the 18th section, which was disagreed to.

By general consent the word "two," in the 193rd line, was stricken out and the word "one" inserted.

Mr. Lamb moved to amend the 18th section by striking out all after the word "Ohio," in the 194th line, to the word "the" in the 195th line, and insert in the blank the words "shall not have resided within," and to add, at the end of the section, the following: "one year next preceeding his election."

Mr. Brown of Kanawha, moved to insert after the word "United States," in the 198th line, the following: "any minister or priest of a religious denomination; any salaried officer of a banking corporation or company."

A division being called for, the yeas and nays were demanded upon inserting the words "any minister or priest of a religious denomination," which being sustained the amendment was rejected—yeas 16, nays 28.

And, on motion of Mr. Brown of Kanawha, the vote was recorded as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Brumfield, Caldwell, Carskadon, Dering, Dille, Harrison, Hubbs, Hoback, Irvine, Montague, O'Brien, Sinsel, Stephenson of Clay, Warder—16.

NAYS—Messrs. Brooks, Chapman, Cook, Dolly, Hansley, Haymond, Hervey, Hagar, Lamb, Lauck, McCutchen, Parsons, Powell, Parker, Paxton, Pomeroy, Ryan, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Taylor, Trainer, Van Winkle, Walker, Wilson—28.

The question then being upon inserting the words "any salaried officer of a banking corporation or company," the yeas and nays were demanded, and the demand receiving a second, the amendment was rejected—yeas 12, nays 29.

And, on motion of Mr. Brown of Kanawha, the vote was recorded as follows:

YEAS—Messrs. Brown of Kanawha, Brumfield, Caldwell, Carskadon, Dering, Dille, Hoback, Montague, O'Brien, Sinsel, Stephenson of Clay, Taylor—12.

NAYS—Messrs. John Hall (President), Brown of Preston, Brooks, Chapman, Dolly, Haymond, Hubbs, Hervey, Hagar, Irvine, Lauck, McCutchen, Parsons, Powell, Parker, Paxton, Pomeroy, Ryan, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Trainer, Van Winkle, Walker, Warder, Wilson—29.

Mr. Powell moved to add after the word "profit," in the 213th line, the words "or of exercising the right of suffrage in this State," which was disagreed to.

Mr. Stevenson of Wood moved to strike out the word "city of Wheeling," in the 223rd line, and insert "town of Parkersburg."

Mr. Sinsel moved to amend the amendment by inserting "town of Grafton."

Mr. Harrison asked for a division; and the question being first put upon striking out, it was determined in the negative.

And, on motion of Mr. Trainer, the Convention adjourned.

* * * * *

L. SATURDAY, FEBRUARY 8, 1862.

*The Convention met at the usual hour, and after prayer by the Rev. Mr. Powell, the journal was read and approved.

The Convention then resumed consideration of the report of the Committee on the Legislative Department, on second reading.

*Mr. Hervey moved to amend the 233rd line by adding at the end thereof the following: "but such extension shall not exceed thirty days."

Mr. Brown, of Kanawha, moved to substitute the following for the amendment of Mr. Hervey: strike out the word "three-fifths" and insert "three-fourths," and the question being upon the substitute it was decided in the affirmative.

Mr. Walker moved to strike out the word "three," in the 271st line, and insert "four," which was disagreed to—yeas 12, nays 32.

And, on motion of Mr. Powell, the vote was recorded as follows:

*See note Vol. II, page 219.

YEAS—Messrs. John Hall (President), Battelle, Cook, Haymond, Hervey, Hoback, Lamb, Parker, Robinson, Sinsel, Simmons, Walker—12.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Chapman, Carskadon, Dering, Dille, Dolly, Hansley, Harrison, Hubbs, Hagar, Irvine, Lauck, Montague, Mahon, McCutchen, O'Brien, Powell, Pomeroy, Ryan, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Taylor, Van Winkle, Warder, Wilson—32.

Mr. Van Winkle moved to strike out the word "three," in the 271st line, and insert "two."

Mr. Brown, of Preston, asked for a division of the question, and the question being first upon striking out, the yeas and nays were demanded, which demand being sustained, the motion was rejected—yeas 11, nays 34.

And, on motion of Mr. Brown, of Preston, the vote was recorded as follows:

YEAS—Messrs. John Hall (President), Cook, Harrison, Hoback, Hagar, Ryan, Stephenson of Clay, Stuart of Doddridge, Van Winkle, Walker, Wilson—11.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Battelle, Chapman, Caldwell, Carskadon, Dering, Dille, Dolly, Hansley, Haymond, Hubbs, Hervey, Irvine, Lauck, Lamb, Montague, Mahon, McCutchen, O'Brien, Powell, Parker, Pomeroy, Robinson, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Taylor, Warder—34.

Mr. Irvine moved to amend the 284th line by inserting, after the word "object," the following: "unless the objects are so connected that they cannot be conveniently separated," and, after the word "which," the following: "object or objects."

Mr. Lamb moved to amend the amendment by striking out the whole of the 37th section, which motion was decided in the negative.

Mr. Brown, of Kanawha, moved to amend the amendment by substituting the following for the 37th section:

"But one object ought to be included in any legislative act, and that object ought to be stated in the title."

And the question being upon this substitute, it was rejected.

Mr. Irvine's amendment was then rejected.

Mr. Van Winkle moved to amend the 287th line by inserting, after the word "bill," the words "creating a debt, appropriating money, or repealing or altering a public act," which was disagreed to.

On motion of Mr. Van Winkle, the 45th section was transferred to the report of the Committee on Fundamental and General Provisions.

Mr. Van Winkle moved to strike out the first clause of the 46th section, which motion was rejected.

Mr. Dolly, moved to amend the 355th line by striking out "shall" and inserting "may," and the motion was adopted.

Mr. Stuart, of Doddridge, moved to strike out the 48th section, and the question being put the motion was agreed to.

Mr. Van Winkle moved to amend the 382nd line by striking out the word "three" and inserting "one."

Mr. Irvine moved to amend the amendment by inserting "two" instead of "one."

Mr. Lamb moved that the motion be divided; and the question being, first, upon striking out of the word "three," it was decided in the negative.

Mr. Brown, of Kanawha, moved to amend the 383d line by striking out the words "in every county in which a newspaper is printed," and insert the words "printed at the capital."

Mr. Dering moved to amend the amendment by inserting "printed in one newspaper in each senatorial district."

A division being called for, the question was first put upon striking out, which was decided in the negative.

Mr. Ryan moved to strike out the word "may," in the 398th line, and insert "shall," which was disagreed to.

Mr. Lamb moved to strike out the 51st section, which was rejected.

Mr. Van Winkle moved to amend the 411th line by striking out the words "except where the object cannot be attained under such general laws," and the question being put, was decided in the affirmative.

Mr. Lamb moved to strike out the words "the same," in the 416th line, and insert "such charter," which was agreed to.

And the question then recurring upon the adoption of the whole report of the Committee on the Legislative Department, as amended, it was determined in the affirmative.

Mr. Van Winkle then moved that the report of the Committee on Fundamental and General Provisions be printed, as amended, which was agreed to.

And, on motion of Mr. Van Winkle, the Convention adjourned.

* * * * *

LI. MONDAY, FEBRUARY 10, 1862.

*The Convention met at 9 o'clock, A. M.

Prayer by Rev. Mr. Hagar, after which the journal of the preceding day was read and approved.

Mr. Van Winkle submitted propositions for the schedule, which were referred to the committee on that subject.

Mr. Van Winkle then offered the following resolutions: 1. Resolved, As the opinion of this Convention,

*See note Vol. II, page 219.

That if the Legislature of the State of Virginia shall, at its present sessions, pass an act giving the consent of the said legislature to the formation and erection of the proposed new State within the present jurisdiction of the State of Virginia, but suspending the operation of the said act until the governor of the said state shall by proclamation declare that the people residing within the limits of the proposed new State have adopted the Constitution to be proposed by this Convention in the manner therein set forth, such consent would, upon the issuing of the said proclamation, be, to all intents and purposes, the consent of the legislature required by the third section of the fourth article of the Constitution of the United States.

2. Resolved, That the said legislature is hereby respectfully requested to give its consent to the formation and erection of the proposed new State in the manner indicated in the foregoing resolution at its present session; and to provide for the submission of the said Constitution to the voters residing within the proposed limits of the said new State for their adoption or rejection on the day and in the manner therein set forth, requiring the Governor, within days thereafter to issue his proclamation declaring the result of said election and the adoption or rejection of the said Constitution, as the case may be; and in the event of its adoption to transmit to Congress authenticated copies of the said Constitution, of the act giving the consent of the legislature, and of the proclamation of the governor.

3. Resolved, That the Committee on the Schedule is hereby instructed to report a suitable provision to be inserted therein, providing that in event of the formation and erection of the proposed new State, the whole cost of this Convention, including the election of its members, the submission of the Constitution to the people, and all other expenses attending the premises shall be refunded to the State of Virginia.

4. Resolved, That the said legislature is hereby further requested to make such additional appropriation as may be necessary to defray the expenses incurred and to be incurred by this Convention, and in submitting the

said Constitution to the people, and transmitting the same to Congress.

5. Resolved, That the Committee on Printing and Expenditures report a revised estimate of the amount required to defray the expenses of the Convention, based upon the contemplated adjournment on the 19th instant, showing the amount required to pay the additional members admitted since their last estimate, the cost of printing and distributing 5,000 copies of the Constitution in pamphlet form, and the amount already appropriated by the legislature.

6. Resolved, That the president be requested to transmit a copy of the foregoing resolutions, and of the estimate of the Committee on Printing, etc., to the legislature.

On motion of Mr. Van Winkle, all the foregoing resolutions except the 5th, were laid on the table and ordered to be printed.

And the question being upon the adoption of the 5th resolution,

Mr. Dering moved to amend the same by inserting "10,000" in lieu of "3,000," which was disagreed to.

Mr. Lamb moved to amend the same by inserting "5,000" instead of "3,000," which was adopted.

And the resolution, as amended, was adopted.

On motion of Mr. Stevenson, of Wood, the report of the Committee on the Executive Department was taken up on its second reading.

Following is the amended report, now taken up for consideration:

REPORT OF THE COMMITTEE ON THE EXECUTIVE DEPARTMENT.

As Amended by the Convention.

1 1. The chief executive power of this State shall be vested in a governor. He shall hold his office for the term of two
2 ed in a governor. He shall hold his office for the term of two
3 years, to commence on the day of next succeeding his

4 election. The person acting as governor shall not be elected
5 or appointed to any other office during his term of service.

6 2. No person shall be elected governor unless he has atta-
7 ined the age of thirty years, and has resided in this State
8 for five years next preceeding his election.

9 3. The governor shall reside at the seat of government;
10 shall receive two thousand dollars for each year of his service,
11 and during his continuance in office shall receive no other
12 emolument from this or any other government.

13 4. The governor shall be commander-in-chief of the mili-
14 tary forces of the State; shall have power to call out the mili-
15 tia to repel invasion, suppress insurrection and enforce the ex-
16 ecution of the laws; shall conduct in person, or in such man-
17 ner as may be prescribed by law, all intercourse with other
18 and foreign states; and during the recess of the legislature
19 shall fill temporarily all vacancies in office, not otherwise pro-
20 vided for, by commissions to expire at the end of thirty days
21 after the commencement of the succeeding session of the Leg-
22 islature. He shall take care that the laws be faithfully execu-
23 ted; communicate to the legislature at each session thereof
24 the condition of the State; recommend to the consideration of
25 the members such measures as he may deem expedient; and
26 convene the legislature in extra session when in his opinion,
27 the interest of the State may require it. He shall have
28 power to remit fines and penalties in such cases, and under
29 such regulations as may be prescribed by law; to commute
30 capital punishment, and, except when the prosecution has been
31 carried on by the house of delegates, to grant reprieves and
32 pardons, after conviction, but he shall communicate to the
33 legislature, at each session, the particulars of every case of
34 fine or penalty remitted, of punishment commuted, and of re-
35 prieve or pardon granted, with his reasons for remitting, com-
36 muting or granting the same.

37 5. The governor may require information in writing from
38 the officers of the executive department, upon any subject
39 pertaining to their respective offices, and also the opinion, in
40 writing, of the attorney general upon any question of law
41 relating to the business of the executive department.

42 6. Returns of the election of governor shall be made in the
43 manner and by the persons designated by the legislature, to
44 the secretary of the state, who shall deliver them to the
45 speaker of the house of delegates on the first day of the
46 next session of the legislature, who shall, within ten days
47 thereafter, in the presence of a majority of each house of the
48 legislature, open the said returns, when the votes shall be
49 counted. The person having the highest number of votes, if
50 duly qualified, shall be declared elected; but if two or more
51 shall have the highest and an equal number of votes, one of
52 them shall thereupon be chosen governor by the joint vote of
53 the two houses. Contested elections for governor shall be

54 decided by a like vote, and the mode of proceeding in such
55 cases shall be prescribed by law.

56 7. In case of the removal of the governor from office, or of
57 his death, failure to qualify within the time prescribed by
58 law, resignation, removal from the seat of government, or in-
59 ability to discharge the duties of the office, the said office, with
60 its compensation, duties and authority, shall devolve upon the
61 president of the senate, and in case of his inability, or failure
62 from any cause to act, on the speaker of the house of dele-
63 gates; and the legislature shall provide by law for the dis-
64 charge of the executive functions in other necessary cases.

65 8. A secretary of the state, who shall receive a salary of
66 thirteen hundred dollars per annum; a treasurer, who shall
67 receive a salary of fourteen hundred dollars per annum; and
68 an auditor, who shall receive a salary of fifteen hundred dol-
69 lars per annum, shall be elected at the same time, and for the
70 same term as the governor. Their duties, and the mode of
71 making returns of their election, shall be prescribed by the
72 legislature.

73 9. The legislature shall have power to vest the manage-
74 ment and control of the works of internal improvement of the
75 State, the disposition and investment of the fund arising there-
76 from or that may be created for that purpose, in the governor,
77 treasurer and auditor, and to prescribe their duties as a board
78 of public works.

79 10. The legislature shall have power to provide for the or-
80 ganization of the militia and the appointment of militia officers;
81 but the governor shall nominate, and by and with the con-
82 sent and advice of the senate appoint, all military officers
83 above the rank of colonel."

*And, on motion of Mr. Lamb, the blank in the third
line was filled with the words "fourth day of March."

Mr. Lamb moved to amend the 18th line by striking
out the words "and foreign," which was agreed to.

Mr. Brown of Kanawha moved to amend the 20th
line by inserting, after the word "for," the words "by this
Constitution, or by the legislature," which motion was de-
cided in the affirmative.

On motion of Mr. Stevenson of Wood, the word
"otherwise," in the 19th line was stricken out.

Mr. Ryan moved to amend the 68th line by striking
out "fifteen hundred," and inserting "sixteen hundred."

Mr. Powell asked for a division, and the question be-
ing put upon striking out, it was decided in the negative.

Mr. Stuart of Doddridge moved to transpose the sal-

aries of the secretary of the state and the treasurer, in the 8th section, which was disagreed to.

Mr. Battelle moved to amend the 8th section by striking out all fixing the salaries of the different officers named therein, and inserting, after the word "duties," in the 70th line, the word "compensation," and the question being, first, upon the striking out, it was decided in the negative.

On motion of Mr. Harrison, the word "legislature," in the 72nd line, was stricken out and the word "law" inserted.

On motion of Mr. Lamb, the whole of the 9th section was stricken out.

Mr. Harrison moved to strike out all the 10th section to the words "the governor," in the 81st line, which was agreed to.

And on motion of Mr. Dering, the report, as amended, was adopted.

On motion of Mr. Harrison, the report of the Committee on the Judiciary Department was taken up on its second reading.

Following is the amended report, now taken up for consideration:

REPORT OF THE COMMITTEE ON THE JUDICIARY DEPARTMENT.

(As Amended by the Convention)

- 1 1. The judicial power of the State shall be vested in a Su-
2 preme Court of Appeals and circuit courts, and such other
3 inferior tribunals as are herein authorized. The jurisdiction of
4 these courts, and the judges thereof, except so far as the
5 same is conferred by this Constitution, shall be prescribed by
6 law.
- 7 2. The State shall be divided into nine circuits, as follows:
8 3. The counties of Hancock, Brooke, Ohio and Marshall
9 shall constitute the first circuit.
- 10 4. The counties of Monongalia, Preston, Tucker and Taylor
11 shall constitute the second circuit.
- 12 5. The counties of Marion, Harrison and Barbour shall
13 constitute the third circuit.
- 14 6. The counties of Wetzel, Tyler, Pleasants, Ritchie, Dod-
15 dridge and Gilmer shall constitute the fourth circuit.
- 16 7. The counties of Randolph, Upshur, Lewis, Braxton,
17 Webster and Nicholas shall constitute the fifth circuit.

18 8. The counties of Wood, Wirt, Calhoun, Roane, Jackson
19 and Clay shall constitute the sixth circuit.

20 9. The counties of Kanawha, Mason, Putnam and Fayette
21 shall constitute the seventh circuit.

22 10. The counties of Cabell, Wayne, Boone, Logan, Wyoming
23 and Raleigh shall constitute the eighth circuit.

24 11. The counties of Pocahontas, Greenbrier, Monroe,
25 Mercer and McDowell shall constitute the ninth circuit.

26 12. And in the event that the counties of Pendleton, Hardy,
27 Hampshire and Morgan become a part of the State, then they
28 shall constitute another circuit, to be called the tenth circuit.

29 13. And in the event that the counties of Frederick, Berk-
30 ley and Jefferson become a part of the State, then they shall
31 constitute another circuit, to be called the eleventh circuit.

32 14. The legislature may, from time to time, re-arrange the
33 said circuits; and after the expiration of five years from the
34 time when this Constitution shall go into operation and there-
35 after, at periods of ten years, may increase or diminish the
36 number of circuits or the number of courts in a year, as
37 necessity may require.

CIRCUIT COURTS.

39 15. For each circuit a judge shall be elected by the voters
40 thereof, who shall hold his office for the term of six years,
41 unless sooner removed in the manner prescribed by this Con-
42 stitution. He shall, at the time of his election, be, at least,
43 thirty-five years of age. During his continuance in office, he
44 shall reside in the circuit of which he is judge.

45 16. A circuit court shall be held at least four times a year,
46 unless otherwise provided by law, made in pursuance of sec-
47 tion 3rd, by the judge of each circuit, in every county wherein
48 a circuit court is hereby, or may hereafter be, established.
49 But the judges may be required or authorized to hold the
50 courts of their respective circuits alternately, and a judge of
51 one circuit to hold a court in any other circuit.

52 17. The circuit courts shall have the supervision and con-
53 trol of all inferior tribunals, by *mandamus*, *prohibition* or
54 *certiorari*. They shall also, except in cases confided exclu-
55 sively by this Constitution to some other tribunal, have origi-
56 nal and general jurisdiction of all matters whatsoever at law,
57 where the amount in controversy exclusive of costs exceeds
58 twenty dollars, and of all cases in equity, and of all crimes
59 and misdemeanors. They shall also have appellate jurisdic-
60 tion in all cases civil and criminal, where an appeal, writ of
61 error or supercedeas may be allowed to the judgment or pro-
62 ceedings of any inferior tribunal. And they shall also have
63 such other jurisdiction, whether supervisory, original, appel-
late

64 or concurrent as may be prescribed by law.

SUPREME COURT OF APPEALS.

65 18. The Supreme Court of Appeals shall consist of three
66 judges, any two of whom shall be a quorum. They shall be
67 elected by the voters of the State, and shall, at the time of
68 their election, be, at least, thirty-five years of age. They
69 shall hold their offices for the term of twelve years, unless
70 sooner removed in the manner prescribed by this Constitution.
71 Of the judges first elected, one to be designated by lot in such
72 manner as they shall determine, shall hold his office for four
73 years, another to be designated in like manner for eight years,
74 and the third for twelve years, so that thereafter one shall be
75 elected every four years.

76 19. The Supreme Court of Appeals shall have original
77 jurisdiction in cases of *habeas corpus*, *mandamus* and *prohibi-*
78 *tion*. It shall have appellate jurisdiction in civil cases where
79 the matter in controversy, exclusive of costs, is of greater
80 value or amount than two hundred dollars, and in controver-
81 sies concerning the title or boundaries of land, the probate of
82 will, the appointment or qualification of a personal represen-
83 tative, guardian, committee, or curator; or, concerning a mill,
84 road, way, ferry, or landing, or the right of a corporation or
85 a county to levy tolls or taxes; and also in cases of *habeas*
86 *corpus*, *mandamus* and *prohibition*, and cases involving free-
87 dom, or the constitutionality of a law. It shall have appel-
88 late jurisdiction in criminal cases wherever there has been a
89 conviction for felony or misdemeanor in a circuit court. It
90 shall have such other appellate jurisdiction in civil and crim-
91 inal cases as may be prescribed by law.

92 20. When a judgment or decree is reversed or affirmed by
93 the Supreme Court of Appeals, every point made and dis-
94 tinctly stated in writing in the cause and fairly arising upon
95 the record of the case, shall be considered and decided, and
96 the reasons therefor shall be concisely and briefly stated in
97 writing and preserved with the records of the case.

98 21. When any judge of the court of appeals is so situated
99 in regard to any case pending before it as to make it improper
100 for him to aid in the trial of the same, or is under any other
101 disability, the remaining judges may call to their assistance
102 a judge of the circuit court who shall act as a judge of the
103 court of appeals in the cases to which such disability re-
104 lates.

105 22. Judges shall be commissioned by the governor. The
106 salary of a judge of the Supreme Court of Appeals, shall
107 be two thousand dollars, and that of a judge of a circuit
108 court eighteen hundred dollars, per annum, and each shall
109 receive the same allowance for necessary travel as members
110 of the legislature.

111 23. No judge, during his term of service, shall hold any
112 other office, appointment or public trust, under this or any
113 other government, and the acceptance thereof shall vacate

116 his judicial office; nor shall he, during his continuance in of-
117 fice, be eligible to any political office.

118 24. Judges may be removed from office, by a concurrent
119 vote of both houses of the legislature, for malfeasance,
120 corruption, incompetency, neglect of duty, or on conviction
122 of any infamous offence; but a majority of all the members
123 elected to each house, must concur in such vote; and the
124 cause of removal shall be entered on the journal of each
125 house. The judge against whom the legislature may be
126 about to proceed, shall receive notice thereof, accompanied
127 by a copy of the causes alleged for his removal, at least
128 twenty days before the day on which either house of the
129 legislature shall act thereon.

130 25. The officers of the Supreme Court of Appeals, shall
132 be appointed by said court, or, by the judges thereof in
133 vacation. Their duties, compensation, and tenure of office,
134 shall be prescribed by law.

135 26. The voters of each county, in which a circuit court is
136 held, shall elect a clerk of said court, whose term of office
137 shall be four years. His duties and compensation, and the
138 mode of removing him from office, shall be prescribed by law;
139 and when a vacancy shall occur in said office, the judge of
140 the court held in the county where it occurs, shall appoint a
141 clerk, *pro tempore*, who shall discharge the duties of the
142 office until the vacancy is filled. In any case, or matter
143 arising, in respect to which the said clerk shall be so situated
144 as to make it improper for him to act as such, the said court
145 shall appoint a suitable person to act in his place.

146 27. At every regular election of a governor, an attorney
147 general shall be elected by the voters of the State. He
148 shall be commissioned by the governor, shall perform such
149 duties, and receive such compensation as may be prescribed
150 by law, and be removable in the same manner prescribed for
151 the removal of judges.

152 28. The legislature may establish courts of limited juris-
153 diction within any city of the State."

*Mr. Stevenson of Wood moved to amend the 58th line by striking out the word "twenty" and inserting the word "fifty."

Mr. Dille asked for a division and the question being first upon striking out, it was determined in the negative.

By general consent, the word "costs," in the 57th line, was stricken out, and the word "interest" inserted.

Mr. Powell moved to amend the 110th line by striking out the word "eighteen" and inserting "sixteen," and the question being, first, upon striking out, the yeas and nays were demanded, which demand being sustained, the

*See note Vol. II, page 219.

amendment was rejected—yeas 14, nays 23.

And, on motion of Mr. Stevenson of Wood, the vote was recorded, as follows:

YEAS—Messrs. Brown of Preston, Battelle, Dille, Dolly, Haymond, Hagar, Parsons, Powell, Ryan, Sinsel, Simmons, Stevenson of Wood, Soper, Wilson—14.

NAYS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Carskadon, Dering, Hansley, Harrison, Hervey, Irvine, Lamb, Montague, McCutchen, Parker, Robinson, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Smith, Taylor, Van Winkle, Walker, Warder—23.

Mr. Stuart of Doddridge, moved to amend the 116th line by striking out the words “continuance in,” and insert “term of,” which motion was rejected.

Mr. Stuart of Doddridge, moved to amend the 116th and 117th lines by striking out all after the words “judicial office,” which was disagreed to.

Mr. Dille moved to amend the 128th line by striking out the word “twenty” and insert “thirty,” which was rejected.

Mr. Dille moved to strike out the word “said” and insert “the,” in the 132nd line, which was agreed to.

Mr. Dille moved to amend the 137th line by striking out the word “four” and insert “six,” which was rejected.

Mr. Van Winkle moved to amend the 130th line by inserting, after the word “appeals” the words “and of the circuits,” which was disagreed to.

Mr. Stuart of Doddridge moved to strike out the words “such compensation as may be prescribed by law,” and insert “a salary of five hundred dollars per annum.”

Mr. Lamb asked for a division; and the question being upon striking out, it was put and decided in the negative.

And at the usual hour, the Convention took a recess.

3 O’CLOCK, P. M.

The Convention re-assembled.

Mr. Brown moved to amend the last line of said report by inserting after the word “city,” the words “or incorporated town,” which was agreed to.

The question then recurring upon the adoption of the whole report, as amended, it was put and decided in the affirmative.

And, on motion of Mr. Van Winkle, the Report of the Committee on Fundamental and General Provisions was taken up on its second reading.

Following is the report (as amended by the Convention,) now taken up for second reading:

REPORT OF THE COMMITTEE ON FUNDAMENTAL AND
GENERAL PROVISIONS,

As amended by the Convention.

- 1 1. The State of West Virginia shall be and remain one of
2 the United States of America. The Constitution of the
3 United States, and the laws and treaties made in pursuance
4 thereof, shall be the supreme law of the land.
- 5 2. Writs and commissions, issued under state authority,
6 shall run in the name of, and official bonds shall be made pay-
7 able to, The State of West Virginia. Laws shall be enacted in
8 the name of the State of West Virginia. Indictments shall
9 conclude "against the peace and dignity of the State of West
10 Virginia."
- 11 3. The powers of government reside in all the citizens of
12 the State, and can be rightfully exercised only in accordance
13 with their will and appointment.
- 14 4. The citizens of the State are the citizens of the United
15 States residing therein; but no person in the military, naval
16 or marine service of the United States shall be deemed a
17 resident of this State by reason of being stationed therein.
- 18 5. Every citizen of the State shall be entitled to equal re-
19 presentation in the government, and in all apportionments of
20 representation, equality of numbers of those entitled thereto
21 shall as far as possible be preserved.
- 22 6. The white male citizens of the State shall be entitled to
23 vote at all elections held within the election districts in which
24 they respectively reside; but no person who is a minor, or of
25 unsound mind, or a pauper, or who is under conviction of
26 treason or felony, or who has been convicted of bribery in an
27 election, or who has not been a resident of the State for one
28 year, and of the county in which he offers to vote for thirty
29 days, next preceding such offer, shall be permitted to vote
30 while such disability continues.
- 31 7. In all elections by the people the mode of voting shall
32 be by ballot.
- 33 8. No voter during the continuance of an election at which
34 he is entitled to vote, or during the time necessary and con-

35 venient for going to and returning from the same, shall be
36 subject to arrest upon civil process; or be liable to attend any
37 court or judicial proceeding as suitor, juror or witness; or to
38 work upon the public roads; or, except in time of war or pub-
39 lic danger, to render military service.

40 9. All citizens entitled to vote and no other persons, may
41 be elected or appointed to any State, county or municipal
42 office; but judges must have attained the age of thirty-five
43 years, the governor, the age of thirty years, and the attorney
44 general and senators, the age of twenty-five years, at the
45 beginning of their respective terms of service, and all must
46 have been citizens of the State for five years next preceding
47 or at the time this Constitution goes into operation.

48 10. Every person elected or appointed to any office or trust,
49 civil or military, shall, before proceeding to exercise the au-
50 thority or discharge the duties of the same, make oath or
51 affirmation that he will support the Constitution of the United
52 States and the Constitution of this State; and every citizen of
53 this State may in time of war, insurrection or public danger,
54 be required by law to make the like oath or affirmation, upon
55 pain of suspension of his right of voting and holding office
56 under this Constitution.

57 11. The Legislative, Executive and Judicial Departments
58 of the government shall be separate and distinct. Neither
59 shall exercise the powers properly belonging to either of the
60 others. No person shall be invested with, or exercise the
61 powers of, more than one of them at the same time.

62 12. Treason against the State shall consist only in levying
63 war against it, or in adhering to its enemies, giving them aid
64 and comfort. Treason shall be punished, according to the
65 character of the acts committed, by the infliction of one or
66 more of the penalties of death, imprisonment, fine, or confis-
67 cation of the real and personal property of the offender, as
68 may be prescribed by law.

69 13. No lottery shall be authorized by law; and the buying,
70 selling or transferring of tickets or chances in any lottery
71 shall be prohibited.

72 14. All officers elected or appointed under this Constitution
73 may be removed from office for misconduct, incompetence, or
74 neglect of duty, in such manner as may be prescribed by law,
75 and unless so removed, shall continue to discharge the duties
76 of their respective offices until their successors are elected or
77 appointed and qualified.

78 15. All elections of state and county officers shall be held
79 on the fourth Thursday of October.

80 16. The terms of all state and county officers, and of the
81 members of both houses of the legislature, not elected or
82 appointed to fill a vacancy, shall, unless herein otherwise pro-
83 vided, begin on the first day of January next succeeding their
84 election. All elections and appointments to fill vacancies

85 shall be for the unexpired term. All vacancies in elective
86 offices shall be filled in such manner as may be prescribed by
87 law.

88 17. The privilege of the writ of *habeas corpus* shall not be
89 suspended, except when, in time of invasion, insurrection or
90 other public danger, the public safety may require it. No
91 person shall be held to answer for treason, felony or other
92 crime, not cognizable by a justice of the peace, unless on
93 presentment or indictment of grand jury. No bill of attain-
94 der, *ex post facto* law, or law impairing the obligation of a
95 contract, shall be passed.

96 18. No law abridging freedom of speech or of the press
97 shall be passed, but the legislature may provide for the re-
98 straint and punishment of the publishing and vending of ob-
99 scene books, papers and pictures, and of libel and defamation
100 of character, and for the recovery, in civil actions, by the
101 aggrieved party, of suitable damages for such libel or de-
102 famation. Attempts to justify and uphold an armed inva-
103 sion of the State, or an organized insurrection therein, during
104 the continuance of such invasion or insurrection, by publicly
105 speaking, writing or printing, or by publishing or circulating
106 such writing or printing, may be, by law, declared a misde-
107 meanor, and punished accordingly.

108 19. Private property shall not be taken for public use
109 without just compensation. No person, in time of peace
110 shall be deprived of life, liberty or property without due pro-
111 cess of law. The military shall be subordinate to the civil
112 power.

113 20. The right of the citizens to be secure in their houses, per-
114 sons, papers and effects, against unreasonable searches and
115 seizures, shall not be violated. No warrant shall issue but
116 upon probable cause, supported by oath or affirmation, and
117 particularly describing the place to be searched, and the per-
118 sons and things to be seized.

119 21. In suits at common law, where the value in controver-
120 sy exceeds twenty dollars, the right of trial by jury, unless
121 waived by the parties, shall be preserved. No fact tried by a
122 jury shall be otherwise re-examined in any case than ac-
123 cording to the rules of the common law.

124 22. The trial of crimes and misdemeanors, unless herein
125 otherwise provided, shall be by jury, and shall be held pub-
126 licly, and without unreasonable delay, in the county where
127 the alleged offence was committed, unless, upon petition of
128 the accused, and for good cause shown, or in consequence
129 of the existence of war or insurrection in such county, it is
130 removed to some other county. In all such trials the accus-
131 ed shall be informed of the character and cause of the accu-
132 sation, and be confronted with the witnesses against him, and
133 shall have the assistance of counsel for his defense, and com-
134 pulsory process for obtaining witnesses in his favor.

135 23. In all criminal prosecutions, the jury shall be the
136 judges of both the law and the fact. In prosecutions and
137 civil suits for libel, the truth may be given in evidence; and
138 if it shall appear to the jury that the matter charged as libel-
139 ous is true, and was published with good motives, and for jus-
140 tifiable ends, the verdict shall be for the defendant.

141 24. Excessive bail shall not be required, or excessive fines
142 imposed, or cruel and unusual punishments inflicted. Penal-
143 ties shall be proportioned to the character and degree of the
144 offence. No person shall be compelled to be a witness against
145 himself, or be twice put in jeopardy for the same offense.

146 25. The enumeration in this Constitution of certain rights
147 and privileges shall not be construed to impair or deny others
148 retained by, or inherent in, the citizens of the State.

149 26. Such parts of the common law, and of the laws of the
150 State of Virginia as are in force within the boundaries of
151 the State of West Virginia when this Constitution goes into
152 operation, and are not repugnant thereto, shall be and con-
153 tinue, the law of this State, until altered or repealed by the
154 legislature. All offences against the laws of Virginia com-
155 mitted within the boundaries of this State before this Consti-
156 tution goes into operation, shall be cognizable in the courts
157 of this State in the same manner they would be if after-
158 wards committed within this State. All civil and criminal suits
159 and proceedings pending in the county or circuit courts
160 theretofore held within the said boundaries when this Consti-
161 tution goes into operation, shall be docketed, and thereafter
162 proceeded in the circuit court of the proper county; and
163 all such suits and proceedings then pending in the Supreme
164 and District Court of Appeals of the State of Virginia, if
165 the defendant in the court below resides within the said
166 boundaries, or the subject of the suit is land or other proper-
167 ty situated or being therein, and the plaintiff is entitled to
168 prosecute in this State, shall be docketed, and thereafter
169 proceeded in in the Supreme Court of Appeals thereof.

170 27. No entry by warrant on land in this State shall be
171 made after this Constitution goes into operation; and in all
172 cases where an entry has been made before that time, and
173 then, or thereafter, so perfected as to entitle the locator to a
174 grant, the legislature shall make provision by law for issuing
175 the same.

176 28. The legislature shall make provision for the sale of
177 all lands in this State, forfeited to the State of Vir-
178 ginia for the nonpayment of taxes for the year one thou-
179 sand eight hundred and thirty-one, or any year previous
180 thereto, or for the failure of the owners to have the same en-
181 tered and charged with taxes for the said or any prece-
182 ding year, as well as of all waste and unappropriated lands
183 by proceedings to be had in the circuit court of the county,
184 where such lands may lie.

185 29. No man shall be compelled to frequent or support any
186 religious worship, place or ministry whatsoever; nor shall
187 any man be enforced, restrained, molested or burthened in his
188 body or goods, or otherwise suffer on account of his religious
189 opinions or belief; but all men shall be free to profess, and by
190 argument to maintain, their opinions in matters of religion;
and
191 the same shall in no wise affect, diminish or enlarge their civil
192 capacities. And the legislature shall not prescribe any re-
193 ligious test whatever; or confer any peculiar privileges or
194 advantages on any sect or denomination; or pass any law re-
195 quiring or authorizing any religious society, or the people of
196 any district within this State, to levy on themselves or others
197 any tax for the erection or repair of any house for public
198 worship, or for the support of any church or ministry; but
199 it shall be left free to every person to select his religious in-
200 structor, and to make, for his support, such private contract
201 as he shall please.

*Mr. Van Winkle moved to amend the first line by striking out the word "West Virginia," and upon this question the yeas and nays were demanded, and the demand receiving a second, the motion was rejected—yeas 11, nays 28.

Mr. Powell moved that the vote be recorded, which was done, as follows:

YEAS—Messrs. John Hall (President), Battelle, Haymond, Harrison, Hervey, Hoback, Lamb, Stevenson of Wood, Stewart of Wirt, Van Winkle, Warder—11.

NAYS—Messrs. Brown of Kanawha, Brown of Preston, Brumfield, Chapman, Caldwell, Carskadon, Cook, Dering, Dille, Dolly, Hansley, Hagar, Irvine, Montague, Mahon, McCutchen, O'Brien, Parsons, Powell, Parker, Robinson, Ryan, Sinsel, Simmons, Sheets, Soper, Taylor, Wilson—28.

Mr. Brown of Kanawha, moved to strike out the entire first section, which was disagreed to.

Mr. Lamb moved to insert the word "grants," after the word "writ," which was adopted.

On motion of Mr. Lamb, the second sentence of the 2nd section was stricken out.

Mr. Brown of Kanawha moved to amend the 14th line by inserting after the word "the," at the beginning of the section, the word "white," which was disagreed to.

Mr. Wilson moved to amend the 27th line by inserting after the word "election," the following: "or who has not paid all taxes assessed against him for the previous year," which was rejected.

Mr. Powell moved to amend the 25th line, by striking out the words "is under conviction," and insert the words "has been convicted," in the 26th line.

Mr. Brown of Kanawha moved as a substitute for the motion of Mr. Powell, to strike out the word "or," before "felony," and also the words "who has been convicted," and upon the question the yeas and nays were demanded, and the demand being sustained, the substitute was adopted—yeas 22, nays 17.

And, on motion of Mr. Simmons, the vote was recorded as follows:

YEAS—Messrs. Brown of Kanawha, Battelle, Chapman, Carskadon, Cook, Dille, Dolly, Haymond, O'Brien, Parsons, Ryan, Simmons, Stevenson of Wood, Stephenson of Clay, Stuart of Doddridge, Soper, Smith, Taylor, Van Winkle, Warder, Wilson—22.

NAYS—Messrs. Brown of Preston, Brumfield, Caldwell, Dering, Hansley, Hoback, Harrison, Hervey, Hagar, Irvine, Lamb, Montague, McCutchen, Powell, Parsons, Sinsel, Stewart of Wirt—17.

Mr. Brown of Kanawha moved to amend the 32nd line by striking out the words "by ballot," and inserting the words "*viva voce*," and upon this question the yeas and nays were demanded, which being sustained, the motion was disagreed to—yeas 10, nays 29.

And, on motion of Mr. Brown of Preston, the vote was recorded as follows:

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Cook, Hoback, McCutchen, Robinson, Stephenson of Clay, Stuart of Doddridge, Smith, Wilson—10.

NAYS—Messrs. Brumfield, Battelle, Chapman, Caldwell, Carskadon, Dering, Dille, Dolly, Hansley, Haymond, Hervey, Hagar, Irvine, Lamb, Montague, O'Brien, Parsons, Powell, Parker, Ryan, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Taylor, Van Winkle, Warder—29.

Mr. Parker moved to amend the 45th line by inserting after the word "all," the words "except senators who

shall have resided in the State two years," and upon this question the yeas and nays were demanded, and the demand being sustained, the amendment was rejected—yeas 11, nays 29.

And, on motion of Mr. Brown of Kanawha, the vote was recorded as follows:

YEAS—Messrs. Battelle, Chapman, Hansley, Hervey, Hagar, Parker, Simmons, Stevenson of Wood, Soper, Taylor, Wilson—11.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brumfield, Caldwell, Carskadon, Cook, Dille, Dolly, Hall of Marion, Haymond, Harrison, Hoback, Irvine, Lamb, Montague, McCutchen, O'Brien, Parsons, Powell, Robinson, Sinsel, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Smith, Van Winkle, Warder—29.

Mr. Powell moved to amend the 46th line by striking out the word "five" and inserting the word "three."

Mr. Sinsel asked for a division, and the question being first upon striking out, the yeas and nays were demanded, and the demand being sustained, the motion was lost—yeas 13, nays 27.

And, on motion of Mr. Brown of Kanawha, the vote was recorded as follows:

YEAS—Messrs. Battelle, Chapman, Hansley, Hervey, Hagar, McCutchen, Powell, Parker, Simmons, Stevenson of Wood, Soper, Taylor, Van Winkle—13.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brumfield, Caldwell, Carskadon, Cook, Dille, Dolly, Hall of Marion, Haymond, Harrison, Hoback, Irvine, Lamb, Montague, O'Brien, Parsons, Robinson, Sinsel, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Smith, Warder, Wilson—27.

Mr. Lamb moved to strike out the 40th line, and insert in lieu thereof the following: "No persons, except citizens entitled to vote shall," which was adopted.

Mr. Powell moved that the following be added at the end of the 9th section: "No person convicted of treason, felony or of bribery in an election shall be elected or appointed to any state, county or municipal office," and the

question being upon the adoption of this amendment, it was decided in the negative.

And, on motion of Mr. Lamb, the Convention adjourned.

LII. TUESDAY, FEBRUARY 11, 1862.

*The Convention met at the usual hour, and after prayer by the Rev. Mr. Simmons, the journal of yesterday was read and approved.

Mr. Stuart of Doddridge, from the Committee on the Boundary, submitted the following report, which was laid on the table:

The Committee on the Boundary to whom were referred certain resolutions relating to the boundaries of the proposed new State, with instructions to report a provision to be inserted in the Constitution, embracing the substance of the said resolutions, and fully defining the said boundaries, respectfully submit the following for the consideration of the Convention.

By order of the Committee,

C. J. STUART, chairman.

The following counties, formerly parts of the State of Virginia, as the same have been heretofore laid off and established by authority thereof, namely: the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe, shall be included in and form part of the State of West Virginia. And if a majority of the voters of the district composed of the counties of Pendleton, Hardy, Hampshire, Morgan, Berkley, Jefferson and Frederick, voting at an election or elections held as provided in the schedule hereof, and a majority of the voters of each of any four of the said seven counties, voting as aforesaid, shall vote for the adoption of this Constitution, then all the said counties shall also be included in and form part of the State of

*See note Vol. II, page 219.

West Virginia; but if the result of said election or elections is otherwise, and a majority of the voters of the district composed of the said counties of Pendleton, Hardy, Hampshire and Morgan voting at the said election or elections, and a majority of the voters of any three of the four counties last named, shall nevertheless vote for the adoption of this Constitution then only the said counties of Pendleton, Hardy, Hampshire and Morgan shall also be included in and form part of the State of West Virginia. The said State shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the State of Virginia; and the territorial right and property in, and the jurisdiction, of whatever nature, over the said bed, banks and shores heretofore reserved by and vested in the State of Virginia, shall vest in and be hereafter exercised by the State of West Virginia."

Mr. Van Winkle then moved to take up the resolutions submitted by him on yesterday, which was agreed to.

Mr. Ruffner moved to amend the 1st resolution by striking out all after the word "Virginia," in the 5th line, to the end of the 9th line, and also the words "upon the issuing of the said proclamation," which was adopted.

And the question being upon the adoption of the 1st resolution, as amended, the yeas and nays were demanded, and the demand being sustained, the motion was decided in the affirmative—yeas 39, nays 7.

And on motion of Mr. Brown of Kanawha, the vote was recorded as follows:

YEAS—Messrs. John Hall (President), Brown of Preston, Brumfield, Battelle, Caldwell, Carskadon, Cook, Dering, Dille, Dolly, Hansley, Hall of Marion, Haymond, Hubbs, Hervey, Hagar, Hoback, Irvine, Lamb, Lauck, Mahon, O'Brien, Parsons, Powell, Pomeroy, Ruffner, Ryan, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Stuart of Doddridge, Soper, Smith, Taylor, Van Winkle, Warder, Wilson—39.

NAYS—Messrs. Brown of Kanawha, Harrison, Montague, McCutchen, Parker, Stephenson of Clay, Walker—7.

Mr. Van Winkle moved to amend the 2nd resolution by striking out the words "within days thereafter," and insert the words "as soon as the result is ascertained," which motion was adopted.

Mr. Stuart of Doddridge, moved to strike out all after the words "set forth," in the 7th line.

Mr. Ruffner moved to strike out all after the word "State," in the 3rd line, to the word "at," in the 4th line, and all after the word "session" to the end of the resolution, and the amendment to the amendment was rejected, after which,

The motion of Mr. Stuart of Doddridge was disagreed to.

And the second resolution adopted as amended.

The 3rd, 4th and 5th resolutions were then read and respectively adopted.

The question then being upon the adoption of the report of the Committee on Fundamental and General Provisions as amended,

Mr. Hall of Marion, moved further to amend the same by striking out the word "five," in the 66th line, which was disagreed to.

On motion of Mr. Van Winkle, the following words, accidentally omitted in printing, were inserted after the word "comfort," in the 64th line: "No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or confession in open court."

Mr. Van Winkle moved to amend the 79th line by adding at the end thereof, the words "and of all township officers, on the 4th Thursday of May."

Mr. Pomeroy moved to amend the amendment by inserting "first Thursday of April."

And the question being upon the amendment to the amendment, it was decided in the negative.

Mr. Van Winkle's amendment was then rejected.

Mr. Van Winkle moved to amend the 84th line by striking out the words "and appointment," which was agreed to.

By general consent, the words "in elective offices," in the 85th line, were stricken out.

Mr. Lamb moved to insert after the word "officers," in the 78th line the following: "and of the members of both houses of the legislature," which was agreed to.

Mr. Brown of Kanawha, moved to amend the 78th line by inserting after the word "county" the words "and townships," which was rejected.

Mr. Caldwell moved to amend the 95th line by inserting after the word "contract" the words "or remedies," and the question was put and decided in the negative.

On motion of Mr. Van Winkle, the words "or instituted in" were inserted in the 130th line, after the word "to."

On motion of Mr. Brown of Kanawha, the 23rd section was amended by striking out the first sentence.

Mr. Stuart of Doddridge, moved to amend the 139th line by striking out all after the word "true" to the word "the," in the 140th line.

Mr. Sinsel moved to amend the amendment by striking out the whole of the 23rd section, which was disagreed to.

The motion of Mr. Stuart was then decided in the negative.

On motion of Mr. Van Winkle the Committee on Printing and Expenditures were granted leave to make a verbal report. Whereupon,

Mr. Stevenson of Wood, chairman of said committee, reported, that the committee had had under consideration, the resolution referred to them on yesterday, and that no further appropriation will be required to accomplish the purposes named in said resolution.

The hour of 12:30 o'clock having arrived, the Convention took a recess.

3 O'CLOCK, P. M.

The Convention re-assembled.

Mr. Van Winkle moved to rescind the 4th resolution and so much of the 5th resolution as relates to the estimate of the Committee on Printing and Expenditures, which were adopted this morning, and the motion was agreed to.

On motion of Mr. Van Winkle the following clause was inserted in the report of the Committee on Fundamental and General Provisions at the end of the 69th line. "All private rights and interests in lands within this State, derived from the laws of Virginia prior to the time this Constitution goes into operation, shall remain valid and secure under the laws of this State, and shall be de-

terminated by the laws then existing in the State of Virginia."

Mr. Van Winkle moved to amend the 28th section by striking out all after the word "taxes," in the 178th line, to the word "or," in the 180th line, and all after the word "taxes," in the 181st line, to the words "as well," in the 182nd line, which was agreed to.

Mr. Van Winkle moved to take up the report of the Committee on the Boundary on its second reading, which was agreed to.

Mr. Van Winkle then moved that said report be adopted, and inserted as the 2nd section of the report of the Committee on Fundamental and General Provisions.

Mr. Hall of Marion moved to amend the same by striking out all the second sentence and inserting the following:

"And if a majority of the votes cast at an election or elections held as provided in the schedule hereof in the district composed of the counties of Pendleton, Hardy, Hampshire and Morgan, shall be in favor of the adoption of this Constitution, then the said four counties shall also be included in and form part of the State of West Virginia, and if the same shall be so included, and a majority of the votes cast at the said election or elections in the district composed of the counties of Berkeley, Jefferson and Frederick, shall be in favor of the adoption of this Constitution then the said counties shall also be included in and form part of the State of West Virginia."

And the question being upon the adoption of this amendment it was decided in the affirmative.

Mr. Brown of Kanawha, moved further to amend the same by inserting, at the end of the second sentence, the following: "The counties of Lee, Scott, Wise, Russell, Buchanan, Tazewell, Bland, Giles, Craig, Allegheny, Bath, Highland, Loudon, Alexandria, Fairfax, Northampton and Accomac shall constitute part of the State of West Virginia, if a majority of the votes cast at the election for the purpose and a majority of the said counties be in favor of the adoption of this Constitution."

MR. HAYMOND. I am opposed to taking in any more territory. I was opposed to going beyond the Allegheny mountains;

and I never can and never will vote to add another inch of territory to our State. If they take in those counties, West Virginia will be gone. I am satisfied no friend of West Virginia will give one vote for the resolution. Take in those counties, and West Virginia is gone and our labors here are at an end, and I, for one, would be ready to go home.

MR. DERING. I am exceedingly sorry, sir, that this boundary question has been opened up and made subject to the amendments which gentlemen have sought to make in it. But I must oppose with all my might and main the amendment of the gentleman from Kanawha. I concur most heartily, sir, in the view taken by my friend from Marion, that it is one of the most fatal measures to the creation of a new state in western Virginia that could be introduced into this Convention. What, sir, take in a tier of counties in old Virginia that would at once control us again; take in a tier of counties that would legislate in behalf of their own interests and whose interests would be in entire contradistinction to ours? Sir, for one, I will never consent to it. I am sorry, sir, that I did not let this report stand as it came from the hands of the committee. I do not want to reiterate the argument that we have used before in this Convention. I do not want to see that contest all gone over again. But I desire to say now that I believe firmly that if you pass this resolution to include the counties indicated by the motion of the gentleman from Kanawha, you sound the death knell of the new State of West Virginia; and I as firmly believe as that we are standing here that if you include those counties we may all as well go home and let this whole thing go. I do verily believe it is the most fatal measure to the creation of a new State that could be introduced into this Convention. I do trust, sir, that it will be the pleasure of this Convention to adhere to the report; that they do not move the boundaries one single inch farther than they have been moved, and that we will remain with the report just as it is. With our prospects somewhat beclouded and dimmed already in reference to a new State, this would be capping the climax and fixing it unalterably against us. By that we could get no new State at all in my opinion. I trust, sir, we will leave it as it is without any annexation of additional territory.

MR. BATTELLE. I was going to suggest to the gentleman from Kanawha that he was entirely too modest in his request. You just ought to take in the whole State.

MR. BROWN of Kanawha. I am a modest man. I do not know whether I can accord it though to the gentleman as indicated by his remark. I do not propose to take even the half of Virginia, but I hold, sir, it is our duty to do it. The true division line of the State of Virginia is the Blue Ridge; and this amendment does not contemplate only half the valley. You, sir, I presume, have voted—I do not know—for the tier of counties from Winchester to Bath. I only keep on down to the Tennessee line. And, sir, if it was any lack of modesty to take this lower half, what was it to take the upper which is twice as big? I would say to the gentleman from Monongalia who seems to be so very zealous on the subject—who tells us it is his opinion if we permit those counties to come in the new State will be lost—I do not take them. I hope the Convention will understand that we do not propose to take them. We only say to them, like we have said to other counties, if they are willing to come in, likely they may have the privilege of doing it. There is no harm done to anybody, and I am satisfied they will never harm us. If they don't wish to come in they will not do it. I wish to say to the gentleman, whose honest opinion as he tells us, is that if they do vote in, or if we extend to them the privilege to vote in, they will destroy the prospects of the new State, that I hope the opinion of one gentleman may be worth as much as that of any other, and it is my opinion that it will not only not destroy the new State but would add to its prospects of success. I feel, sir, as deep an interest in this State as you or any other man. I have done as much, said as much, besought for it as long and faithfully, and expect to do it to the end. I yield to none. Gentlemen may make their professions to the world but I care not a fig for their professions—not intending any disrespect; but I wish to be understood that there are other men who have something at stake in this new State as well as they; that we in the south have some interest in it, and some friendly feeling for our natural relatives and brethren; and that when we are standing up for the privilege that they may stand by us and be with us, we do not think it comes in good taste for gentlemen to keep telling us we are the enemies of the new State and indicating it and that they are par excellence its friends. Why, sir, if we expect to get a state, we must expect to do it by doing it fairly and justly and honestly before the world; and if we assemble here in one little corner to form a new State, it ought to be done by even-handed justice that will commend itself not only to the approval of those to whom we extend the opportunity

but also to the approval of the world. We ought not to act on any narrow-minded and contracted and selfish motive. We should look to the interests of those other people who are similarly situated; who are bone of our bone and flesh of our flesh; West Virginians as much as we, as true as we are; who have stood by us and battled for the right and that we have battled for; and when we choose to adopt and appropriate that name to ourselves, it don't become us to say at the same time that we will exclude one-half of those who have always worn it with us in common. Now, sir, where are the interests of those people? Is it not in forming a new state that you wish to be a respectable state, equal at least in quality with the residue of the State; that we shall have one in wealth, numbers and population—in everything that constitutes a noble and energetic new state, equal to that which remains of the old? The Blue Ridge, sir, has been the boundary line between us; and here it is proposed that we shall cut off one-half of those and refuse to give them the privilege of joining with us. I do not ask a single man to enter this State that does not want to do it; but I do say if there is a loyal man within the boundaries of West Virginia, I want to take him by the right hand and say, "Sir, you are my brother, I am willing to stand or fall by you against the world." I have no better friends than these people who will desire to come with us. If they do not, I hope we shall ever continue friends still and neighbors, too.

MR. HERVEY. I apprehend the representatives from Northampton and Accomac will hardly thank the gentleman from Kanawha for his zeal. I do not think they want to remain with us or with Virginia at all. I was in the senate today and there was a proposition introduced there by the senator of that district asking the Legislature of Virginia to authorize a vote to be taken in those two counties, Accomac and Northhampton, with a view to annexing themselves to Maryland. Now, that is their wish; their representatives have spoken on that subject, and I have no objections. I know the gentleman from Kanawha has none in allowing them to choose their own destiny. If they want to go to Maryland, I would say: "Go, gentlemen, and peace go with you." But under these circumstances I have no disposition at all apart from the question of extending to them such an invitation as is here proposed. They are disconnected from us. This Convention has adopted a proposition saying that the counties of Frederick, Jefferson, etc., shall not become a part of this State, unless the inter-

vening counties are included. Now, here is a proposition to take in territory laying away out east on the other side of the whole state—even beyond the Chesapeake Bay, bordering the Atlantic Ocean on one side and extending south farther than the city of Richmond; farther even than the ancient capital of Williamsburg; farther east than any other part of the territory of Virginia, and disconnected by some two hundred miles of the territory and waters of Maryland and Virginia from Fairfax county, the county farthest east named in the proposition lying this side the Chesapeake Bay. That disconnection, of course, would make it impossible, if it were not made so by every other reasonable consideration. If motives of philanthropy alone are to control, let the bird of philanthropy take its full flight and extend an invitation to the whole State of Virginia to come in if they choose. An invitation of this kind was extended in 1861 when we were about to reorganize the Virginia government. You know how it was responded to. But let the gentleman propose to extend an invitation to every county in the state, and then he will be consistent.

MR. BATTELLE. I regret that the gentleman from Kanawha took my pleasantry so seriously.

MR. BROWN of Kanawha. Not at all, sir.

MR. BATTELLE. I can scarcely regret it, either, since it brought out such a fine burst of eloquence. But the suggestion was based on the incongruity of the thing, attaching us to Lee, Scott, Wise, Russell, Buchanan, Tazewell, Bland, Giles, Craig, Allegheny, Bath, Highland, Loudon, Alexandria, Fairfax, Northampton and Accomac, and seeing what a figure the new State would make on the map suggested a rather comical idea to my mind and led me to make the remark I did. I had supposed it was an indispensable and very desirable characteristic of the boundaries of a state that there should be compactness of territory.

MR. BROWN. I contemplated that Accomac and Northampton will seek a connection with the State of Maryland. Unless we take them in, they will have no opportunity of accomplishing their objects; and I contemplate that the western counties of Maryland—Washington, Allegheny, etc., will seek connection with us, and by the interchange a mutual benefit may be obtained.

MR. BATTELLE. That was the idea—that it would present a very singular figure on the map. I certainly did not question the

devotion of the gentleman to the new State that we are creating here. But I will suggest to the gentleman that if—to use his own language—"equal and exact justice" is to characterize our measures here, it does seem to me a little doubtful about the justice, while the Old Dominion is in duress, of stretching our arms across her territory and across her great bay to take a part of her territory in no way connected with us or necessary to us, over which at present she has no control.

MR. DERING. I desire to reiterate my opinion again, and that, sir, every gentleman has a right to do on this floor—to give us his opinion and the effect of any amendment or proposition that is made by any gentleman here, and I claim that in that respect I am the peer of any gentleman here so far as my rights are concerned on this floor.

MR. BROWN. I hope my friend will not suppose I either questioned or doubted the fact.

MR. DERING. I do verily believe that it will be the effect of this amendment if adopted that it will cast forever in gloom, and defeat forever, the creation of a State in West Virginia. Take in Wayne and Russell and Wise and Buchanan, Northampton and Accomac, and you take in an element with them that would produce destruction and distraction for all time to come, if that territory were embraced in the same organization with the territory we now propose to incorporate in this State. Why, sir, I would sooner go back to old Virginia again and be together as we were before. What was the vote of those counties on the ordinance of secession. Why, sir, it was overwhelmingly in favor of the ordinance. Do you wish to embrace an element of discord, that will forever keep us in hot water? An element that cannot if it would always but be bitter against us in legislation. Do you wish to embrace an element that looks upon us in the west as a set of , who know very little, like wild men of the forest, out here in West Virginia? There is no similarity of taste, feelings or ideas existing between us; no homogeneity whatever. We are distinct in everything—in commerce, in ideas, in feelings, in territory and everything else; and we ought to be, and we must be, I hope, too, a separate and distinct people. Sir, I trust we never shall be allied again with old Virginia, and this is a large part of it that the gentleman's amendment endeavors to bring in, as I think, not arbitrarily but by the vote of that people.

The vote by yeas and nays was demanded by Mr. Brown, and being taken the amendment was rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Carskadon, Dolly, Hubbs, Montague, McCutchen, Simmons, Stephenson of Clay, Sheets, Smith, Taylor—13.

NAYS—Messrs. Brown of Preston, Brumfield, Battelle, Caldwell, Dering, Dille, Hansley, Hall of Marion, Haymond, Harrison, Hervey, Irvine, Lamb, O'Brien, Parsons, Powell, Paxton, Pomeroy, Robinson, Ryan, Sinsel, Stevenson of Wood, Stewart of Wirt, Soper, Trainer, Van Winkle, Warder, Wilson—28.

*On motion of Mr. Powell, the Convention adjourned.

LIII. WEDNESDAY, FEBRUARY 12, 1862.

*The Convention met at 9 o'clock, A. M.

Prayer by Rev. Mr. Ryan, member of the Convention.

The journal was read and approved.

The question being upon the adoption of the report of the Committee on Boundary as a part of the fundamental and general provisions, the question was put and decided in the affirmative.

On motion of Mr. Brown of Kanawha, the following additional section to the fundamental and general provisions was adopted:

"All lands lying within the State of West Virginia, which have been vested in the State of Virginia by purchase at sheriff's sale for taxes and damages delinquent thereon, whenever they become vested in the State of West Virginia, may be redeemed by the former owner by the payment to the State of West Virginia of the amount of taxes and damages due thereon, within five years after this Constitution goes into operation, and the net amount so paid in redemption shall go to the school fund. And the residue of such lands so vested and not so redeemed shall be treated as forfeited lands."

*See note Vol. II, page 219.

And, on motion of Mr. Van Winkle, the amended reports of the Committees on Fundamental and General Provisions; on the Judiciary Department; on the Legislative Department; and on the Executive Department, were referred to the Committee on Revision and Engrossment.

On motion of Mr. Battelle the report of the Committee on Education, as amended, was taken up on its second reading.

Following is the amended report, as now taken up for second reading:

REPORT OF THE COMMITTEE ON EDUCATION.

As Amended by the Convention.

1. All money, being the proceeds of forfeited, waste and unappropriated lands; all grants, devises or bequests that may be made to this State for the purposes of education, or where the purposes of such grants, devises or bequests are not specified; the revenues accruing from any stock, not pledged to the sinking fund, hereafter acquired by this State in any bank, and the proceeds of the sale of such stock, if the same be sold; any sums due this State from any other state, on account of educational purposes; the proceeds of the estate of all deceased persons that may have died without leaving a will or heir, and of all escheated lands; the proceeds of any taxes that may be levied on the revenues of any corporation hereafter created; and all moneys that may be paid as an equivalent for exemption from military duty, and such sums as may from time to time be appropriated by the legislature for that purpose, shall be set apart as a separate fund, to be called the school fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State; and the interest thereof shall be annually applied to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said interest remaining unexpended at the close of a fiscal year, shall be added to, and remain a part of, the capital of the school fund.

25 2. The legislature shall provide, as soon as may be practica-
26 ble, for the establishment of a thorough and efficient system of
27 free schools. They shall provide for the support of such schools
28 by appropriating thereto the interest of the invested school
29 fund; the net proceeds of all forfeitures, confiscations and
30 fines accruing to this State under the laws thereof; and by
31 general taxation on persons and property, or otherwise. They
32 shall also provide for raising, in each township, by the author-

ity of the people thereof, a sum not less than one-half the amount required for the support of free schools therein.

3. Provision shall be made by law for the election, powers, duties, and compensation of a general superintendent of free schools for the State, whose term of office shall be the same as that of the governor, and for a county superintendent for each county, and for the election, in the several townships, by the people, of such officers, not specified in this Constitution, as may be necessary to carry out the objects of this article, and for the organization, whenever it may be deemed expedient to do so, of a state board of instruction.

4. The legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; they shall, whenever it may be practicable to do so, make suitable provisions for the education and maintenance of the blind, mute and insane, and for the organization of such other institutions of learning as the best interests of general education in the State may demand.

*Mr. Battelle moved to amend the same by striking out the clause embraced in the 8th and 9th lines, and inserting in lieu thereof the following, which was agreed to.

"This State's share of the Literary Fund of Virginia, whether paid over or otherwise liquidated; and any sums of money, stocks or property, which this State shall have the right to claim from the State of Virginia for educational purposes."

On motion of Mr. Smith the word "that," in the 15th line, was stricken out, and the word "the" inserted.

Mr. Smith moved to strike out all after the word "land," in the 18th line, to the word "and" in the 19th line, which was disagreed to.

On motion of Mr. Stevenson, the word "deceased" and the word "that" in the 10th line, were stricken out, and the word "who" inserted after the word "persons."

Mr. Van Winkle moved to amend the 30th line by inserting after the word "thereof," the following: "and of all lands hereafter sold for taxes, and purchased by the State of Virginia, if hereafter redeemed or sold to others than the State," which amendment was adopted.

Mr. Battelle moved to amend the 33rd and 34th lines by striking out all after the word "thereof" to the end of the section, and insert "such a proportion of the amount

required for the support of free schools therein as shall be ascertained by general laws," which was agreed to.

Mr. Battelle moved to amend the 47th line by striking out the words "the education and maintenance of," and the 48th line by striking out the word "other," which was adopted.

On motion of Mr. Van Winkle, the word "shall" in the 35th line was stricken out, and the word "may" inserted.

And the question then recurring upon the adoption of the report, as amended, it was put and determined in the affirmative.

And, on motion of Mr. Battelle, the said report was referred to the Committee on Revision and Engrossment.

Mr. Harrison then moved that the subject of all forfeited, waste and unappropriated lands be referred to a special committee of seven, and the question being put it was decided in the affirmative.

The President then appointed the following gentlemen said committee:

Messrs. Harrison, Smith, Stevenson of Wood, Brown
of Kanawha, Irvine, Hall of Marion, and Van Winkle.

Mr. Dering then moved that the report of the Committee on Taxation and Finance be taken up and made the order of the day for 3 o'clock this afternoon.

Mr. Stuart of Doddridge, moved to amend the motion by taking up the report of the Committee on County Organization on its second reading, which was disagreed to and the motion of Mr. Dering adopted.

On motion of Mr. Stuart of Doddridge the President was directed to lay before the two houses of the General Assembly of Virginia, the section of the Constitution fixing the boundaries of the proposed new State, and to request their consent to the formation and erection of the said new State.

The Convention then took a recess.

AFTERNOON SESSION.

The Convention re-assembled at 3 o'clock P. M.

The report of the Committee on Taxation and Finance was taken up as the order of the day.

Mr. Dering moved that the 5th, 6th and 7th sections be referred to a special committee of nine.

Mr. Smith remarked that when this report was last before the Convention he thought he had observed a disposition on the part of the house—a liberal kind of disposition to take this subject in hand and endeavor, if possible, to make an arrangement that would be satisfactory to all. But gentlemen say there is no principle in this; it is a question of policy altogether. Now, I ask as a question of policy is it expedient and proper to send home some of us utterly dissatisfied with this arrangement, and especially so when I said before, I am not blaming any of the committee? But is it expedient and proper to send us home where not one from that section of the country has been represented on the committee, and when they ask an opportunity of being heard to some extent on the committee with a view of a fair compromise on a question of policy, not principle at all? Will it tend to soothe them and put them in a better frame of mind to say that we will not grant them that little boon? To say, you shall not have anything? Now, I ask if that is a proper spirit with which to meet us? I hope and trust it will be the pleasure of this house to give us some little opportunity of being heard on this question. And I can say it was never designed in the slightest degree to impugn the motives or action of the committee. But we are dissatisfied with the results of the work of that committee and we think injustice has been done us, not wittingly but unwittingly, and we ask to be heard; and I ask gentlemen who represent this majority to show a little liberality on this subject.

MR. SINSEL. The gentleman from Ohio seems to think because this Convention has passed once or twice on certain subjects that they have no right to meddle with it afterwards; that what we do once must be like the laws of the Medes and Persians—unalterable. Now what is the fact of the case? The Convention voted twice to have our elections on the 4th Thursday of May, and finally turned round and put it on the 4th Thursday of October. Now, I made no fuss about it. The Convention had a right to do it; and they have a right to change anything else here if they choose. Well, one gentleman spoke of this as no compromise. Now, sir, was the city of Wheeling subscribed (?) to make her roads? She might complain at being taxed to make her own improvements and then being taxed to make improvements in another part of the State. There would be some hardship in that. This compromise pro-

poses to put that on state account and do as much in the other sections of the State on state account. The State of Virginia made our turnpikes through all these counties. Yet in settling the old state debt the people of the southern counties will have to foot that bill; and I only propose now to spend about an equal amount in that section of the State. It does seem to me nothing on earth could be more fair and reasonable than this proposition. She would also be required to transfer that stock, the \$500,000, over to the State of Virginia. The State of Virginia then would own it. We are taxed now probably to keep up these roads. There are many counties in the southern part that have none of these turnpikes. This \$500,000 was simply offered there to make these roads, and it was to be expended in ten years, so as to put these counties on about an equal footing with the counties in this part of the state. Now, if that is not fair and just I am incapable of deciding what is right.

MR. HERVEY. I hope this motion will not prevail. This report has been adopted by this Convention; and now, sir, after the action of the Convention, deliberately considered and solemnly passed, it is proposed, on the very heels of this Convention, when we are told we would probably have this Constitution completed by Saturday, it is now proposed to recommit this report to another committee and await their action and its submission and its discussion in this body and the action of this body. Where is the propriety of it? If gentlemen desire to incorporate any particular provision in the report, they have a perfect right to propose it and the Convention have a right to incorporate it if they see fit. They have been doing so at every step of our progress; and simply because the Convention did what these gentlemen did not want done, therefore it has become absolutely necessary that a new committee shall be created and a new report brought in! Why, sir, the door is open here for substitutes either for the whole report or for any section of it. Why not reach it in that way? The Convention, of course, will hear and decide on any propositions that may be introduced here; and any gentleman is perfectly competent to introduce any particular feature he sees proper at once, and not retard the action of the Convention on this subject.

MR. HAYMOND. I think if this report is sent back to the committee, it would not be necessary to send the whole report. The first four sections have been adopted and I believe are satisfactory to the Convention. As to the balance of the report, I am opposed

to sending back to that committee. I would prefer a committee of nine, with the idea of a compromise being brought about, to report a compromise on the balance of the report.

Mr. Dering's motion was agreed to and the Chair appointed the special committee as follows:

*Messrs. Dering, Smith, Lamb, Ruffner, Harrison, Brumfield, Stevenson of Wood, Sinsel and McCutchen.

Mr. Brown of Kanawha moved to amend the 9th section by striking out the word "portion," and inserting the word "proportion," which was agreed to.

On motion of Mr. Paxton, the report, as amended, was adopted and laid on the table.

Mr. Battelle then submitted the following resolutions:

"1. Resolved, That at the same time when this Constitution is submitted to the qualified voters of the proposed new State to be voted for or against, an additional section to article ; in the words following:

"No slave shall be brought, or free person of color come, into this State for permanent residence after this Constitution goes into operation; and all children born of slave mothers after the year eighteen hundred and seventy, shall be free—the males at the age of twenty-eight, and the females at the age of eighteen years; and the children of such females shall be free at birth.

Shall be separately submitted to the qualified voters of the proposed new State for their adoption or rejection; and if a majority of the votes cast for and against said additional section, are in favor of its adoption, shall be made a part of article of this Constitution, and not otherwise.

2. Resolved, That the Committee on the Schedule be, and they are hereby instructed to report the necessary provisions for carrying the foregoing resolutions into effect."

Mr. Battelle remarked that the Convention could take what ever action in reference to these resolutions they might think proper. If they chose to make them the order of the day for any fixed future day, as an individual he did not care; but he supposed there were some gentlemen

*See note Vol. II, page 219.

who would wish to discuss this matter, and they might proceed a while at least in that discussion.

Mr. Sinsel moved to lay the resolutions on the table, and make them the order of the day for to-morrow at 10 o'clock in the morning.

MR. HALL of Marion. I move to amend the motion by moving to lay on the table.

MR. BATTELLE. I sincerely hope that this Convention will not. I hope that no such gag rule will be instituted here in this Convention.

MR. STUART of Doddridge. That question is not debatable.

MR. POWELL. On that question I ask the yeas and nays.

MR. VAN WINKLE. I understand that is a privileged motion, to lay on the table without day. That can be made without amendment.

THE PRESIDENT. It is a substitute and will be voted on as such.

MR. HALL of Marion. I design to make the motion merely to accomplish the object.

THE PRESIDENT. It will be regarded as a substitute.

On the motion to thus lay on the table indefinitely the vote resulted:

YEAS—Hall of Mason (President), Brown of Kanawha, Brumfield, Chapman, Carskadon, Dering, Dolly, Hall of Marion, Haymond, Harrison, Hubbs, Irvine, Lamb, Montague, McCutchen, Robinson, Ruffner, Sinsel, Stephenson of Clay, Stuart of Doddridge, Sheets, Smith, Van Winkle, and Warder—24.

NAYS—Brown of Preston, Brooks, Battelle, Caldwell, Dille, Hervey, Hagar, Hoback, Lauck, Mahon, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Ryan, Simmons, Stevenson of Wood, Stewart of Wirt, Soper, Trainer and Wilson—23.

So the resolutions were laid on the table.

*On motion of Mr. Van Winkle, the amended report of the Committee on County Organization was taken up on its second reading.

*See note Vol. II, page 219.

Following is the amended report, now taken up on second reading:

REPORT OF THE COMMITTEE ON COUNTY ORGANIZATION

As Amended by the Convention.

- 1 1. Every county shall be divided into not less than three
2 nor more than ten townships, laid off as compactly as practica-
3 ble, having reference to natural boundaries, and containing as
4 nearly as possible an equal number of inhabitants, but not less
5 than four hundred. Each township shall be designated, "the
6 Township of _____ in the County of _____", by which
7 name it may sue and be sued.
- 8 2. The voters of each township, assembled in stated or special
9 township meeting, shall transact all such business relating ex-
10 clusively to their township as is herein, or may be by law, re-
11 quired or authorized. They shall annually elect one supervi-
12 sor, one clerk of the township, one surveyor of roads for
13 each precinct in their township, one overseer of the poor,
14 and such other township officers as may be directed by law.
15 They shall also, every four years elect one justice of the peace;
16 and if the white population of their township exceeds twelve
17 hundred in number, may elect an additional justice, and every
18 two years as many constables as justices. The supervisor
19 or in his absence a voter, chosen by those present, shall pre-
20 side at all township meetings and elections, and the clerk shall
21 act as clerk thereof.
- 22 3. The supervisors chosen in the townships of each county
23 shall constitute a board, to be known as "the Supervisors of
24 the County of _____," by which name they may sue and
25 be sued and make and use a common seal, and enact ordin-
26 ances and by-laws. They shall meet statedly at least four
27 times in each year at the court house of their county, and
28 may hold special and adjourned meetings. At their first
29 meeting after the annual township election, and whenever a
30 vacancy may occur they shall elect one of their number pres-
31 ident of the board, and appoint a clerk, who shall keep a
32 journal of their proceedings and transact such other business
33 pertaining to his office as may be by them or by law required,
34 and whose compensation they shall fix by ordinance and pay
35 from the county treasury.
- 36 4. The board of supervisors of each county, a majority of
37 whom shall be a quorum, shall, under such general regulations
38 as may be prescribed by law, have the superintendence and
39 administration of the internal affairs and fiscal concerns of
40 their county, including the establishment and regulation of
41 roads, public landings, ferries and mills, the granting of
42 ordinary and other licenses, and the laying, collecting and
43 disbursement of the county levies; but all writs of *ad quod*

44 *damnum* shall issue from the circuit courts. They shall
45 from time to time appoint the places for holding elections in
46 the several townships of their county, and shall be the judges
47 of the election, qualification and return of their own members
48 and of all county and township officers.

49 5. The voters of every county shall on the day appointed
50 for electing members of the legislature, whenever it may be
51 necessary, elect a sheriff, prosecuting attorney, surveyor of
52 lands, recorder, one or more assessors, a superintendent of
53 schools, and such other county officers as the legislature may
54 from time to time direct or authorize; the duties of all of
55 whom shall be prescribed and defined as far as practicable by
56 general laws. All the said county officers shall hold their
57 offices for two years, except the sheriff, whose term of office
58 shall be four years. The same person shall not be elected
59 sheriff for two consecutive full terms, nor shall any person
60 who has acted as deputy of any sheriff be elected his suc-
61 cessor, nor shall such sheriff act as the deputy of his succes-
62 sor; but the retiring sheriff shall finish all business remaining
63 in his hands at the expiration of his term, for which purpose
64 his commission and official bond shall continue in force, the
65 duties of all the said officers shall be discharged by the in-
66 cumbents thereof in person or under their superintendence.
67 The recorder, in addition to the duties incident to the record-
68 ing of deeds and other writings, the recording of inventories
69 and other papers relating to estates; the registering of births,
70 deaths and marriages, and the issuing of marriage licenses,
71 shall have authority, under such regulations as may be pre-
72 scribed by law, to receive proof of wills and admit them to
73 probate, appoint and qualify personal representatives, guar-
74 dians, committees and curators, to administer oaths, take ac-
75 knowledgments of deeds and other writings, and relinquish-
76 ment of dower.

79 6. The legislature shall, at their first session, by general
80 laws, provide for carrying into effect, the foregoing provisions
81 of this article. They shall also provide for commissioning
82 such of the officers therein mentioned, as they may deem
83 proper, and may require any class of them to give bond with
84 security for the faithful discharge of the duties of their re-
85 spective offices, and for accounting for and paying over as
86 required by law, all money which may come to their hands by
87 virtue thereof. They shall further provide for the compensa-
88 tion of the said officers by fees, or from the county treasury;
89 for their removal, in case of misconduct, incompetency or
90 neglect of duty; for filling vacancies, not herein provided for,
91 and for the appointment, when necessary, of deputies and
92 assistants, whose duties and responsibilities shall be prescribed
93 and defined by general laws. When the compensation of an
94 officer is paid from the county treasury, the amount shall be
95 fixed by the board of supervisors, within limits to be ascer-

96 tained by law; but no reduction of the compensation of any
97 officer shall take effect during the term for which he was
98 elected.

99 7. The civil jurisdiction of a justice of the peace shall
100 extend to actions of assumpsit, debt, detinue and trover,
101 when the defendant resides, or, being a non-resident of the
102 State, is found, or has effects or estate within his township
103 or when the cause of action arose therein, and the amount
104 claimed, exclusive of interest, does not exceed one hundred
105 dollars; but a justice of any other township of the same
106 county may issue a summons to the defendant to appear
107 before the justice of the proper township, which may be
108 served by a constable of either township. In case of a
109 vacancy in the office of justice or constable in any town-
110 ship having but one, or of the disability to act of the incum-
111 bent, any other justice or constable of the same county
112 may discharge any of the duties of their respective offices
113 within said township. The manner of prosecuting the
114 aforesaid actions and of issuing summonses and executions
115 and of executing and making return of the same shall be
116 prescribed by law, and the legislature may give to justices
117 of the peace and constables such additional civil jurisdiction
118 and powers within their respective townships as may be
119 deemed expedient.

120 8. Every justice of the peace and constable shall be a
121 conservator of the peace throughout his county, and have
122 such jurisdiction in criminal cases therein as may be pre-
123 scribed by law. Jurisdiction of all misdemeanors and
124 breaches of the peace, punishable by fine not exceeding ten
125 dollars, or by imprisonment for not more than thirty
126 days, may be, by law, vested in justices of the peace.
127 The board of supervisors shall designate one or more con-
128 stables of their respective counties to serve process and levy
129 executions when the sheriff thereof is a party defendant, in a
130 suit instituted therein, or is under any other disabili-
131 ty. But in all cases an appeal, writ of error, supersedeas,
132 or certiorari shall lie from the judgment or proceedings of a
133 justice of the peace, recorder, corporation or other inferior
134 court, the circuit court of the county in which the case
135 may be; excepting, however, judgments of justices of the
136 peace in assumpsit, debt, detinue and trover, and for fines,
137 where the amount does not exceed ten dollars; unless, in
138 cases involving freedom or the validity of a law, or the right
139 of a corporation or county to levy tolls or taxes.

140 9. Either party to a civil suit brought before a justice of
141 the peace, where the value in controversy, or the damages
142 claimed exceeds twenty dollars, and the defendant in such
143 cases of misdemeanor or breach of the peace as may be
144 made by law cognizable by a single justice, when the penal-
145 ty is imprisonment, or a fine exceeding five dollars, shall be

entitled, if demanded, to a trial by six jurors, under such regulations as may be prescribed by law. The board of supervisors may alter the bounds of a township of their county, or erect new townships therein, with the consent of a majority of the voters of each township interested, assembled in stated township meeting, or in a meeting duly called for the purpose subject to the provisions of the first section of this article.

10. No new county shall be formed having an area of less than four hundred and fifty square miles. Nor shall a new county be formed if another county be thereby reduced below that area; or if any territory be thereby taken from a county containing less than four hundred and fifty square miles. And no new county shall be formed, containing a white population of less than four thousand. Nor shall a new county be formed if the white population of another county be thereby reduced below that number; or if any county containing less than four thousand white inhabitants be thereby reduced in area. But the legislature may, at any time, include any county containing less than four thousand white inhabitants within an adjoining county or counties as part thereof.

11. Nothing contained in this article shall impair or affect the charter of any municipal corporation, or restrict the power of the legislature to create or regulate such corporations."

*Mr. Harrison moved to amend the 25th and 26th lines by striking out the words "and enact ordinances and by-laws", which was disagreed to.

Mr. Dille moved to amend the 26th line by striking out the word "four," and inserting the word "two," which was rejected.

Mr. Brown of Kanawha, moved to amend the 26th line by striking out the word "ordinances" which motion was rejected.

On motion of Mr. Smith, the following words were added after the word "by-laws," in the 26th line: "not inconsistent with the laws of this State."

Mr. Sinsel moved to amend the 57th line by inserting after the word "sheriff," the words "and prosecuting attorney," which was rejected.

Mr. Stuart of Doddridge, moved to amend the 57th line by inserting after the word "sheriff" the words "and surveyor of lands," which was disagreed to.

Mr. Sinsel moved to strike out the 9th section, which being put was decided in the negative.

*See note Vol. II, page 219.

And, on motion of Mr. Lamb, the Convention Adjourned.

LIV. THURSDAY, FEBRUARY 13, 1862.

*The Convention met at the usual hour.

The session was opened with prayer by Rev. Mr. Pomeroy, member of the Convention.

The journal of yesterday was read and approved.

Mr. Dering, from the special committee appointed on yesterday to take into consideration the 5th, 6th and 8th sections of the report of the Committee on Taxation and Finance, submitted the following Report:

The committee respectfully recommend that the Convention adopt the 5th and 6th sections of the report of the Committee on Finance and Taxation without alteration; and that the 8th section be adopted, with the following amendment:

In line 41st of the report of the Committee on Finance and Taxation, strike out the words "or other association or corporation," and insert "If the State shall become a stockholder in any association or corporation, for purposes of internal improvement, she shall pay for the stock at the time of subscribing, or shall levy a tax for the ensuing year sufficient to pay such subscriptions in full."

Signed by the unanimous order of the committee.

H. Dering, chairman.

And on motion of Mr. Dering, the report was adopted.

The Report of the Committee on Taxation and Finance was then adopted as amended.

And on motion of Mr. Lamb said report was taken up on its second reading.

Mr. McCutchen moved to amend the 10th line by striking out the word "one" and inserting "two," which was disagreed to.

Said report was then adopted.

And on motion of Mr. Lamb, it was referred to the

*See note, Vol. II, page 219.

Committee on Revision and Engrossment.

The President then stated that the business before the Convention was the further consideration of the amended report of the Committee on County Organization.

Mr. Hall, of Marion, offered the following substitute for the 10th section of said report, from the beginning to word "area," in the 163d line:

"No new county shall be formed containing a white population of less than 3,300, nor if the white population of any other county be thereby reduced below that number; nor containing an area of less than 200 square miles; nor if any other county be thereby reduced below that area."

Mr. Wilson moved to amend the amendment by limiting the number of square miles to 400, and the number of white inhabitants to 4,000.

A division being called for, the question was put upon striking out, and decided in the negative.

Mr. Hall, of Marion, moved to amend by striking out the words "and fifty," in the 154th line, and upon this question the yeas and nays were demanded, and the demand being sustained, the motion was disagreed to—yeas 21, nays 20.

On motion of Mr. Brown, of Preston, the vote was recorded as follows:

YEAS—Messrs. Brown of Kanawha, Battelle, Caldwell, Carskadon, Dering, Dolly, Hall, Haymond, Hubbs, Hervey, Hoback, Lauck, Parsons, Robinson, Stevenson of Wood, Stephenson of Clay, Sheets, Soper, Trainer, Wilson, John Hall (President)—21.

NAYS—Messrs. Brown of Preston, Brooks, Chapman, Dille, Hansley, Harrison, Hagar, Irvine, Lamb, Montague, Mahon, McCutchen, O'Brien, Sinsel, Simmons, Stewart of Wirt, Smith, Taylor, Van Winkle, Warder—20.

Mr. Dolly moved to amend the 159th line by striking out the words "four thousand," and insert "one half the rates of representation in the house of delegates."

And on motion of Mr. Van Winkle said report was adopted, as amended, and referred to the Committee on Revision and Engrossment.

On motion of Mr. Van Winkle, the Committee on the Schedule to the Constitution were granted leave to have their report printed before submitting it to the Convention.

Mr. Pomeroy, of Hancock, suggested that as they now had nothing else before them the vexed question raised by the resolution offered the day before by Mr. Battelle "might be compromised," either by adopting a proposition already written out or by raising a committee of conference representing in about equal number the opposing views, and let them bring in a report, either to adopt the first of the resolutions offered by the gentleman from Ohio and make that part of the Constitution without any separate vote by the people or raise a committee of conference.

I fully concur, Mr. Pomeroy continued, with the remarks of the gentleman from Logan in conversation on this subject that we ought all to desire a new state above everything else and take action which would meet not only the favor of the people but of Congress. I am not prepared to say, from the fact of this business being hurried through which is the best manner to proceed. I cannot conceive any evil that could result from a committee of conference, as I understand they would certainly report in favor of the first of the resolutions offered by the gentleman from Ohio being incorporated in the Constitution: which is that no free negro or slave after the adoption of the Constitution should be imported for permanent residence. So many gentlemen say they would agree to that there could be no difficulty in the committee of conference, for they would certainly report that part and then might take into consideration the other part. I cannot conceive if the committee would meet in the right spirit, any evil would result, and if so it would be my idea to raise the committee now.

MR. SMITH of Logan. If there is a proposition of this sort proposed I would like for it to be read and if it meets our approbation, I would like for it to be adopted at once without a committee of conference if it can be. If it is thought probable it will not be, let us refer it to a committee of conference. But I would prefer the proposition being read as acceptable to myself and others who act with me. We may as well vote on it at once. I am willing, in a spirit of compromise, to concede anything I can properly concede; and I would prefer hearing the proposition that is proposed to be offered. I understand there is a gentleman who has a proposition, and I would like to have it read and then determine what to do

with it, and if it is going to produce any excitement here I would prefer to have it sent to a committee of compromise.

MR. BATTELLE. I regret, for one, that this subject is named now. A gentleman on the other side came to see me this morning, and inquired whether this topic would probably be up this morning. I, of course, could not speak authoritatively but thought it would not; and I pledged him, so far as I was concerned, that there should be no action on this question in his absence. I want no action here that shall be a vote one way or the other without the fair presence and concurrence of gentlemen interested in both ways. I want, if I am defeated in my particular opinions on this subject, to have it fairly done; and if I succeed in my views I wish it fairly done; and for that reason, especially that I pledged myself to the gentleman who is absent, that nothing should be done here without his presence. I would regret that anything more be done at least than what was indicated by my friend from Hancock, the appointment of the committee. I would not wish to go into the discussion of the question in the absence of this gentleman.

MR. DERING. How would it do to make it an order of the day for three o'clock?

MR. BATTELLE. I suppose the appointment of a committee would be no infraction of that understanding?

MR. DILLE. I have for some time had more trouble in reference to this question than perhaps any other that might be brought up before this Convention in any manner; and I have felt that something like this provision would harmonize and conciliate and do everything consistent to bring about a perfect harmony upon this, of all others, the most vexed question in our country. And I suppose, really, that we ought in the spirit of compromise come to some definite conclusion without any discussion or agitation upon this subject. And I suggest this morning upon my own responsibility, without even consulting with the friends of the proposition that was laid on the table yesterday, to inquire of the mover whether the first clause of the proposition laid on the table yesterday would probably as a compromise be acceptable to those favoring the motion to lay the original proposition on the table. With the frankness and good feeling characteristic of the gentleman from Logan, he intimated to me that he had no doubt the first clause would be acceptable to those entertaining views adverse

to this proposition. I then intimated and I am willing to say that if this Convention can be reconciled upon that first proposition, and that proposition can be inserted in the Constitution with the cordial approbation of the friends of the proposition and those who may be adverse to the whole proposition, that I think we ought to accept it. I look upon a new State in West Virginia as a matter above and higher than all other considerations combined; and I think we bring about a state of feeling that will contribute more to the success—that will concede to the feelings and prejudices of our people and to the feelings and prejudices of those to whom we must look if we expect admission as a state into the Union. And if I can have the assurance that that proposition will meet with the approbation of this Convention, it will afford me great pleasure to present it; and having been accepted by those who oppose the whole proposition, I will say to them that as one individual I will oppose any action being taken on the latter clause of the proposition. I think it is right; I think it is due to members of the Convention, that we should make mutual concessions on this subject.

MR. POMEROY. I will now move, to test the sense of the house, as there are a number of gentlemen present on both sides, that a committee of eight be appointed. I see no evil that can result from this committee of conference. They would certainly report on the first part. Whether they do or not, it will be open to the Convention afterwards. And I want to say, Mr. President, that I hope all these things will be met in a spirit of conciliation and good feeling—no undue excitement on this subject at all. The committee will certainly report this first proposition, which the gentleman from Preston says he is in favor of; and I also am favorable to it, because we do not want any free negroes here.

MR. BROWN of Kanawha. I have just learned definitely of the proposition of the gentleman from Preston and his declaration; and I am very ready to say that I will meet him half-way with the right-hand of fellowship and adopt his proposition at once as a full settlement of this matter. And I believe, sir, it will give peace and quiet to our people; it will do justice to all, and it will compromise the rights of none; and when so great and good an object can be done, I shall be one of the first to accept and sustain it. I hope it will be the pleasure of every gentleman in the house to do the same thing.

MR. CALDWELL. I hope after the remarks we have all heard from my friend from Kanawha county that the gentleman from

Hancock will see the impropriety of prolonging this matter any further and of the absence of any necessity for appointing a committee. I think this house now is in a position in which this proposition can be adopted, calmly and coolly, and almost unanimously adopted; and I hope my friend from Hancock will withdraw his motion for a committee, and I trust we will pass it unanimously.

MR. HERVEY. I am very much pleased to hear the proposition made by the gentleman from Preston. I have had some conference with a number of gentlemen who opposed the motion to lay on the table yesterday. We have great confidence in the discretion and forecast of the gentleman from Preston, and I confess, sir, that I have no fears at all. I believe it is bound to be a free state; and I have no doubt that as this seems to be the only exception by the persons from both sides that we better just vote that proposition as it stands without the committee.

A member asked what the precise proposition was. The Secretary reported the first clause of Mr. Battelle's proposition as follows:

"No slave shall be brought or free person of color come into this State for permanent residence after this Constitution goes into operation."

MR. DILLE. I hope it will be the pleasure of the gentleman from Hancock to withdraw his proposition. And I hope further, with the feeling that I see around me on this subject that this proposition may be inserted in the Constitution by an unanimous vote. I do not want a dissenting voice on that subject; and I want the whole matter to end there, I think we might spare a good day's work and a day's work that will tell upon the future of the new State of West Virginia.

THE PRESIDENT. The Chair is of the opinion that if the disposition to compromise this question exists in the Convention—and it seems to exist there—that it would be certainly inadvisable to appoint a committee; that after what has occurred, it might carry the idea abroad that there was a division here; that what we did we were forced to do through a committee of compromise. The Chair would therefore suggest to the Convention that if there is that unanimity which the Chair hopes there is, then it is better to dispense with the committee.

MR. POMEROY. The mover of the motion will very cordially withdraw it if the Convention is ready to vote. I can very cordially

vote for that proposition and I thought the committee could do no harm.

MR. BATTELLE. I wish to say at this point that in view of the considerations before stated by myself I should prefer that action be not taken this morning on this question; and if anything is done I should prefer the direction intimated by the gentleman from Hancock. As I said before, I know there are gentlemen absent on both sides of this question, but I speak especially of gentlemen I know to be absent on the other side who before leaving came to me and intimated their desire that the question be not brought up this morning. As far as I am personally concerned, I expressed my own preference that it should not come up, and that if it did they should be notified thereof. I feel that my honor is involved in this point and if the question is to come up for final action here, it is but right that they should be present. I will add, further, that personally I would prefer to have more time for reflection on this subject. The idea of incorporating this single provision is a new proposition to me, and I do not think it can interfere with the harmony and good feeling that prevails here this morning to either refer or allow the vote to be taken to-morrow morning. I should prefer that direction to the taking of the vote now and I think it would be the fairest on all sides if we could understand it that the vote was to be taken then and everybody could be present.

MR. HAYMOND. I am in hopes the gentleman from Hancock will withdraw. I think the resolution of the gentleman from Preston is the very thing, sir, that I wanted when I came here.

THE PRESIDENT. The gentleman has withdrawn his motion.

MR. STEVENSON of Wood. I was going to make this suggestion—or if necessary make a motion—as there are a number of gentlemen absent on both sides of this question, that they should have an opportunity of recording their votes on this subject if they thought proper, either to-day or to-morrow.

SEVERAL MEMBERS. Certainly.

THE PRESIDENT. It will be considered as the sense of the Convention.

MR. POMEROY. I hope it will be the unanimous consent of the Convention that the vote be recorded on this, the yeas and nays.

MR. PARKER. If I understand, this is on the first clause.

The Secretary read the first clause of the propositions submitted yesterday by Mr. Battelle.

MR. PARKER. No one would be more gratified than myself if the whole question could be entirely ignored. The only question in my mind—and the question has been there for some time is whether we can get through Congress—whether we can consummate our end. If we could do this without touching the question at all, it is my desire and has been all the time. Now the question arises in my mind whether the adoption of what now seems to be pretty generally conceded—if that is to be satisfactory and enough, I am for it—that is, if it is necessary. But whether it goes far enough to meet what will be necessary, to ensure us admission—the approval of Congress and admission—that is the question. And it is a vital question, it seems to me. I would therefore, Mr. President—because I don't believe discussion on a question of this kind is going to do any good—I should hope that the matter might be referred to a committee fairly representing both parties here—say of eight—and that they investigate the whole matter and report what in their judgment the Convention ought to do to secure us success. Because unless we meet with that success there, why then the whole thing here is a stupendous and expensive abortion, not to say disgrace; and its projectors and conductors, including ourselves, would be the object of universal derision.

THE PRESIDENT. The question is a plain one. Everybody seems to have made up his mind. The object of the Convention is to avoid discussion as far as possible.

MR. STUART of Doddridge (who had just come in). When I vote on this, do I understand that I am voting on it as a compromise measure, and as settling the question?

A MEMBER. Yes, sir.

MR. STUART of Doddridge. Then, sir, I do not want to say one word.

MR. BATTELLE. The gentleman from Doddridge is now in and I wish the Convention to bear me witness that the coming up of this question now is not by my act and that I have redeemed in good faith the promise I made him this morning. I much prefer

that this question should not be considered now and especially after the intimations given to it.

And I wish here to say that so far as I am concerned, as an individual, I enter into no arrangement with regard to compromises in this fashion. I expect to vote for what suits me and to vote against what I dislike. I should much prefer if the question did not come up this morning and was willing, so far as I regarded it as violating no understanding with individual members—if it did come up at all, that it be referred to a committee such as indicated by the gentleman from Hancock, of four persons on each side. I should feel myself, if voting for that proposition, bound to at least pay very respectful attention to their report whatever it might be. I am prepared to vote for the pending proposition in good faith; but I wish to say in answer to the question of the gentleman from Doddridge that on my part I do not enter into this arrangement as a matter of compromise; because there has been no arrangement which could give it the dignity of a compromise: I mean no such parliamentary arrangement, for instance, as its reference to a committee.

And I will say, sir, with the indulgence of the Convention while on the floor—and that is the crowning motive impelling me as an individual in all this business—that we should have a new State; and I desire to see such action taken as will most effectually secure that end. I have not had time for reflection to determine in my own mind how far it will go towards securing that end. I should have preferred, if the question must be mooted to-day at all, that it be referred to a committee fairly and properly constituted of gentlemen of different views, that they might report to us to-morrow morning.

The question was taken on Mr. Dille's motion to incorporate the first proposition in the Constitution and it was agreed to, with a single dissenting vote, that of Mr. Brumfield, the vote in detail being as follows:

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Battelle, Chapman, Caldwell, Carskadon, Cook, Dering, Dolly, Dille, Hansley, Hall, Haymond, Harrison, Hubbs, Hervey, Hagar, Hoback, Irvine, Lamb, Lauck, Montague, McCutchen, Mahon, O'Brien, Parsons, Powell, Parker, Pomeroy, Robinson, Ruffner, Ryan, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Smith, Tay-

lor, Trainer, Van Winkle, Warder, Wilson, John Hall, (President)
—48.

NAYS—Brumfield—1.

Several members appealed to Mr. Brumfield to change his vote and make it unanimous.

Mr. Brumfield replied that he didn't "take as much part in the discussions as some of the members," but he always "did his own voting."

The members absent when the vote was taken were: Paxton, Mahon, Willey and Walker.

MR. HAYMOND. I congratulate this house and the country on the vote just taken. If nothing more is said about slavery here, it will do more than anything this house can do to cause all opposition to this Constitution and this new State to cease. And I ask my friend from Ohio (Mr. Battelle) never to mention slavery here again.

Mr. Dering moved to adjourn.

MR. BATTELLE. Will the gentleman withdraw his motion a moment?

MR. DERING. Certainly.

MR. BATTELLE. Indulge me a moment while I say that I join in the congratulations of my friend from Marion; except in so far—which I suppose he did not intend—as his remarks imply any reflection on me individually for mootng a subject here which in my judgment as a representative in this Convention I see proper to moot. I hope, however, the gentleman intends no reflection on me personally.

MR. HAYMOND. I intended nothing of the sort.

*Mr. Battelle moved that the said additional section be referred to the Committee on Revision and Engrossment, which was agreed to.

And, on motion of Mr. Dering, the Convention adjourned.

LV. FRIDAY, FEBRUARY 14, 1862.

*The Convention met at the usual hour, and after prayer by the Rev. Mr. Brooks, the journal was read and approved.

Mr. Harrison, chairman of the special committee on the subject of forfeited, waste and unappropriated lands, submitted the following report:

28. All private rights and interests in lands within this State, derived from the laws of Virginia prior to the time this Constitution goes into operation, shall remain valid and secure under the laws of this State, and shall be determined by the laws then existing in the State of Virginia.

29. No entry by warrant on lands in this State shall be made after this Constitution goes into operation; and in all cases where an entry has been made before that time, and then or thereafter, so perfected as to entitle the locator to a grant, the legislature shall make provision by law for issuing the same.

30. The legislature shall make provision for the sale of all lands in this State, forfeited to the State of Virginia for the non-payment of taxes charged thereon for the year one thousand eight hundred and thirty-one, and prior thereto, or for the failure of the owners thereof to have the same entered and charged on the land books of the proper county, with taxes for the year one thousand eight hundred and thirty-one, or prior thereto, under the laws of Virginia, as well as of all waste and unappropriated lands, by proceedings to be had in the circuit court of the county where such lands may lie.

31. All lands within the bounds of this State returned delinquent for non-payment of taxes to the State of Virginia, or forfeited for the failure of the owners to have the same entered on the books of the commissioner of the revenue, since the year one thousand eight hundred and thirty-one, shall, as soon as this Constitution goes into operation, be released and exonerated from forfeiture and from the delinquent taxes charged thereon; provided, however, that this section shall not apply in the case of forfeiture of any tract containing more than one thousand acres, and in cases of delinquency to any tract where the amount of taxes, exclusive of damages, shall exceed twenty dollars.

32. And all such lands as have been vested in the State of Virginia as mentioned in the preceding section

*See note, Vol. II, page 219.

either by forfeiture or purchase at the sheriffs' sales for delinquent taxes, but which shall not be released from such forfeiture, by the proviso thereto, may be redeemed by the former owners by payment to the State of West Virginia of the amount of taxes and damages due thereon within five years after this Constitution goes into operation, and the residue of such lands so vested, and not redeemed, or which shall not be released by this Constitution from such forfeiture or delinquency shall be treated as forfeited lands. Provided, however, that the former owners shall be entitled to the excess of the proceeds of such lands over the taxes and damages due thereon, and the costs of their claim to the same be filed in the Circuit Court within two years from the sale of the land.

On motion of Mr. Van Winkle this report was taken up for consideration, section by section.

The several sections were then read and adopted.

And, on motion of Mr. Van Winkle, said report was taken up on its second reading; and the question recurring upon the adoption of the whole report, it was put and decided in the affirmative; after which it was referred to the Committee on Revision and Engrossment.

On motion of Mr. Dille the Convention adjourned till 10 o'clock to-morrow morning.

LVI. SATURDAY, FEBRUARY 15, 1862.

*Mr. Lamb, from the Committee on Revision and Engrossment, made a partial report, which was read by Mr. Van Winkle.

Mr. Lamb moved to amend the 20th section of the 4th article, as revised, by striking out the words "unless another time be prescribed by law," which was agreed to.

Mr. Battelle moved to amend the 2d section of the 8th article, as revised, by striking out the words "not less than fifty nor more than," and inserting the word "of," in the blank, and the question was put and the amendment adopted.

On motion of Mr. Lamb the revised articles, as far as completed, were ordered to be printed under the supervision of the Committee on Revision and Engrossment.

Mr. Hall, of Marion, chairman of the Committee on

*See note, Vol. II, page 219.

the Schedule, submitted the following report:

The Committee on the Schedule to the Constitution respectfully recommend that the following provisions be inserted in the schedule.

By order of the Committee,

E. B. Hall, chairman.

"1. It shall be the duty of the President of this Convention, immediately upon its adjournment, to subscribe and cause to be duly certified copies of the foregoing Constitution with this schedule annexed, and to deliver one of said copies to the governor, and the other copies to the commissioners hereinafter appointed.

"2. It shall be the duty of who are hereby appointed commissioners† with full power and authority to act for this Convention upon the receipt of such certified copy, to cause the same to be published once a week for successive weeks, in so many of the news papers published within the boundaries of the proposed State of West Virginia as they may deem necessary, and to distribute properly the printed copies of said Constitution, heretofore provided for by this Convention.

"3. Poll books shall be prepared under the direction of for each place of voting in the several (fifty-one) counties proposed to be included in said State, said books to contain two separate columns, one to be headed "For the Constitution," and the other "Against the Constitution," and it shall be the duty of the commissioners and officers who superintended and conducted the election in October last, or such other persons as the governor or said first named commissioners may appoint to attend at their respective places of holding elections, and superintend and conduct the election herein provided for, and if they shall fail to attend or act, any two free-holders present may act as commissioners, administer to each other the prescribed oaths, appoint a conducting officer and clerks to record the votes and qualify them.

"4. Said election shall be held on the day of , 1862, and for the causes prescribed in the code of Virginia, the polls may be kept open three days; and

†For "Minutes of the Meetings of the Board of Commissioners appointed by the Constitutional Convention in Regular Session" see Appendix.

if at the time of said election there be in any of said counties any military or hostile assemblage of persons, or other cause to interfere with the full expression of the will of the voters they may assemble at any other place within, or convenient to, their respective counties, and hold an election as herein provided for; and if from any cause said election be not held in and for any of said counties, at the time named, the same may be held at such subsequent time or times as said first named commissioners may approve, if so done as not to materially delay the submission of the result to the legislature for its action.

"5. The commissioners, officers and clerks who shall hold said election as aforesaid shall each, before entering upon the duties of his office, take, in addition to the oath now required by the general election law, the oath prescribed by the convention, which assembled at Wheeling on the 11th day of June, 1861, and said commissioners and officers shall, as early as practicable after said election, aggregate and ascertain the number of votes cast and recorded *for* and the number *against* the Constitution, at the election so by them held and conducted, and the expenses of such election, and shall return and certify the same to said first named commissioners at Wheeling, to the following effect:

We and commissioners and conducting officers do certify that we caused an election to be held at in the county of , at which we permitted all persons to vote who desired, and were entitled to do so, under this Constitution and none other, and that we have carefully added each column of our poll books and find the following result:

For the Constitution votes.
Against the Constitution votes.
Given under our hands this day of , 1862.

.....
.....
.....

To which shall be added the following affidavit:

.....County, to-wit:

I, a justice, (or other officer authorized to administer oaths or one of the acting commission-

ers), in and for said county, do hereby certify that the above named conducting officer this day made oath before me that the above certificate is correct and true.

Given under my hand this day of , 1862.

"6. All persons qualified to vote under this Constitution shall be entitled to vote on the question of its adoption or rejection; and said first named commissioners shall provide for taking the vote of such of said qualified voters as may at the time of said election, be in the armies or service of the United States, whether within or beyond the boundaries of the proposed State, and any other such qualified voters as may be prevented by peril or other obstacle from voting in their respective counties, may vote at any place of voting in any other of the said counties, upon making oath that they have not elsewhere voted on the question.

"7. The officers and commissioners conducting the elections shall preserve their poll books and hold them subject to the order of the said first named commissioners, who shall provide for their collection and delivery to the authorities of the State of West Virginia; shall ascertain and certify to the Governor of Virginia the result of the said election so held; and if the same results in the adoption of said Constitution, they shall request him, as provided in the 8th section of the ordinance convening this Convention, to convene, and lay before the General Assembly of the State of Virginia, for its consent, as provided in the Constitution of the United States, a certified copy of this Constitution, with the result of said vote, and to request said general assembly, as provided in the 10th section of said ordinance, to give its consent to the formation and erection of the State of West Virginia, as proposed, and to forward to the Congress of the United States such consent, together with an official copy of said Constitution, with the request that the said State of West Virginia may at once be admitted into the Union of states.

"8. Said first named commissioners shall take such steps, and do all such things as they shall deem expedient, to procure, as soon as possible, the said consent of the said general assembly and Congress to the formation, erection and admission of the said State of West Virginia; the leg-

islature whereof, at its first session shall provide for reimbursing the expenses incurred by said commissioners in the discharge of the duties of their appointment, and may make them a reasonable compensation for their services.

"9. When the General Assembly of the State of Virginia, and the Congress of the United States shall severally give their consent to the formation, erection and admission of said State of West Virginia, as proposed, the said commissioners shall forthwith issue their proclamation, which shall be inserted, for three or more successive weeks, in the newspapers published within the limits of the said new State, declaring this Constitution in operation, and directing an election to be held in every county thereof, at the several usual places of holding elections therein, on such day, not more than sixty days after the consent of Congress shall be obtained as aforesaid, as they shall appoint, and under the superintendence of such persons or former county officers as they shall designate, by name or otherwise, for the choice and election of judges of the circuit courts, and all the State and county officers provided in this Constitution to be elected except Supervisors, and shall provide and do all things necessary to be done in holding such election, ascertaining and certifying the result, and declare the same by proclamation; and shall qualify the state officers elect, the duties of whose offices call them to act at the capital of the State, and shall designate and appoint suitable persons in each of said counties to qualify the county officers elect in their respective counties, and the judges of the circuit courts; and said commissioners shall have power, if deemed necessary, to reconvene the members of this Convention, on such day as they may prescribe.

"10. The duties to be performed by the Commissioners, officers and clerks holding and conducting said election, and the privileges of the voters, and the penalties attaching for misconduct, on the part of any person, shall be, in all things, as now prescribed by law, and in this schedule.

"11. If the first election of senators, delegates, judges and state and county officers is held not more than six months before the first day of January in any year, or

within six months thereafter, their respective terms of service, except that of the governor, shall begin twenty days after such election, but shall end on the day on which they would have ended had they begun on the first day of January. The same provisions shall apply to the first elections of governor except that the third Tuesday in January shall be substituted for the first day of January.

"12. All officers elected or appointed and qualified by authority of the State of Virginia who shall remain in the exercise of the functions of their respective offices within the limits of this State up to the time this Constitution goes into operation, may continue to exercise the same within their respective counties under the authority and in the name of this State until the officers first elected or appointed under this Constitution for the discharge of similar duties are qualified.

"13. The records, books, papers, seals and other property and appurtenances of the former circuit and county Courts shall, when transferred by the Legislature of Virginia to the State of West Virginia, remain in the care and custody of the circuit court hereby established for the same county, to which all process outstanding at the time this Constitution goes into operation shall be returned, and by which new process in suits then pending or previously determined in the said former courts may be issued in proper cases. Copies and transcripts of the records and proceedings of the said former courts shall be made out and certified by the courts having the case and custody of such records and proceedings, and shall have the same force and effect as if they had been heretofore properly made out and certified by the said former courts."

On motion of Mr. Lamb, said report was taken up for consideration.

The first section being read,

Mr. Van Winkle moved to amend the same by striking out the word "copies" and inserting the word "triplicates," in the 3rd line; and striking out the words "of such copies," in the 4th line, and inserting "thereof," which was agreed to.

On motion of Mr. Hall, of Marion, the words "other copies," in the 4th line, were stricken out and the word "others" inserted.

And the first section was adopted.

The word "Constitution" was inserted in the 9th line, in lieu of the word "copy."

Mr. Van Winkle moved to amend the 2nd section by striking out all after the word "published," in the 10th line, to the word "newspapers," in the 11th line, and insert the words "in all the"; and insert after the words "West Virginia," in the 12th line, the words "willing to publish the same," which amendment was rejected.

Mr. Stevenson of Wood moved to amend the 2nd section by striking out the words "once a week for successive weeks," which was agreed to.

On motion of Mr. Van Winkle, the word "heretofore," in the 14th line, was stricken out.

The 2nd section, as amended, was adopted.

On motion of Mr. Brown of Preston, the following words were inserted in the 16th line of the 3rd section, after the word "books"; "with the oaths and forms of returns herein required, attached thereto."

Mr. Hall of Marion moved that the following words be inserted in the 22nd line, after the word "last"; "for delegates to this Convention," which was adopted.

The 3rd section, as amended, was then adopted.

On motion of Mr. Stuart of Doddridge, it was

Resolved, That hereafter until otherwise ordered, this Convention will meet at 2 o'clock P. M., instead of three o'clock.

The Convention, at the usual hour, took a recess.

2 O'CLOCK, P. M.

The Convention re-assembled.

Mr. Lamb moved that the Convention order five thousand copies of the Constitution to be printed.

Mr. Dering moved to amend the motion by inserting ten thousand instead of five thousand, which was agreed to.

And the motion of Mr. Lamb was adopted, as amended.

The question then being upon the adoption of the 4th section of the schedule, it was read, and the word "materially," in the 41st line, was stricken out.

Mr. Brown of Kanawha, moved to fill the blank in

the 30th line with the "fourth Thursday of May."

Mr. Sinsel moved to amend the motion by inserting "first Thursday of April," which was agreed to—yeas 25, nays 14.

And, on motion of Mr. Dering, the vote was recorded as follows:

YEAS—Messrs. Brown of Preston, Brooks, Battelle, Chapman, Dering, Dille, Haymond, Hubbs, Hagar, Irvine, Lauck, Mahon, Parsons, Powell, Paxton, Robinson, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Taylor, Van Winkle, Warder, Wilson—25.

NAYS—Messrs. Brown of Kanawha, Brumfield, Cook, Dolly, Hall, Hoback, Lamb, Montague, McCutchen, Ruffner, Stephenson of Clay, Sheets, Walker, John Hall (President)—14.

On motion of Mr. Van Winkle the balance of the report was passed by and the 13th section taken up.

Mr. Van Winkle moved to amend the 164th line by inserting after the word "courts," the words "within the bounds of the State of West Virginia," and insert in lieu of the word "when," in the 165th line, the word "be," and striking out all after the word "transferred" to the word "remain," in the 166th line, and inserting in the blank the words "to and," which was agreed to.

The 13th section was then adopted as amended.

And, on motion of Mr. Van Winkle, said section was taken up on its second reading.

And the question being upon the adoption of the same, it was decided in the affirmative; and the section was referred to the Committee on Revision and Engrossment.

The 4th section was then taken up and adopted, as amended.

Mr. Lamb moved to amend the 5th section by striking out all from the words "the oath" to the words "1861," and insert the following oath or affirmation:

"I solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the ordinances of the convention which assembled at Richmond on the 13th of February, 1861, to the

contrary notwithstanding," which motion was adopted; after which the 5th section, as amended, was adopted.

Upon the reading of the 6th section,

Mr. Brown of Preston moved to amend the 77th line, by adding at the end thereof the words "or of the State of Virginia," which was agreed to, and the 6th section adopted.

Mr. Lamb moved to amend the 7th section by inserting at the end of the 90th line, the words "by the voters of the forty-four counties first mentioned in the 2nd section of the first article of this Constitution," which amendment was adopted, after which the said section was adopted.

The 8th and 9th sections were then read and adopted.

Mr. Van Winkle then moved to amend the 10th section by striking out the words "and the penalties attaching for misconduct, on the part of any person," which was adopted.

And the question being upon the adoption of the section, as amended, it was decided in the affirmative.

The 11th section was read and

Mr. Van Winkle moved to amend the 152nd line, by striking out the words "third Tuesday of January," and insert the fourth day of March, which was agreed to, and the section adopted.

The 12th section was then read and adopted.

Mr. Hall of Marion then offered the following additional Section:

"In the event of the formation and erection of the proposed new State, the whole cost of this Convention, including the election of its members, the submission of the Constitution to the people, and all other expenses attending the premises shall be refunded to the State of Virginia."

On motion of Mr. Sinsel, the second reading of said report was dispensed with, and it was referred to the Committee on Revision and Engrossment, with power to fill the blanks.

And, on motion of Mr. Parsons, the Convention adjourned till Monday morning at 11 o'clock.

LVII. MONDAY, FEBRUARY 17, 1862.

*The Convention met at 11 o'clock, A. M., and after prayer by Rev. Mr. Simmons, the journal was read and approved.

Mr. Lamb, from the Committee on Revision and Engrossment, submitted the additional articles of the Constitution, which on his motion were ordered to be printed under the supervision of the Committee on Revision and Engrossment.

On motion of Mr. Lamb the Convention took a recess until 5 o'clock this afternoon.

5 O'CLOCK, P. M.

The Convention re-assembled.

Mr. Lamb, chairman of the Committee on Revision and Engrossment, submitted the revised schedule to the Constitution, except the names of the commissioners, which were not reported.

Mr. Brown of Kanawha, moved to amend the 122nd line by inserting after the word "sixty," the words "nor less than fifty."

Mr. Pomeroy moved to amend the amendment by inserting "forty," in lieu of "fifty," which was agreed to.

The amendment, as amended, was then adopted.

On motion of Mr. Lamb the said report was ordered to be printed under the supervision of the Committee on Revision and Engrossment.

Mr. Hoback offered the following resolution, which was rejected:

"Resolved, That the residue of the money appropriated by the legislature, to defray the expenses of this Convention be appropriated to pay the mileage of the delegates to said Convention in proportion to the amount paid for necessary travel."

Mr. Stuart of Doddridge, moved that when this Convention adjourns tomorrow, it will adjourn *sine die*.

Mr. Lamb moved to postpone the consideration of Mr. Stuart's motion for the present, which was agreed to.

And, on motion of Mr. Battelle, the Convention adjourned till tomorrow morning at 11 o'clock.

*See note Vol. II, page 219.

LVIII. TUESDAY, FEBRUARY 18, 1862.

*The Convention met pursuant to adjournment, and was opened with prayer by Rev. Mr. Battelle, member of the Convention.

The journal of yesterday was read and approved.

Mr. Lamb, chairman of the Committee on Revision and Engrossment, stated that he was instructed to report that the blank in the 2nd section of the schedule to the Constitution be filled by inserting the following names: John Hall, James W. Paxton, Elbert H. Caldwell, P. G. Van Winkle and Ephraim B. Hall, which report was adopted.

Mr. Lamb, by instruction of said committee, submitted the following resolution:

"Resolved, That the balance of the appropriation made by the legislature to cover the expenditures of this Convention if any, be and the same is hereby placed at the disposal of the President to defray such expenses as may be incurred by the commissioners appointed by the schedule, in submitting the Constitution to the people, to the legislature and to Congress."

And the question being upon the adoption of the resolution, it was decided in the affirmative.

Mr. Lamb, by instruction of said committee, offered the following resolutions:

"Resolved, That when the Convention adjourns to-day, it adjourn subject to the provisions of the eleventh section of the schedule.

"Resolved, That if the Convention be again convened the commissioners take the necessary steps to secure a representation therein from the counties proposed to be included in the new State not at present represented, and to fill any vacancies which may occur."

Mr. Hall of Marion offered the following substitute for said resolutions:

"Resolved, That the 11th section of the schedule be stricken out, and that when this Convention adjourn to-day, it do adjourn *sine die*."

And upon this substitute the yeas and nays were demanded, which demand being sustained, it was decided in the negative.

*See note Vol. II, page 219.

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Carskadon, Cook, Dering, Dille, Hall of Marion, Haymond, Harrison, Hagar, Hoback, McCutchen, Simmons, Stephenson of Clay, Stuart of Doddridge, Taylor, Warder—17.

NAYS—Messrs. John Hall (President), Brooks, Brumfield, Battelle, Chapman, Caldwell, Dolly, Hansley, Hubbs, Hervey, Irvine, Lamb, Lauck, Montague, Mahon, O'Brien, Parsons, Pomeroy, Robinson, Ryan, Sinsel, Stevenson of Wood, Stewart of Wirt, Soper, Trainer, Van Winkle, Walker, Wilson—28.

The resolutions of Mr. Lamb were then adopted, and the second one ordered to be inserted at the end of the 11th section of the schedule.

Mr. Lamb, by instruction of said committee, offered the following resolutions:

“Resolved, That the Constitution, as submitted by the Committee of Revision and Engrossment, and amended by this Convention, be adopted, and submitted, according to the schedule, to the voters within the proposed boundaries of the State of West Virginia, for adoption or rejection.

“Resolved, That a copy of the Constitution and schedule, authenticated by the signature of the President, and attested by the Secretary, be subjoined to the journal.”

And the question being upon the adoption of the resolutions the vote was recorded as follows:

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Battelle, Chapman, Caldwell, Carskadon, Cook, Dering, Dolly, Dille, Hansley, Hall, Haymond, Harrison, Hubbs, Hervey, Hagar, Hoback, Irvine, Lamb, Lauck, Montague, McCutchen, Mahon, O'Brien, Parsons, Powell, Parker, Pomeroy, Robinson, Ruffner, Ryan, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Smith, Taylor, Trainer, Van Winkle, Warder, Wilson, John Hall, (President)—49.

NAYS—0.

On motion of Mr. Stevenson of Wood, the following resolution was adopted:

“Resolved, That the bound copies of the journal of

the proceedings of this Convention, be left in possession of the commissioners appointed by it, to be distributed by them as follows: One copy to each member of the Convention, and the remaining volumes in such manner as they may deem proper."

On motion of Mr. Brown of Preston, the following resolution was unanimously adopted:

"Resolved, That the thanks of this Convention are hereby tendered to the President for the able, courteous and impartial manner in which he has presided over their deliberations."

On motion of Mr. Brown of Kanawha, the following resolution was unanimously adopted:

"Resolved, That the promptness and correctness of the Secretary in the discharge of his complicated duties has met the approbation of the Convention, and is entitled to this official acknowledgment."

On motion of Mr. Dering, the following resolution was unanimously adopted:

"Resolved, That the thanks of this Convention are due to the reporters of the proceedings of this body, for the faithful and impartial manner in which they have reported the proceedings of this Convention."

On motion of Mr. Stuart of Doddridge, the following resolution was adopted:

"Resolved, That the thanks of the Convention are justly due, and are hereby presented to the sergeant-at-arms, pages and other officers of this Convention for the prompt and efficient discharge of their respective duties."

On motion of Mr. Soper, the following resolution was unanimously adopted:

"Resolved, That the clergy of the city of Wheeling and vicinity, who have opened the sessions of the Convention with prayer are hereby tendered the sincere and grateful acknowledgments of the members."

On motion of Mr. Powell, the following resolution was unanimously adopted:

"Resolved, That the thanks of this Convention are due to the citizens of this city for their hospitality shown to the members of this Convention."

On motion of Mr. Caldwell, the Convention took a recess until half-past two o'clock this afternoon.

2:30 O'CLOCK, P. M.

The Convention re-assembled.

Mr. Brown of Kanawha, tendered his resignation, which was accepted.

On motion of Mr. Van Winkle, the following resolution was adopted:

Resolved, That the journal of today's proceedings be read, approved and signed by the President and Secretary, and that the Convention adjourn in accordance with the resolution passed this morning.

JOHN HALL, President.

ELLERY R. HALL, Secretary.

(End of First Session)

RECALLED SESSION AT WHEELING, VIRGINIA,
FEBRUARY 12, 1863.

LIX. THURSDAY, FEBRUARY 12, 1863.

In pursuance of proclamation issued by the schedule commissioners, issued January 14, 1863, the Convention to frame a constitution for the proposed State of West Virginia reassembled in the United States Court Room, in the Custom House, in the city of Wheeling, at the hour of eleven o'clock A. M., this day, and were called to order by the Secretary, Mr. Ellery R. Hall, who read the proclamation as follows:

Whereas, by the schedule annexed to the Constitution of West Virginia, the commissioners therein named have power to reconvene the Convention which prepared and proposed the said CONSTITUTION: AND WHEREAS, The said commissioners, if they determine to reconvene the said Convention, are required to take the necessary steps to secure a representation therein, from the counties proposed to be included in the said State, not heretofore represented, and to fill all vacancies that have occurred:

Now, therefore, the undersigned commissioners, deeming it necessary to reconvene the said Convention, to take into consideration the acts of Congress, entitled "An act for the admission of the State of West Virginia into the Union, and for other purposes," approved December 31, 1862, do by this, our proclamation, reconvene the said Convention to meet at the Custom House in the city of Wheeling, on Thursday, the 12th day of February next, and do order and direct that elections of delegates to the said Convention be held under and according to the laws of the State of Virginia, on Thursday, the fifth day of February next, in the following counties not heretofore represented, that is to say: the counties of Greenbrier and Monroe shall each elect two delegates and the counties of Morgan, Pendleton and Pocahontas shall each elect one delegate; and that at the same time and in like manner, elections be held to fill vacancies which have occurred in the representation in the said Convention, that is to say: the county of Ohio shall elect one delegate in the place of Gordon Battelle, deceased; the county of Marion one delegate in place of Hiram Haymond, removed from the State; the county of Mason one delegate in place of John Hall, resigned, and the county of Kanawha one delegate in place of James H. Brown, resigned; and that the results of the elections, in the several counties named, be certified to the undersigned com-

missioners at the city of Wheeling.

Given under our hands at the city of Wheeling, this fourteenth day of January, 1863.

P. G. Van Winkle,
J. W. Paxton,
E. H. Caldwell,
E. B. Hall, Commissioners.

On motion of Mr. Pomeroy, of Hancock, Daniel Lamb, of Ohio county was chosen temporary chairman.

Mr. Lamb, before taking his seat, presented the credentials of Prof. Andrew F. Ross, delegate from Ohio county to fill vacancy caused by the death of Gordon Battelle.

MR. VAN WINKLE. Mr. President, I present the report of the commissioners appointed under the schedule.

The report was read as follows:

“To the Members of the Constitutional Convention

Gentlemen:

The commissioners named in the schedule to the Constitution of West Virginia, beg leave to submit the following report: That the Constitution framed by the Convention, was submitted to the people of the proposed new State, for ratification or rejection, at the time named in the schedule, and was adopted with great unanimity. The General Assembly of Virginia was convened by the governor, and the consent of that body to the formation of the State of West Virginia was obtained. A copy of the act giving consent, is herewith transmitted.

A certified copy of the Constitution, together with the act granting permission, was forwarded to the Congress of the United States. In July last, a bill of admission, with a proposed amendment to the Constitution, was passed by the Senate, and in December following, by the House of Representatives. A copy of this act, printed in connection with the Constitution, is herewith transmitted.

By the terms of the act admitting West Virginia into the Union, the Convention that framed the Constitution, is to be reconvened. A copy of the proclamation issued by your commissioners reconvening you for the purpose of taking action on the proposed amendment, and ordering elections to be held in counties not here-

tofore represented, and to fill the vacancy in the representation of Ohio county, occasioned by the death of Gordon Battelle, and in Marion county by the removal of Hiram Haymond from the State, and in Kanawha county by the resignation of James H. Brown, and in Mason county by the resignation of John Hall, accompanies this report. Copies of the resignation of John Hall and of R. F. Brooks, late delegate for the county of Upshur, together with the writ of election issued for supplying the vacancy in the representation of the said county of Upshur, will be found with this report.

All of which is respectfully submitted,

J. W. Paxton,
P. G. Van Winkle,
E. H. Caldwell,
E. B. Hall.

MR. VAN WINKLE. I would like to state that among other papers in the hands of the commissioners are some election returns, and since I presented that report I have received a letter from Mr. Slack of Kanawha, in reference to the election there, which I will hand to the secretary for the Committee on Credentials. I suppose any credentials here had better be presented and referred.

Mr. Powell presented the credentials of Dr. David S. Pinnell, as delegate from Upshur, in place of R. L. Brooks, resigned.

Mr. Powell presented the credentials of David W. Gibson, as delegate from Pocahontas, heretofore unrepresented.

Mr. Dering presented the credentials of Col. Samuel Young, as delegate from Pocahontas, heretofore unrepresented.

Mr. Carskadon presented the credentials of Capt. John Boggs, as delegate from Pendleton, heretofore unrepresented.

Mr. Trainer presented the credentials of Joseph S. Wheat, as delegate from Morgan, heretofore unrepresented.

Mr. Van Winkle presented the credentials of James H. Brown as delegate from Kanawha, resigned and returned.

THE CHAIRMAN. What disposition, gentlemen, shall be made of these credentials?

MR. STEVENSON of Wood. I move that they be referred to the Committee on Credentials, appointed by the Convention. I believe there was a committee of that kind appointed at the last session.

The motion was agreed to.

The Chair stated that the committee consisted of Messrs. Sin-sel, Brown of Preston, Stuart of Doddridge, Parker and Paxton.

MR. VAN WINKLE. I move the committee have leave to sit during the sessions of the Convention.

The motion was agreed to.

THE CHAIRMAN. Is it contemplated to proceed with the election of a president before the new members are reported upon and sworn in?

MR. VAN WINKLE. I should advise not, sir. I should suppose these new members ought to have a vote in the election of president. We can hear from this committee in a very few minutes. If there are any contested cases, of course we cannot wait for them. But on the rest they can report back in perhaps four or five minutes. They can step down to the offices of the secretary of the commonwealth who has such election returns as have been received.

MR. SINSEL. I will give notice to the committee we will meet here in the smoking room immediately to attend to this business.

Mr. Lamb, chairman, called Mr. Van Winkle to the chair, and descending to the floor, said:

Mr. Chairman, I have to announce to the Convention since it last met in this hall the decease of Gordon Battelle, a member of the Convention from Ohio county. We all can bear witness that Mr. Battelle was a most earnest, most useful and efficient member of this body. In all the great questions upon which we were called upon to act, he took, it is true, a decided position on one side or the other; but even those of us who differed from him, as it was my case to do on some questions, we could not but respect the purity of his motives. He had no object in view but the good of our common country, the welfare and prosperity of West Virginia. If there is any member of this Convention who deserves a mark of respect at our hands it is our deceased brother. I move therefore that this Convention adopt the following resolutions:

“RESOLVED, That this Convention have learned with deep regret the death of their late associate and friend, the Rev. Gordon Battelle, of Ohio county, whose courtesy, kindness, unaffected piety and devotion to his duties, are freshly remembered and will cause his memory to be deeply cherished.

"RESOLVED, That we, in common with our fellow-citizens, appreciate the lofty patriotism and humane impulses which led our late associate to devote himself to the task of affording both spiritual and physical relief to his compatriots in arms, in which disinterested services he lost his life.

"RESOLVED, That we tender to the relatives and friends of the deceased our cordial sympathy in their deep affliction.

"RESOLVED, That these resolutions be entered on the minutes, and that a copy thereof be transmitted to the family of the deceased."

MR. WILLEY. I hope, sir, it may not be out of order to add my testimony to the exalted character of our deceased fellow member. There is not a relation in life in which he was not only eminent but unsurpassed. In all the private charities of private life he was a shining light. In social life, in the circles of private friendship, he had had the endearing and delightful qualities and characteristics calculated to attach friends to him. His country's true interest and true glory was the motive power of every action he took in reference to it. There is one style of man still higher. It is said that the Christian is the highest style of man, and he filled that standard. Coming down from the Capitol at Washington, two or three weeks before his death, the last time I ever saw him, I saw him standing looking upon the crowd gathered on a festive occasion when the marine band was entertaining the citizens looking on. I took him by the hand. He was then unwell. Said I "Brother Battelle, how do you feel in regard to the war? Have you the same hope and confidence?"

"My hope," says he "is thus far the same. We shall succeed. God is with us."

Those were the last words I ever heard him utter. I believe it was the faith of the dying Christian, for he was sick unto death.

MR. STEVENSON of Wood. I feel like adding a brief tribute of respect to the memory of our late associate, who since our last meeting here one year ago has passed through the valley to the pleasant country beyond to receive his reward as a patriot, as a Christian and as a man. I can speak only of his labors as a member of the Convention. Elected as he was in a time of public difficulty, when the clamors of party gave way to a public demand on

the part of the people for the best men to avert if possible the threatened destruction of constitutional liberty and of public order. He was qualified on this account to represent untrammelled the interests of the people who elected him; and in pursuing such a course his labors in the Convention contributed much to the establishment of the object for which it was convened, perfecting the organization of our new State and giving us a constitution that will in a brief period of years I have no doubt make this new State one of the most prosperous in the Union, in which all our hopes are rested; and it will by that time have brought us safely through the shocks of a terrible revolution.

I can say, sir, as a laborer with him on the Committee on Education that he labored with untiring industry for the purpose of engrafting on the Constitution of the State a provision upon that subject that would make education one of the leading features in the progress of our career as a State. For this purpose he consulted and corresponded with men who were prominently, and who had long been connected with the subject of education. He collected, with great labor, all the laws in different states upon that subject in order to extract from them such features as might be properly applied to the conditions of education within the limits of the new State. He seemed to realize the fact that had there been a system of liberal public instruction in the southern country there would not have been a rebellion wasting in their midst like the pestilence at noonday. The results of his labors in reference to this matter are found in the provision in our new Constitution upon that subject; and I think I may safely say that in no constitution of any state is there a provision found better calculated to accomplish the purposes for which it was inserted. He seems also in all his acts, as was suggested by my friend from Monongalia, to have had steadily in view but one object, the good of the people of the new State and of our common country. For this reason he labored to insert in our Constitution such provisions as had in other constitutions in other states contributed to the prosperity and success of the people and the particular interests of those states. I have only to say, sir, in conclusion, that I accord to the memory of our departed friend all that has been remarked in regard to him both in the resolutions and in the remarks of my friends on the other side of the house. I offer this, sir, as a brief tribute, and a very imperfect one, to the memory of one whom I regarded not only as one of the best members of this Convention but

one of the best men within the limits of the new State or the country.

MR. POMEROY. Mr. President, I suppose it would be proper and just that I also should add my tribute of respect to the memory of our deceased brother. My first acquaintance with Mr. Battelle was in this hall when I first met him here as a member of this Convention; and I can bear testimony that in all my acquaintance with him I always found him to be a high-toned Christian gentleman, and that his hopes and his faith always remained bright and unshaken in regard to the ultimate triumph of the great cause in which this country is now engaged. And it does a man's heart good that is at all loyal himself to find other men that have the same hopes and the same unshaken confidence that in the end right and truth must prevail over wrong and error. And while it is a great thing in a day like ours, when dark and portentous clouds hang over the country to find a man that is a true patriot, loves his country and its institutions, it is still a greater thing and a greater privilege to me to find a man that adds to his patriotism that spirit of piety and Christianity which elevates and purifies every one of the thoughts of its possessor. And while we mourn over the loss of our brother here; while we cannot meet with him in counsel and cannot receive from him the wholesome advice and consideration in our deliberations we have been wont to do, yet it is a great comfort to us to believe and have unshaken faith in that truth that what has been our loss has been his eternal gain; that while he cannot participate in the privileges and blessings we expect to enjoy in this new and loyal and patriotic State of West Virginia, that he can rejoice in those pleasures and joys that never die and can mingle with those associates and spirits of the just made perfect whose home is in heaven. May it be the happy lot of each one of us to walk as he walked in the ways of pleasantness and of wisdom, so that we may meet with the same glorious and eternal reward that I have no doubt our departed brother at this time is permitted to enjoy.

ANDREW F. ROSS. Mr. President, I hope I shall not be deemed obtrusive in adding my poor tribute of respect to the gentleman whose place I occupy in this Convention. With the lamented friend whose death has just been announced I was acquainted only in the private relations of life. In those relations he was one of the most estimable men it has ever been my good fortune to know; a

warm-hearted Christian; a clear-headed man, whose worth was not properly estimated until the disorders of the times brought his great talents into requisition in this Convention. Mr. Chairman, I feel it a privilege upon this occasion to add my feeble testimony, so far as my knowledge of him extends, to the private worth and the noble Christian character of Gordon Battelle. I would to God that here to-day he were in your midst instead of myself, that you might have on the re-assembling of this body the benefit of his advice, his clear-headed counsel, and that he might enjoy the happiness of seeing this present time, that the great object which was so near to his heart is so nearly consummated as it is this day.

With these few remarks, Mr. President, I conclude, with the hope that these resolutions will pass unanimously.

MR. BROWN of Kanawha. I beg leave of the house to say one word. I desire to bear my own testimony to the genius and virtues of Gordon Battelle. I come not to pass any glowing eulogium upon him. He needs none: simply to speak that which I know. I knew him intimately as a member of this Convention; but better and long years before as a resident of my own town; where he established a reputation that will live long in the years to come, when all good men will rejoice to follow his example. This I deem but just and due to him, coming as I do from that section of the state most distant now from the residence he occupied at the time of his decease.

The Chairman put the question on the resolutions, and they were adopted unanimously.

MR. SOPER. Mr. President, as a tribute of further respect to the deceased, I move that this Convention do now adjourn.

MR. VAN WINKLE. For the day, sir?

Several members suggested two o'clock.

MR. STEVENSON of Wood. Take a recess till three o'clock.

MR. SOPER. Until two o'clock this afternoon.

MR. VAN WINKLE. Will the gentleman suspend for one moment. I move that the gentleman from Monongalia (Mr. Willey), be requested to address this Convention this afternoon; or if that time is not convenient, at such other as he may appoint. I apprehend the Convention would be pleased to hear from him. He has

been in a place where his experience and knowledge of facts and circumstances he has acquired would be certainly interesting to the Convention. I move, therefore, the gentleman be requested to address this Convention this afternoon.

The motion was agreed to; and thereupon Mr. Soper renewed his motion and the Convention adjourned till 2 o'clock P. M.

AFTERNOON SESSION

At 2 o'clock P. M. the Convention reassembled, Mr. Lamb in the chair.

Mr. Sinsel, chairman of the Committee on Credentials, submitted the following report, which was adopted:

"The Committee on Credentials beg leave to submit the following report, viz:

"That the following gentlemen have been duly elected members of this Convention and are entitled to seats therein, viz:

"A. F. Ross from the county of Ohio, to fill the vacancy occasioned by the death of Gordon Battelle.

"David S. Pinnell from the county of Upshur, to fill the vacancy occasioned by the resignation of R. L. Brooks.

"Joseph S. Wheat from the county of Morgan, heretofore unrepresented.

"John Boggs from the county of Pendleton, heretofore unrepresented.

"Moses Tichenell from the county of Marion, to fill the vacancy occasioned by the removal of Hiram Haymond out of the State.

"Respectfully submitted,

"Harmon Sinsel, chairman."

MR. SINSEL. In addition to that, we have three other cases before us. Judge Brown, from Kanawha, is here, we understand by a simple letter that he was elected but we have no certificate and poll-book showing that fact; and we have another case from the county of Pocahontas in which there will be some little controversy. We will have another meeting and attend to these cases unless the Convention see proper to take action on the subject itself.

MR. POMEROY. I move that the report be adopted and the members sworn in and then we will take up the other cases, each one by itself.

THE CHAIRMAN. Will the Convention take action on each case separately?

MR. POMEROY. O, on the whole, I think as far as it goes.

THE CHAIRMAN. Gentlemen, are you ready for the question? It is upon the adoption of the report.

The question was put and the report adopted, nem. con.

MR. POMEROY. If I understand the case of Kanawha county it was a simple matter. The Convention can decide it in a moment. There was no opposing candidate to Judge Brown and he has been elected by the voters of that county; and therefore I suppose this Convention is prepared to receive him without any further report.

Mr. Sinsel presented the following letter:

“Charleston, Feb. 11, 1863

“To the Commissioners:

“Judge Brown was elected to the Convention in his own place, he having resigned. He is now in Washington. You will please telegraph him. His certificate of election will be forwarded to you. The very best thing the Convention can do to secure a large vote.”

MR. VAN WINKLE. I said the letter was from Mr. Slack (Greenbury Slack), a member of the legislature.

Mr. Pomeroy moved that Mr. Brown be admitted to a seat, and the motion was agreed to.

At the suggestion of Mr. Sinsel, the newly admitted members came forward to the Secretary's desk and took the oath of office.

THE CHAIRMAN. If it be the pleasure of the Convention to proceed to the election of a president, that will be the next thing in order.

MR. STUART of Doddridge. I beg leave to bring into nomination the name of A. D. Soper. He is our most venerable friend and has large legislative experience; a gentleman in every respect; and I think his action heretofore in our body commends him. I

will support him myself with the greatest pleasure and I hope it will be the pleasure of this body to do so.

MR. VAN WINKLE. I nominate Mr. E. B. Hall, of Marion.

MR. MCCUTCHEN. Mr. President, I nominate Mr. Pomeroy, of Hancock.

MR. LAUCK. I nominate Mr. E. H. Caldwell, of Marshall.

THE CHAIRMAN. How shall the election be determined?

MR. STEVENSON of Wood. By calling the roll, I suggest.

MR. VAN WINKLE. It was done that way on a former occasion.

THE CHAIRMAN. Before we proceed, the Chair will ask the Secretary to read a letter.

The Secretary then read a letter from John Hall, member from Mason county, President of the Convention, tendering his resignation.

The resignation was accepted, and the Secretary proceeded to call the roll of the Convention when the following responded to their names:

Messrs. Brown of Preston, Brown of Kanawha, Chapman, Caldwell, Carskadon, Dering, Dille, Dolly, Hall, Hubbs, Hervey, Irvine, Lamb, Lauck, Montague, Mahon, McCutchen, O'Brien, Parsons, Powell, Parker, Pomeroy, Pinnell, Ross, Ruffner, Ryan, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Smith, Tichenell, Trainer, Van Winkle, Willey, Warder, Wheat and Wilson.

The Chair said the next business in order would be the election of a permanent president, stating that it would require a majority of all the votes cast to elect.

The roll was called with result as follows:

For A. D. Soper—Messrs. Chapman, Carskadon, Cook, Hubbs, Mahon, Powell, Pinnell, Ryan, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Sheets, Wheat and Wilson—16.

For E. B. Hall—Messrs. Brown of Preston, Brown of Kanawha, Dering, Dille, Irvine, Lamb, O'Brien, Ross, Ruffner, Smith, Tichenell, Van Winkle, Willey, and Warder—14.

For J. S. Pomeroy—Messrs. Caldwell, Montague, McCutchen, Parsons, and Parker—5.

For E. H. Caldwell—Messrs. Hall, Hervey, Lauck, Pomeroy, Soper, and Trainer—6.

There being no election, Mr. Lauck withdrew the name of Mr. Caldwell, and Mr. Pomeroy declined the further use of his name. The roll was again called and the vote recorded as follows:

For A. D. Soper—Messrs. Chapman, Carskadon, Cook, Hall, Hubbs, Hervey, Lauck, Montague, Mahon, Powell, Parker, Pinnell, Ryan, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Sheets, Trainer, Wheat and Wilson—22.

For E. B. Hall—Messrs. Brown of Preston, Brown of Kanawha, Caldwell, Dering, Dille, Harrison, Irvine, Lamb, McCutchen, O'Brien, Parsons, Pomeroy, Ruffner, Soper, Smith, Tichenell, Van Winkle, Willey, and Warder—19.

Mr. Soper having received a majority of all the votes cast, was declared duly elected President of the Convention, and was thereupon conducted to the chair by Messrs. Van Winkle and Hall. On taking the chair, President Soper said:

Gentlemen of the Convention: I thank you for the honor conferred in electing me as your presiding officer. I am aware of the importance and responsibilities of the position. I shall endeavor to perform the duties incumbent upon me faithfully and impartially, relying at all times upon your aid and assistance in the observance of the rules and regulations for our government. Gentlemen, permit me to express the hope that our labors will be approved and ratified by our constituents and end in lasting prosperity to the State of West Virginia.

MR. LAMB. I desire to submit as a proposition of my own an ordinance to provide for submitting to the people of West Virginia the amended Constitution adopted by this Convention. I shall move to lay it on the table that it may be printed with the expectation that we may have it here in the morning and that members on the inspection of it may at least be set to thinking about what will be the proper work and business of this Convention. The project embodied in this paper is, I am aware, very imperfect, will need much amendment and large correction, but my main object is with a view to expedite the business of the Convention and bring the matter before the members in a shape which may call their attention to the provisions which will be necessary to carry

out the object for which we have assembled. I will not ask even in the present state of the case that the projected ordinance shall be read. I simply ask that it be laid on the table and be printed.

THE PRESIDENT. It will take that course if there is no objection.

Following is the ordinance as presented and printed:

AN ORDINANCE

To provide for submitting to the People of West Virginia, the amended Constitution adopted by this Convention.

Poll books, with the proper forms of oaths and returns attached, shall be prepared under the direction of the committee hereinafter named,† for every place of voting in the forty-eight counties proposed to be included in the State of West Virginia; which books shall contain two columns, one to be headed, "For the amended Constitution," and the other "Against the amended Constitution;" and the names of all qualified voters who vote in favor of the ratification of the amended Constitution of West Virginia, shall be written in the first column, and of those who vote against such ratification, in the second column, under the respective headings aforesaid.

The committee hereinafter named, shall appoint three persons in each of the said forty-eight counties, any two of whom may act, as superintendents of the polls hereby directed to be taken in each county; and shall furnish them with the proper poll books for every place of voting in said county at which a separate poll is to be taken. The superintendents for each county shall appoint three commissioners (any two of whom may act) and a conductor for every place of voting in such county, to superintend and conduct the polls to be held at such place, and shall distribute to them the proper poll books.

In default of such appointment for any county or place of voting, the officers who superintended and conducted the polls in April last on the question of the ratification of the Constitution of West Virginia, at any place of voting in said forty-eight counties, shall

†For "Minutes of the Executive Committee appointed by the Constitutional Convention of 1862-63," see Appendix.

attend at such place, and superintend and conduct the polls hereby directed to be taken.

If there be at any place of voting, at the time the polls should be opened, but one commissioner willing to act, he may associate with himself as a commissioner any freeholder of the county then present; and if there be no commissioner present willing to act, then any two freeholders of the county present, and agreeing to act, shall be commissioners.

The commissioners superintending the polls at any place of voting, are hereby authorized to administer the proper oaths to each other, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one, and they may also appoint clerks to record the voters. They shall admit all persons to vote entitled to do so, and shall reject the votes of all not entitled, and in all respects have the polls taken fairly according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of every person offering to vote, but rejected by them, if required by the voter, shall be entered in a separate list on the poll book showing the vote he desired to give.

The said polls shall be taken on day of . They shall not be opened sooner than sunrise, and shall be closed at sunset. But if it shall appear to the commissioners superintending the polls at any place of voting, that the persons present entitled to vote thereat cannot all be polled before sunset, or that many of those entitled so to vote were prevented from attending by rain, rise of water course, or just apprehension of their personal safety, they shall keep the polls open for three days, including the first. And if on the day appointed for taking the said polls there be a rebel force rendering it dangerous to hold said polls at any place of voting in the said forty-eight counties, the voters may hold the said polls at any place within, or convenient to, their respective counties; and any voter prevented from voting on the said question in the county where he resides, by just apprehension of personal danger, or any other cause, may vote in any other county upon making oath that he is entitled to vote on the question of the ratification of the amended Constitution of West Virginia, and that he has not voted, and will not vote, elsewhere on that question.

Every commissioner, conductor and clerk shall before entering on the discharge of his duties, take the following oath or affirm-

ation: "I do solemnly swear (or affirm) that in the polls about to be taken, I will faithfully, impartially and fairly discharge the duties pertaining to my office, according to law. And I do solemnly swear (or affirm) that I will support the Constitution of the United States, and laws made in pursuance thereof, as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth day of February, one thousand eight hundred and sixty-one, to the contrary notwithstanding."

Immediately after the polls at any place of voting, shall be closed, the commissioners superintending such polls, and officers conducting the same, shall subscribe on the poll books, or attached thereto, a certificate to the following effect: "We A. B. and C. D. commissioners, and E. F. conductor, for taking the polls at..... in the county of..... do hereby certify that we have fairly and impartially taken the said polls, this..... day of..... according to law, and that the result thereof, as more fully shown by the poll books hereto attached, is..... votes for the amended Constitution of West Virginia, and..... votes against the same." In the said certificate, the number of votes shall be written out in words at length. And the commissioners and conductor shall, within three days after the polls are closed, cause the poll books, certified as aforesaid, to be delivered to the superintendents of the polls for the county, who shall, as soon as possible thereafter, transmit the same, carefully sealed, to the President of this Convention at the city of Wheeling.

All persons qualified to vote under the amended Constitution shall be entitled to vote on the question of its ratification. And the committee hereinafter named shall provide for taking, certifying and returning the votes of such persons, qualified as aforesaid, as may, at the time the polls are to be taken on the said question, be in the armies or service of the United States, whether within or beyond the boundaries of the proposed State of West Virginia; but any votes so taken beyond the said boundaries shall be distinctly so stated in the certificate of the returns thereof.

The returns made as aforesaid to the President of this Convention, shall be opened by him and the result ascertained in the presence of the committee hereafter named. And if it shall appear that a majority of the votes cast at the polls to be taken as aforesaid, within the limits of the State of West Virginia, be in favor

of the ratification of the said amended Constitution, then the President of this Convention shall, under his hand, certify to the President of the United States, that the people of West Virginia, through this Convention, and by a vote taken at an election held within the limits of said State, at the time for that purpose provided by this Convention, have made and ratified the change in the Constitution of the said State of West Virginia, proposed in the act of the Congress of the United States, approved December 31, 1862, entitled "An act for the admission of West Virginia into the Union and for other purposes," which certificate shall be countersigned by said committee.

It shall be the duty of James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell, Ephraim B. Hall, and..... who are hereby appointed a committee for the purpose, and a majority of whom may act, to take such measures and do all such things, not inconsistent with this ordinance, as they deem expedient, to cause the said polls to be fully, fairly and impartially taken in every part of the proposed State of West Virginia, and to procure the admission of the said State into the Union if the amended Constitution thereof be ratified by the people. And the said committee shall have power, in their discretion, to re-convene the members of this Convention on such day as they shall prescribe; and if it be so re-convened, shall adopt proper measures to secure a representation therein from the counties proposed to be included in said State not at present represented, and to fill any vacancies that may occur.

MR. STUART of Doddridge. I would be glad to be informed of the gentleman's motion. I could not hear here (Several members informed him.)

THE PRESIDENT. I would suggest it had better be printed. Members will have it in the morning.

MR. STUART of Doddridge. I shall withdraw any objections.

MR. VAN WINKLE. I renew my motion that the gentleman from Monongalia be requested to address the Convention at this time.

The motion being agreed to, Mr. Willey arose in his place and spoke as follows, declining to take the President's stand to which he was invited:

MR. WILLEY: Mr. President, I imagine I can make myself heard, and as for being seen by the Convention I do not know that I should make anything by that operation. (Laughter.)

I cannot say, Mr. President, that I regret that this request has been made of me; I will not say that I enter upon it with reluctance, because if I were to say so, I should say what I do not feel. I do regret, however, Mr. President, that I am so ill prepared to respond to the invitation of the Convention. Indeed, sir, I have no idea that I shall be able to suggest a thing that has not occurred perhaps to every member of this Convention. But I am glad, sir, to have the opportunity through this Convention to address my constituents at large throughout the State of Virginia, east and west, upon this absorbing topic. I had intended at some convenient point in the progress of the business of this body to address myself to this subject, to discuss it somewhat at length and had prepared notes with a view to accomplish that object; and I shall confine myself now, sir, principally to those which I have before me. I have prepared these notes for the purpose of being as accurate as I possibly can in the statements I may make.

A D D R E S S

O F

HON. WAITMAN T. WILLEY,

Delivered before the Constitutional Convention of West Virginia, in the city of Wheeling, on the 12th day of February, 1863, in compliance with a resolution of that body, inviting him to do so.

Mr. President—Nothing has ever surprised me more than the opposition which is made to the admission of the new State of West Virginia into the Union by a portion of the people within its limits. The assumed grounds of this opposition are, however, little less surprising. It is to be regretted that there seems to be some necessity for debating the question.

The fundamental objection on the part of the opponents of the new State appears to consist in the idea that the proper assent of the Legislature of Virginia has never been obtained, and this objection is predicated on the hypothesis that what has been called the Wheeling legislature was not, in fact and in law, the Legislature of Virginia. If this be true, the objection is well taken, for

the Constitution of the United States expressly provides that "no new state shall be formed or erected within the jurisdiction of another state without the consent of the legislature of the state and of the Congress."

I hardly suppose it is necessary to controvert the idea before the people of West Virginia, that the Richmond legislature since the 17th day of April, 1861, was the true and rightful Legislature of Virginia. Traitors may think so, but loyal men cannot think so. Those who believe in the doctrine that a state has a right to secede from the Union, may be excused for entertaining such an opinion, but those who believe that Virginia is still in the Union and one of the United States, cannot tolerate such a political heresy. Why, sir, those men at Richmond were rebels. They had abjured their allegiance to the United States and sworn to support the Constitution of the so-called Confederate States. They have levied war against the United States. Shall they be acknowledged as the rightful Legislature of Virginia? Not by me, sir, while God spares my life! Not by me while the old flag of my fathers floats over one foot of ground between the Atlantic and Pacific oceans. Well, then, sir, has Virginia been without a legislature ever since April 17, 1861? I recur to the question—was the legislature which consented to the formation of the new State of West Virginia the Legislature of Virginia in fact and in truth?

I need not rehearse to the people of West Virginia the atrocious proceedings of the conspirators which led to the organization of the legislature at Wheeling. I need not remind them that without their knowledge or their assent they were transferred, like slaves on the block, to an insurrectionary government of self-constituted rulers at Montgomery. I need not review the state of facts existing among us by which we were left without judges, sheriffs, justices of the peace, courts, and all those arrangements of government, legislative, executive and judicial, necessary to the protection of our lives, liberties and estates. All these matters are still painfully fresh in the memory of all. The necessity to provide some security for ourselves was absolute. If we had been disposed to submit ourselves to the rebel government, it was utterly beyond our reach—utterly unable to afford us the slightest protection. What could we do? There were three alternatives before us. 1st. To yield ourselves victims to unrestrained anarchy and lawlessness. 2nd. To invoke the protection of a military governor, and submit ourselves to the caprices of military despotism. 3rd. Or to resume the exercise of our original inalienable right of establishing a

government for ourselves. We chose the latter, and the wisdom of our choice has been vindicated by the comparative security, happiness and prosperity of the people wherever the government we restored has been established and maintained.

Our moderation in the exercise of this prerogative has been the theme of admiration by all impartial men who have examined and understood our proceedings. Instead of assuming to organize a new state government, we simply resumed the old government, by appointing new officers to discharge its functions in place of those who had vacated their offices by flight, or forfeited them by treason. This we did, and nothing more.

And now, sir, was the government of Virginia, thus restored, legitimate, and valid? Was the legislature at Wheeling which gave its consent to the admission of the State, the true and lawful Legislature of Virginia?

And here, sir, I beg leave to refer you to the following extract from the opinion of Chief Justice Taney, delivered in the celebrated case of *Luther vs. Borden*, 7 Howard, page 42:

"Moreover, the Constitution of the United States, as far as it has provided for any emergency of this kind, and authorised the general government to interfere in the domestic concerns of a state, has treated the subject as political in its nature, and placed the power in the hands of that department.

"The fourth section of the fourth article of the Constitution of the United States, provides that the United States shall guarantee to every state in the Union a republican form of government, and shall protect each of them from invasion; and on the application of the legislature, or of the Executive (when the legislature cannot be convened) against domestic violence.

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a state. For, as the United States guarantee to each state a republican form of government, Congress must necessarily decide what government is established in the state, before it can determine whether it is republican or not. And when the Senators and Representatives of a state are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognised by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal."

Now, sir, what are the facts in this case? Have Senators and

Representatives of the State of Virginia been admitted into the councils of the Union under the authority of the reorganized government of Virginia which gave consent to the admission of West Virginia into the Union? I need not answer that question. You know that they have been so admitted. My colleague (Mr. Carlile) and myself now holding seats in the Senate of the United States, were elected by the legislature at Wheeling. And Messrs. Blair and Segar, now holding seats in the House of Representatives, were elected under warrants issued by His Excellency Gov. Pierpont, the executive of this re-organized government. And that is not all. For, in the language of the Hon. Mr. Colfax, when lately discussing this same question on the floor of the House of Representatives of the United States:

"Secondly, The Executive Department of the government, and the highest portion of that Executive Department, the President himself, has repeatedly recognized the Governor and the Legislature of Virginia as the rightful authorities of that state.

"Thirdly, The Secretary of the Treasury has recognized that government as the rightful government of Virginia, for he has paid to them out of the treasury of the Union, without complaint and without protest from any one of all the twenty-odd millions of loyal people of the United States the \$40,000 remaining in the treasury as the share of the State of Virginia of the proceeds of the sales of the public lands, and which the State of Virginia had hitherto refused to take from the Treasury.

"Fourthly, The Secretary of War has recognized his government as the lawful government of Virginia, and Governor Pierpont as the rightful Governor of Virginia, by accepting his commissions of the officers of the noble and loyal volunteer regiments of Virginia, as commissions emanating from rightful and legal authority.

"Fifthly, the Secretary of the Interior has also recognized the same thing in his communicating to Governor Pierpont, as the Governor of Virginia, the official notice of the congressional appointment of 1860, as required by law."

Surely, then, I think I may confidently say that the legislature at Wheeling, and the government at Wheeling, have been most amply recognized by "the proper constitutional authorities." And if, in the language of the opinion just quoted, "its decision is binding on every other department of the government, and would not be questioned in a judicial tribunal," we ought to be content.

But the opponents of this measure express equal dissatisfac-

tion with the character of the act of admission passed by the Congress of the United States: and whilst they cannot deny the power of Congress in the premises, they assume to allege that this power has been exercised in an oppressive and unconstitutional way. They denounce the act of admission because we were not admitted with the Constitution we had ordained and adopted, without modification or conditions. Mr. President, I am free to say that such an admission would have been more acceptable to me. But I put it to you to say whether there ever was a law passed of very great importance which was, in all respects, perfectly acceptable to you. It is impossible to please all parties exactly in any matter of important legislation. The wishes, feelings, prejudices and interests of others must be consulted as well as our own. Dr. Franklin remarked, when about to cast his vote in favor of the Constitution of the United States, that there were many provisions in it which he would desire to be modified; but that considering the views and opinions of others it was the best constitution he could get, and that its advantages and virtues so overbalanced its defects and vices, that he was willing to adopt it as a whole. Well, sir, I opposed the adoption of the condition imposed upon us in the act of admission. I preferred to have no such conditions, and voted against them. But I was but one of forty senators, each of whom were entitled to as much consideration as myself. A majority of them determined to affix the conditions complained of to the act of admission, and they did affix it. The result was, that I must choose between admission with this objectionable feature, or rejection altogether. I could not hesitate. The advantages of admission thus embarrassed, over total rejection were, to my mind, so overwhelming that there was no apology for hesitation.

But, sir, let us examine the objection most frequently, and, as I understand, effectively made against this act of admission. It is called unwarrantable—nay, unconstitutional “dictation,” on the part of Congress, with matters properly cognizable by, and belonging to the people of the State in their municipal capacity. Now, what is the precise cause of offence?

In the Constitution of the new State there was this section:

“No slave shall be brought, or free person of color be permitted to come, into this State for permanent residence.”

The following is the substitute proposed by Congress for the foregoing section: “The children of slaves born within the limits of this State after the fourth of July, eighteen hundred and sixty-three, shall be free; and all slaves within the said State who shall,

at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years, shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein."

Now, this is the provision which has created so much ado; and inspired so many jeremiades. Here is the head and front of that terrible "dictation" which has been so bitterly denounced—especially by our friends possessing secession proclivities.

Now, sir, I frankly admit that every state should be left free, within the plain limitations of the Constitution of the United States, to regulate its own municipal affairs, without any interference from any external power on the face of the earth. Does this act of Congress infringe upon this right? Let us see.

By the 3rd section of article IV of the Constitution of the United States, it is provided as follows:

"New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junctions of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress."

Now it must, therefore, be conceded by all that Congress had an unqualified right to have rejected our application for admission into the Union altogether. Suppose Congress had exercised that right? Suppose, that to our application Congress had said—No! You shall not be admitted on any terms. Would that not have been "dictation," according to the logic of these objectors? And yet Congress had the right and power to do so. But Congress did not exercise its power so arbitrarily. They did not object our suit altogether, but submitted a proposition to us. They did not assume to thrust this proposition on us *nolens volens*, but referred it to our free consent whether we would accept or reject it. They sent their proposition back to the Convention which ordained the Constitution, and if it should be acceptable to the Convention, then it was to be sent on to the people themselves for ratification or refusal. Why, sir, what kind of "dictation" in this? It is very harmless "dictation" which leaves us perfectly free to obey it or disregard it, as it may please us. There is nothing mandatory or compulsory in the case. We have no power to compel Congress to admit us; and Congress has no power to compel us to come into the Union contrary to our own free will, nor have they assumed to exercise any

such power. And yet there are those who are constantly inflaming the public mind with the indefinite cry of "Congressional dictation."

But, Mr. President, I must be allowed to revert to a few historical facts in connection with an admission of new states in the Union. I think we shall find that the precedents are neither few nor feeble, in which Congress has affixed conditions, to their admission. Indeed we shall find a notable instance prior to the adoption of the Constitution of the United States. In the 6th article of the celebrated Ordinance of 1787 for the government of the Territory of the United States northwest of the Ohio river, we have the following restrictive condition: "There shall be neither slavery nor involuntary servitude in the said territory." And when Ohio was admitted into the Union, the first born of this great territory, the act of admission contained an express provision in effect that the people of the state should never authorize slavery or involuntary servitude therein.

The admission of Missouri occupies a large space in the history of the nation. The constitution of that state contained the following provision, art. 3, 26th sec. and 4th clause thereof:

"It shall be the duty of the legislature, as soon as may be, to pass such laws as may be necessary to prevent free negroes and mulattoes from coming to and settling in this state, under any pretext whatsoever."

You will perceive that this clause is almost identical with the clause in our Constitution, which it is proposed in the act of admission shall be modified, and it was this clause in the Constitution of Missouri which excited the memorable contest in Congress, resulting in the admission of that State by the adoption of the following resolution:

"RESOLUTION PROVIDING FOR THE ADMISSION OF THE STATE OF MISSOURI INTO THE UNION ON A CERTAIN CONDITION."

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Missouri is hereby admitted into the Union on an equal footing with the original states in all respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the Constitution submitted on the part of the said State to Congress, shall never be construed to authorize the passing of any law, and that no law shall be passed in conformity thereto,

by which any citizen of either of the states in this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States, PROVIDED, That the legislature of the said state, by a solemn public act, shall declare the assent of the said state to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of said act; upon the receipt of which, the President, by proclamation, shall announce the fact; and thereupon, without any further proceeding on the part of Congress, the admission of the said state into the Union shall be considered as complete."

I refer you also to act of Congress for the admission of the State of Michigan in the Union. This act is entitled:

"An act to establish the boundary line of the State of Ohio and to provide for the admission of the State of Michigan into the Union upon the conditions therein expressed."

These conditions are express and fundamental. They are declared to be so in the act itself. (Here Mr. W. read several extracts from said act. See the same, Appendix, note A.)

In 1846 Congress passed what is called "An enabling act," looking to the admission of the State of Wisconsin. In 1847 an act was passed by Congress finally and fully admitting that state into the Union. Both these acts contain explicit fundamental conditions, to be complied with by that state, before the act of admission could take effect. (Here Mr. W. read sundry portions of said act. See the same, Appendix, note B.)

The joint resolutions of Congress for the admission of Texas form no exception to what was then becoming almost a general rule of Congress in their acts admitting new states. These resolutions contain several important restrictions and conditions which are worthy the consideration of those who seem to be so jealous of Congressional dictation. I have them here, but I will not detain the Convention by reading them.

I make one more reference. It is to the act of Congress admitting the State of Kansas. If I saw proper to go into the extraordinary history of Congressional legislation in reference to that state, I should be able to furnish an array of precedents in favor of the power of Congress to impose conditions upon the admission of new states, which it would be difficult for the opponents of the exercise of such power to resist. I will content myself, however, with a few extracts from the final act of admission. (Here Mr. W.

read what will appear in the Appendix, note C.)

Mr. President: I will not further transgress on the time and patience of the Convention by the citation of other Congressional precedents. I am happy, however, to be able to add to these high authorities that of my able colleague in the Senate of the United States, Hon. John S. Carlile. I have here the original bill reported by the Committee on Territories for the admission of West Virginia into the Union, drawn by Mr. Carlile. That it was the mature result of Mr. Carlile's enlightened judgment, there can be no doubt, for Mr. Senator Wade, the chairman of that committee, when discussing the question, said: "He (Mr. Carlile) of all the men in the committee is the man who penned all these bills and drew them up. He is the man who investigated all the precedents to see how far you could go in this direction. It was to his lucid mind that we were indebted for the fact that there were no legal or constitutional barriers in the way of the proposition." We may, therefore, confidently refer to Mr. Carlile's bill as containing his deliberate opinion of the constitutional power of Congress in the premises, and of the expediency and propriety of so exercising that power.

The first section of this bill is exactly as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of West Virginia shall be admitted into the Union on an equal footing with the original states in all respects, whatever, upon the following conditions, viz:

"First, that there shall be included within the said State of West Virginia, in addition to the counties already enumerated in the preamble to this act, the following counties, as laid off and defined by the Legislature of the State of Virginia, to-wit: Berkeley, Jefferson, Clark, Frederick, Warren, Page, Shenandoah, Rockingham, Augusta, Highland, Bath, Rockbridge, Botetourt, Craig and Alleghany.

"Second. That the Convention hereinafter provided for shall, in the Constitution framed by it, make provision that from and after the fourth day of July, eighteen hundred and sixty-three, the children of all slaves born within the limits of said State shall be free."

This section implies that it was competent for Congress in the admission of West Virginia, to make it a fundamental condition that a large additional section of territory, embracing sixteen counties, with a white population of more than a hundred thousand and

a slave population of thirty or forty thousand, should be included. It also declares that Congress had the power to make our admission dependent on the amendment of our fundamental law, so that "the children of all slaves born within the limits of said State shall be free." These are certainly, very important conditions. I do not say that Congress had not the power to prescribe them.

The second section of this bill of Mr. Carlile, Mr. President, I confess looks a little "dictatorial"; for, after providing for an election for delegates to frame an entire new constitution for this proposed enlarged new State, it prescribes the qualifications of the delegates to the Constitutional Convention, and also the number of delegates each county should be entitled to elect, and finally provides that if the people should ratify the new Constitution formed by these delegates, then the President of the United States, shall, by proclamation, announce the fact; and thereupon, without any presentation of this new Constitution to Congress, the new State shall *ipso facto*, become a member of the Union. I confess I can hardly subscribe these latter provisions as within the constitutional power of Congress. But then, sir, I have to acknowledge that I have not investigated this section with the deliberation which was, doubtless bestowed upon it by Mr. Carlile. Is it not strange—passing strange—Mr. President, that any person should be either so ignorant of the history of his own country, or, so far the victim of prejudice or passion, as, in the face of all these facts and precedents, to denounce the act of Congress admitting the State of West Virginia into the Union, as a new policy and an invasion of the rights of the people?

But, Mr. President, the real objection to this measure entertained by those opposed to it, is, I doubt not, that if the amendment proposed by Congress shall be adopted, West Virginia will become a free state. And as this is a question of great practical importance, I shall be pardoned for bestowing upon it a brief consideration.

Shall we, in forming this new State, organise it as a free State, or as a slave State? Shall we have only free labor, or shall we have slave labor also? I shall not say whether slavery is morally right or morally wrong. I shall make no argument upon the morality of slavery. I shall speak of it only in reference to the true political economy of the new State. The question is, not whether slavery ought to be abolished in east Virginia, where there are 480,000 slaves. It is not proposed to disturb the institution there or elsewhere beyond the limits of the new State, within which

there are only 7,000 or 8,000 slaves. All concede the right of each state to regulate its own domestic institutions. And in the exercise of this undoubted right, which affects ourselves alone, the question arises whether we should recognize, or exclude slavery in organizing our new State.

It cannot be presumed that the number of slaves now actually owned within the limits of the new State would be urged as an interest of such magnitude as might not be interfered with, if the general welfare would be promoted by emancipating them. That number is too small to stand in the way of the public good. But small as is this number, the act of admission only affects a part of them—not more than half; and this half are to serve their masters, those under ten years of age, till they are 21, and those over 10 and under 21 years of age, till they are 25. Shall this small interest stand between us and all the advantages of a new state? Shall the welfare and prosperity of 330,000 of our people be forfeited because it might deprive some 2,000 or 3,000 people of the service of 3,000 or 4,000 slaves for a part of their lives? May not this small interest be surrendered for the public good, upon due compensation being made? We go into the quarries and forests and fields of our citizens and impress teams and materials to construct our public roads, because the public good requires it. Shall it be said we shall not remove the obstruction of a few hundred thousand dollars worth of slaves out of the great highway of our State to wealth, prosperity and power? Certainly, therefore it cannot be the value of the property or interests affected by the act of admission, which constitutes the objection of the opponents to this measure. It must be the value attached to slavery as an institution and a desire to see it perpetuated and diffused all through our western counties, as it is in the eastern section of the state, which prompts this opposition to a division of the state.

But, granting for the sake of argument, that slavery is all its friends claim for it, let me ask them whether they can ever hope to enjoy its blessings in West Virginia? Look at the geographical situation of West Virginia—located between the two great free States of Ohio and Pennsylvania—and it will be apparent to all that slavery could never exist here to any great extent, even if it were desirable to have it. The last census shows that the number of slaves decreased some 2,000 during the last decade within the limits of the proposed new State. It is a fact well established by experience, that slave labor is not profitable in raising grain, especially in growing and grazing stock—that for manufacturing pur-

poses it is entirely valueless. It cannot, therefore, ever be valuable in West Virginia, where the climate and the soil are adapted only to the growth of cereals in a moderate degree, but to grazing and stock raising in an eminent degree; but more especially are our great interests dependent on the establishment of manufactories. Why, then should we want slavery here? Or rather, why should we wish to remain connected with eastern Virginia where slavery does exist, to be embarrassed and burdened by laws and by a state policy well adapted to protect and promote the interests of the section of the State where slavery does exist, but for that very reason not adapted to our section of the State where slavery does not and cannot exist? The policy of Virginia has been to cherish slave labor: but we have only free labor. Shall we forever submit to have our free labor placed on an equality with slave labor? Will the hardy sons of toil in our mountains agree to that?

Mr. President, on this great question of slavery in its relations to political economy, I cannot, with due respect to your patience, venture into the wide field of details before me. I must content myself with general conclusions. And in giving you these conclusions I will not ask you to rely on my own poor judgment; but I will borrow the sanction of names that will command your respect, and refer you to facts which cannot be controverted.

In the infancy of Virginia—when she was a colony—and before slavery had assumed its present unwieldy proportions, and when Virginia was desirous of laying a secure and wide foundation for her future welfare, as West Virginia is seeking to do now, the House of Burgesses declared:

“The abolition of domestic slavery is the great object of desire in these colonies, where it was unhappily introduced in their infant state. But, previous to the enfranchisement of the slaves we have, it is necessary to exclude all further importations from Africa. Yet our repeated efforts to effect this, by prohibiting and by imposing duties which might amount to prohibition, have been hitherto defeated by his Majesty’s negative—thus perfering the advantages of a few British corsairs to the lasting interests of the American States, and to the rights of human nature, deeply wounded by this infamous practice.”

Such was the language of our fathers. Eastern Virginia early and earnestly protested against the injustice of the mother country in forcing the evils of slavery there; but it seems that we have some persons amongst us here in West Virginia, that desire to embrace it as a blessing.

When we were about establishing our nationality, George Mason, of Virginia, used this language:

"Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the immigration of whites, who really enrich and strengthen a country. They produce the most pernicious effects on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a county. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our eastern brethren, from a lust of gain, have embarked in this nefarious traffic. As to the States being in possession of the right to import, that was the case with many other rights, now to be given up. He held it essential in every point of view that the general government should have the power to prevent the increase of slavery."

This was the language of a statesman uttered before the judgment of men had been overcome by the influences of party spirit and sectional prejudice. As slavery increased in Virginia, these effects of it, so tersely described by Mr. Mason, became more and more apparent. I might multiply the number of witnesses of equal distinction whose testimony is no less explicit. In 1829-30, the public opinion of Virginia as to the pernicious influences of slavery on the material and moral welfare of the State was almost universal. Hear the language of a memorial address to "The Honorable Convention of Virginia, held in Richmond, in October, 1829."

After declaring that "Virginia is in a state of moral and political retrogression among the states of the Confederacy," they proceed to delineate the causes of her declension. They say: "That the causes heretofore frequently assigned are the true ones, we do not believe. If they have any effect, as possibly they may, it must be extremely small and partial. We humbly suggest our belief that the slavery which exists, and which, with gigantic strides, is gaining ground among us, is, in truth, the great efficient cause of the multiplied evils which we deplore. We cannot conceive that there is any other cause sufficiently operative to paralyze the energies of a people so magnanimous, to neutralize the blessings of Providence included in the gift of a land so happy in its soil, its climate, its minerals and its waters; and to annul the manifold advantages of our republican freedom and geographical position. If Virginia has already fallen from her high estate, and if we have assigned the true cause of her fall, it is with the utmost anxiety that we look to the future, to the fatal termination of the scene. As we value

our domestic happiness, as our hearts yearn for the prosperity of our offspring, as we pray for the guardian care of the Almighty over our country, we earnestly inquire what shall be done to avert the impending ruin? The efficient cause of our calamities is vigorously increasing in magnitude and potency, while we wake and while we sleep. The outlets, for draining off a portion of this pestiferous population of slaves, are fast closing against us. In the meantime our white people are removing in multitudes to distant regions, and those who remain seem destined to become martyrs to their love of Virginia, exposed to foreign enemies, to civil feuds, and to domestic insurrections, without the physical ability indispensable to their own preservation."

But the evil, like a cancer too long neglected, has so enlarged itself, and so thrust its poisonous roots into the vital part of the body politic, as that the most skillful statesman feared, that its removal might prove fatal to the life of the commonwealth.

It was on the floor of that convention, in 1829, composed of a body of men than whom the world never presented more illustrious—of a Madison, a Monroe, a Marshall, a Doddridge, a Randolph, a Barbour, and others a little less distinguished, that Benjamin Watkins Leigh, the intellectual peer of them all, used this memorable language:

"I wish, indeed, that I had been born in a land where domestic and negro slavery is unknown. I wish that Providence had spared my country this moral and political evil. It is supposed that our slave labor enables us to live in luxury and ease, without industry, without care. Sir, the evil of slavery is greater to the master than to the slave."

This, sir, was the language of that great man, uttered in a speech wherein he was resisting the abolishment of slavery—resisting it because he believed the evil, on account of its extent and peculiar relations, to be irremediable. Will we of West Virginia not be wise and avoid such an evil while we may?

But, sir, I wish to refer to some matters of fact pertinent in this connection. In 1840 the total population of Virginia was 974,622; of Ohio, 230,760. In 1860 the population of Ohio was 1,980,329; of Virginia, 1,596,318, so that the increase of population during fifty years in Ohio was 1,759,569, whilst in Virginia it was only 641,696. And yet, in extent of territory, in variety and value of mineral resources, in natural commercial facilities and advantages, in climate, and in all the natural elements of wealth and prosperity, Virginia vastly excelled Ohio. How, therefore, are we

to account for the rapid progress of the latter beyond the former? There is but one answer—slavery. Look at the rich, inexhaustible mineral resources of West Virginia—our iron, coal, oil, slumbering beneath our hills, cropping out on our mountain sides, everywhere inviting the hands of industry and development. What has paralyzed that hand? What has kept capital, and skill, and population from our midst? Why are our perennial streams forever wasting away unappropriated and useless? Why are we without roads and markets except where foreign enterprise has come to our relief? The answer is the same—slavery. Shall we still cling to the instrumentality of our impoverishment now when we have an opportunity of escaping from it? Or, rather, will we not say to capital, and skill, and labor, come—open our mines, build our roads, people our valleys, make us rich and prosperous, and powerful. This alternative is now before us. Which shall we choose?

But I wish to institute some further comparisons. In 1790 the total population of Virginia was 748,318—of New York 340,120; or 408,198 less than that of Virginia. In 1860 the population of New York was 3,880,735—of Virginia, 1,596,318, or 2,284,417 less than that of New York. Do you suggest that a large proportion of this great increase of population in the State of New York is composed of the people of the city of New York, and as Virginia is an agricultural state, the comparison I have instituted is not a fair one? But I ask why is not the city of New York at Norfolk—or rather, why is not Norfolk what the city of New York is? And more than it is? The harbor at New York is better. The geographical position is better whether for foreign or domestic commerce. Why, then, is not the wealth, population and power, political and physical, of New York, in the genial clime of Virginia instead of on the icy shores of the North river? Why is not Virginia the empire state of the Confederacy today, rather than New York? The same answer still comes back—slavery.

The Hon. John B. Henderson, of Missouri, lately instituted the following comparison, discussing in the Senate of the United States the economical effects of slavery:—"Missouri commenced her career as a state in 1820, with a population of 66,557 inhabitants. Illinois at the same time had but 55,162. Forty years elapse, and Missouri, with superior advantages, presents a population of 1,182,317, while Illinois shows 1,711,753. The ratio of increase in Illinois for the ten years preceding 1860 was 101 per cent, while that of Missouri was but 73 per cent. In 1810 Kentucky had a population of 406,511. Ohio at the same time had

230,760. Fifty years pass by, and Kentucky has 1,155,713, while Ohio shows 2,339,599. In 1810 the population of Kentucky is nearly doubled that of Ohio; in 1860 the population of Ohio is more than doubled of that of Kentucky. The facts are plain. What is the cause, is it slavery?

I beg leave also to refer to an interesting article recently published by Hon. Robert J. Walker, whose public life, national reputation, political antecedents and eminent abilities, entitle his opinions to the highest consideration in this connection. He extends the comparison between Illinois and Missouri to the value of lands, extent of internal improvements, cities, and to agriculture, manufactures and wealth; and produces an array of figures and facts in favor of free labor over slave labor that is startling. (See Appendix, Note D.)

Mr. President, there is no sophistry which ever can evade the logic of these plain facts. I do not know how any candid man can fail to see the advantages to West Virginia of a separate state organization. Nor will this separation be at all detrimental to any interest of eastern Virginia. If it would be, we might pause—we might hesitate. But it will not, cannot be. It will not affect the title to a single slave outside of our own borders. It will leave slavery in eastern Virginia precisely as it was and as it is. It will derange no mutual interest; for there is little that is common to both sections. The Alleghany mountains are the natural boundary of eastern Virginia on the west, marked out by the Almighty hand. Their recognition as such would only be obedient to the commands of nature and Providence. What trade or traffic or commercial interest of east Virginia would this separation injure? None at all. For we never had any commercial relations with that section of the state, and never can have. What social relations or interests would be disturbed? None. The social habits and characteristics of the two sections are radically different. In the east the tone of society is aristocratic; in the west it is democratic. In the east white labor is not reputable; and in the west the toilers in our fields and factories acknowledge no social inferiority. It was when speaking of what he called the "peasantry" of the west, that Benjamin Watkins Leigh, in the constitutional convention of 1829, said that in political economy slaves fill exactly the same place as the white laborers of the west. "What real share," said this illustrious representative of the aristocratic sentiment of eastern Virginia, "What real share, so far as mind is concerned, does any man suppose the peasantry of the west * * * can or will take in the

affairs of state?" Yes, sir, this was the sentiment of the Tidewater and Piedmont districts of the state at that time—an assumption of social and political superiority based on slave labor and slave property. Nor has this sentiment at all abated. It was at the bottom of the present rebellion. It rankles today in the bosom of the aristocracy of east Virginia, and of the whole South, more intensely than ever before. Mark the language of the Richmond Whig of a late date. It is but the index of what is called in east Virginia "The ruling class":

"We have committed many errors in our treatment of the Yankees. Not the least has been in regarding them as something better than they really are. They are by nature menials, and fitted only for menial duties. They are in open and flagrant insurrection against their natural lords and masters, the gentlemen of the South. In the exercises of their assumed privileges they deport themselves with all the extravagant airs, the insolence, the cruelty, the cowardice, and love of rapine which have ever characterized the revolt of slaves. The former leniency of their masters only serves to aggravate the ferocity of their natures. When they are again reduced to subjection, and taught to know their place, we must take care to put such trammels about them that they will never have an opportunity to play these tricks again."—Richmond Whig.

Against these arrogant assumptions and the policy growing out of them, we have been warring for the last forty years.

Sir, I rejoice to see here my distinguished friend (Col. Smith). Well do I remember his noble defense of West Virginia in the convention of 1851. Well do I remember how his manly, honest voice was raised in the capital of the state against the despotism of the eastern majority based on slavery, when that majority were attempting to fasten on him and his children, and upon us all, the nefarious principles of the mixed basis of representation.

Do not these perpetual conflicts and antagonisms of opinions and policy constitute unanswerable reasons for distinct municipal organizations of the two sections? Do they not point to a division of the state as a means of peace, and of establishing harmonious relations between the two sections, by leaving each free to regulate its own municipal concerns according to its own will and wishes?

Look at the map of Virginia. All over the state east of the Alleghanies you see a net-work of railroads, affording every needful facility of transportation and travel. West of those mountains there is not a mile of such facilities constructed on state account,

or by the authority of the state. Even the representatives in our legislature have been compelled to travel far away through other states and districts in order to reach our own Capital. Do we actually love these embarrassments and disabilities so well that we are determined to entail them on our children forever?

But, sir, I am told that all the mighty advantages and blessings of a separate state organization, will be more than counter-balanced by the evil of—what? What is the unfortunate drawback in these magnificent prospects of West Virginia? Why, sir, it is alleged that we shall be overrun with free negroes! I have learned that this objection has been seriously urged by some men—that there are those in our midst who have actually ventured so far upon the supposed credulity, and want of common sense of the people, as to address to them such an argument as this. Sir, I beg pardon for this style and tone of expression. I mean no offence to any person. But I confess that I am unable to restrain the expression of mingled surprise and indignation at this bold attempt to abuse the minds of the people by a fallacy so transparent. Why, sir, where are the free negroes to come from that are to overrun us? Not from east Virginia. The division of the state will not affect the status of slavery east of the Alleghenies. If the free negroes in east Virginia have hitherto declined to come to West Virginia, why should they come now or hereafter? Will they come from Ohio? What is there in West Virginia that would attract free negroes from Ohio? Would they come from Pennsylvania? There is no reason why they should abandon Pennsylvania than Ohio to come into West Virginia. Where, I ask again, are the free negroes to come from that are to overrun us? There are only 36,000 free negroes in all the populous State of Ohio, and only 56,000 in the great State of Pennsylvania. There is nothing in the soil or climate of West Virginia to attract a free negro, but much to repel him. Besides the kind of labor which will be required here, will not be of a character to induce his employment.

But supposing we had an attractive soil and climate for the free negro—supposing we were surrounded by states where free negroes abounded—supposing free negroes began to immigrate into our borders, what then? Could we not by a change in our organic law easily provided under our Constitution, or by a simple statute, prohibit them from coming into our midst, as Indiana, Illinois, and perhaps other states have done? Does not the merest tyro know so much as this? The people have only to say to their representatives in the legislature, pass such a law. The whole

question is completely under their control. And yet there is an effort made to get up a clamor about the danger of free-negroism. Sir, I should be ashamed to attempt such a fraud upon the public credulity.

But, sir, I am happy to say that the work is already done. The people and their representatives, have already been relieved of the necessity of prohibiting free negroes from coming into our new State when it is organised. Yes, sir, by the law as it now stands, and will stand the very moment our admission is complete, it will absolutely require the passage of a law to authorise it, before a single free negro outside of our territory, dare attempt to become a resident amongst us. That such is the fact every lawyer knows, and he who does not know it, is not well qualified to teach the people.

In chapter 198, section 32, of the Code of Virginia we have this explicit provision:

"No free negro shall migrate into this State."

In chapter 107, section 1, of the same Code, we have another provision in these words:

"No negro emancipated since the first day of May, 1806; or hereafter, or claiming his right to freedom under a negro so emancipated, shall, after being twenty-one years of age, remain in this state without lawful permission."

I may refer to other provisions in the Code of Virginia. In section 31, chapter 198, is the following clause—"Any free person who shall bring a free negro into this state, shall be confined in jail and fined."

It is also provided in section 32 of said chapter, that—"If a free negro not authorized by law to do so, come into, or remain in this state, any person may, and every sheriff, sergeant, and constable is required, to apprehend and carry him before some justice, who shall require him to pay one dollar to the person apprehending him, and give bond in a penalty not less than \$100, to leave the state in ten days and not return. If the free negro fail to pay the fee aforesaid, or give said bond, he may, by order of the justice be punished with stripes, and repeated so long as he remains in the state."

I say nothing of the humanity and propriety of these provisions. But surely those apprehending danger from the influx of free negroes, could not devise more stringent measures to prevent it. And now, sir, I refer you to article 11, section 8, of the new State Constitution. It reads thus:

"Such parts of the common law and the laws of the State of

Virginia, as are in force within the boundaries of the State of West Virginia, when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the laws of this State until altered or repealed by the legislature.”

What then will be the effect of the admission of the new State into the Union, on this question? It will be this, that thereafter no free negro can come into West Virginia, nor can those who are now in it, or who, under the operation of the condition proposed by Congress, if adopted by us, will hereafter become free, remain in it, unless they shall get permission according to law—that is to say, no free negro outside of the new State can come into it, and all those in it, may be compelled to leave it. And yet we are warned not to vote for the new State, because if we are admitted under the act of Congress we shall be inundated with free negroes. Sir, where does this warning voice come from? But, sir, I will not longer detain the Convention in exposing the fallacy of a pretext so flimsy.

There is another objection invented to embarrass this great measure. It may be well enough to bestow upon it a passing notice. Appeals are being made, I understand, to the fears of the people lest they should, by voting for the new State, involve themselves in debt by an increase of expenditures in the construction of the necessary public buildings, etc. Of course, sir, this will involve some expense; not, however, exceeding a few hundred thousand dollars. I will venture the assertion, that the simple act of complete admission as an independent State will, on the very moment it takes place, increase the value of every tax payers' estate, within the limits of the new commonwealth, to the amount of five hundred per cent on what he will ever be required to pay for all the public buildings and expenses of organizing the new State. I believe, sir, that on the day when we shall be finally and completely made an independent state of the Union, every landholder within our borders will be worth more, by an average of from twenty-five to forty per cent, than he was the day before. And every merchant and mechanic will have secured to him the certain prospect of an increased and better business, greater by a hundred fold than ever they enjoyed before. Such an objection, when contemplated in the light of the great and manifold advantages of a new state, sinks into insignificance.

As to our assumption of a just and equitable proportion of the debt of Virginia, existing at the time of the ordinance of secession, that is eminently right and proper. We should not de-

serve to be admitted into the Union on any other terms. Any attempt to evade this would be dishonorable. But, sir, how will our admission as a new State increase our liabilities in this behalf? If we remain undivided, will we not be made to pay our equitable proportion of that debt of Virginia? Nay, if the policy of the eastern majority of our legislative councils shall be hereafter as it has been heretofore, we shall be made to pay more than our equitable proportion of that debt. The same discriminating and unfriendly legislation against which we have been remonstrating for forty years, will be fastened on us and our posterity forever. We shall simply be tax-payers to build roads and canals for the benefit of that sectional majority who have no identity with us in geographical location, social habits, or commercial relations, and not much in political principle. Shall we still, and forever, with canine docility and compliance, continue to lick the rod with which we have been beaten?

But, sir, this is not all. We shall, by remaining in the old state, not only be liable to the payment of our pro rata share of the public debt of Virginia, as it existed when the ordinance of secession was passed, but we shall also be subjected to the payment of, at least, a proportioned share of the enormous debt which Virginia has incurred since the passage of that ordinance. It was bad enough to be compelled to pay taxes to build railroads and internal improvements on the other side of the Blue Ridge, which few of us would ever be able to see, and none of us ever derive any benefit from. I say it was hard enough to be compelled to pay that old debt. But it was contracted according to law. The good faith of the state was pledged, in lawful form, to redeem it, and therefore, no good citizen dare shrink from the obligation to pay it. But what obligation is there resting upon us loyal West Virginians to assume this new debt? How and for what purpose has it been created? To forge weapons to slaughter our fellow-citizens, our fathers, and sons, and brothers! To raise means to destroy our property, our lives, and our liberties! Yes, sir, it was for these hellish purposes this new debt has been created. And that these purposes have been but too fully accomplished, let the blood of thousands of our fellow-citizens, shed by the murderous hands of eastern soldier and western guerrillas, this day crying from the earth to heaven, answer. Look upon the ashes of many a happy homestead; look upon the anguish of many a stricken heart; upon the widowhood and orphanage all through our once happy hills and homes. These are the results contemplated and accomplished by the erection of

this new debt of Virginia. Where is the man that will advise the people of West Virginia to be taxed to pay such a debt as this? Where is he? And yet, so surely as we remain in Virginia, undivided, so surely will we be compelled to pay this new debt. The man who would create such a debt for such purposes, will not hesitate to make us pay for it after these purposes are accomplished. And what is the amount of this new debt? What will it be when the war is terminated? No human being can now tell. The debt of Virginia, when the ordinance of secession was passed, was at least forty millions. It is now, perhaps, eighty millions. If the war lasts a year longer it will be a hundred millions. And yet there are those who are advising the people that they should resist the admission of the new State because it would involve the expenditure of a few hundred thousand dollars in the construction of public buildings, etc.; whilst, by adhering to the old state, and rejecting separation, it will subject them to the burden of a new and additional debt contracted since the ordinance of secession, amounting to fifty or sixty, or perhaps, a hundred millions of dollars. Give us a new state, and our existing rates of taxation will be lessened. Remain as we are, and they must necessarily be increased more than a hundred fold. I cannot appreciate such economy as this.

Mr. President, there are those who are so uncharitable as to suppose that underlying these specious but fallacious objections, there is concealed a secret hope that the rebellion will succeed, and that West Virginia will be dragged into the Southern Confederacy, like the captive princess chained to the triumphal car of the ancient Roman conqueror? Can it be possible that these pretexts are assumed to cover up a design so disloyal and fratricidal? Are they mere diversions of the enemy to distract our attention from the true issues?

Why, Mr. President, what would be the condition of the people of West Virginia in a Southern Confederacy?—with all our waters, with most of our trade and traffic and travel, flowing into the north?—with little or no trade, or travel, or commerce or social intercourse with the remainder of even our own state? Cut off from all these advantages by impassable geographical and natural barriers, not to be overcome by any available amount of capital or skill—compressed like a driven wedge between the two mighty States of Ohio and Pennsylvania, which, if hostile to us, could sweep us away as with a “besom of destruction,” before relief could reach us? And would not these states be hostile? Does

not universal history teach us this significant lesson, that no contiguous people, speaking the same language, possessing the same religion, accustomed to the same civil institutions, ever did live, in peace, under distinct and independent governments, with no natural barriers to separate them. Perpetual war or consolidation is the inevitable result of such a condition.

Sir, we have recently heard a great cry for peace. No man more earnestly desires peace than I do. But, sir, there is no peace but in the union of these states. Disunion is perpetual war. To establish two confederacies of the United States is to inaugurate a war which will have no end, save in the utter destruction of each, or in their consolidation into one government; and such a consolidated government, would, most probably, be a military despotism. Let West Virginia, therefore, be attached to a Southern Confederacy, and we would be the prey and the sport of hostile neighbors; or if any attempt were made to protect us, we should be the mere battle ground of the opposing powers, and be crushed beneath the iron heel of war. In this event, frowning forts would cast their dark shadows from either shore upon the peaceful bosom of the beautiful Ohio, where hitherto we have only been rivals in trade and commerce and good fellowship. Standing armies would line these shores from Ceredo to New Cumberland, and from New Cumberland to the Fairfax stone; and we might as reasonably expect luxuriant verdure where the blasts of the sirocco sweep across the Arabian deserts, as that the arts and pursuits of peace should flourish in West Virginia, under such malign influences. Sir, how long would it be before frowning battlements would crown those Ohio hills, yonder in sight commanding your city?—How long before your city would be in ruins, and your wives and children homeless and houseless? We should but reproduce the history of the wars and desolations of the Scottish border—happy, if at last, after centuries of rapine and murder, and the unceasing conflict of armies, we should acknowledge the folly of our unnatural separation, by again “joining together,” as did Great Britain and Scotland, that which God and nature had ordained should never “be put asunder.”

Mr. President, I feel that I have trespassed too long on the patience of the Convention. Others topics suggest themselves for consideration; but I forbear to discuss them. I beg leave to submit a few remarks of a general character, and then I shall have done.

The adroit opponents of this great measure, despairing, perhaps, of the success of their arguments, are bestirring themselves

to enlist in their behalf the passions and prejudices of party politics.

Sir, what have party politics to do with the division of the state? Will any man be less a Democrat, or Whig or Republican after the admission of the new State into the Union than he was before? Will not all offices, federal, state, and county, be precisely under the same control after admission as they were before? Do you, or do I condemn the President's Emancipation Proclamation? Or his suspension of the privilege of the writ of habeas corpus? Are we dissatisfied with his policy in reference to slavery? Surely the admission of the new State cannot be construed into an approval or disapproval of any of these things. It has no connection with them whatever. We shall be as free to approve or condemn in the new State as in the old. It will not change our relations in the slightest degree, towards the President or his policy, or towards any party, or policy. Let the question, therefore, stand or fall upon its own merits. Let not the people be deceived by the clamor of artful political leaders, who, under the guise of party fealty, are seeking to defeat a measure having no connection with party politics, but which is of vital importance to the interests of all. I trust, therefore, that we will not suffer ourselves to be betrayed by any such mischievous devices; but shutting our ears to all these false suggestions, and turning our eyes away from the dreary scenes of the past, we will listen to the voice of duty alone, and fix our eyes only upon the bright prospects awaiting us in the future, if we do but accept the rich boon of proffered independence before us. Sir, I do feel that the long and chilly night of western destitution and demoralization is passing away forever; and that a new era is dawning upon us—an era of light and life which shall quicken the long dormant energies of our people, reveal and develop the abounding treasures everywhere hidden beneath our mountains and valleys, attract labor and capital and skill from every quarter of the land, and elevate us to that condition of moral, intellectual and physical prosperity and happiness which we have a right to enjoy.

But we still hear it said in certain quarters—"Wait for the proper time." Sir, now is the proper time. This same objection has been urged from the beginning; and it was in reply to it that Mr. Carlile in August, 1861, in the Convention then held in this city, so forcibly said—

"Why, sir, I was surprised to hear gentlemen enumerate difficulty after difficulty, all of which, as was said on yesterday by my friend from this city, (Mr. Paxton) have existed and will continue

to exist throughout all time with the exception of embarrassment to the administration in this struggle. The reasons are assigned by gentlemen who tell us they are in favor of division at a proper time, and that proper time is when all Virginia is represented in the legislature, and that time will be when you never can get the consent of the legislature. Now, sir, I have my own views about the position of gentlemen when they tell me they are in favor of a division of the state and say they intend to postpone it until they never can get the consent of the legislature."

Has anything occurred since that time to render the admonition of Mr. Carlile less necessary now than it was then? No, sir. Let us, therefore, not be deceived by this clamor for delay. Why should we hesitate to accept the great advantages before us? We have complied with every requisition of the law. We have fulfilled every constitutional obligation. And now wealth and popular education, and material and moral progress and development, and political equality, and prosperity in every department of political economy, so long withheld from us, are all within our grasp. The "golden moment" has come at last. If we fail to improve it we shall deserve the degradation in which our folly will have forever involved us.

A P P E N D I X.

MICHIGAN.

Note A.—"An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union upon the conditions therein expressed."

"Sec. 2. And be it further enacted, that the constitution and state government which the people of Michigan have formed for themselves, be, and the same is, hereby accepted, ratified and confirmed; and the said State of Michigan shall be, and is, hereby declared to be one of the United States of America, and is hereby admitted into the Union on an equal footing with the original states, in all respects whatsoever: PROVIDED ALWAYS, and this admission is upon the express condition that the said state shall consist of, and have jurisdiction over all the territory included within the following boundaries, to-wit: Beginning, etc., etc.

"Sec. 3. And be it further enacted That as a compliance with the fundamental condition of admission, contained in the last preceding section of this act, the boundaries of the said State of Michi-

gan, as in that section described, declared and established, shall receive the assent of a convention of delegates elected by the people of said state, for the sole purpose of giving the assent herein required; and as soon as the assent herein required shall be given, the President of the United States shall announce the same by proclamation; and thereupon without any further proceeding on the part of Congress the admission of the said state into the Union, as one of the United States of America on an equal footing with the original states, in all respects whatever, shall be considered as complete."

WISCONSIN.

Note B.—In 1846 Congress passed what is called an "enabling act" for the admission of this state. The 7th section of that act is as follows:—

"That the following propositions are hereby submitted to the convention which shall assemble for the purpose of forming a constitution for the State of Wisconsin, for acceptance or rejection; and if accepted by said convention, and ratified by an article in said constitution, they shall be obligatory on the United States."—Then follow five distinct propositions and restrictive conditions, granting certain lands, per centage on sales of lands, etc., etc., the whole concluding with a proviso in the following words: "PROVIDED, that the foregoing propositions herein offered are on the condition that the said convention which shall form the constitution of said state, shall provide by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that the said state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-residents proprietors be taxed higher than residents."

The act of Congress finally admitting the State of Wisconsin, approved March 3, 1847, contained the following sections:

"Sec. 3. And be it further enacted, That the assent of Congress is hereby given to the resolutions by said convention, and appended to said constitution, and the acts of Congress referred to in said resolutions thereby granted and the proceeds thereof, and the five per centum of the net proceeds of the public lands, may be held and disposed of by said state in the manner and for the

purposes recommended by said Convention: PROVIDED, HOWEVER, that the liabilities incurred by the territorial government of Wisconsin, under the act entitled "an act to grant a quantity of land to the territory of Wisconsin for the purposes of opening a canal to connect the waters of Lake Michigan with those of Rock river," shall be paid and discharged by said state; and provided further, that the even numbered sections along the route of said proposed canal shall be brought into market and sold at the same minimum price, and subject to the same rights of preemption to all the settlers thereon at the passage of this act, as other public lands of the United States.

"Sec. 4. And be it further enacted, That it is made and declared to be a fundamental condition of the admission of the State of Wisconsin into the Union, that the constitution adopted at Madison on the 16th day of December, 1846, shall be assented to by the qualified electors in the manner and at the time prescribed in the 9th section of the 20th article of said constitution and as soon as such assent shall be given, the President of the United States shall announce the same by proclamation, and therefrom, and without any further proceedings on the part of Congress, the admission of said State of Wisconsin into the Union, on an equal footing in all respects whatever with the original states, shall be considered as complete."

KANSAS.

Note C.—"Whereas, the people of Kansas did by a convention of delegates assembled at Lecompton the 7th day of November, 1857 'for that purpose, form for themselves a constitution and state government which is republican; and whereas, at the same time and place said convention did adopt an ordinance, which ordinance asserts that Kansas when admitted as a state, will have an undoubted right to tax the lands within her limits belonging to the United States, and proposes to relinquish said asserted right, if certain conditions set forth in said ordinance, be accepted and agreed to by the Congress of the United States; and whereas, said constitution and ordinance have been presented to Congress by order of said convention, and admission of said territory into the Union thereon as a state, requested; and whereas, said ordinance is not acceptable to Congress, and it is desirable to ascertain whether the people of Kansas concur in the changes in said ordinance hereinafter stated, and desire admission into the Union as a state, as herein proposed:

Therefore, be it enacted, etc., That the State of Kansas be and is hereby admitted into the Union on an equal footing with the original states, in all respects whatever, but upon this fundamental condition precedent, namely: That the question of admission with the following propositions in lieu of the ordinance framed at Le-compton, be submitted to a vote of the people of Kansas and assented to by them, or a majority of the voters voting at an election to be held for that purpose, namely: (Here follow five distinct propositions, concluding with the following provision:)

Provided, The foregoing propositions herein offered are on the condition that said State of Kansas shall never interfere with the primary disposal of the lands of the United States, or with any regulations which Congress may find necessary for securing the title in said soil to bona fide purchasers thereof, and that no tax shall be imposed on lands belonging to the United States, and that in no case shall non-resident proprietors be taxed higher than residents," etc., etc.

Note D.—Extract from an article recently published by Hon. Robert J. Walker.

AREA.

The area of Missouri is 67,380 square miles, being the fourth in rank, as to area, of all the states. The area of Illinois is 55,405 square miles, ranking the tenth. Missouri, then, has 11,975 square miles more than Illinois. This excess is greater by 749 square miles than the aggregate area of Massachusetts, Delaware and Rhode Island, containing in 1860 a population of 1,517,902. The population of Missouri per square mile in 1810 exceeded that of Illinois .08; but, in 1860, the population of Missouri per square mile was 17.54, ranking the twenty-second, and that of Illinois 30.90, ranking the thirteenth. Illinois, with her ratio to the square mile, and the area of Missouri, would have had in 1860 a population of 2,082,052; and Missouri, with her ratio, and the area of Illinois, would have had in 1860 a population of 971,803, making a difference in favor of Illinois of 1,110,239, instead of 529,939. The absolute increase of population of Illinois per square mile, from 1850 to 1860, was 15.54, and of Missouri 7.43, Illinois ranking the sixth in this ratio and Missouri the fourteenth. These facts prove the vast advantages that Missouri possessed in her large area as compared with Illinois.

But Missouri, in 1810, we have seen, had nearly doubled the population of Illinois. Now, reversing their numbers in 1810, the

ratio of increase of each remaining the same, the population of Illinois in 1860 would have been 2,905,014, and of Missouri, 696,983. If we bring the greater area of Missouri as an element into this calculation, the population of Illinois in 1860 would have exceeded that of Missouri more than two millions and a half.

MINES.

By census tables 9, 10, 13 and 14, Missouri produced in 1860 pig iron of the value of \$575,000; Illinois, none; bar and rolled iron, Missouri, \$535,000; Illinois, none; lead, Missouri, \$356,660; Illinois, \$72,953; coal, Missouri, \$8,200; Illinois, \$964,187; copper, Missouri, \$6,000; Illinois, none. As to mines, then Missouri has a decided advantage over Illinois. Indeed, the iron mountains of Missouri are unsurpassed in the world. That Illinois approaches so near to Missouri in mineral products, is owing to her railroads and canals, and not to equal natural advantages. The number of miles of railroad in operation in 1860 was 2,867 in Illinois, and 817 in Missouri; of canals, Illinois, 102 miles; Missouri none. (Tables 38-9.) But if Missouri had been a free state, she would have at least equaled Illinois in internal improvements, and the Pacific railroad would long since have united San Francisco, St. Louis and Chicago.

Illinois is increasing in a progressive ratio as compared with Missouri. Thus, from 1840 to 1850, the increase of numbers in Illinois was 78.81, and from 1850 to 1860, 101.01 per cent; whilst the increase of Missouri from 1840 to 1850 was 77.75, and from 1850 to 1860, 73.30. Thus, the ratio is greatly augmenting in Illinois, and decreasing in Missouri. If Illinois and Missouri should each increase from 1860 to 1870, in the same ratio as from 1850 to 1860, Illinois would then number 3,441,448, and Missouri 2,048,426. (Table 1.) In 1850 Chicago numbered 29,963, and in 1860, 109,260; St. Louis, 77,860 in 1850, and 160,773 in 1860. From 1840 to 1850 the ratio of increase of Chicago was 570.31 and from 1850 to 1860, 264.65, and of St. Louis, from 1840 to 1850, 372.26, and from 1850 to 1860, 106.49. If both increased in their respective ratios from 1860 to 1870, as from 1850 to 1860, Chicago would number 398,420 in 1870, and St. Louis 331,879. It would be difficult to say which place has the greatest natural advantages, and yet, when St. Louis was a city, Chicago was but the site of a fort.

PROGRESS OF WEALTH.

By census table 36, the cash value of farms of Illinois in 1860, was \$432,531,072, and of Missouri, \$230,632,126; making a difference in favor of Illinois of \$201,898,946, which is the loss which Missouri has sustained by slavery in the single item of farm lands. Abolish slavery there, and the value of her farm lands would soon equal those of Illinois, and augment the wealth of the farmers of Missouri over two hundred millions of dollars. But these farm lands of Missouri embrace only 19,984,809 acres, (table 36) leaving unoccupied 23,138,391 acres. The difference between the unoccupied lands of Missouri and Illinois is six dollars per acre, at which rate the increased value of the unoccupied lands of Missouri, in the absence of slavery, would be \$138,830,346. Thus, it appears that the loss of Missouri in the value of her lands, caused by slavery, is \$340,729,292. If we add to this the diminished value of town and city property in Missouri, from the same cause, the total loss in that state, in the value of real estate, exceeds \$400,000,000, which is nearly twenty times the value of her slaves by table 35 the increase in the value of the real and personal property of Illinois, from 1850 to 1860, was \$715,595,276, being 457.93 per cent and of Missouri, \$363,966,691, being 265.18 per cent. At the same rate of increase from 1860 to 1870, the total wealth of Illinois would then be \$3,993,000,000, and of Missouri, \$1,329,000,000, making the difference against Missouri in 1870, caused by slavery \$2,664,000,000, which is much more than three times the whole debt of the nation and more than twice the value of all the slaves in the Union. Whilst then the \$20,000,000 proposed to be appropriated to aid Missouri in emancipating her slaves, is erroneously denounced as increasing federal taxation, the effect is directly the reverse. The disappearance of slavery from Missouri would ensure the overthrow of the rebellion and the perpetuity of the Union, and bring the war much sooner to a close, thus saving us a monthly expenditure far exceeding the whole appropriation. But this vast increase of the wealth of Missouri, caused by her becoming a free state, would, by increasing her contribution to the national revenue in augmented payments of duties and internal taxes, diminish to that extent, the rate of taxation to be paid by every state, Missouri included.

On motion of Mr. Van Winkle, the Convention adjourned to ten o'clock A. M. tomorrow.

LX. FRIDAY, FEBRUARY 13, 1863.

The Convention was opened with prayer by Rev. Moses Tichenell, member from Marion.

Following the reading and approval of the journal,

Mr. Van Winkle presented two petitions several yards long from the soldiers of the loyal Virginia regiments in the neighborhood of Winchester praying the Convention to provide for holding an election in their camps on the question of adopting the Constitution. One of these petitions was signed by the officers of the 9th Virginia regiment; the other by 577 members of the 10th Virginia.

The President presented a petition to the same effect signed by 126 citizens of Tyler county; Mr. Stuart of Doddridge, one signed by 656 members of the 14th Virginia.

The petition from the officers of the 9th regiment prayed that the Convention would "adopt and ratify the amendment suggested by what is called 'the Willey Bill' for the admission of West Virginia, and make provision for the Virginia troops to vote on the ratifications of that amended Constitution."

The petition presented by Mr. Stuart said:

"At the call of the President, thousands of the citizens of West Virginia left their homes to do battle for the integrity of the Union and the sanctity of the Constitution. It has been suggested that this class of our citizens will be deprived of the privilege of voting on the fundamental law of the government under which they will live. Would it be asking too much of your honorable body to grant to the men now in the service of their country the same rights and privileges and immunities that are accorded to other citizens? Does any soldier forfeit any right simply because he happens to be beyond the territorial limits of the State?"

MR. BROWN of Kanawha. I would move reference of these petitions to the Committee on Schedule. That committee, I believe, has the question of the submission of the Constitution to the voters under consideration; and I take this occasion to express the opinion that it seems to me if any persons can be entitled upon principle to the right of determining or voting upon the fundamental law of the State it is those men especially who are by their arms and lives defending and sustaining it. I imagine there will be no difficulty on the subject. It is only a question of preparation in submitting it.

MR. CALDWELL. I hold in my hand a certificate of the election of Samuel Griffith from Mason county. I do not concede there is any necessity of referring it to the Committee on Credentials. I ask it be read.

MR. SINSEL. The committee has already considered that case, and are ready to report it.

MR. CALDWELL. I withdraw it.

MR. HALL of Marion. With reference to the motion of the gentleman from Kanawha, as chairman of the Committee on Schedule, without having had an opportunity of conferring with the other members of the committee, I would make a suggestion which will perhaps expedite the business. One great object will be to have the business of the Convention matured at as early a time as possible in order to make our session as brief as the circumstances and business will enable us to do. The Convention at its former session having passed through and had reports from the various committees, assigned the whole work then to a Committee on Revision, and I propose that for the consideration of the gentleman as a substitute for his motion in order that the matter be referred to the Committee on Revision in lieu of the Committee on Schedule, as it will supercede the necessity of a double reference and let it go to what was regarded before as the "Lamb Committee." The questions that may arise on these petitions I suppose will detain no time in the committee. I do not know how other men may regard it. There can be but one opinion as to the rights of these men; that they have not ceased to be citizens, and legal restrictions that are sometimes construed to exclude soldiers have reference only to the members of the regular army and have no application at all to the persons in the service as volunteers. I think that is the construction of the present law, and thus arises the idea that seems to have prevailed in some quarters that without some action here they might be excluded. But the Convention will take pleasure, I am satisfied, in putting any question of doubt at rest. But I suggest this reference. Perhaps I should have conferred with the Committee on Schedule before making the motion; but I think the reasons will be apparent and I apprehend it will meet with the concurrence of the whole committee.

MR. BROWN of Kanawha. Without having the statute before me, I believe from memory and I have ever regarded that the volunteer in the service is not precluded from voting or holding office

by the provision of our Constitution; that it only refers to the regular standing army of the Union and not to volunteer citizens who are mere militia and are so entitled. You will see on their knapsacks "Volunteer Militia of Virginia", of Ohio, etc. But even if it were otherwise, I should be prepared to go a step further. This is a Constitutional Convention, which is preparing to submit the fundamental law, the basis and groundwork of a new state, and in submitting that we are about to determine to whom it is to be submitted; and we do in this very instance submit it to the individuals who are voters under the laws of Virginia; who are to be voters under this Constitution; and we provide in this schedule to whom this Constitution shall be submitted and whether it shall be in the territory or out of it makes no difference. It is not a submission that is to affect men hereafter in the ordinary elections of the State, and by any provision which we may submit to men on the farthest shores of the continent or wherever they may be on the day of the election, it cannot be pleaded as any precedent to enable other voters hereafter to vote when out of the territory. It is a provision to meet the exigencies of the case. It is fully competent for us to provide for it and justice demands that we should do so.

Mr. Hall's amendment was accepted by Mr. Brown and agreed to by the Convention.

MR. SINSEL. The Committee on Credentials is prepared now to make a final report. They report as follows:

"The Committee on Credentials, through its chairman, beg leave to report that it has had under consideration the credentials of David W. Gibson and Samuel Young, both claiming seats in this Convention from the county of Pocahontas, and that the members of the committee present were equally divided in opinion as to the claims of the aforesaid gentlemen to seats in this Convention, and ask that the said credentials be submitted to the Convention for its consideration and action in the premises.

"Your committee further reports that Samuel T. Griffith is duly elected a member of this Convention from the county of Mason, in the room of John Hall, resigned, and that said Griffith is entitled to a seat therein.

"HARMON SINSEL, Chairman."

MR. SINSEL. In reference to the contested seats from Pocahontas, the facts are something like these: On the 29th day of October last, some refugees from that county drew up a petition to this body to admit Samuel Young as a delegate to represent that

county in this Convention. It is true the committee did not call the Convention together at that time but they were aware the Convention would be called together and felt confident Congress would admit us and it would be necessary to revise the Constitution, and they embraced that opportunity that they might be ready. There were 25 petitioners; and this Mr. Gibson, the getter-up of the petition, signed it with the others and asked this Convention to receive this gentleman; but from that time until the election, Mr. Gibson could not hear from Mr. Young and they were fearful that they might still be unrepresented; and on the day of the election, the 5th of February, in the county of Upshur there were many refugees there at that time and they opened a poll for election and elected Mr. Gibson to this Convention, not knowing where this other gentleman was at the time, and in that way they both appear as applicants for the seat in this body. Mr. Young and a part of the committee thought they had complied with the forms of an election all except holding it in the county of Pocahontas. One half the committee thought his claims were more in accordance with the requirements; the other thought as this gentleman was here not by any fault of his own but through the agency and influence in part of this Mr. Gibson he was entitled to the equitable seat; and so we differ, and now we submit it to you for your decision.

On suggestion of Mr. Stuart of Doddridge, the report was received and Messrs. Griffith and Boggs were allowed to come forward and take the prescribed oath.

MR. VAN WINKLE. I wish to offer a couple of resolutions.

MR. SINSEL. I would ask to dispose of this contested case, first.

MR. VAN WINKLE. O, certainly, sir.

MR. SINSEL. I move to take up this contested case and let the Convention dispose of it.

The motion was agreed to and the Convention proceeded to consider the Pocahontas case.

MR. SMITH. There are two gentlemen here, and I have heard the facts, and I think it is the most difficult case I have ever had to decide on; so much so that I am at a loss to know how to vote. But to get rid of it I am making another proposition which I think is just and fair. Those gentlemen are both from the county of Pocahontas. There is Webster and Greenbrier, there is Monroe and other counties in that section wholly unrepresented. This Con-

vention it must be recollected is omnipotent so far as the admission of members is concerned; have perfect power to dispose of it at their pleasure; they are governed by no law but the Constitution of the United States. That is the only thing that inhibits them from doing whatever may seem pleasant to them. And I therefore recommend that these gentlemen each be admitted as representing that section of the country. There is a large portion there wholly unrepresented, and the power that is in us to admit each of them and let them stand as the representatives of the whole country where there is no representation at all. I merely state this fact that they should take charge because they live in that country, and in representing Pocahontas they would completely represent the other portions. I think it will relieve the Convention of the difficulty of voting between these gentlemen. Both came here to serve the public interests and from motives of patriotism; and I therefore earnestly recommend to the Convention to receive both.

MR. LAMB. I should be very glad to see both these gentlemen members of this Convention; but are members to be appointed by this Convention or by the people? Can we undertake to say that either of these gentlemen shall represent a district of country which has not seen proper to send its own representatives here? Will it be putting this Convention in a proper position before the great public if they undertake to decide that a gentleman not appointed by the people for that purpose shall be understood as representing a portion of our people? I think, sir, we cannot escape, difficult as may be the question, we cannot escape deciding between these two gentlemen which of the two is entitled to the seat they claim. We cannot undertake to make them the representatives of another section or another people. "Omnipotent" as this Convention may be, we have no authority to represent the sovereignty of the people in that respect.

MR. POMEROY. I understand there is a proposition made by the gentleman from Logan to admit both these members. That proposition is open, I suppose, to amendment. I move that Mr. Gibson be admitted as the representative from Pocahontas.

MR. STUART of Doddridge. I really think the proposition made by the gentleman from Logan ought to be accepted by this body. If they do not represent those counties, let them be members here representing the refugees. I was one of that committee, let me say

for the information of this body, who favored this expedient. Both gentlemen are very intelligent, respectable men; both been engaged in the service of our government fighting the rebels; they are here and their equity is almost identically the same. They have no legal evidence here entitling them to a seat; but I would like very much if the gentleman from Hancock would withdraw the amendment until we test the other question; because the question which your amendment brings up I desire to be heard before this body as to the rights of these two gentlemen. But I don't want to go into that matter until we test the other question. If it is the will of this body to receive both—which I hope it will be—it will be necessary to investigate and discuss which has the preference one over the other.

MR. POMEROY. I would do anything to accommodate my friend from Doddridge, but my understanding is that Pocahontas is entitled to one member and is not entitled to two; and it is a question for this Convention to decide whether she is in accordance with the provisions of the proclamation issued by the commissioners for the holding of elections and whether she elected one man or not; and if she is, that man is entitled to a seat on this floor. We cannot take it for granted that Greenbrier wishes to be represented here. We have no call to infer that Monroe wishes to be represented in this body. But the great objection I have to this is just this: I don't want to give those rebels any ground on which to find fault with this Convention. I want everything they state against this Convention without any foundation in it, and therefore I want this Convention to proceed in that way that will give them no opportunity to quibble and find fault without departing from the truth—and that will not hurt anybody. The amount of the mileage of these men is a very little thing; but the world is made up of little things, and we are to be careful of the funds entrusted to us belonging to the people. I think I am prepared to say that Dr. Gibson is the man entitled to this seat without saying a word disrespectful of this other gentleman. It may be both are the best men in the country. One of them is entitled to a seat and two are not; and therefore if the gentleman from Doddridge wants this naked question to discuss we will have to show that two men ought not to be received here, and then we will have to discuss which of them is. I am not desirous to be tenacious about this question. I don't believe we ought to admit two from Pocahontas any more than we ought to admit two from any other county that is entitled to but one. If entitled to two, why not entitled to ten? Why, gentlemen,

better let all these refugees over in Upshur come down here in a body and represent their section, to carry out the idea of the gentleman from Logan. His proposition would establish a bad precedent. I have the kindest feeling towards these men. I sympathise with them as refugees. I hope they will not be refugees always.

MR. VAN WINKLE. I would suggest that the request of the gentleman from Doddridge is that the gentleman from Hancock simply withdraw his motion for the present. He will see that in voting for his amendment gentlemen must exclude Dr. Gibson, for they must vote that in and thereby throw out the gentleman from Doddridge from any opportunity of having a vote on his amendment.

MR. POMEROY. I am very willing to withdraw.

MR. VAN WINKLE. And if the amendment of the gentleman from Hancock should fail—

MR. POMEROY. I withdraw it.

MR. WILLEY. We should be as regular in our proceedings here as the nature of the case will admit. It cannot be expected in these times of revolution and disorganization that we can be altogether regular. It strikes me there is a great deal of force in the remarks of the gentleman from Hancock; but I very much like the suggestion of my friend from Doddridge. Now, sir, these gentlemen are both of them refugees, I understand. Why cannot we have a representative here of refugees in general? If I were in place of one of these gentlemen I should very much hesitate to assume upon myself, not living in Greenbrier or any of the other counties, to take it upon myself without any knowledge of the wishes of people there to represent them on this floor. But it occurs to me the refugees have a fellow-feeling. It is said a fellow-feeling makes us wondrous kind, and if there is any portion of our community that deserves our consideration I think it is the refugees driven from those counties. I believe, sir, in the Congress of the United States are delegates from the territories. They can speak, they can be heard, can bring forward measures, but they cannot vote. Well, here are hundreds of refugees all from that county. I do not know how I shall vote finally on the proposition but it occurs to me to suggest that to my friend from Logan.

MR. VAN WINKLE. My understanding of the proposition of the gentleman from Logan, is this, not that you should appoint a

delegate from Greenbrier but that you should admit the two delegates from Pocahontas in consequence of other neighboring counties being unrepresented.

MR. WILLEY. That is what I understand; that he should be admitted as the representative of Greenbrier.

MR. SMITH. I meant for both to be admitted as representatives from Pocahontas, and the reason is that a good many counties in the vicinity are wholly unrepresented and there would be propriety in it.

MR. WILLEY. Rather being understood as admitting him from all that country that is not represented here.

MR. SMITH. That is a reason why they should both be admitted.

MR. WILLEY. Well, then, sir, there is not so much difference between us as I had supposed.

MR. STEVENSON of Wood. I feel myself disposed to vote for the proposition of the gentleman from Logan, if it can be put in a shape that might satisfy my conscience. I am afraid that if the gentleman is admitted as suggested by the gentleman from Monongalia to represent any of the unrepresented territory in that country it might lead to a difficulty if any other portion should turn up in the meantime and should come here properly authenticated to represent any particular portion of that territory. I see a difficulty there that might arise.

MR. WILLEY. My main objection was to fixing as the representative of Greenbrier; and if that were the case—if a representative from Greenbrier duly elected should present himself, we should be in rather an awkward predicament.

MR. STEVENSON of Wood. I am supposing a representative should come here with proper documents from any one of those unrepresented counties and we should have admitted one of these gentlemen as representing all that territory, a difficulty would grow out of that, of course. If the matter could be put in a shape, as suggested, to make one of these gentlemen represent the refugees who have been driven from those counties, I think it would remove that objection at least. I understand that both these gentlemen are very worthy men and have suffered somewhat in the way of persecution and loss of property for the cause of the loyal

people in that portion of the state. I believe there is no difference of opinion about that; and both come here honestly with the intention of representing the people in that particular county. There is no charge made, as I understand that either of these gentlemen is actuated by any but pure motives in this matter. Now, we have gentlemen upon this floor who have made very able and efficient and excellent members who it seems to me were admitted upon conditions to say the least as much objectionable as those proposed here. If there is a possibility of admitting both these gentlemen to participate in the proceedings of the Convention without any glaring violation of the propriety in such cases, I confess that I feel disposed to support it and vote for it. I have a little difficulty, however, in my mind as to exactly what I shall do and would like to hear a further interchange of opinion on the matter.

MR. SMITH. It seems I have been misunderstood, that I had used the county of Greenbrier for Pocahontas. It was not my purpose to recommend the admission of either as the representative of any other county than Pocahontas; and my remarks were made for the purpose of showing that we had power to admit two members from Pocahontas; although it would be an unequal representation, we have the power to do it. There is no question about our power. We have no constitutional powers to take such action at all. We have perfect power to give inequality of representation; but as a reason for giving that inequality of representation in the county of Pocahontas I suggested that there is a surrounding country there wholly unrepresented; and those gentlemen whilst taking charge of the interests of Pocahontas might also be watchmen in behalf of the people of the surrounding counties; and I offer that as a reason for giving to these gentlemen a representation for the county of Pocahontas, of two instead of one. We have the perfect power. Our consciences are not involved in it at all, because this Convention is omnipotent on that subject. We did say in a former day that the county of Pocahontas should be entitled to one representative; but may we not *pro hac vice*, undo that and say that now, although we have provided as a general principle that they shall have one, we may now declare they shall have two. And the reasons for so declaring now I think are potent. These gentlemen have come here honestly and from a spirit of patriotism and for the public good. It is a small amount we will have to pay, and I don't think we ought to quarrel on that subject; and if it is so, we ought to make up a pony-purse. But I don't think that is neces-

sary. And that is not the question at all. These gentlemen have come here and ask to be represented. They ask to be represented on principles which we cannot admit. And by admission, we are taking the sovereign power of the country into our hands; and although they have not been elected according to the law as before provided, yet we assume the prerogative here, and which we have a right to do, to undo the law for the occasion. We abrogate the law in this particular case. So we have done in other cases where member's came in by petition. We abrogated the law for that occasion; we abrogate it here. There is no sort of legal difficulty in the way. I, therefore, think it is just towards these gentlemen who have come here from honest purposes and such equal claims that we will cut the Gordian knot by admitting both.

MR. HALL of Marion. I confess, Mr. President, I do not see this as the gentleman from Logan and some other gentlemen indicate. I know that no one on this floor would sympathize more with refugees or extend a larger liberty to those who may have been so situated that they are represented with difficulty here. But I wish to answer the suggestion of the gentleman from Logan that there are persons—and I believe another gentleman also—that there are persons on this floor as representatives that are here by an abrogation of law: I do not so understand it. I do not believe it. Under the circumstances in which we found ourselves placed, we were bound to provide ways and means of getting a representation that under ordinary circumstances were regarded as irregular, they were legitimate and proper. And when all was done, in order to be regular, that could be done under the circumstances, they have done all that should be required. I know of no petition on this floor that comes here except by the best expression of the will of the people it is proposed he shall represent that could be had under the circumstances. Now, I am like the gentleman from Logan, I have a jealousy for the fair fame of this Convention. The monied consideration, as suggested by the gentleman from Logan, is a very small matter; but it is a matter of importance that in what we do here we shall do legally and right; and let us not, in order to avoid the responsibility that it is our duty to meet and discharge of deciding between these two men, let us not in this eleventh hour in our Convention put a cudgel in the hands of our enemies that they can say a convention not gotten up to represent the people, but a few of them, got together and appointed persons without consulting the people; appointed them to represent whom? Counties?

Not exactly so; sections or districts or different classes of people, without their knowledge or consent.

MR. SMITH. A man in a glass house cannot throw stones. I believe this very town and country is represented in the Confederate Congress, and they are represented in the Legislature of Virginia.

MR. HALL of Marion. But two wrongs do not make a right; and when we simply answer our accuser by telling him he is "another" it does not exculpate us. We regard all their acts as illegal, and we set ourselves up in distinction and say we are legal. Let us keep our record so that we can stand on it and show the difference between the rebellion and loyalty—between the ignoring of laws and their observance. I shall not be content to place myself on an equality and say to a rebel, we are as good as you are. I am better than any rebel that treads on God's earth, and I am not willing to make myself the peer of any man in any particular who is a rebel.

Now, here is the simple point. It is suggested that they may represent a class of persons—refugees. I would be willing they should all be represented; but there was provision made by which they might have been represented, and that provision is the very same that Pocahontas has availed herself of to be represented here. But this proposition involves this question: You propose to introduce a representative of a people that have not requested or indicated these men as their representatives. I ask by what authority this Convention makes itself the constituency of any people? What right have we to say these men shall represent refugees more than Monongalia has a right to say that because my colleague, Mr. Tichenell and myself happen to be away they shall represent the county of Marion? It is said every tub shall stand on its own bottom, and every county must look out for itself, and every people must. Otherwise this is not a republic and we are getting beyond the bounds of our power, and right when we attempt to appoint for a people who have not appointed for themselves. I want to know which gentleman represents Pocahontas. How will the Clerk and Reporter report them? Will they have to say the gentleman from Pocahontas who represents Pocahontas, or the gentleman from Pocahontas who represents the surrounding country? Without this we cannot tell in reading after the Convention who represents Pocahontas and who represents the rest of mankind. Now, I am opposed to that proposition in toto. On personal grounds, I would very gladly have both gentlemen here. I wish one of them

did come properly accredited from some other county; but until he does I cannot know him. I must know one of them. It is my duty and the duty of all members to know which one does represent Pocahontas county, and admit that one to the privileges of this body. I know both come here from worthy impulses, and it matters not which of them is excluded. So far as they are concerned they will respect this body the more for doing its duty and they will be content, either of them—I know it. It is my pleasure to have known one of the gentleman personally for some time. The other I have met since coming here and I have looked in his face and know he is an honest man and will be content with the decision of this Convention, so it does its whole duty.

There is something in the idea of our setting a precedent and making a mark here so that the world could say we were not regularly appointed to represent the people we do profess to represent. There would be that cloud on our title; gotten up without reference to the regular principles of government. No man could meet our record and say we were a properly organized and regular body of representatives of the people. I want that our record shall go out the work of masters' hands and all that we do shall be above suspicion, and beyond question or quibble. Let us meet this matter and decide between these men, taking one and rejecting the other according to our best judgment of which has the best title to the seat. I trust we will not adopt the method proposed here of going to work and appointing delegates.

And, now, here is another point. Suppose we appoint the delegate now to represent the refugees, or suppose you say the rest of the territory there, and we will remain in session a few days—how many men may come here as representatives from that territory? How many representatives is that territory there entitled to? And what portion of it will each one represent? Why you open up a field here and set a precedent which may compel you to stultify yourselves or throw open the gate and tell all the people not here to come in and participate; and the result is your Convention is swallowed up and you can draw no lines to tell what is convention and what is mass-meeting.

MR. SMITH. What part of Marion do you represent?

MR. HALL. We represent it all over, and it takes all our might and main. I represent twelve thousand people. How many does the gentleman from Logan represent? How many will the delegate from Pocahontas represent? The proposition as I under-

stand the gentleman's question is that Pocahontas county should have two delegates because Marion has two. If the circumstances were the same, she would be entitled to it; but the case is very different. I would not be willing to set the precedent that a county should have the same power in this body as a county with four times the number of people in it even if the manner of choosing delegates had been equally fair and regular. I trust we will render unto Cæsar the things that are Cæsar's; that we will be just to all the other counties; and whilst I apprehend it would not benefit a particle whether they had one or two—for I expect they would vote right on every question—yet, for the sake of avoiding a wrong precedent, so that all we do may be legal and above reproach, I must hold to the position taken against this proposition.

MR. PARKER. I had the honor to be on the committee and heard the statements of the gentlemen. It seems to me the first question is: Has the Convention the right to admit both of these applicants as representing the people of Pocahontas—the loyal people of Pocahontas? That the Convention should undertake to admit delegates to represent other counties where there is no expression of the sentiments of the loyal people of those counties—it seems to me when done here for this purpose, the power is perfectly manifest. The credentials of other gentlemen who hold seats on this floor based on the same principle have been accepted by the Convention. We have the power, as the gentleman from Logan says and have exercised it in the course we have hitherto pursued in admitting members. We have been liberal, but not too liberal. So far as the right is concerned there seems to be no question. Is it expedient? Can the precedent do us any harm now? At this period of the work of the Convention it is not at all probable the precedent set could work any practical injury; and therefore I hope it will be the pleasure of the Convention to admit them both.

MR. DERING. I desire to say a word upon this question and my object in doing so will be to favor the proposition of the gentleman from Logan. Here are two gentlemen coming from Pocahontas with equal or pretty nearly equal claims. This Convention has set the precedent and made it legal to admit members on petition. It seems to me the proposition of the gentleman from Logan is eminently fair. As to making a record on the part of this Convention, for the rebels to attack I do not care, for one, whether they are pleased or displeased. They are going to oppose the new State and everything that looks like loyalty. I am not like the gentleman

from Marion for making a record that shall be irreproachable and not subject to objection on the part of the rebels. We will get independent of them. I think, with the gentleman from Logan we are omnipotent in this respect and can abrogate law and make law here. We are representatives of the people in their sovereign capacity and have a right to admit two members from Pocahontas if we like. Look at that whole section of country overrun by rebels. These gentlemen are both refugees themselves from that county. That whole section is without any representation and shall we refuse; shall we stickle, and stop and halt on this subject because it don't come up exactly and precisely to legal requisitions made by this Convention in the election of delegates? My object will be to do justice, to give Pocahontas two representatives. In the language of the gentleman from Logan, let them be here as watchmen for their whole section. I trust it will be the pleasure of this Convention to give both delegates a seat here.

MR. TICHENELL. I am well acquainted in this country that these men come from. The motion is to admit both gentlemen. I would like to do it—like to vote for both of them. I confess to you that I do not feel clear to do it. I feel that to admit both these gentlemen makes a precedent here from which similar difficulties might arise, and I believe it would be used before the people to our disadvantage. I will tell you what I would like in this case. It is only my own opinion. What I would like under the circumstances in which these men came here would be to admit one as a delegate from Pocahontas and pay the other his mileage going and coming and some three or four days attendance. And if it is in order to amend the motion before the house to this shape, I move we admit the man elected and that in connection we allow Mr. Young his mileage here and return and three or four days per diem. I think this will get us clear of all difficulty; and as these men have come here honestly and as true patriots, and I love patriots wherever I find them. I would not trample on their rights and feelings; and as they have come here honestly to represent that people, either of which would be entitled if both had not come, it would be a hardship in my opinion to send either away on his own expense. I therefore hope we shall take one of them and show respect to the other by providing that he shall not have come and gone at his own expense; and if my friend over the way says we are to pay it out of a pony-purse or any other way, I will pay my share. But I want one of them appointed here. It will get out and I know our people

well. We are in the midst of enemies watching us by day and night. If you imagine you have nothing to do but to go home and vote the new State in, you are greatly mistaken. They will burst forth like a smothered volcano whenever they have the opportunity. And they will tell our people there is a class of our people they cannot touch with a 40-rod pole. We have a good many softs hanging on the fence, and a breeze might blow them over. Let us act honorably. Let us say to Pocahontas, we will give you a fair representation. Who knows what county would claim it, if we set the example? I hope we will admit one of these gentlemen and honor the other and respect him and cause that he shall not have the difficulty of coming here at his own expense. This we are compelled to do.

My amendment is this: That we admit Mr. Gibson as the member from Pocahontas, and that we will allow the mileage and three days per diem to the other.

MR. LAMB. I should be very glad, indeed, to be able to vote for the admission of both these gentlemen, the proposition being now, not as I supposed it was originally that we should invent a constituency for them, but to admit them both to represent Pocahontas county if it could be done without the violation of fundamental principles; if it could be done without giving our enemies a handle and weapon, placing in their hands a weapon which they will be able to wield with great effect against the institution of the new State and its validity after it is instituted.

Mr. President, there seems to be a misapprehension in regard to the position in which this question rests here. It is necessary to make some explanation in regard to the exact position of the matter.

A convention was assembled on the 11th of June, 1861, authorized by the people of West Virginia to adopt such measures as the welfare and safety of the people might require. That Convention did represent the sovereignty of western Virginia. That Convention passed an ordinance on the 20th of August, 1861, which fixed by a decree in the name of the people of Virginia which this matter, as I say, beyond the power of this Convention to affect. It is the fundamental law under which this Convention is assembled, as the only authority we have for meeting here; and we are asked by this motion to set aside the action of that Convention assembled here and representing the sovereignty of the people of Virginia; for that Convention has said in that ordinance that Pocahontas shall have but one representative. That Convention pre-

scribed in that ordinance how many representatives should be allowed to each county. It gave Ohio county three, to Marion and some others two and it gives to Pocahontas but one.

Now, what is the authority of this Convention? Here is the fundamental law under which we are organized. The authority given by the people of western Virginia, in the name of Virginia, to this Convention is to prepare a constitution under that fundamental law and submit it to the people for their ratification or rejection. We are a Convention of limited powers. It is a misrepresentation of the whole position of the matter to say we are a sovereign Convention. Sir, we heard something of this sovereignty in regard to the convention down at Richmond. And that Convention undertook to appoint members of Congress to represent us and the State of Virginia in the Montgomery Congress. And what was the universal sentiment, not merely among the loyal people of the land but over the world, wherever republican principles are respected in regard to acts of that character? What will be the sentiment and feeling of the people of West Virginia? With what force can they wield against you a weapon of this character if you undertake, in violation of the fundamental law of this organization to give representatives to the people?

I do hope, Mr. President, that this motion will not carry. I consider that it would be, not a fatal blow, but that it would be a blow struck at the new State which would tell for many a year to come. That this Convention, assembled under this fundamental law of August 20, 1861, do not represent even the people that they profess to represent—we have heard such reports in the Congress of the United States. We have heard this argument even in the Congress of the United States against the admission of the new State under the Constitution framed by this Convention and sent to that Congress; and you are by your acts fortifying and giving ground for reports of this character.

Sir, I should be glad, if we had the power, without the violation of right and without the violation of fundamental principles to admit these two gentlemen as representatives of Pocahontas county; but I feel we have got to decide this question between them. We have got, under the same authority which authorizes us to appear on this floor, we are required to say which one of these gentlemen shall be received as the representative of Pocahontas. Let the other—and that will be perfectly regular and fair and perfectly right—let the other coming here under the circumstances which justified him to come here to put in his claim—let him be entitled—

as he is entitled—and it is perfectly regular to give it to him—to his mileage and a reasonable per diem. It strikes me that under the motion which has been made to this effect we can do justice all around; we can protect our character as a convention really representing the people.

And let me say, there has been nothing of a similar character done from the commencement of this Convention; there has been no precedent set; there has been no case in which this Convention has presumed to set aside this article of the ordinance of August 20, 1861, and admit for any county more delegates than it was entitled to. We have governed ourselves heretofore strictly in that respect at least under this ordinance prescribing the manner in which this Convention should be organized.

The gentleman from Logan is mistaken in the position of this matter. He seems to think—and he repeated the remark over and over again—that this Convention had undertaken to prescribe how many representatives there should be here from different counties. If that had been the position of the matter it is true we might have set aside our own regulations and admitted a different number; but it is prescribed to us under the very act that assembles us here, under the very act that gives every authority which we can presume to exercise, that Pocahontas shall have but one delegate: "The counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston and Wood shall each elect two, and the other counties named in the first section of this ordinance shall each elect one delegate to the said Convention."

MR. VAN WINKLE. Will the gentleman please inform me whether Pendleton is named there?

MR. SMITH. Pendleton and Pocahontas is not in the ordinance.

MR. LAMB. Pendleton is, Pocahontas is.

MR. VAN WINKLE. Is McDowell? McDowell is.

MR. LAMB. All mentioned and prescribed one delegate.

MR. VAN WINKLE. Some counties not prescribed there.

MR. LAMB. No, sir; not a county. We have acted in strict conformity in that respect to this ordinance. We are bound to so act.

MR. DERING. Have all the delegates? Some are here on petition.

MR. LAMB. Yes, sir; I am perfectly aware of that; but we have never presumed to disregard the section of the ordinance which I have read here; and the members whom we have admitted on petition are virtually here in conformity with this ordinance; for an election, I take it, does not necessarily convey the idea that a poll is to be opened in cases in which it is impossible. It implies that they are to be the choice. The word "election" means nothing but choice—that they are to be the choice of the people whom they represent; and we have admitted no person on this floor who had not virtually been the choice, so voted and presented to us with proper evidence in that respect. But let us adopt this number, and what is going to be the effect? Will it not be said that we have presumed to make a constitution for the people of West Virginia with a convention assembled not by the people whom they assume to represent but by delegates selected by the Convention itself; selected by the Convention in violation of the very fundamental law under which the Convention exists?

MR. ROSS. Mr. President, I desire to say a word or two on the question that is presented before us at the present time. It must be obvious to every member of this Convention that however "omnipotent" the power of this Convention may be, it at least is bound to respect its own acts; and however far as a "sovereign" Convention of the people we may be permitted to wander away from the proper bounds of regularity, it certainly should be the object of this Convention to keep as near to those bounds as possible. Mr. President, the schedule to the Constitution authorized the commissioners to reconvene the Convention if they found it necessary and in that event they were required to take the necessary measures to secure representation from the counties proposed to be included in the state which were not represented in the first session and to fill vacancies which might occur. In exact accordance with that provision of the schedule we have the proclamation issued by these commissioners recalling the Convention, and in that proclamation I find it provided that the county of Pocahontas shall elect one delegate. Now the question comes up before the Convention: Who is the delegate from Pocahontas? Is it the gentleman elected in accordance with the proclamation of the commissioners, in virtue of which we are all assembled today, or is it another individual appointed, as I understand, long before and presented here by petition? Certainly, Mr. President, there can be no doubt in the mind of any member of this Convention as to which of these per-

sons is entitled to a seat on this floor on the score of regularity. The commissioners appointed under the schedule appended to this Constitution, under the power conferred upon them, have issued their proclamation calling this Convention together at the present time, prescribing the number of delegates to be elected from certain counties heretofore unrepresented in this Convention and providing likewise for elections to fill the vacancies that had occurred in the *interim*. In that it is prescribed that the county of Pocahontas shall have one delegate, and now the question is presented to us, who is that delegate to represent the county of Pocahontas on this floor? In my humble, Mr. President, there can be but one opinion on the subject, and that is that the gentleman who was elected in accordance with the proclamation of the new state commissioners is the individual and no other is regularly a member of this Convention.

Mr. President, both these gentlemen are equally unknown to me. It has been represented that they come here with the purest motives, patriotic gentlemen that have been engaged in sustaining the cause of the country against the present unfortunate rebellion. I have the greatest respect for these gentlemen and for their feelings respectively on this subject; but, Mr. President, we must be bound by our own acts, and it does seem to me that the preceding acts of this Convention utterly preclude any such idea as has been advanced by the gentleman from Logan county and others. It is most assuredly the case that upon every ground of regularity which we can assume here the gentleman who is elected in accordance with the proclamation of the new state commissioners is the delegate to represent Pocahontas county in this Convention.

MR. BROWN of Kanawha. I beg leave to make one remark on this subject. It is one I feel some interest in, and I have been very much edified by the remarks of gentlemen who have preceded me. It is one that addresses itself to the warmest sympathies and to the earnest judgment of the whole Convention. I might remark here that this county seems to be one of the most popular counties in the world, for everybody is in love with it. All seem desirous to give it its representative. All seem anxious to extend to it everything that can be extended to it, and the only question is, who is the better man of the county? One difficulty is suggested by gentlemen, that if they only had the power they have the will. I think I can show to the satisfaction of the Convention that if we have had the power we have got it still, and further that we have had the power to do the like before and have done it, and therefore can do

it again. The gentleman from Ohio told us we were assembled under the ordinance of the Convention which represented, as I understand him to remark, the sovereignty of West Virginia and that by that ordinance we were to be governed. Now I understand we assembled under a convention ordinance passed by a convention that represented not the sovereignty of West Virginia, for West Virginia never had any sovereignty until the action of the people and this Convention and the act of Congress have given it vitality, if there is any sovereignty.

MR. LAMB. Excuse me. If I said "West Virginia" the gentleman understood me to mean Virginia.

MR. BROWN. I wanted to say I supposed it was a mistake. Then we assembled under a convention of Virginia which represented the sovereignty of Virginia (not West Virginia) and under the ordinance of that convention, which now is pleaded as the limitation on our powers this Convention was assembled. In express terms in the language of the ordinance the gentleman read from—I haven't it now but it is here—calling up the delegates to frame a constitution for 39 specifically named counties within the territory and prescribed limits of which the county of Pocahontas and the county of Greenbrier, or Monroe, or Mercer, or McDowell constituted no part.

MR. LAMB. Excuse me there again. The gentleman has not lately read the 3rd section of that ordinance which provides that "The Convention hereinbefore provided for may change the boundaries described in the first section of this ordinance so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and such other counties as lie contiguous to said boundaries or to the counties named in this section, if the counties to be added, or either of them, by a majority of the votes given shall declare their wish to form part of the proposed State, and shall elect delegates to the said Convention at elections to be held at the time and in the manner herein provided for."

MR. BROWN of Kanawha. The gentleman did not read it all. There is further limitation in that very provision, that they may do that upon certain contingencies, which contingencies had not taken place; and therefore it is urged that at that time this Convention had no authority inasmuch as the contingencies did not exist upon

which that authority was given to them to add other counties; that therefore they had no such power. But this Convention solemnly determined in that very question that they had the authority to take in although the convention by which that authority was delegated to take in any and every county which they might choose. And they did it; took in other counties even without their consent; and then went beyond that and prescribed a rule by which they would take in other counties still if they should consent to it, and have done that too. And then they have given delegates to those counties. I am not able to state whether any delegates are given to these or not that were not embraced in the 39; but this Convention adding in those counties without any compliance with that ordinance on our part; and they came in under the action of this Convention, not under that ordinance, and being in here they have been represented and their action has gone to the people and has been adopted and ratified by them saying they did right in the matter; and who at last is the party interested but the people?

Now, let us test this question a little further. This Convention then has acted and assumed and exercised that power whether conferred by the ordinance or not, both in enlarging the territory and admitting delegates from the counties they have claimed and even adopting upon another basis and principle that which the ordinance prescribed where it prescribed the mode of the election. Now, the same rule can be applied to Pocahontas as to the rest. This Convention surely has not lost all of its powers that it possessed when it first assembled; because if its assumed powers, not delegated, have been ratified by the people and we now assembled here, ratified and endorsed by the will of the people by an overwhelming majority, surely that cannot diminish the powers it has assumed and exercised. We may go on in the exercise of what they have conferred. The power then it seems to me is within the limits of this Convention. It is assembled here now a Constitutional Convention to represent the unfolding sovereignty of a new people; and this very people to whom you are proposing to give the representation in this instance are a part and parcel of this unfolding sovereignty. Shall we injure the county of Pocahontas by conferring upon her two delegates instead of one? Shall we do her any injustice in that particular? These gentlemen both come here endorsed by the people of that county. Surely she and her people there cannot complain if we admit both. The only question is who can complain? Why, if we the representatives of the other counties are content to concede more than she might de-

mand, can anybody complain? If we have exercised this authority in other instances, and have it still here, our constituencies are not complaining, then who can complain? Are we to be frightened, then, from this matter to our feelings as well as judgments, because rebels may complain that we have acted which they say was not in conformity with the rule under which we assembled? It seems to me that ought not to weigh upon us; and whether we look at this thing in one light or the other on the question of power, we have it amply, and in the conferring of this delegation we do not injure that county but insure its benefit. I do not think the rest of the counties ought to complain. I feel no apprehension my constituents will complain that I have given to Pocahontas more than she might demand. Kanawha has two delegates and Preston has two; and why may not this Convention concede to Pocahontas two delegates.

But these gentlemen come here representing another feature in the case we do not; and that is, I have no doubt, the largest constituency represented in this Convention—and that is the refugees driven from home because of their loyalty and because they cling to this idea of saving this state. And I may say to those gentlemen, although they are strangers to me that I feel a natural and common feeling and sentiment with them. When a man has been driven from his home by the hostile forces of the enemy, he can realize something of the common feeling they have, and that I am confident they will represent; though they may come ostensibly from one county they will have a common sentiment with hundreds and thousands from other counties who cannot vote and cannot have a representative here.

There is another idea. We have gone on and made a constitution with no representatives from either of these counties to aid or assist us. When we have adopted the Constitution and submitted it to the people and they have ratified and adopted it, and even their people have a chance to vote upon it, yet we are intending to put upon them a constitution, to bind them for all time to come. Would it be too much to give them a representative in this tail-end of the Convention? If they had none in the beginning, would it be too much to give them two men to be in the closing scene on the amendment to it? I think not. The rest of us will take care that our constituents are not injured by anything they can do.

Taking this question, then, in any and every aspect, that we have the power and that we have exercised the power and it has been ratified and confirmed in our hands by the action of the peo-

ple, and now we will give to Pocahontas two delegates as we authorized the counties of Mercer, and McDowell to vote for one on perhaps one-third the population that is contained in Pocahontas. That will do no injustice to anybody, not endanger our constituencies' rights; and we need have no fear to go before the people that when we have done justice and right and what our consciences approve and what all these gentlemen say they would like to do, we need have no fear in any discussion when we can lay our hands on our hearts and say we conscientiously believed we were right. Being sure that we are right, let us go ahead and we need not fear the consequences before the people and before the world; and I can confidently assure gentlemen here that I do feel that in any discussion which may devolve on me to maintain what we shall do, I shall never fear the adversary who charges me with having given Pocahontas at the close of this session two delegates on this floor; and I shall have no fear of defending myself by saying I did no harm to Greenbrier and I am sure we did none to anybody else.

I just wish to remind the Convention of a rule we have that no one shall speak over ten minutes the first time and five minutes the second. That is a standing rule of this Convention.

MR. HERVEY. I supposed the question would perhaps be raised and I made up my mind as soon as it was to move the rule be set aside. I therefore move that the rule of this Convention which limits speakers to ten minutes and five be repealed.

THE PRESIDENT. It is hardly in order now.

MR. POMEROY. I wish to make a little speech on this but I will forego that if my friends over the way should be willing to take the vote.

MR. HERVEY. There was a motion made that one of these contestants be admitted to his seat.

THE PRESIDENT. I understand the gentleman from Marion proposed this merely as an argument.

MR. SMITH. There is just one word I want to state. As I introduced this resolution and an attack was made on the constitutionality of our proceedings by a gentleman for whose legal opinions much respect is really due—he says we are not at liberty to depart from the ordinance.

MR. SINSEL. I will have to call the gentleman to order.

MR. SMITH. No, sir, my proposition was misunderstood and I merely want to explain it. I don't like to speak when I have nothing to say.

MR. LAMB. The gentleman will have the advantage of me, for I cannot reply to him.

MR. SMITH. It was only in relation to this ordinance. Well, then, I will not say anything about it.

Cries of "Question!"

The question was taken on the motion to admit both claimants and resulted as follows:

YEAS—Messrs. Brown of Kanawha, Boggs, Chapman, Cook, Dering, Dolly, Montague, McCutchen, O'Brien, Parker, Ruffner, Ryan, Stevenson of Wood, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Van Winkle and Wilson—19.

NAYS—Messrs. Soper (President), Brown of Preston, Caldwell, Carskadon, Dille, Griffith, Hall, Harrison, Hubbs, Hervey, Hagar, Hoback, Irvine, Lamb, Lauck, Mahon, Parsons, Powell, Pomeroy, Pinnell, Ross, Sinsel, Simmons, Stewart of Wirt, Sheets, Tichenell, Trainer, Willey, Warder, and Wheat—30.

So the motion was rejected.

MR. TICHENELL. I now make the motion to admit one of these gentlemen, and I wish to vote for it with the understanding we will allow the other his mileage and three days per diem. I move the admittance of Dr. Gibson.

I will tell you my reason briefly. I learn one of these gentlemen is here. I was going simply to state that one is here by petition; the other by regular election held under the instructions of the schedule commissioners. My own opinion is that Mr. Gibson is entitled to the seat, and my motion is that he be admitted and the other be allowed his mileage and three days per diem.

MR. STUART of Doddridge. I move as an amendment that Mr. Young be admitted as a member of this Convention.

MR. SINSEL. Mr. President, I call for a division of the question.

MR. WILLEY. I wish to inquire of the chairman of the Committee on Elections whether he will state the number of votes Dr.

Gibson received; whether they were certified to. It was stated there were some 40 to 50 refugees there but it does not appear whether all voted. The other by petition was 25. The gentleman before us stated there was some 40 or 50 refugees there but he did not know how many of them cast their votes.

MR. HERVEY. Before the Convention can vote understandingly on the question I presume we should have the evidence in the case. A simple motion here cannot reach the merits of the case. Unless the evidence is produced, how can members vote upon it?

MR. SINSEL. I will call upon the Clerk to read the certificate of Dr. Gibson and then he can read the petition there.

The Secretary read the certificate and the petition asking the admission of Col. Samuel Young.

MR. STUART of Doddridge. I design a few reasons for the amendment. I propose, and I intend to keep myself strictly within the rules. I advocate the admission of Mr. Young because he appears here on petition of citizens of Pocahontas. Appended to that petition I find the name of Dr. Gibson who is seeking to supplant him and take his seat. Mr. Young comes here at the request of Doctor Gibson, himself. Neither gentleman has any legal claims here because no authority was given to any person to open a poll in the county of Upshur. In passing upon these papers I am bound to say Mr. Young has the most equity because he comes here at the instance and request of the very gentleman who is now seeking to supplant him. If we pass upon this thing on the legal construction of these papers, neither would be entitled to a seat perhaps, although heretofore it has been the action of this body to receive members upon petition from counties that could not hold an election. Then, sir, both the gentlemen must appear here as simply asking consideration on the equity of their cases. Neither can claim any right under the law. Cannot be so construed. Mr. Young appears here with 27 names. The gentleman who is seeking to supplant him comes at his instance and having come in good faith I say it is right he should have the seat in preference to Mr. Gibson. It strikes me so. There is nothing here indicating the number of men who voted for Mr. Gibson in Upshur county. It is signed by one or two of the commissioners and those part only of the names, not giving the number of persons who voted. It is true it came out before the committee that there was from 16 to 25 that they

thought had voted. I understand it does not exceed that. It strikes me Mr. Young is the man entitled to the seat.

MR. PINNELL. It is due I should make a few remarks in opposition to the gentleman who has just taken his seat and in favor of the gentleman who in my opinion is entitled to the seat as the representative of Pocahontas county. The election of Mr. Gibson took place at the county seat of my county. There has been at various times from one hundred to three hundred Union citizens of Pocahontas, refugees, in the county of Upshur. After the commissioners' proclamation calling the Convention to order and setting a day for an election to be held a number of these citizens refugees from Pocahontas, came to the county seat and made inquiries whether an election for a delegate to represent them would be regarded as valid. Col. Taft, our prosecuting attorney advised them such an expression of opinion would be received by this body. On the 5th day of February there was an election took place at our court-house. I saw on that occasion I think possibly some fifty refugees from Pocahontas in town. They were exceedingly anxious that Dr. Gibson should consent to represent them. He declined; he was busily engaged in his profession and declined and suggested Mr. Young. They replied that they knew not of his whereabouts and did not know if an election was held whether he could get a certificate and be present, and they urged Dr. Gibson to consent to represent them. The election was held. I paid very little attention to it. It was the day on which I was elected myself; and consequently when asked by the committee how many votes were polled it was impossible for me to say. It is not customary for the certificates certifying the return of an election to certify the number of votes cast. I believe my own credentials do not contain that fact.

It will be observed as the case now stands before this body that here is a petition gotten up and signed by Dr. Gibson—I am credibly informed by Mr. Young himself—gotten up in October, before there was any certainty that this body would be convened at all. That petition was placed in the hands of the contestant. Since that time he has been traveling, wandering about; the citizens of his county had no cognizance of his whereabouts; and when the time came to select an individual to represent them, it was natural, it was to be expected, that they would not confide in Mr. Young, not knowing whether the knowledge of their desire would be made known to him or whether he was actually in the state. Under the circumstances, a petition gotten up before the proclama-

tion of the commissioners, is brought in here to act as a bar to the expressed wish of the people directly from the county of Pocahontas fully and fairly expressed, as near as could be under the circumstances. The gentleman thus selected has come here against his own consent at a financial sacrifice. I may be permitted to add one more remark in reference to this gentleman, because it was at the earnest request of us that he finally yielded. He is a man of pride, of intelligence. His brother was shot down in Randolph, and his own hat shot from his head and he traveled bare-headed through that country to within five miles and then sent a messenger to warn us of the approach of the secessionists. He has stood there ready whenever a squad of 20 men could be raised to go back to Pocahontas. He accompanied it. He is ready to do it any time. I am in hopes it will be the pleasure of this Convention to accord to Dr. Gibson a seat in this body.

MR. DERING. I just desire to say one word. As Mr. Young has been in the county of Monongalia a refugee, I desire to say that he consulted me on this subject, showed me his petition and letters from his county requesting him to be the representative, and he asked me if the Convention would receive him. I told him according to precedent I thought it would; that a number of gentlemen representing various counties had been admitted on petitions and I thought his chance was very good and advised him to come on. In reference to the gentleman's loyalty and soundness, I take it upon myself to say from what I know of him there is no more loyal gentleman on this floor than Mr. Young. He was the guide of Gen. Milroy when in Pocahontas; took him through the country and was his guide. He is loyal, sir, and desires anxiously to establish our new State.

MR. PINNELL. I fully accord that to Mr. Young.

MR. PARKER. As a member of the committee, I agree with the gentleman from Doddridge, it is perfectly clear that Mr. Young starts out here with the credentials with the authority of Dr. Gibson. He writes the paper. Well, now, either one of two things is necessary to show by the document to give him the claim to the seat. Either that Mr. Young since then has been derelict in his duty or that there has been an expression of the people, the constituency on which both depend, either revoking or showing a wish for a change. Otherwise, it seems to me it would be perfectly legitimate after starting Mr. Young out and he having been faith-

ful to his duty, why there should be some reason why the writer of that paper comes in here and asks us to let him to come in and not Mr. Young. I do not see any point where Mr. Young has not faithfully done his duty. Neither is there any evidence showing any change in the minds of the people, his constituency, which, of course, above all other things we are to observe. It seems to me there was no evidence that Mr. Young did not do all that could be done; no evidence that he was notified. Whenever the Convention was reconvened, the contingency they were providing for, he presents himself for his seat, and meets as his competitor the gentleman that drew his petition and signed it. I have been unable to see that the constituency changed. They did not know where Mr. Young was; they were anxious to be represented; and therefore, in order to be sure they went through this election. It seems to me neither party has been in the wrong; but still on the common principle which governs in this case—the familiar principle that where neither party is in the wrong—intentional wrong—it should fall upon the party that took the first step from which as a consequence this damage has accrued; that familiar principle of equity which governs in all such cases. If we come to strict law in settling the matter, my mind is brought to that conclusion.

The hour for recess having arrived, Mr. Stevenson of Wood moved to extend the time half an hour, and it was agreed to.

MR. BROWN of Kanawha. The correctness of the rule of the gentleman from Cabell that if there were a controversy between two gentlemen and their interests were involved in the question at stake, the rule would be a very correct one; but I understand it is between the people, the constituents and not the representatives. Our object is to ascertain who is the representative of the people. Now, as we would not have both, we must take the one who is the representative, and as between the gentlemen I shall feel no partialities one way or the other. I do not think it is anything to the disadvantage of Dr. Gibson that his name is on the other petition. I rather think it is to his credit. I always like to see one man who is contesting for a place to see his name on his adversary's poll. It is an endorsement of the other man but no discredit to the man who gives the endorsement that the other is worthy.

But there is another rule of law more conclusive I think and more applicable in this case and that is this: In the case of deeds the oldest shall prevail; but in the case of liens the last is always that which holds (Laughter). What I want to get at is what was

the last "will and testament" of these people of Pocahontas. They may have all voted for Mr. Young in the first instance; but the last will and testament is what I want to ascertain, because they may have changed their minds for reasons satisfactory to themselves. We have nothing to do with their reasons. It may be the men on the petition were voters and in every case voted for the other gentleman. But if the reasons assigned by the gentleman from Upshur rather go to show had the fact in contemplation and changed their minds and votes for the purpose of insuring a representative, and so selected a man they knew was there. The vote is regular, and although not precisely as provided in the 6th section of the schedule, it comes fully up to the substance of it, and is about as near to it as it can be made. It was done, also, we are advised, under the advice of the county commonwealth's attorney as the most legitimate mode in which the people could be represented.

MR. STUART of Doddridge. There was nothing on that committee indicating that these gentlemen on the petition voted for Dr. Gibson or saying that as many men voted for Gibson as are on that petition of Mr. Young or showing that these men had changed their last will and testament.

MR. PINNELL. There was precisely the same before the committee that you have before the house.

Cries of "Question!"

Mr. Lauck inquired whether Mr. Pinnell was acquainted with the list of signatures attached to the petition.

MR. PINNELL. Never examined it.

The roll was called and each member when his name was called voted for Mr. Gibson or Mr. Young according to his preference, the vote resulting as follows:

For David W. Gibson—Messrs. Soper (President), Brown of Preston, Brown of Kanawha, Boggs, Caldwell, Chapman, Cook, Dille, Dolly, Griffith, Hall, Harrison, Hubbs, Hervey, Hagar, Hoback, Irvine, Lamb, Lauck, Montague, Mahon, McCutchen, O'Brien, Parsons, Powell, Pomeroy, Pinnell, Ryan, Ross, Sinsel, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Sheets, Smith, Taylor, Tichenell, Trainer, Van Winkle, Willey, Warder, Wilson, and Wheat—43.

For Samuel Young—Messrs. Carskadon, Dering, Parker, Ruffner, Simmons, and Stuart of Doddridge—6.

MR. VAN WINKLE. I move that the remainder of the resolution of the gentleman from Marion be acted on; that the contestant be entitled to his mileage both ways and three days pay and that the Clerk pay him.

MR. SINSEL. I would suggest an amendment: two days; that is all he has been in attendance.

MR. VAN WINKLE. He will be three days before he can get away. We have spent ten times that in discussing it this morning.

MR. POWELL. Would it not be well for Dr. Gibson to come forward and have the oath administered so that he may vote on this?

Dr. Gibson, accordingly came forward to the Clerk's desk and took the prescribed oath and took his seat.

The question on Mr. Van Winkle's motion was put and the order made to allow Col. Young his mileage and per diem.

MR. VAN WINKLE. I now ask leave to offer the resolution I alluded to this morning. I suppose unless we make the change required by act of Congress, there is nothing for us to do but to go home. It is therefore necessary before we initiate any other business that matter should be disposed of. The question has arisen—it probably has come to the knowledge of most of the members—as to the right of the owners to be compensated for the slaves proposed to be liberated by this section, that is, the amendment proposed by the act of Congress—the right of those owners to compensation. I have given the subject some examination and my mind is by no means clear that they are not entitled to it. But in order that the Convention may have the benefit of a deliberate and proper examination of the subject, I have drawn up a resolution which I will read for information:

“RESOLVED, That the seventh section of the eleventh article of the Constitution be stricken out, and the following inserted in its place:

“7. The children of slaves born within the limits of this State after the fourth day of July in the year one thousand eight hundred and sixty-three, shall be free; and all slaves within the limits of the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years, shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein.

“RESOLVED, That the foregoing resolution be referred to a special committee of five members, with instructions to inquire and report whether any provision looking or having reference to the compensation of the owners of slaves freed by the proposed amendment of the Constitution, should or can with propriety, be inserted in that instrument, or adopted by the Convention.”

MR. VAN WINKLE. This last resolution proposes two questions:

First, Whether any provision under any circumstances in reference to this matter should be inserted in the Constitution; secondly, if the Convention be of the affirmative opinion, then the question of the propriety of inserting it.

Looking to the question whether such an insertion might not be such a variation as would necessitate the matter going back to Congress, I would simply state that the necessity for the insertion of any alteration whatever in the section proposed by Congress or any other part of the Constitution may be avoided. I would like to suggest that the Convention should raise a committee who will take some pains to examine into the subject and give the Convention such information as we all desire when it comes up for action. I believe all the difficulty likely to arise out of it may be avoided to the perfect and entire satisfaction of any member of the Convention. Whether I am right or wrong in this, I shall be better informed after the action of the committee and the Convention.

I therefore offer the resolutions, and I will say now if this committee is appointed, I will make a motion that the adjournment be for the day.

MR. STUART of Doddridge. I would be in favor of striking out that portion of the resolution for the appointment of a committee.

MR. VAN WINKLE. I would suggest to the gentleman that it is hardly courteous to refuse a committee to inquire on any subject.

MR. STUART. I have my reasons for it.

THE PRESIDENT. The question would come up directly after the report of the committee.

MR. STUART. There would be nothing to do until tomorrow. We can do all the business proposed in the resolution very easily. I think the minds of members in this body are perfectly made up on that question. It will delay it unnecessarily. I am, for one, prepared to act, and would rather do it.

MR. WILLEY. This thing ought to go to a committee, sir. My friend from Doddridge cannot be more decided in his opinion on this subject than I am. Still it ought to go to a committee. I should be very much disappointed if you get a committee in this body who will not be prepared to vote distinctly. Still I think it may very properly, however, go to a committee. I am sure a committee will bring in something that will be satisfactory to us. There is no difference of opinion on the question; but the gravity of the subject requires I think that there should be something like a deliberate expression on the part of the Convention. Therefore, I hope my friend will withdraw his objection.

MR. STUART. I will withdraw it at the solicitation of my friend.

The question was then put on the last of the foregoing resolutions, and it was agreed to; and subsequently the president announced the appointment of the special committee as follows:

Van Winkle, of Wood, Chairman;
Willey, of Monongalia;
Brown, of Kanawha;
Lamb, of Ohio;
Parker, of Cabell.

Upon the announcement of the committee, Mr. Brown of Kanawha, said:

I wish to offer a resolution, which may be printed and go to the committee. I should have offered it, under our standing rule, to go to the Committee on Fundamental and General Provisions. I will ask that the resolution be printed. I will read it for information before sending it to the Secretary's desk:

"RESOLVED, That the clause accepting and ratifying the Constitution prescribed by Congress for the admission of the State of West Virginia into the Union, ought also to contain a provision requiring the legislature to make just compensation to the loyal owners whose slaves shall be emancipated thereby, or at least be accompanied by an explicit and positive declaration by this Convention, that the ratification and adoption of said condition shall not be construed as changing in any degree, the sixth section of the second article of the Constitution of West Virginia as already adopted and ratified by the people; nor in any wise diminish the rights of persons and property secured thereby any more than if said condition had not existed."

Mr. Harrison moved that 8000 copies of the address delivered by the gentleman from Monongalia be printed in English and

1000 in German for the use of the Convention. Referred on his request to the Committee on Printing.

Mr. Hervey offered the following:

"RESOLVED, That the West Virginia volunteers in the army of the United States should be entitled to vote at all elections during the continuance of the war."

Referred to Committee on Revision.

Mr. Lamb asked that the ordinance submitted by him should go to the same committee. So ordered.

The Convention adjourned, on motion of Mr. Van Winkle, to meet each day at 10 o'clock A. M. until otherwise ordered.

LXI. SATURDAY, FEBRUARY 14, 1863

The Convention was opened with prayer by Rev. Samuel Barnes, of the Methodist Episcopal Church.

After reading and correction of the journal,

MR. LAMB. Mr. President, I desire to offer resolutions referring certain subjects to the Committee on Revision and Engrossment with a view that matters necessarily coming before this Convention be prepared so as to expedite our proceedings and enable us to adjourn as soon as possible. I presume there will be no objections to the resolutions. I will read them for information:

"RESOLVED, That the Committee on Revision and Engrossment be instructed to report on ordinance regulating the first election under the amended Constitution for members of the legislature, and state and county officers, and fixing the time when such election shall be held, and when the legislature shall assemble.

"RESOLVED, That the Acts of the General Assembly of Virginia, passed at their recent session in this city, relating to the proposed State of West Virginia be referred to the said committee, with instructions to report what action, if any, of this Convention may be necessary in respect to the same.

"RESOLVED, That the said committee report and address on behalf of the Convention to the people of West Virginia, explaining the principal measures adopted by us, and the reasons for the same, and examining the objections made to the erection of the new State."

The resolutions were adopted.

MR. LAMB. There is a vacancy in that committee. Gordon Battelle was one of the members. I move—or would suggest, rather, to the chairman, I believe the Chair makes the appointment—that my colleague, Mr. Ross be put upon the committee in place of Mr. Battelle.

MR. VAN WINKLE. Mr. Battelle was chairman of the Committee on Revision and also one of the standing committees. I would add the suggestion that Mr. Brown of Kanawha, be restored to his place on his old committee.

MR. HALL. I believe Mr. Willey was chairman proper until by reason of his absence Mr. Brown was substituted.

Mr. Stevenson of Wood said the Committee on Education had had no meeting since the assembling of the Convention and had no chairman unless some name now on the committee would take precedence. Of course there is a vacancy until the committee elect a chairman or until the Convention appoint one.

MR. LAMB. Perhaps it would be better to put my motion to the Convention simply with reference to the Committee on Revision.

Mr. Willey said it was very uncertain how long he would remain and if this were not so, the Convention would do well anyhow to appoint Mr. Brown of Kanawha.

The Chair announced the appointment of Mr. Brown of Kanawha as a member of the Committee on Revision.

Mr. Dille presented the resignation of the Sergeant-at-Arms, James C. Orr, which was accepted.

MR. MCCUTCHEN. I hold in my hand, sir, a petition of some fifty signers, constituting a man from Greenbrier as delegate from that county and submit it to the Convention.

The petition was read as follows:

“We, the undersigned, citizens of Greenbrier county, do respectfully request and petition the Wheeling Convention that is to assemble, to receive Andrew W. Mann to represent the county of Greenbrier.”

MR. MCCUTCHEN. I would just remark that I know a good many of these men and I know them to be good loyal men of the county.

MR. STEVENSON of Wood. I move it be referred to the Committee on Credentials.

Mr. Van Winkle suggested to his colleague to so modify the motion as to allow the matter to be taken up now and the member admitted.

Mr. Stevenson said if the Convention were satisfied with the paper he was willing.

The petition was taken up and Mr. Mann admitted to a seat, and being present he came forward and assumed the oath of office.

MR. STEVENSON of Wood. I have a resolution which I desire to offer, and have referred to the Committee on Revision. I will read it:

RESOLVED, That each person before voting for or against the amended Constitution shall be required to take the following oath:

"I solemnly swear (or affirm), that I will support the Constitution of the United States, and the laws made in pursuance thereof as the supreme law of the land, anything in the Constitution and the laws of Virginia, or in the ordinances of the convention which assembled at Richmond on the 13th day of February, 1861, to the contrary notwithstanding; and that I will uphold and defend the Government of Virginia as vindicated and restored by the Convention which assembled at Wheeling on the 11th day of June, 1861, So help me God: Provided, that persons who have before taken said oath shall not be required to do so again."

The resolution was received and so referred.

Mr. Brown of Preston moved to proceed to the election of Sergeant-at-Arms.

The motion was agreed to.

Mr. Parsons nominated Henry Startzman, of Preston county.

Mr. Hall nominated William M. Dunnington, of Marion county.

On a roll-call the vote resulted:

For Mr. Startzman. Messrs. Soper (President), Brown of Kanawha, Boggs, Chapman, Caldwell, Carskadon, Cook, Dering, Dille, Dolly, Gibson, Harrison, Hubbs, Hervey, Hagar, Hoback, Irvine, Lamb, Lauck, Montague, Mahon, McCutchen, Mann, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Pinnell, Ruffner, Ryan, Ross, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Smith, Taylor, Tichenell, Trainer, Van Winkle, Willey, Walker, Wilson and Wheat—49.

For Mr. Dunnington.—Messrs. Griffith, Hall, and Warder—3.

Mr. Startzman, being present, assumed the obligation of the office and its functions.

MR. VAN WINKLE. The Special Committee have directed me to make the following report:

REPORT OF THE SPECIAL COMMITTEE ON THE QUESTION OF COMPENSATION FOR SLAVES EMANCIPATED.

The Special Committee to whom was referred a resolution making the change in the Constitution proposed by Congress, with instructions to "inquire and report whether any provision looking or having reference to the compensation of the owners of the slaves freed by the proposed amendment of the Constitution, should, or can with propriety, be inserted in that instrument or adopted by the Convention," having had the subject under consideration respectfully report as follows:

The committee are not aware, nor can they learn after such inquiry as they have been able to make, that any state which has passed laws for the gradual emancipation of its slaves, has emancipated those in being at the time of the passage of such laws. It is conceded on all hands that no prospective or other right of property attaches to the children of slave mothers until actually born, who cannot, therefore, be the subjects of compensation. The committee are therefore without a precedent occurring in this country to serve as a guide in forming their opinions, as to whether the owners of slaves in being at the time the Constitution goes into operation, and then under the age of twenty-one years, should be compensated for the loss of their services.

Within a few years England, France, Denmark and Holland have provided for the emancipation of the slaves in their colonies, but not without adequate compensation to the owners. The Emperor of Russia has actually decreed the liberation of the serfs of that empire, but has also provided for the compensation of the owners of the lands to which they were attached, to whom their services were due. It would seem that a republic always careful of the acquired, as well as the natural rights of its citizens, should not be less just than the monarchies referred to.

The committee find in the fifth amendment of the Constitution of the United States the following clauses:

"No person * * * shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Similar provisions are found in the constitutions of all, or nearly all of the states of this Union, and have not been omitted from that prepared by this Convention. They occur in the latter in the sixth section of the second article, entitled "Bill of Rights," in the following form:

"Private property shall not be taken for public use without just compensation. No person in time of peace shall be deprived of life, liberty, or property, without due process of law."

To what extent these provisions are applicable to the case before them, the committee now proceed to inquire. The first question that presents itself is, whether slaves, or the right to their services, constitute such property as is contemplated by the clauses quoted? Among the subjects of property it may be briefly stated, are all such things as have a money value, or which may be bargained and sold, or for the injury or deprivation of which damages in money may be recovered. Slaves in the United States have all these characteristics, and are, in fact, recognized as property by the laws of all the states where slavery exists, and of the United States. This is true of the laws of Virginia, which will become the laws of the State of West Virginia at the very moment the emancipation section of the Constitution becomes operative. Whether the property in them consist of their thews and sinews, or in the right to their labor or service, is not material. If freed, the owner is deprived of his property in them, whatever may be its nature.

The next inquiry arising under the first clause above cited is, whether when slaves are freed by act of law, they are taken for public use? They are certainly taken from the owners for a public purpose, which word is equivalent to "use" in the connection in which the latter is found. The use or purpose for which they are taken, in the case under consideration, is the expected benefit of the people of the State by the substitution of free for slave labor. It will not, however, be pretended that the State can deprive the owner of them or their services for any other than a public purpose.

The second clause has relation to fines, forfeitures or confiscations for criminal offences. Even in these extreme cases property cannot be taken in time of peace, unless the commission of the offence to which the penalty is annexed, is clearly established by legal proceedings. The clause is cited to show with what carefulness the law protects private rights and particularly the right of property. It is manifestly against the spirit of both clauses, that any citizen should be deprived of his property by the state, without compensation. Chief Justice Marshall placed this restriction of legislative power on grounds higher than law or constitution.

He said—"It may well be doubted whether the nature of society and government does not prescribe some limit of the legislative power; and if any be prescribed, where are they to be found, if the property of an individual fairly and honestly acquired, may be seized without compensation?"

The committee are of opinion, that by the express terms of the Constitution, the owners of slaves in being at the time it goes into operation, and emancipated by the proposed amendment, will be entitled to compensation at the time such emancipation takes effect. It may therefore seem that the instrument which emancipated, should also direct that compensation be made. This, the committee are of opinion it does, in the clause forbidding private property to

be taken for public use without just compensation. Certainly if the emancipation takes effect, such owners would have a valid claim against the State, which any competent judicial tribunal would enforce. The clause referred to will be as obligatory on the legislature, as would a clause specifically directing compensation to be made, inserted in the Constitution. That body cannot deny the binding force of the instrument to which they owe their own existence, nor give it a construction which will make its parts inconsistent with each other.

As to the mode, time and other details, those matters are more proper for the consideration of the legislature than the Convention.

It has not been necessary for the committee to inquire as to the propriety of inserting additional provisions in the Constitution. While they do not believe that mere emendations not making substantial alterations, would be objected to in any quarter, they nevertheless recommend that no changes whatever, except that indicated by the first of the resolutions referred to them, be attempted; as, however, proper in themselves, they might delay the accomplishment of the great object in view.

The committee unanimously recommend the passage, by the Convention, of the said first resolution, which they herewith report back without alteration, and also of the resolution subjoined.

P. G. VAN WINKLE,
W. T. WILLEY,
JAMES H. BROWN,
DANIEL LAMB,
G. PARKER,
Committee.

“RESOLVED, That in the opinion of this Convention, the owners of slaves in being at the time the Constitution goes into operation, and emancipated under its provisions, will be constitutionally and legally entitled to recover from the State the actual value of such slaves at the time of emancipation, if they have not forfeited that right by disloyal acts.”

The resolution referred to the committee and reported back with the foregoing report with unanimous recommendation that it be adopted is as follows:

“RESOLVED, That the seventh section of the eleventh article of the Constitution be stricken out and the following inserted in its place:

“7. The children of slaves born within the limits of this State after the fourth day of July in the year one thousand eight hundred and sixty-three, shall be free; and all slaves within the limits of said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years

shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein."

MR. STEVENSON of Wood. I should like in voting on these resolutions to have them divided so we can take a vote on each one separate.

MR. VAN WINKLE. I would make the formal motion that the resolution reported and reported back by the committee be adopted.

MR. POMEROY. The object of the gentleman from Wood is simply to have the resolutions divided. I move to take the vote on the first resolution.

MR. STEVENSON of Wood. That was the motion I had made but gave way to my colleague. I do not see any necessity for having the first resolution printed. I think the whole Convention are ready to vote on that. The other I would like to have printed. My motion is to divide so as by a single vote we can strike out our own section and insert the amendment of Congress.

MR. VAN WINKLE. I would suggest whether the second resolution may not be considered dependent on the first. The discussion might come on both and whenever we come to voting, any gentleman has the right to have the question divided.

MR. STEVENSON of Wood. I presume there will be no difference of opinion. I do not understand that there is, on the first resolution, the business for which the Convention has been assembled. There will be some difference of opinion I presume on the second, and that ought to be printed and a fair expression of sentiment on the part of the members given. But I would insist, unless there is some valid objection, some difference of opinion among members that requires it to be printed, that we postpone that and that the vote be taken on the main resolution now. The Convention is ready to decide on that question.

THE PRESIDENT. On the adoption of the first resolution, is that, sir?

MR. HERVEY. I understand the motion to be to strike out and insert?

MR. STEVENSON. Yes, sir.

THE PRESIDENT. Striking out the 7th section and inserting the Congressional amendment. I would like to inquire the effect of the

adoption of the report of the committee; whether it is appending an additional section to the Constitution? (A member: "No, sir.") It strikes me if we adopt it in this form it would be adding another section.

MR. POMEROY. I will endeavor to state the motion pending before the house. It is simply to strike out the 7th section.

MR. STUART of Doddridge. I understand decidedly what that is, if he will just indulge me. I simply wanted to know what would be the effect if we adopted the report of the committee. Members might be disposed to vote against his proposition perhaps to divide the question unless they knew what effect would be of adopting the report of the committee. I want to understand from the authors of the report whether if we adopt the report it will not be appending an additional section in the Constitution besides the section proposed by Congress.

MR. VAN WINKLE. I did not move the adoption of the report. You have part of it in the resolution subjoined and the recommendation of the committee. I moved the adoption of the resolution—that is, the one making the change in the Constitution and the one reported by the committee; not the adoption of the report itself.

MR. STUART of Doddridge. Then does not the adoption of your motion add an additional section to the Constitution?

MR. VAN WINKLE. No; no additional section; it only makes the change required by Congress; it takes out the section now there and puts another in the place of it. The resolution subjoined by the committee to their report is simply declaratory of the opinion of the Convention as to the obligation of the State to make compensation. Simply an expression of opinion on the part of the Convention; and I understand that would be accepted by those who are anxious on this subject as a settlement of the question.

MR. STUART of Doddridge. I would like to have it printed.

MR. WILLEY. Mr. President, I think my friend from Doddridge may rest assured the adoption of both resolutions would not do anything to the Constitution except to incorporate the amendment passed by Congress. The adoption of the first resolution would strike out the 7th section and insert the amendment proposed in the act of Congress. That is all that would be added to the Constitution. That amendment would become the 7th section in lieu of

the one we take out. That is the only extent to which the Constitution would be affected by the adoption of both resolutions. If we adopt both of them, the first one would make the condition in the act of Congress a part of our Constitution. If we adopt the second, it would simply be an expression of the opinion of this Convention and no more. It would have no constitutional effect; no legal obligation upon any man on the face of the earth. It would be simply an expression of what this Convention believes to be the legal construction and effect of emancipation; nothing more; binding on nobody; a mere expression of opinion. And it is understood that those who desire that there should be an additional section to the Constitution making it mandatory upon the legislature that may be elected in the new State to provide compensation to the owners of slaves emancipated would be satisfied if there was a simple expression of the opinion of the Convention that the obligation did exist in the instrument itself and therefore waived any effort or desire to append one jot or tittle, one iota, to the Constitution beyond what Congress requires. Well, sir, believing that to be the effect of the Constitution as it is, I feel very much disposed to satisfy gentlemen who have some anxiety on this subject by giving my opinion upon that. It will not embarrass us in any degree at all. Our opinion does not go to Congress; not involving the necessity of sending the Constitution back to Congress at all. We will have satisfied completely the requisition of the act of Congress; and as I understand, we will have satisfied our friends who have some doubts whether the Constitution as it stands does contain within it an obligation that the owners of emancipated slaves should be compensated. I think my friend from Doddridge need have no apprehension that the adoption of both these resolutions would add anything to the Constitution. Certainly not, sir.

MR. POMEROY. If I understand the position of the matter before the Convention, the report made by the special committee which reports two distinct and separate resolutions. The gentleman from Wood (Stevenson) moved that we take the vote first upon the first resolution; which is simply the amendment proposed by Congress. Now, in regard to that resolution, if I am correctly informed there is no division of opinion in this Convention. We are about united; and therefore I want the vote to go forth to the people of this proposed new State and to the world that we were united, that there was no division of sentiment on that question whatever; that the new State is of such paramount importance to

us that we are willing to accept of an amendment proposed by the Congress of the United States.

Now in regard to this other resolution, there may be discussion; but I ask as a matter of information is it a proper time to discuss the propriety of the resolution when there is a division? You take the vote on the first. Then, if we take the vote on the first the other can be printed and it will come into the hands of the members of the Convention. Then the whole discussion, if there is to be a discussion, on the point, can come up. Now, I am well apprised of the fact that there is a difference of opinion on the second resolution; there appears to be none on the first, and I hope sincerely there is none.

MR. WILLEY. Allow me to say to my friend from Hancock that I think he will find himself right as to there being no division on the first resolution, once the second is also adopted. If the second is adopted, I can assure him, so far as I am concerned, I think there will be no division as to the first; but unless it is there may be division as to the first resolution.

This division of the question is a matter that any member of the Convention has a right to require; any member; does not require a motion or vote of the Convention. The motion that is made by the chairman of the committee and instructed by the committee is the adoption of the two resolutions. The gentleman may separate my motion on discussion or any other way. That is the motion. They can vote it down if they choose; but when it comes to the voting any member has a right to require a division of the question if the question is divisible; and most certainly I do not anticipate when we come to vote we cannot vote the two resolutions together. I take it for granted they will be voted on separately. But I think the discussion had better be on both.

MR. STEVENSON of Wood. I would like to understand one thing: If the motion of the gentleman from Wood is to adopt both resolutions? Now, it seems to me if we take a vote here without having a division of his motion the effect will be either to adopt or reject both the propositions. What I want to get at is, in taking the vote on the two resolutions, we shall vote on each separately. I don't care how you get it, so the vote is taken in that way. I certainly understand his motion to be to adopt both resolutions. Now, sir, how can I vote on both at once and express my opinion?

MR. VAN WINKLE. The time to ask a division is when the vote is coming on; and then any gentleman on the floor has a right

to a division. There can be no question about it. The motion as at present is as instructed by the committee, to adopt both resolutions. That brings up that motion for consideration.

THE PRESIDENT. I would suggest the report be printed.

MR. STEVENSON of Wood. I can see no necessity for printing the first resolution.

MR. PINNELL. I am in hopes it will not be the pleasure of the Convention to delay the action of the Convention on these resolutions by requiring them to be printed. It seems to me the propositions are so plain each gentleman has the matter fairly and fully before his mind. If I understand the motion of the chairman of the committee from the county of Wood, it is that any member has the right to have the votes taken separately on the two resolutions; to require us to take it in broken doses; and in the present instance I am in favor of taking this in broken doses.

MR. VAN WINKLE. The motion before the house is the adoption of this resolution and until that is disposed of—

THE PRESIDENT. A division is called for.

MR. VAN WINKLE. A division does not apply to the motion at all. It applies to the vote only.

MR. PINNELL. If the gentleman insists on the motion to take the vote upon both propositions and the question cannot be divided I have another motion that I wish to submit, and that is to have it referred back to a committee of fifteen of this body selected from different portions of the proposed new State. I have a plain duty here to perform. I am here as the representative of my constituents, and that duty I understand and will perform without dotting an "i" or crossing a "t".

MR. STUART of Doddridge. There need be no discussion.

MR. HERVEY. With a view of testing this question, sir? Very true, as the gentleman from Wood remarks, that there is a motion before the house. That motion is amendable. I move therefore to amend the motion of the gentleman from Wood by taking a vote on the first proposition.

MR. VAN WINKLE. The gentleman is out of order. It has no reference to the subject of the motion.

MR. HERVEY. That is a question for the Chair and the house. I make the motion therefore to amend the motion of the gentleman from Wood by taking a vote on the first proposition. As I understand the gentleman from Wood objects that the motion is out of order. I therefore during the pendency of this motion and objection, if the Chair decides me out of order, then I will sit down.

MR. POMEROY. I yielded the floor to my friends from Monongalia and Wood but I really believe I had the floor afterwards. I hope the gentleman from Brooke is through. If he is not I will wait on him.

MR. HERVEY. I have made a motion to amend, to which the gentleman from Wood objects. I desire to know whether that motion is in order.

THE PRESIDENT. The Chair understands the gentleman from Wood to move the adoption of the two resolutions, upon which a division is called and the vote will be taken on the first resolution first.

MR. STEVENSON of Wood. That is the way I understand it. No amendment is necessary.

MR. HERVEY. That is all I desire.

That is what I have conceded from the first.

MR. POMEROY. I understand that a division can be called for, and if the body does not see proper to discuss the first resolution and the vote can be taken on that resolution it does not cut off discussion when it comes up. I think the decision of the Chair is right on that point. We are all prepared to vote for the first resolution.

MR. STUART of Doddridge. I think the gentleman is entirely mistaken in saying there need be no discussion on the question. Whenever the vote comes to be taken, any gentleman has a right to call for a division of the question. The discussion will come up on the whole. Whenever a vote is taken any member has a right to call for a division of the question and then you vote on the different divisions of the question; but there can be no further discussion after you have entered into a vote.

THE PRESIDENT. The Chair thinks to take a vote whether or no—we are not bound to go through and take a vote and close discussion. We can entertain a motion to send that report and resolution to be printed.

MR. POMEROY. If there is no difficulty on the mind of the Chair upon that subject then the amendment of the gentleman from Brooke would certainly be in order. Because if there is a report presented here with two or more resolutions, we can move an amendment to take up a section in the Constitution, and it is moved to adopt a section; some gentleman moves to adopt the first clause of the section, and we have voted on that.

MR. STUART of Doddridge. The way to reach that is to move to strike out the second section. The gentleman from Brooke is certainly mistaken in the motion he made, and his motion should be to strike out the second section in the motion of the gentleman from Wood.

MR. POMEROY. Why not move to adopt the first as well as to strike out the second. In regard to that we anticipated there would be no discussion and we would all harmonize and agree. Now, if the gentlemen wish to agree to bring on the discussion before we vote on the first, I am not going to be very strict on that.

MR. LAUCK. Would it be in order to move that the report of the committee be laid on the table and printed?

THE PRESIDENT. Yes, sir.

MR. LAUCK. I move, then, that the report be laid on the table and printed.

MR. SINSEL. The effect of that motion will be to delay us another whole day and I shall vote against it. I think we can act upon it without further delay.

MR. GRIFFITH. I move to amend that resolution laying the second resolution on the table.

THE PRESIDENT. I do not know if discussion should be allowed.

MR. BROWN of Kanawha. This question is one of serious importance. This committee was raised to represent the Convention, contained within perhaps all the elements of conflict supposed to exist in the body. That committee have investigated the subjects committed to them; but I believe I may conscientiously say no committee have ever been more impressed with the important seriousness of the subject or have more conscientiously and earnestly entered on a discharge of their duty with a more sincere desire to ac-

comply a result and meet the approbation of the Convention, preserve fundamental principles and enable every member of this Convention to go forth to the people and defend this Constitution before the world now and forever. And we in doing it have presented the case here first with a view to avoid all difficulty and complication hereafter with Congress; presenting it that by the adoption of the resolution amending the 7th section as proposed by Congress that no further reference to Congress can be had upon any excuse or pretense whatever, but at the same time meeting fully and harmonizing the views of other gentlemen who may apprehend, as the enemies of our Constitution and State are declaring, that they may give a misconstruction to this Constitution and thus prevent our adversaries from having an argument against us of an outrage and injustice only practised by a barbarous people.

MR. STUART of Doddridge. I rise to a question of order. I do assure the gentleman I do not desire to cut off discussion; but on a motion to lay on the table it is not proper to go into a discussion of this question at present and it is not proper to discuss the motion to lay on the table.

MR. BROWN. I believe the gentleman is right in the point of order.

MR. LAMB. Is it in order to move to lay upon the table a motion to lay upon the table?

THE PRESIDENT. No, sir. The motion of the gentleman from Wetzel is to lay the report and resolution on the table and print them.

MR. LAMB. There is another motion to lay that upon the table; to lay the second resolution on the table.

MR. STUART of Doddridge. The motion to lay on the table is not amendable at all and cannot be discussed.

MR. LAUCK. The motion was to lay on the table and order to be printed. I am not prepared to vote on it until I consider it further.

MR. CALDWELL. I merely rise to express the hope that my friend from Wetzel will withdraw his resolution. I think, with one exception made by the gentleman himself, I candidly entertain the opinion that every member of this Convention is ready now as much as he will be at any future day at least to discuss, vote upon and

decide these several questions coming up on the two resolutions. If the gentleman is not prepared to enter into the discussion and determine what vote he shall give on either of these resolutions, I think before the discussion shall have ended he will be ready to decide how he shall vote. If he will listen to me a moment I will hope the reasons I have assigned, that he will consent to withdraw his proposition to lay on the table and print. I do not see any propriety in printing at any rate a great portion of this report. It is all before the members of the Convention, has been in the hands before the people of West Virginia. I hope for the reasons I have assigned he will withdraw his motion.

MR. LAUCK. I withdraw the motion.

MR. WHEAT. I move to lay on the table and print.

THE PRESIDENT. Will the gentleman wait a moment?

MR. GRIFFITH. I move the second resolution be laid on the table and printed.

MR. VAN WINKLE. To lay part on the table takes the whole of it.

THE PRESIDENT. It carries the whole.

MR. SMITH. I hope the two propositions will go together and let us examine them together. Gentlemen seem to be impressed with the idea that there will be no difficulty at all in getting an unanimous vote upon this Constitution—upon the first clause of it. They entertain that opinion and therefore we should vote upon that. There is no objection to voting for it, and therefore we ought to adopt that now and leave the other for future discussion. Now, I tell the gentlemen that there is not a man in this house that has taken more interest in his Constitution than I have; more anxious it should receive the sanction of this body than I have been. I have been from the beginning its sincere friend; I am now its friend; but before I vote upon that I want to ascertain what is the opinion of this house on the other. Conscientiously, I cannot vote for that alone. I stand here sworn to support the Constitution of the United States and without some declaration on the part of this house that the clause in the constitution—

MR. STUART of Doddridge. I have again to rise. I want to know what is the question?

MR. SMITH. I am now giving a reason why they should be printed.

MR. STUART of Doddridge. I understand the motion made carries the whole and of course, the motion is not debatable.

MR. SMITH. This is a motion to print one part of it.

MR. STUART of Doddridge. The Chair has decided that the motion takes all.

THE PRESIDENT. I so decided, sir.

MR. STUART of Doddridge. Well, sir, it is not debatable at present. If the motion prevails, both resolutions go on the table.

MR. SMITH. That being so, I do not so understand it.

MR. PINNELL. I would ask whether it would be in order to amend the motion?

MR. HALL. Cannot amend.

MR. PINNELL. I wish, if it is, to offer an amendment to recommit the report of the committee to a select committee of 15 members of this Convention.

MR. POMEROY. I would like if the Chair would decide this point, if it carries the whole of the resolutions.

THE PRESIDENT. I think it does.

MR. HERVEY. If it is necessary this house can take up and act upon any proposition it sees proper. Our mode of doing business has been about this: committees make their reports; house rules require us to take those reports up section by section. We can do it; have a perfect right to do it. We can take up this report, now, sir.

MR. VAN WINKLE. If there is such a rule, I ask for the reading of it. That only refers to constitutional provisions.

MR. HERVEY. Such was the practice of our last session.

MR. STUART of Doddridge. I again arise to a question of order. The gentleman cannot argue against the decision of the Chair except he takes an appeal from that decision.

MR. BROWN of Kanawha. What is the proposition before the house?

THE PRESIDENT. It is to recommit report and resolution to the same committee and increase the number to 15.

MR. BROWN. I would have no objection to it.

MR. POMEROY. I cannot conceive any advantage to be gained by recommitting. If it is a disposition of certain gentlemen that you must necessarily commence at the lower end of a report and discuss that part of it before a vote on the first part, we are just as well prepared for the discussion now as we will be next week. I thought that upon this one resolution we could vote unanimously. I thought on the other we would be divided in opinion. Therefore where we could act unanimously together I wanted to stand upon the record so and all vote for the first resolution. While we could not vote for the second, what advantage would come from recommitting, I cannot understand. I can imagine that where a report is brought in and then sent to an entirely new committee they may bring in a very different report. But if we are to discuss this whole matter before we take a division of the question, cannot divide until we come to the point of voting, no division to be made until we come to a vote, then we might as well enter into the discussion now as at any future time. I am prepared to vote for the amendment of Congress. It has been before me for weeks past. I knew something of that kind would have to come before this Convention if ever we got a new State. Therefore, I am prepared to accept the amendment proposed by Congress. This other is a matter sprung upon us suddenly. We have not time to investigate. We have heard a little said about it; but it is a question that requires calm deliberation; and as every gentleman knows that I might perhaps differ with him on this question that I am only one man on this floor who has always stood for free and open discussion. I am willing a man who differs with me shall have a fair opportunity of expressing his opinions as candidly and patriotically as he pleases, and I claim the same privileges myself. If gentlemen wish to discuss this matter, we are not perhaps prepared to discuss it but we will endeavor to do the best we can. I hope we will differ honestly and with the best of motives. I do not impugn the motives of any man that differs with me. I have never thought the wisdom was all embodied in me and that if I left the world the world would not go on. I know some people think that is the case when they die. I don't allude to any member of this Convention. But I do conceive this motion might be divided and a vote taken on the first part. But if it is the decision of the Chair

to open up the discussion why not open it up today? What better opportunity than at the present time. I would like we could go harmoniously together and all see alike, all believe alike. I believe we can in regard to the amendment of Congress. I may be deceived in regard to that, but I do not think so; and I cannot therefore see the importance of recommitting this report. If there is anything to be gained by it, any further light gained of the amendment, if we would be better prepared to discuss it then, if the new committee can make a report that will better accord with the sentiments of the Convention, then I have no objections. But then if we are simply to bring in a similar report and one that will lead to as much discussion as this, why delay the action of this body until Monday?

MR. PINNELL. I would say to my friend from Hancock, the object I have in view is to divest the report of the committee from what seems to me to be objectionable; that is, to divide the proposition and let the Convention vote upon the first and second propositions contained in the report separately and in their order. If the motion to lay on the table and print had prevailed we would have had the very same thing before the Convention again after it was printed; but if we refer to a judicious committee they will see the difficulty that presents itself to this body and they can possibly bring in a report that will divest it of this objection and let the Convention proceed upon it. I am prepared now to vote on both these propositions without a particle of argument. My mind is clear, and I would to God we could all, as representatives of our constituents proceed to vote oftener and say less. I will withdraw my motion if we can bring the Convention to act right on these propositions. I know my friend from Kanawha; I have every respect for his judgment and experience; but it does look to me if the argument of the gentleman from Monongalia is correct there is nothing binding and valid in this second resolution in point of law; and if it is not worth anything, I cannot see why he insists with such tenacity upon its being acted on and why he cannot vote for the first proposition unless the second carries. There is a considerable bowl of meal, and it may be a rat. At least it creates suspicion in my mind. If the gentleman will withdraw and let us take the vote on the first and second propositions I am prepared to support the previous question on it.

MR. PAXTON. Would a motion to lay on the table be in order?

THE PRESIDENT. To lay the motion of the gentleman from Upshur?

MR. PAXTON. No, sir, to lay the report of the committee on the table?

THE PRESIDENT. I should suppose not, sir, until we dispose of that motion.

MR. POMEROY. I think the gentleman withdraws.

MR. PINNELL. I do not unless I can be satisfied we will take it in broken doses.

MR. PAXTON. I was going to make a motion to lay the report on the table; and if that prevailed, I proposed to move the adoption by the Convention so as to bring the matter directly before them of the substitute proposed by Congress for the 7th section of this Constitution.

MR. PINNELL. With that understanding, I withdraw.

MR. PAXTON. I then move the report be laid on the table.

MR. PINNELL. I have no objections at all.

The motion to lay on the table and print was agreed to.

MR. PAXTON. If it be in order I now move that the substitute proposed by Congress for the 7th section of this Constitution be adopted. I will just make this remark. This thing has now been before this Convention and before the people for six months at least. The bill passed the Senate in July last, or August. From that day to this it has been a subject of discussion; it has been before the people and the members of this Convention, and we are as well prepared to act now as at any future time, and there appears to be a disposition on the part of a large number of members that we should take prompt action on this. I make the motion, therefore, with that object, that the substitute proposed by Congress for the 7th section be adopted.

MR. LAMB. Mr. President, I simply rise to require the motion to be reduced to writing. The matter of form in this case may be of the highest importance. A motion in the form in which this is put is not in proper form to be adopted by this Convention. I want to see it reduced in writing as it is the all-important question which we are to decide, to understand exactly the shape in which

it is to be presented to us, in order that I may see and judge for myself whether it is.

THE PRESIDENT. That is right, sir. It must be so. Have to reduce it to writing.

MR. STEVENSON of Wood. Let me suggest to the gentleman from Ohio to move to strike out the 7th section of the 11th article and insert in its place the amendment made by Congress.

MR. PAXTON. That is the motion I desire to make.

MR. VAN WINKLE. It cannot be taken up without taking up the whole of it.

MR. PAXTON. Then I move to take up the first resolution of the committee.

MR. STUART of Doddridge. The only way to get at that thing is to move a reconsideration of the vote laying the report on the table. I make that motion.

MR. POWELL. Would not a vote to take up the first take up the whole resolution?

THE PRESIDENT. Yes, sir.

MR. STEVENSON of Wood. Do I understand the gentleman from Doddridge to move to reconsider?

MR. STUART of Doddridge. Yes, sir.

MR. STEVENSON of Wood. If the Chair would decide this point first. My own impression is that the motion of the gentleman from Ohio was made to take up the resolution separately and distinct; that this report is entirely new matter.

THE PRESIDENT. I would suggest the discussion on this question appears to be inevitable. If the Convention are going into the discussion, it is proper to take up the report now on the table and have the discussion.

MR. PAXTON. The report, on my motion, was laid on the table and ordered to be printed. I now offer the following resolution:

RESOLVED, That the seventh section of article eleven be stricken out and the following inserted in its place:

"7. The children of slaves born within the limits of this State after the fourth day of July, in the year one thousand eight hun-

dred and sixty-three, shall be free; and all slaves within the limits of said State who shall at the time aforesaid be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein."

I offer that as an independent resolution.

THE PRESIDENT. Does the gentleman withdraw his motion to reconsider?

MR. STUART of Doddridge. Not by any means, sir. It must be apparent this discussion must come up, and I do not want to get up a factious opposition and compel gentlemen to vote on a certain proposition which they do not desire to until other propositions have been before this Convention. I hope it will be put and carried.

MR. STEVENSON of Wood. I am willing, and trust the members have so regarded me to extend the largest investigation upon this matter embraced in this entire report; but what I would like, and what I think would conduce to the harmony of both the members of the Convention and of the people, would be to discuss these propositions distinctly and separately, each one by itself, and let it fall or let it be adopted on its own merits. Now, can there be an objection in the mind of any reasonable man to that? Is it right to bring important questions into this Convention about which there is very little difference of opinion and attach other questions in order to embarrass these and thus imperil the success of this entire movement? Is there any fairness about that? The proposition of the gentleman from Ohio is an honest one. It proposes to the Convention to accept this amendment of Congress. The gentleman will observe it is on a motion to reconsider.

MR. DILLE. Is a motion to reconsider debatable?

MR. STEVENSON of Wood. Yes, sir.

MR. STUART of Doddridge. I hope the gentleman from Wood will pardon me for making one suggestion. There is no possible way to avoid the entanglement of this thing. The parties can offer their amendment to the proposition of the gentleman, and it can come up.

MR. STEVENSON of Wood. Then where is the advantage of reconsidering? Then why not do it in this shape just as well?

MR. STUART of Doddridge. It is not proper to take it up in any other shape.

MR. STEVENSON of Wood. It comes up here, and if anything is attached on to this simple proposition to embarrass it, let the responsibility rest on the parties who do it. It will not rest on the friends of this new State measure.

MR. BROWN of Kanawha. The remarks of the gentleman from Wood demand a reply. He gravely says that this move is made to embarrass this thing. I say that is incorrect, and if he intends to speak of the motives of those who act, he has misstated those motives. I understand the motives of these parties who seek to bring up this question and discuss it and to present these propositions to this house is to secure the adoption of this other in a spirit of harmony and concession, and preserve a principle, and whoever impugns to the contrary utters that which is not true. I speak for myself; and I believe every other gentleman who coincides with me entertains the same sentiment. It may be a rather an adroit move to throw upon us who ask the open discussion of this question entire that we are seeking to avoid the fair discussion of the question now. Let facts speak for themselves. We propose to open the door and discuss the whole question on its merits. Who is it that asks to cut off and confine the discussion to part only and obtain the adoption of that part and then say to the other you have no alternative. I can well see a gentleman may entertain very serious doubts on the subject how he will vote on the first proposition in this house unless he has some assurance what is to be the action on the other. I am sent to labor for you and we have no difficulty about the labor; but the reward, the remuneration is a subsequent consideration which is well to be understood before the work is begun. The gentlemen say it is very fair to discuss the question of the work but I think it is well to discuss the question on both sides. Now, what is the whole effort made here in every shape and form on the other side? It has been to gag, to cut off, to take up a part, to allow but one clause in this whole matter to be considered and exclude the other from consideration. The gentlemen on our side have said at every step of this case they were willing to discuss this question on the whole merits of this question on the motion to adopt it, and when the vote is taken the party may call for his division of the vote; but every man who has listened to the discussion, has heard the whole case brought before his mind. Some gentlemen say they have not even considered the

subsequent proposition. Why, sir, that is the very reason why we should discuss it, that it may be considered, and that it may be considered all together; that when you come up to vote on the proposition you have considered both so that you know how to vote. Suppose when you come to consider—those gentlemen who say they have not considered the subsequent proposition—suppose when you come to consider that subsequent proposition you shall come to the conclusion some gentlemen have come to and that some gentlemen announced, that this Constitution does not provide a security against taking private property for public use without just compensation; that it makes the people adopt the nefarious and infamous doctrine that you may take away the rights of the people and give them no compensation for it.

MR. STUART of Doddridge. I am under the necessity of ruling the gentleman down on that subject. Let us have this discussion on the fair and legitimate discussion.

MR. BROWN of Kanawha. I am confining myself to the remarks of the gentleman from Wood. He has rendered it necessary to make this reply.

MR. STEVENSON of Wood. Did the gentleman understand me to say that I had not examined this other proposition?

MR. BROWN of Kanawha. No, some other gentleman.

MR. STEVENSON of Wood. Then let your reply be to some other gentleman and not to me. (Laughter.)

MR. BROWN of Kanawha. But your remarks were on the same side. I think it was therefore highly important when we had considered the subject that we should consider it equally. But I believe I hope it more sincerely than the gentleman from Wood that we shall have harmony on this subject because I believe there are circumstances in which I have more at stake in it than he has—infinitely more, representing the people I do than he does. My whole soul is in this matter; and however predicated on fundamental principles that are right in themselves I cannot defend before the world if I were willing to sustain that proposition which my judgment and conscience condemn as infamous and an outrage and violation of fundamental principle. I would not even purchase the state I desire above everything else at such a price. I desire therefore to have this matter set plainly and fairly before the world in order that when I go back to my constituency I can

say, here is what I have done; I have faced the world, and there is nothing I shall blush to own. And I hope every other gentleman in this Convention will return to his constituents with the same sentiment and feeling.

THE PRESIDENT. The question is on the motion to reconsider the vote laying the report on the table.

MR. HERVEY. I hope the motion to take up will not prevail. This Convention has met for the purpose of incorporating into the Constitution of the proposed State an amendment required by the Congress of the United States as a condition precedent to its admission into the Union. That amendment has been before the country and members for weeks and months. What is proposed here? Why, sir, that the action of a committee, of high-minded and honorable gentlemen, I am free to confess—no gentleman doubts it; but that is not the question—but that the action of a committee asking the Convention to express an opinion on the liability of the State for the value of slaves emancipated under this amendment shall be tied on to what is intended to be the acceptance of this amendment by proper constitutional provision. Is it sought, sir, to incorporate the whole of this thing in the Constitution of the proposed State? Not at all, sir. But it is sought to force this Convention—yes, sir, I will use that expression; I mean to use it in this qualified sense, to compel an expression of opinion on the part of this Convention with reference to a particular fact which is not necessarily connected with the provision you are required and seek to incorporate in this Constitution. Now, sir, whatever rights may be involved in it—whatever rights of property may be involved in the Constitution of our proposed State, they are established there. The courts will declare them. Of what effect or force is a declaration of opinion on the part of this Convention?

MR. STUART of Doddridge. I must again appeal to the gentleman to confine himself to the subject.

MR. HERVEY. I do not desire to infringe any right. I am certainly replying to the arguments which have been used here. I say it is sought by the report of this committee to compel the Convention to take up propositions which have no connection with the Constitution, to annunciate what? A fact, as they allege, and nothing but a fact; which fact more properly belongs to the courts of the country and the declaration on the part of this Convention of any

such fact does not confer any right nor detract from any right of any citizen of the State.

MR. DERING. I would ask the gentleman from Brooke what motion he is discussing?

MR. HERVEY. Reconsideration.

MR. DERING. You are going into a general discussion of the subject, and I hold you are out of order.

MR. HERVEY. The discussion has been gone into.

MR. STUART of Doddridge. I would like that discussion stopped. Let us go at this thing rightly.

MR. HERVEY. I do not desire to trespass on the rule of this body; but I do not desire that argument shall be forced upon this Convention by the other side and those arguments not replied to.

THE PRESIDENT. The whole matter will come up if the report is taken from the table.

MR. POMEROY. I understand the motion to be the motion of the gentleman from Doddridge to reconsider. Now, if there was any advantage to be gained by that reconsideration, I would vote for it; but I cannot see what advantage is to be gained. Then you have the whole matter before you and the division will arise again whether we will lay the whole or part on the table. Let us vote down the motion to reconsider. I will submit it to the Chair. It is a legitimate rule laid down in all manuals that where a report is laid on the table a member can offer a resolution identical with a portion of that report and can have it acted upon while that report lies upon the table. Look at the propriety of the matter. A committee brings in a lengthy report and it lies on the table. That does not cut off all other members from offering resolutions embodying the same ideas of a part of that report. Suppose the committee has purposely connected with their report matters which the Convention does not approve of? Is it in the power of a committee to tie up the body so it cannot execute its will? The motion of the gentleman from Ohio is a legitimate and proper motion. It will if adopted accomplish the one object for which this Convention has been recalled. I therefore am opposed to taking this report from the table and hope the motion to reconsider may be voted down and that we will take up the motion offered by the gentleman from Ohio and dispose of it.

MR. WILLEY. I beg leave to submit a few suggestions. I think it is obvious to every one that during the progress of this matter this discussion must come up. It will come up. We cannot prevent it unless we succeed in adopting some parliamentary tactics by which, in the language of the times, we may succeed in gagging those that wish it to come up. I am satisfied there is not a member wishes to do that. Well, sir, we all conclude this discussion must take place. Why not let it come up on the report of the committee? Why not reconsider? Suppose we do, what then? We discuss the matter to our heart's content from the whole report. It may be that a very large majority of the Convention are opposed to the adoption of the second resolution. That may be. Why, sir, after we discuss that; been fully heard; are done with discussion, we come to vote. What then? Any member can move a division of the question and they can have the vote taken on the first resolution distinct and separate from the other, and can vote on that without voting on the second resolution at all—as distinctly as you would vote on the proposition of the gentleman from Ohio, while we shall have heard the discussion of the whole subject. If it is adopted, and a majority of the Convention are opposed to the second resolution, they can vote it down. The vote has come up on the second resolution some time or another. Now, what do we gain if we refuse to reconsider and take the vote upon the resolution of the gentleman from Ohio? What do we gain? Why, sir, it is perfectly competent for the gentleman from Kanawha to move an amendment to that by a distinct resolution incorporating the very same principle we are seeking to avoid. That must be done by way of amendment. Then you see we are just where we started. Why not, then, take up the report of the committee. It presents the question in full and fair manner; discuss the whole field; and when we come to vote, if it be the pleasure of the Convention to decide the questions and take the vote on each separately, it seems to me that would be the fairer and better way.

MR. PAXTON. What has become of my resolution?

MR. PRESIDENT. This proposition was before the house before that was offered.

MR. PAXTON. I will withdraw the resolution I offered in order that this whole matter may come before the house.

The motion to reconsider was agreed to.

MR. PINNELL. Now, for the sake of consistency and harmony, I will renew my motion to recommit. I think we can harmonize this whole matter better in committee than here. I renew the original motion to recommit to an enlarged committee of fifteen.

MR. STUART. The question is still pending on the motion to lay on the table.

MR. WHEAT. I intend to amend the second resolution. I promise the gentleman who seems to have special care of the second, and I will vote for every word in it provided I succeed in having the amendment I propose passed and carried. But, if it is their pleasure, I will vote an indefinite postponement of it afterwards. But, sir, I will withdraw my motion to lay on the table.

THE PRESIDENT. It was moved by the gentleman from Ohio, Mr. Paxton.

THE SECRETARY. The gentleman is mistaken. Mr. Paxton made the last motion to lay on the table and print.

MR. PAXTON. It was my motion. Then I offered a resolution which I have since withdrawn, the Convention having reconsidered the vote on the motion to lay on the table. My motion is therefore before the house and I now withdraw that motion.

THE PRESIDENT. Now, the whole question is before the Convention.

MR. VAN WINKLE. I rise not to argue the case but only to explain what is involved in the resolutions reported by the committee. In the first place, the resolution contemplates making the change required by Congress, in which is involved emancipating not only slaves to be born after a certain day, but slaves that are now in existence. In that report the committee have informed the Convention that according to their best knowledge on the subject, as the result of all the inquiries they were able to make, it was an entirely new case in this country; that no states had got rid of their slaves by emancipation by law; that no state has ever ventured to free slaves in existence; provision being made for only those to be thereafter born. It has been conceded that the state being involved, of course no right of property are attacked. It is therefore thought proper—I do not know but there has been a decision of the Supreme Court of the United States to that effect—but I am sure that it is entirely competent for the legislature to pass a law say-

ing children born of slave mothers after a certain day shall be free. That requires no compensation because the theory is that it does not take from the owners of the mothers any property, because they could have no property in that which does not exist. There comes up therefore this case in reference to those under ten years and those between ten and twenty-one. We propose to introduce into the Constitution an amendment by which we give freedom to those slaves now in being or that will be in being on the day on which this Constitution goes into operation. All slaves between ten and twenty-one years of age, though they make two classes, the first to be free at twenty-one, the other at twenty-five.

Now, this, in the opinion of the committee, as they have reported here to the house, is taking private property; and on that branch of the proposition, I suppose there can be no difference of opinion. It is divesting persons of what by the laws we are acting under now and the laws we shall act under the moment this Constitution goes into operation; laws which are paralleled by the laws of all the states—I believe no exceptions except some of the new states—and under the laws property in slaves is a legal right and that slaves are therefore the subject of property. Now this proposed amendment to the Constitution that we have made proposes to divest the owners of this property. There can be no doubt about that. No voice here I am sure that can dissent from that proposition, that this amendment does propose to divest persons of what by the laws to which we are all subject is property. Now, we find in the United States Constitution, and in the constitutions of all the states, I believe—I do not think there is an exception; and in our own Constitution it is perhaps more to the purpose, a clause declaring that private property shall not be taken for public use without just compensation. Now, sir, it would be only a quibble to say this property was not taken for public use, because nobody here or elsewhere can with any plausibility maintain the position for a moment that the legislature or the constitutional convention of a state, the latter representing the whole body of the people in the direct way—no one will contend for one moment that they can divest private persons of their property under any other pretense than that it is forfeited to the laws or taken for a public purpose. It is precisely the case when ground by the acre is condemned for the building of an abutment or a mill-dam when the necessities of the country require any property to be taken. It has been illustrated in the movement of our armies, not within the states where war was existing but where it did not exist. It was done in 1812.

Much private property was taken and in the very neighborhood of this Ohio river. Horses were pressed very near our vicinity to go to Detroit to drag the cannon out there, after, I think, the surrender of Hull. But the principle is so well established it needs no argument. The government may take private property for public use by making compensation. It results then in this, that we do propose by this amendment to divest persons of what our own laws acknowledge as property; and we are met by the words on the face of our own Constitution that this is not a legal proceeding unless we make compensation.

We have shown in the report, to call to the recollection of members, what must be in the minds of others, that four European kingdoms, whose colonies held swarms in slavery have within a very few years freed their slaves, some in one manner, some in another; most of them retaining them as apprentices for a few years until they could learn a little about taking care of themselves. But not in a single case have these monarchical governments, to which we consider our system of government, especially in its protection of private rights, infinitely superior, has even proposed to take the slaves and property of their citizens, their colonists, unless they make compensation for them. England paid, I believe a hundred and fifty millions sterling, and the others have paid in proportion for their slaves; and here recently, in the despotic empire of Russia, the edict of a man whom we are accustomed to regard as one who can say to every citizen of his empire not only go, and he goeth, come and he cometh, but go to Siberia—to death—and he goeth without judge or jury—by this decree in freeing the serfs the empire of Russia did not venture to make that move without providing for the compensation of the owners of the land to which, by their system of slavery, were attached, who were virtually the owners of the serfs.

The question is asked whether with a free republic professing an especial regard for the just rights of all our citizens, we shall stand behind these monarchies in our regard for the rights of our citizens. I cannot but suppose the answer to that question can be but one way. I am sure every member of this Convention will say that the owners thus deprived of their property ought to be paid. They must either do that or repudiate the section they have already introduced into the Constitution by a free and unanimous vote of the Convention and ratified by the whole vote of the people who voted for the Constitution, and the time—sanctioned and time-honored principle; one which was part of the common law of

the country from which we are descended, which was imposed on us and which our ancestors thought important to place in the Constitution of the United States. It was not in the original instrument but in one of the amendments proposed afterwards. There is a series of propositions all having regard to the rights of the citizens which Chief Justice Marshall in one of his decisions pronounced the bill of rights of the people of the United States. And, sir, this clause in our Constitution is very properly placed in that article which we have entitled the "Bill of Rights."

MR. POMEROY. I would like to make an inquiry of the Chair. We had a standing rule that no member should speak more than ten minutes, and while I always voted against that rule, if that rule is claimed to be in force the gentleman cannot proceed further with his remarks. I do not say that I wish him to quit, but that when others come to speak, we shall all have the same liberty.

MR. VAN WINKLE. I think that rule was intended to be only temporary. It only applied to the remainder of that session. I only claim, sir, no other extra privilege than is permitted the chairman of a committee, to explain action of his committee.

I want to show upon what the conclusion of the committee is founded, and the inducements to them to offer this resolution. I have, I believe, shown, as the report shows in briefer language that it is incumbent on this State to make the compensation. The report goes so far as to say that the tribunal before which a citizen thus deprived could bring his suit for compensation against the State—he could only do it by permission of the State—but when he does bring it there could be no doubt under that clause of the Constitution and under the interpretation of it which the similar clause in the Constitution of the United States has received at the hands of the Supreme Court—I say in my own mind and in that the committee are unanimous, that that citizen can recover that money from the State.

Now, sir, the committee, after they got at their business, deprecating, as any member here did, that any necessity should arise which might make it incumbent on us to insert one word in the Constitution other than the proposed amendment by Congress, were glad to find that we could escape entirely from that difficulty because the matter was already provided for in the Constitution by the clause which I have cited. The committee, therefore, in concluding their report, after expressing their opinion on that subject and that it would be incumbent on the legislature to make pro-

vision for the compensation of these owners, have said that they do not find it necessary in this case and that they earnestly recommend that no change whatever be made in the Constitution except the proposed amendment even if that would not in their opinion be obnoxious to objection. If it is a mere amendment, they would not make it, a change merely of form of expression meaning substantially the same thing to make it, because advantage might be taken of us in quarters where it would do us injury. And what do the committee? In order to satisfy those who are most interested in this question, in order to obtain a larger vote, for that certainly would be its effect, for the Constitution before the people, believing that it is not only important that the vote should be as nearly unanimous as possible but that the vote should be extraordinarily large vote if it could be obtained, and believing it would be the best refutation against all the objections to the erection of this new State, this committee are desirous that something should go forth from this body to the world that would tend to secure such a vote as that. Not only so, but they are extremely desirous—for myself it is almost the dearest wish of my heart—that when the day could come as a people or a new State—and I hope and believe the day is not far off—when we will be the really independent citizens of a free State, a free republic in act and heart, and thought and deed, no taskmasters burdening us with improper legislation, with our improvement in population and increase in wealth—I say when that occurs, glorious as it will be for all of us, and especially those of us who have striven for it in this body, I wish we may come together with perfect harmony. I do not mean differences of opinion but that we shall all come feeling that this State is to be indeed and henceforth our mother; one that will be entitled to our dearest affections and feelings and one that, rejoicing in our lot, will induce us to extend the same fraternal feeling to every citizen of the State. That is the desire of my heart; and if I can see the people of this State come together that way, I have no hesitation in predicting, what with my sanguine temperament I have already prophesied, that the blessings to be showered down on us will be multiplied and multiplied again. And much of it will depend on that harmony. Now, is not it worth while for gentlemen of this Convention to yield something of their prepossessions to secure such a state of harmony. What harm can the passage of this resolution do? If it be said it will be used as a bugbear at the polls to frighten the people with taxation, that has been done already. Attention has now been called to the fact and the obligation to make this com-

pensation is there upon your Constitution and every legal mind must know it; and if it is not there, it is upon the Constitution of the United States.

Well, sir, this committee have contented themselves with proposing a simple declaratory resolution of that which is upon the Constitution already. The committee were glad to find that in order to satisfy gentlemen who are most interested and constituents most interested, it was not necessary to place any additional clause in the Constitution, and the resolution simply declares as the opinion of this body that these parties thus to be deprived of their property are constitutionally and legally entitled to receive compensation from the State. It does not venture to dictate to the legislature what they should do; does not venture to dictate to anybody what he shall do; it comes here as a compromise proposition by which the vote of both sections of the new State can be secured. It offers itself in the character and spirit in which compromises must be offered and in which if they are offered in good faith ought always to be received; and in that way, and in that way only, asks by passing the simple declaratory resolution—which after all is but their own opinions—to satisfy the few remaining objections made by true Union and loyal citizens—by our brethern, as we are proud and happy to call them, just to satisfy the slight objections made from a certain quarter.

Now so far as the motives of this committee are concerned—so far from its having any disposition to embarrass the proceedings of the Convention or encumber the main proposition with another—so far from there being a want of relevancy between the two propositions—so far from being any dependency one upon another—I think the remarks I have made must have convinced every one that there is not a dependence, and that it is well we should by the expression of this opinion give the assurance which will be accepted in good faith and unite all parties in the cordial support of our Constitution when it is submitted to the people.

In conclusion, sir, I do appeal to every member here to banish from his mind all preconceptions in favor of a fair consideration of the proposition now made. I ask nothing more than this that every member will take this matter into serious consideration. It is not offered here in the spirit of party. It is not offered here by any clique or party that exists in this Convention; not from any who are likely to form a party by themselves when the new State is put in operation. It is those who have shared the toil and burden of the day who offer it to you; whose desires are as anxious towards

this new State as those of any of you can be. It is those in part, and only in part who would suffer by the deprivation of their property if compensation is not made. It appeals to your sense of justice; it appeals to your honesty; it appeals to every better feeling of your natures and asks you to give them the slight satisfaction they are asking for.

In reference to this question of payment, whatever the amount may be, to be paid, it is not to begin until four years after the adoption of the Constitution, and it will be spread over seventeen years, and that an annual appropriation so small that the people could scarcely feel it will be unquestionably sufficient for the purpose. Some estimate the number of slaves at not more than one-half the number in 1860. I should not wonder if they are reduced to, at most, eight thousand. I have heard at second hand the expression of one of the public officers of the State that in his opinion there are not more than three thousand. But out of that it is only the single class between the ages of ten and twenty-one on which this would have any operation. I cannot say what the proportion would be. Take it at one-fourth or one-third, if you please, and make the calculation yourself. But remember that under the age of twenty-one. All statistics show the greatest number of deaths happen between those ages; and that many of those in the very ordination of Providence will die long before the time will expire. Again, some will be moved away; some will take themselves away; and it is very doubtful to me whether at the end of ten years a slave will be found in the State except some old one who, from attachment will remain. Again, there is a prospect, as we have seen, from the passage of the Missouri bill through the Senate, that the policy of President Lincoln may obtain a wider scope than it has yet had; that in his anxiety to free the country from slavery, unless slaves are to be freed as the act of war, he is preparing the way for compensated emancipation by the states. Even in his proclamation he reserves that if the slaves of loyal men are taken they are to be compensated. But in his scheme to apply particularly to the border states he proposed the freeing of the slaves but that compensation should go with it. I was going to say there is no doubt a similar bill can be procured to be passed with the concurrence of the people of the State or the legislature when it meets; that a bill will pass Congress providing for compensation not only for slaves under twenty-one years of age but for every slave in the State when it agrees to emancipate them within such period as the act may fix.

Here is a sum of money necessarily small but distributed over seventeen years and not beginning for four years. It seems to me when this matter is explained to any real friend of the new State he will place himself in the same category which we are applying to those who resist the new State on account of the emancipation clause: He will be willing to forfeit a great good for the sake of positively nothing.

I am much obliged to you, sir, and the Convention for the attention given me.

The hour having arrived, the Convention took a recess until
2 P. M.

AFTERNOON SESSION.

The Convention re-assembled at the appointed hour.

The President announced that the question was on the adoption of the first resolution reported by the special committee.

MR. STEVENSON of Wood. I would like to ask now whether this would be the proper time to ask for a division of the question?

Several members, "Yes, sir."

MR. STEVENSON of Wood. I ask that it be divided.

MR. POWELL. On this question I ask for the ayes and noes.

MR. BROWN of Kanawha. I have understood the Chair to decide that when we have got through the discussion and we come to the vote, any gentleman will have a right to call for a division of the question.

THE PRESIDENT. That is my decision.

MR. BROWN of Kanawha. This, then, seems to be going back to the very difficulties from which we were extricated.

MR. DILLE. It was understood the discussion had closed.

MR. STEVENSON of Wood. The gentleman from Kanawha will understand me. I waited, because there seemed to be no disposition to speak and the question was about to be taken and I then made my inquiry of the Chair if this was the time to divide.

MR. BROWN of Kanawha. Yes, sir; I understand. I had hoped the other gentlemen would have given their views on this subject. I confess I feel a very deep interest in this subject. In the depth of

interest and feeling upon this subject, in the success of this measure, I yield to no man in this house, or in this State—none; I care not who he is nor whence he comes. I have labored for it from the beginning with all my might, in season and out of season. I have staked everything that I have and all that I am. I have done it from the conscientious belief that we were right in doing it and had a right to go on and organize a state in the manner undertaken. But I have ever believed in another fundamental principle, that in doing that we could do justice to all, secure to ourselves our rights and the rights of every individual in the land, every right to all that he has; that we would do violence to none—never would taint any of our actions with injustice. It is with that view, I think, this Constitution contains provisions which I conscientiously believe reach this case. And other gentlemen—I do not know of a single man I can say I know in this house who believes the contrary. But gentlemen out of this house intimate as much, and really it may be some gentlemen in the house may entertain different views. If they do, certainly it is but right we should know it. In the matter in which gentlemen do entertain different views, I do desire, as an honest man, that whatever we do shall be put beyond all misconception. I would have our action like Cæsar's wife, above suspicion when we come before the world and our constituents who will examine our conduct.

What is it we are proposing to do? We are proposing to take from a portion of our people property which belongs to them under the laws of the land; which is guaranteed to them by the Constitution of the country and the laws of our State. Virtually that is the exercise of one of the highest functions of sovereignty, and the one ground on which it has ever been pretended to be justified before any people in the world is that it is done for the public good. The taking of private property for any other purpose is simply nothing more nor less than simple larceny and broken moral doctrine as old as property itself; that meum and tuum, mine and thine and that I cannot touch my neighbor's without a violation of that fundamental principal in the decalogue that we shall not covet our neighbor's wife, nor his man servant, nor maid servant, nor his ox, nor his ass, nor anything that is our neighbor's. It is the exercise of that sovereign power which every community may exercise under this fundamental principle and restriction, that what we take is for the public good, and that the public in the taking makes due compensation to the party that it injures. That is a principle which Chief Justice Marshall says runs through all laws

and constitutions in America. It is one of the principles that, even, as the gentleman showed you before dinner, not a monarchy on earth has ever undertaken to violate; that the most absolute governments acting on this principle have always honorably exercised that sovereign power, carried the antidote with the poison. Why, the very same thing has been done in our government. When England liberated the slaves in the West Indies, they voted them a hundred millions of dollars to indemnify the losses, and then took upon themselves the education and provision of keeping up that community until it could stand on its legs as a free people. The French government made a similar provision, and report shows that Holland did in her colonies, and that even the absolute and despotic monarch of all the Russias has carried the same principle into his action in freeing the serfs; and that Congress when it passed the bill conferred it on the owners of slaves in the District of Columbia over which the Constitution gives Congress absolute power. In the very act that carries emancipation it provides indemnity for the owner. They would not put upon the record a stain. And that too by the most ultra men, who deny the right of property in human beings. Could it be supposed then that in the assembly of the sovereign people of West Virginia a member should express the sentiment of a readiness to take his neighbor's property without a compensation? I hardly think it would. I will not do any member of this Convention the injustice to believe that there is a man here that would; that there is an individual here that would be willing to put his hand into his neighbors pocket and take from him his property without compensation at the hands of the public that does the act. Well, this question stands upon a principle of high and acknowledged right of a recognized law and constitution as applicable to the old world and its monarchies as to the new world and its republics. We have adopted a Constitution which in express terms asserts that proposition, that no private property shall be taken for public use without just compensation. There it is, written as plain as possible for the hand of man to write it, but we are not the authors of it. We have not the honor of its origin, because our fathers penned and placed it there. We only copy it out of one instrument into another. That Constitution has been adopted and ratified by the people of West Virginia, and they have therefore ratified and approved that doctrine as their doctrine, whether re-asserted by this Convention or not and re-adopted by them in their votes at the polls. Who then can say that the peo-

ple of West Virginia were willing to violate this fundamental principle or to sustain any construction that would violate it?

You appoint a committee on this question to present to you the most mature and deliberate consideration and investigation and opinion upon it as to the bearing and effect of that provision in the Constitution under the proposed amendment; and they, after investigating the subject have given you a deliberate report and opinion, reaffirmed in the resolution they have presented for the adoption of the Convention, stating the fact unequivocally, plainly and explicitly that this Constitution does provide that in the case of property proposed to be emancipated under it and by it, the owners whose property shall be taken will be entitled to indemnity from the state that takes them; and then the proposition comes up, the resolution simply asserting the simple fact; no proposition to make any amendment to the Constitution other than to meet the requirement of Congress, of course, but simply a declaration of the fact, just, they say, as the Constitution reads, and that is that no misconstruction hereafter can be put upon it and so our adversaries cannot rise up and say, here this Convention has assembled and adopted a Constitution which does deprive the people of the right of property without compensation, and this declaration meets them in the face, for there it is written in the Constitution and here is the declaration that we believe and understand it does so contain that provision.

I ask, then, what good, reasonable objection can be urged against saying what we believe? Why, sir, if you could only show to me by any reason that this Constitution does violate this fundamental principle, I would sever that arm from this shoulder before I would vote for it; live in serfdom before I would vote for any constitution that would found its fundamental law in wrong and outrage and robbery of its own people. I will vote for this Constitution because I believe, and upon full examination and investigation of it and comparison with the views of other gentlemen who concur in the solemn belief that it does contain the provision we here seek to express and because I therefore do believe it I will vote for it. But I ask in saying so that like honest men we shall say to the world that this is the fact and that we will not attempt before the world to palm this Constitution on our people under the pretense that a doubtful construction can be given to it and ask men to support it in the belief it does not provide compensation to the owners. And I ask honest men, my fellow-members, any and all of you, are you unwilling to state before the world and upon record

the simple truth and fact? I can see no reason why any gentleman should hesitate. We make no alteration in the Constitution. We declare, though, in express terms just what we understand it to mean, and that hereafter no man that comes here and charges us with injustice can meet us fairly because we here declare the purpose and opinion of this Convention, which will be entitled to respect all over the State. And, then, gentlemen—pardon me, Mr. President, there are some of us who come from districts and constituencies who are more deeply interested in the subject than other constituencies and other gentlemen. Would not you regard me as recreant to my trust if I were to stand here representing a constituency more deeply interested in the subject than any other in the State, if I should not desire whatever was done to be done openly and fairly, and if it was the intention to take away our property that we should know it and it should not be done by a provision of doubtful construction? And then I charge with having done that which I intended purposely not to do? I ask this Convention to do justice to these constituencies. I ask no more; to come up and do justice to us the representatives of these people by the adoption of that resolution—just what you all say to me privately, that this is the identical meaning we understand it to have and upon which we vote. Let us say it to the world, and there can be no disputing it hereafter. That when I go back to my people and take this Constitution I take this declaration of the Convention and show that all these members concur with me in the sentiment. It does contain to you, my fellow citizens, this guaranty and security that your rights have not been outraged, that no injustice has been done you, and that you have become part and parcel with the people who are unwilling to outrage the rights of a single citizen of the State. We are as loyal today as you are. We have borne more of the burdens and desolations of this war than you have; we have stood here for the new State and the Union amid the horrors and desolations of three or four campaigns that have rolled over us and rolled back and back again and you have been left undisturbed by the hostile foe. I want to go back to my people and say I can stand on principle and justify them and assure them of their rights have not been outraged and they are in no danger in the co-partnership they are about to engage in. And I ask this, in returning at the hands of this Convention; and I have not heard any gentleman give to me an excuse that will answer the demands and expectations of that people for not doing it. What objection, then, can be urged against it? Do you say it will complicate us when we get to Congress?

That cannot be the case because the report of the committee expressly declares no amendments shall be made. We take it as Congress has presented it—nothing more, nothing less. We only declare our interpretation of it, exactly what we understand it to mean and did when we adopted it. And here I might say when that proposition was adopted, when we were assembled here last winter, I do not remember ever to have heard from the lips of any an opposition to the principle there laid down, that private property shall not be taken for public use without just compensation. I want to know if that which was a fundamental high and holy and simple principle has become rotten and corrupted now so that it would be an outrage to carry it into effect or even to make the declaration on the record that we believe now as we believed and acted then.

I know, Mr. President, that in my section of the country the charge of a construction of this Constitution by the enemies and those who will seek to defeat us, who have embarked and are enlisted with our adversaries and who are in hourly and daily expectation that help will come to them from the other side of the mountains and we yet be driven from this fair field of the western slope of the Alleghanies—that they will use every effort to arouse opposition to this Constitution on the very ground that we make no provision in this Constitution for the indemnity we propose. And I know, sir, that my community are more interested and many examples might be urged with more power and potency against this Constitution which if it could be painted in fair and open discussion would defeat it; for I entertain the honest conviction that if any man can go before the world this day and make the people of West Virginia believe on a discussion of this subject that this Constitution makes no provision and we are taking the private property of people without just compensation or securing the right of compensation, it would be voted down overwhelmingly. Overwhelmingly! Why, sir, I know some examples that might be urged if you could only give that construction and maintain it in my county that would rouse the prejudices of all mankind against it. Why, sir, I know some of my deceased neighbor's little children, little orphans, whose estates consist almost exclusively in the bonds of the State of Virginia and of slaves their ancestors have left them. The rebels have confiscated the bonds of the state by entering in this rebellion, and driving us into this division of the state have cut off their supply and estates in that quarter, and even have confiscated and appropriated to themselves the interest on these bonds.

And here it would be proposed—here this paternal government you are proposing to form takes away the remaining portion of their estate. The rebels will take the bonds and the loyal men the negroes and turn these orphans upon the world. I know widows whose only support is the labor of the slaves that belong to them under the laws of the land. Should it be said we were constructing a Constitution that would take from them the only support the laws had granted to them and make no compensation, could we say that the people of justice and honor and integrity would sustain such Constitution? No; never! Never! sir, in the land of old Virginia! Let us then free this Constitution from any such construction by express declaration that what we do cannot be misconstrued. Why, sir, the author of that religion which many worthy and honorable gentlemen in this Convention profess here to be teachers of, tells us you must visit the fatherless and widow. But, O, sir, would not the fatherless and widow say save me from such visits if they come in the form which will be put on this Constitution if you do not adopt this resolution? Why, then, sir, if we intend to do right—and we say we are doing right—and have written it in the Constitution in words that are plain, why, then, not say so explicitly as in this report with this construction we give it and that is the only true construction, in our humble opinion. Why, sir, what would a gentleman opposing this Constitution, what would his opinion be worth an audience of Virginia people when he should say this means take away property without compensation and another should rise up and show the vote of this Convention adopting the resolution declaring that is not true; that in the opinion of this Convention this Constitution does guarantee and secure the rights of these people. The people would just throw up their hats and shout, “Hurrah for the Constitution, and the new State!” We will go for the opinions they have expressed, these objectors to the contrary notwithstanding. But, sir, vote down that proposition and whatever your private opinions may be you will never let it go to the world that this is a fact, these objectors will go forth with tenfold strength and when they charge it upon the stump that that is the construction, they will say the Convention did not dare to say so; they will say the Convention repudiates that doctrine. And when they come to ask for compensation, they will say, go home; we have taken your property and appropriated it and now help yourselves. We will say it was not so. But they will say there is the vote of the Convention and they will read it on us. We will say we talked to these gentlemen privately and every man of them said

that was his opinion. They will say, sir, we don't care what they said behind the door; they would not say it in the face of the world. That is the way they will charge us. How can we answer? I then ask this Convention to do nothing that is wrong and submit to nothing that is wrong. It wrongs nobody but does right us all. It secures us against misconstruction. And then, Mr. President, what more? When this State has been formed, when West Virginia shall go forth in the brightness and glory of her youth and bloom and shine as one of the stars in the national galaxy and the representative shall stand in the halls of the Senate and Congress and shall there claim their parity with their equals of the other states, they will never be taunted with having been parties to the committing of an outrage to property and helpless individuals, and they will always feel the better and greater for the fact that in the peril of this State, honor, justice and integrity has been preserved and that while they have maintained the Constitution of their country and the liberties of the people they have secured a guaranty of the rights of their citizens and it will be a proud day. I am confident, I feel, that whose ever fortune it may be to be the representative of this State will stand six feet taller on the Senate halls than if you vote down this proposition today and hear his adversary charge him from the other old state, your people are robbers. I feel and honestly desire that when West Virginia shall take her place among the states of the Union she shall be if the youngest, the brightest and liveliest of them all. I do not wish her when she comes in the hall of any sister that she shall feel she is in anything inferior to Kentucky or the old state—that the younger shall be the inferior.

I hope therefore that this Convention will not hesitate, not to do anything that is wrong, but will not hesitate to do that which is right and all must admit it. I thank the Convention for their attention and apologize for having tresspassed on their patience so long.

MR. TICHENELL. Will the gentleman from Kanawha answer me one question: I wish to know if it is your opinion that your rights in any sense are in jeopardy if this is not passed. Do you think they are not secure, or do you think they are secure, under the Constitution?

MR. BROWN of Kanawha. I thought I had stated it. I vote for this Constitution under the belief and understanding, as my judgment, and aided and assisted by the gentlemen on the commit-

tee who have discussed and investigated this subject, that this Constitution makes secure to every owner whose property shall be taken compensation, as provided in the VI Article, second chapter. And if I did not so believe it I would vote against it and forever. Although I may sacrifice everything to secure the new State, yet I would sacrifice that State even before I would sacrifice my honor. I would not purchase the State at the price of my reputation. I believe the Constitution secures it but others do not. People throughout the country disagree on this subject, and I ask the Convention to put our opinions here on record that we may not be misconstrued. I know that the charge will be made, it will be urged upon us from every quarter, and more potent in our section of the country perhaps than it will be in this. I would scorn to fasten this Constitution upon the people of West Virginia by any other than open and fair dealing that I can defend before the world, so that it shall not be said, you have a new State Constitution procured by keeping back from the people the true state of the case. Let us therefore give to the people the fact, an explicit declaration and understanding of the men who adopt and vote upon it what they understand about it; and there is no question about the fact, it will have a powerful weight on any construction to be given hereafter by any and every people. Why, sir, why is it in the adoption of the Constitution of the United States every jurist, every statesman, every senator, every learned man who undertakes to construe it always looks to the opinions given in the Federalist by Mr. Hamilton and Mr. Jay, who were in the Convention, and who on presentation to the people gave their views and understanding of its principles and meaning. It is ever regarded as the highest evidence by those who expound the Constitution, because it was contemporary at the time—and by those who made the Constitution; made at the time to give the people the understanding of those who framed the instrument; and would not that be precisely the course with the action of this Convention on the subject? But hereafter when the rights of the parties shall arise and be controverted under it, if there was any doubt on the subject, people would turn to the Convention itself and say what did these men at the time they did the act understand about it? They would read that resolution and say we understand this. It expressly provides those whose property is taken by it shall be compensated for it. And don't you think that would end the controversy? What sort of speech would a lawyer make after that was read on him. He would attempt to convince a court or jury that the Convention that made the Constitu-

tion really did not know what they were about; that when they adopted this clause and subsequently the amendment, they meant something else than is there expressed. No, sir, the court and jury would send the gentleman away; that he did not understand. They much prefer to rely on the express declaration made at the time by the gentlemen who made the Constitution and who therefore were the best interpreters of it. This is the simple view I entertain.

MR. HARRISON. Before discussion goes further, I offer an amendment to the report. Insert in the second line of the second resolution before the word "owners" the word "loyal."

MR. BROWN of Kanawha. I fully approve of that because that was the idea expressed in the resolution advocated by myself. I have never been the advocate of the rebels and I stand to represent the loyal men and loyal interests, and I shall vote for it with a great deal of pleasure. It never occurred to any of the committeemen that it was not in until it was called to our attention since it was reported here.

MR. CALDWELL. I believe, sir, the 6th section of Article II is not before this Convention for its adoption. If it were and I had been ever so much opposed to its adoption, after the argument of my friend from Kanawha, I would be induced to have gone for it. But, sir, it has been adopted by this Convention at a previous session; it is a part of this Constitution which this Convention affirmed, which was submitted to the people of West Virginia for their ratification, and they have ratified it. It is there, sir, part and parcel of this Constitution. Now, sir, his argument mainly went to the propriety of adopting this provision in the Constitution. So far as it did go there as to that matter, I concur with the gentlemen entirely.

The other branch of his argument I may illustrate in this way, and I do it briefly. An old friend of mine in this city—I will give his name, John McColloch—who for the last thirty years has been clerk of the county court of this county for some months past has been so much afflicted that he has not been able to give his personal attention to the business in his office. He expects notwithstanding his affliction to continue in life for months or years to come, and expects, sir, under operation of this new Constitution of West Virginia to be a candidate for the office of recorder. He sent me a note night before last that he desired to see me. I called upon him, sir, in his sick chamber, and the object in sending for me was to

ascertain of me whether the duty of recorder could be performed by a deputy. Not having the Constitution in my pocket I looked it up and found an express provision in the Constitution that the duties of all the county officers are to be performed by the office holders themselves or under their supervision, implying thereby, as I am clearly satisfied, the right of the holder of the office to discharge the duties of that office by deputy. Now, sir, for the satisfaction of my old friend and of some other office holders in the same predicament, I might as well ask this Convention to pass a resolution defining that the duties of the office that I have reference to can be discharged by a deputy. It seems to me there would be as much force in the one as the other. Why, sir, this provision is here—

MR. BROWN of Kanawha. The difference is that in the case we have been discussing we are introducing an amendment to the Constitution which gives the adversary the pretext under which to make this pretense. There is no amendment proposed in the one you suggest. The very difficulty arises that the adversary presents this proposed alteration as ground for misconstruction of the 6th section—that we are now proposing to alter the Constitution in the very particular that is affected by the amendment.

MR. CALDWELL. We are proposing to alter the Constitution and take your private property for public use; but we don't propose under that amendment as proposed by Congress to take it without compensation. Most clearly we do not propose anything of the kind. The amendment as proposed by Congress does not say that private property shall be taken without compensation because there is a provision in the Constitution. That is not proposed to be changed at all. That secures to you compensation for your private property when taken for public use. There is no question of that. Then why because this amendment is required by Congress do you ask us to declare here by resolution? We are not all lawyers. I am part of a lawyer; but what is my opinion worth to go abroad to all these people that there is such a provision in the Constitution. What is the opinion of my friend from Monongalia worth going to my constituents? They say my friend from Monongalia votes for this resolution satisfying you thereby that there is such a provision in the Constitution. Why I would rather go to the attorney of the commonwealth; he is a lawyer, I will consult with him, and I will ascertain from him whether there is any such provision in this Constitution to compensate me for my private property taken for

public use. Yes, sir, we go to the lawyers and through the lawyers and tribunals of the country our rights are asserted and will be maintained. There is no question of it.

I regret that this proposition has been introduced. The gentleman from Kanawha thinks it can do no harm. Sir, I am satisfied it will do a great deal of harm. If I thought it would do no harm at all I would most cheerfully go with him. I do not oppose it because I expect my property to be taxed to pay the compensation for his slaves. I do not object to it; willingly, cheerfully, would I incur the tax; but, sir, it will do the harm in this way. Only a few days ago, a German who has lived in western Virginia twenty years in my presence paid to the sheriff of my county a tax on land amounting to over ninety dollars. I had a conversation with him as to this new State and he told me he was a new State man. Yes, and he went further; he was for a free State. "I desire to have a new State, and I want a free State; and they tell me" this simple German said, "you will have to build a capitol, a penitentiary and asylums of one description and another, and the result would be it would increase our taxes." Well, sir, when our enemies have taken the stand, they will go to this poor Dutchman, and they will tell him: "Don't you see by the expression of the opinion of this Convention that there is a provision in this Constitution that our property—we have no interest in slaves—must be taxed to pay these slave-holders for their slaves; and the Convention has gone out of its way to pass a resolution and declare that in their opinion that is what this provisions means." Now, sir, there is the harm; and for these reasons I cannot give my consent to the resolution.

MR. LAMB. I intended to have offered, on consultation with the committee, as I understood there had been some misconstruction with the resolution, to add at the end of it these words: "If they have not forfeited that right by disloyal acts."

MR. HARRISON. I supposed the word "loyal" would accomplish it. I am willing to take anything.

MR. LAMB. I presume the committee will all consent to that being added. It may be added and stand as the resolution of the committee.

MR. TICHENELL. I have a desire to say a few things in regard to this. And, in the first place, I remark that our interests in western Virginia are identified with the free states. I own landed estate for which I paid six thousand dollars in cash and if

we do not get a state, I will enter in a bond this day to take one thousand dollars—I am so well satisfied it is worth nothing to me if we do not get a new state. I am equally well satisfied that if we do not get a state under this Constitution and as result of the action of this Convention we will never get one. Mark it. I am as well acquainted with as many people, as many hills—mostly hills and as many rivers, as any man in western Virginia; as any man who now lives in it or who ever did live in it; and I know no man well acquainted with me will call this in question. Since this wicked rebellion has come about I have traveled thousands of miles in public and private conveyances, when I have been watched by guerrillas on both sides of the road, and dodged to miss them, and got out and talked to our people about being loyal; and I now feel prepared to say, as I have not been an idle spectator of this whole thing, that if we prove recreant to our trust, when the high prize that we have contended for for forty years is within our grasp, if we let it slip out of our hands, I tell you we are not secure. I do not believe there is a gentleman on this floor dare get up and say if we now dodge—to use a homely phrase, “flunk” out, President Lincoln will guard us much longer, that the army will defend us and keep the enemy from coming in upon us. We have prosperity and happiness and glory within our reach; we have degradation and poverty before us; and which it is to be will be determined by the success or failure of the great project for the final consummation of which we are assembled here today. I was sorry the gentleman from Kanawha was so vehement in urging their right to be remunerated for their property. I would not own a member of this Convention if he would say publicly or privately that we would take their property from them for nothing. I claim to have as much honor on that score as any man will have; and when it was thrown into my teeth at Kingwood that if we adopted this Constitution we would have the negroes to pay for, I proposed to buy one negro at my own expense, and another proposed to buy another; and I conceive enough gentlemen in western Virginia could be found to take all the poor children of the negroes in the State and make provision for them rather than give up the State. The gentleman from Kanawha plainly intimated that he would rather sacrifice the new State than jeopardize the interest of the slave owners.

If I had been a member of the Convention when that section 6 was adopted, I would have voted for it with both hands and if a proposition now was lawful and was made to strike it out, I would resist it. It is there and I am glad it is. It secures to every loyal

man every right he has in slaves which this amendment proposes to take away. We are asked then by the gentlemen from Wood and Kanawha why not say so by the adoption of their resolution? And the latter more than insisted that we had no reason to assign why we would not say so.

Now let us look at a few thing dispassionately. If I believed this day to vote this resolution would go farther to carry the State—I do not believe it would in fact—I would vote for it in a moment. I look at it as victory or death, nothing less and nothing more.

But now let us consider. Take the last census. We had in our county 9,672 white people—about three and one-half hundredths of the population in the whole state. That is about the proportion they bear; and since this war has commenced, I have taken pains to examine and find that about one-half in value of all the negroes in our county are gone. The widows haven't got them, nor the children. They are only comparatively few; and the few that own slaves compared to the many that must vote for this amendment is as a drop in the bucket. It is a small matter. But God forbid that I should drive any voter away from the new State. I hope every loyal man will vote for it from one end of the State to the other. But I do know, and I believe what I know from experience, that if we adopt this measure, I can pledge for my county of Marion and for a dozen counties around us that the Union men, the loyal men, "dyed in the wool," will vote for it under any circumstances. Our sentiment is that we would vote for it if it were a hundred times worse than it is. Then when we come out of the woods and are placed in that honorable position along side Kentucky why then, sir, we will fix it up just as we want it. But now we have but one beaten track to follow. In my county, and in many of the other twenty counties, to my certain knowledge there is a floating population among whom the price of a vote is a big dram of whiskey, or an oath, or the word "abolition." Here they hang on the fence; and these votes will count as much as thousands. These men will be told: "you have nothing to do now but vote for this Constitution and then they will turn round and tax you and make you pay for the rich people's 'niggers'". Let this Convention come out and formally recommend that the people pay for all the slaves. They will seize that, and we will lose hundreds and thousands of votes; and before God today I am afraid we will lose it if we pass this resolution. The gentleman from Kanawha argues there is probably more in his region of country than we are aware of. Well, now I will admit some few individuals might vote for it that would not if

we do not adopt this resolution; but while I am free to admit that thing, if you will compare hands with the whole country and then look at the small proportion of the persons who have this species of property, the argument can be brought to bear upon the masses and used with much greater effect the other way. While a small number of slave holders might be led to vote against the Constitution because the Convention refused to declare their slaves should be paid for, a much greater number of non-slave-holders might be brought to vote against it if the Convention made this kind of formal declaration or pledge. It is a knife that will cut both ways. The question is in which way will it do most harm. I appreciate that gentleman's views and believe him entirely sincere in his wish to promote the success of the new State; but I tell you every one I fear the consequences of this vote. You have the right to hold property and they cannot take it away from you. Do you believe your right secure in the Constitution without this resolution? He frankly admitted he did. My friend from Parkersburg frankly admitted that he did. Then let me tell you, while my judgment is no better, my opportunities of knowing facts bearing on public opinion on this subject has been more than many men on this floor; and I assure you it will be wise to let well enough alone. The adoption of this declaration will be used against us and that the same end can be accomplished. I am willing to vote for any plan that will aid my friends and brethren from the lower end of the State so as we can manage not to do us any harm. I do not want to take advantage of them or their property, and if I were in the legislature I should vote to make provision for paying them for it. It is for the effect on our people. They are not all lawyers; they are governed largely by feeling and passion. Some gentlemen have said since I came to the Convention that there will be no vote taken against the Constitution, and "they will lay very low." Gentlemen, I am prepared to know; I know of some organizations in the hills and mountains, and I know the spies or fellows that have gone there to plan our ruin while we have been sleeping. If they have the least hope of success on the morning of the election they will come forth like the flames of a smothered volcano and overpower us if possible.

I believe this whole subject should simply be subject to the legislature for adjustment. That is where it will belong. As was said by the gentleman from Marshall, my opinion here, that man's and this man's are only opinions; would not have any effect; not be quoted; not be authority; could not affect the right that loyal citi-

zens have to their property in slaves. Let us work together for a new state; and if in your wisdom you can shape this in such form as not to injure the popular vote when you come before the people, I am for it. The new State is my object. We have a very eccentric young man in our neighborhood, and when he thought of being married, he prayed three times a day to be directed. But when he prayed, he always said, "Lord, let it be Becky." So in all our actions I want it to be Becky, or the new State. (Laughter.)

MR. WHEAT. I find before me many legal gentlemen that have got their views in regard to this matter. They have worded the Bill of Rights; they have cited instances where states have used slaves and made compensation; they have gone into Europe to show what England, what Russia and France have done. And while I give credit to all that; while I believe as firmly as any man on this floor that no government ought to take private property for public uses without compensation, I differ with gentlemen widely that this is proper and analagous. If the Congress frees those negroes and appropriates them to public use, that they should do all the servile work that they have done for their masters, then would obligation be in point; then would it have been appropriating private property for public use. But, sir, I know the government cannot deprive a man of private property without compensation. This great charter of ours, the Bill of Rights, does not secure to a man contraband goods from destruction and loss. But while I say this I do not want to be misunderstood, though I am opposed to this resolution, as asserting that private property, even the emancipation of these slaves shall not be paid for. I am perfectly willing they shall be; but, gentlemen, not on the hypothesis that I am compelled under the Bill of Rights to do it. I will do it as you did yesterday: donate it, but not as a right; and I would aid them in fighting for that if that were any sort of guaranty.

I said before the war began if the South wanted any original amendment to the Constitution, ask it as a courtesy; don't demand it of the North as a right. The Constitution of the United States expressly, and if they meant it, well; but if not, abide it. It is the best you can do. I say so here. Yes, sir, we will donate to them every slave freed by loyal persons; and I think, gentlemen, when it is examined critically you will have but a few dollars to pay. In Morgan county we have 48 slaves, 46 free negroes. I can buy the whole 48 for \$48.00. (Laughter and applause.) There is not a loyal slaveholder in that county. I would save my \$48.00. I have

never seen a slaveholder that is loyal. I know, sir, that if this compensation is to be paid to loyal men, you will not lose a dollar. Let us tell them we will donate it. Whenever we appropriate for public uses I am willing to pay. But, sir, to free the negro is to change his status. It is like pouring whiskey on the ground. We are not under obligations to pay it, unless to avoid all difficulty; and then I might vote with the gentlemen who seem to be fostering this second resolution.

I wish to offer an amendment: "provided, however, that the proper compensation thereof be made from moneys arising from the sale of rebel property, not from the taxes imposed on Union slaveholders."

That is in principle in accordance with the gentleman from Kanawha. He has urged upon us that he will not vote for that Constitution, sir, unless this indemnity is made, on the ground we would be wronging our neighbor. I endorse it, sir. Don't take taxes from the non-slaveholder and pay to the slaveholder; because if he loses his slave say it shall be paid out of rebel property and not out of the non-slaveholder, and you will get every German to accommodate the gentleman who is fostering this second resolution.

MR. SINSEL. Mr. President, when I was here last winter I called for this 6th article. I endorsed it then most heartily and I still endorse it. At the same time though I was in favor of treating the subject of slavery nearly as we did treat it, to just let it run and let it be subject to legislation. I believed then the Legislature of the State of West Virginia, if we were admitted, in a few years would prepare for the gradual emancipation of all the slaves within our borders. I believed the good sense of the people would prompt them to do that. And I was fully conscious at the same time, if the thing was done, if the legislature emancipated the slaves, that under this 6th article they would have to prepare for compensation. I am sure of that. I was then; and my opinion has not altered. But, Mr. President, I think this amendment introduced by Congress very materially changes the whole thing. The legal gentlemen here have expressed the opinion that such is the fact. It does seem to me if I believed as strongly as they do I would not ask the adoption of this second resolution. We are not now acting in the capacity of a legislative body. We are, as it were, thrown back into our original elements and forming a new government for ourselves, or at least the organic law under which all the other laws of the State must be made and be made to conform to. We may now,

in this organic law if it is adopted by us and sanctioned by the people, we may declare certain articles property or not property, just as we please and from the time of the adoption and ratification it will either be property or not property. This amendment proposed by Congress then declares and if adopted by us and ratified by the people declares that all persons under a certain age shall be slaves, or property if you choose to have it so, until a certain time, and when that time arrives they cease to be property. Hence under this 6th section they could not claim compensation for the public has not taken private property in that case for public uses, because it has ceased to be property under the organic law of the State. Well, then, if I am right in that, you see the thing is materially changed. I believe it is. These men are lawyers, it is true; but great men differ, and surely a small man has a right to differ from them.

MR. TICHENELL. Can they cease to be property until they are paid for?

MR. SINSEL. Yes, sir, the very minute one class of these slaves arrive at twenty-one they cease to be property and they are men and women no longer property, no longer chattels. The very minute the other class arrives at 25, they cease to be property. If they are property after that time, to whom do they belong? Not to the State; the State has never engaged in the speculation in slaves. The law says "shall be free" when they arrive at the age of 21, or when they arrive at the age of 25. They become free the instant the time arrives. Being "free" how could they be slaves at the same time; and if not slaves they cannot be "property." The gentleman from Kanawha remarked that he could not conscientiously and consistently with his honor do a certain act. How could I, while I am in favor of compensation, I believe that resolution does not set forth the facts, and believing this, how could I vote for it? I would be perfectly willing to say every loyal man ought to be compensated. When you confine it to this 6th section, why that means it; but now taken in connection with this amendment required by Congress, I don't agree to it.

MR. VAN WINKLE. The resolution has not struck out the 6th section.

MR. SINSEL. Well, then, if the second resolution is not designed to make it obligatory on the legislature to prepare for compensation, why urge it with so much vehemence. You are aware, Mr. President, that any debates of this Convention cannot be used

in judicial tribunals to determine the meaning of this instrument. The judges are to decide from the language used and not from the arguments of the members of the Convention. In the case of referring to the Federalist for interpretation of the Constitution of the United States, the papers in the Federalist contained simply the opinions of the great men who wrote them and had no authority because they were contemporaneous. Well, then, if we are to be governed by these opinions they sometimes have a very pernicious effect. Here is the opinions of a committee on federal relations used in the Legislature of Illinois. You can see from that what our enemies will do—how they will try to use everything against us. They say here:

“This is in accordance with the plan of action of the general government and Congress generally: The attempted enforcement of compensated emancipation, the proposed taxation of the laboring white men to purchase freedom and secure the elevation of the negro, the transportation of negroes into the State of Illinois in defiance of the repeatedly expressed will of the people.”

Here is “Imprisonment of Refugees from a Southern State.” “The dismemberment of the State of Virginia and erecting within the boundaries a new State.” and so on.

MR. PINNELL. What are you reading from?

MR. SINSEL. The *Wheeling Press*.

MR. PINNELL. Oh! (Laughter.) It is not the text-book of this body.

MR. SINSEL. Here are these opinions as pernicious as any ever uttered by men published to the world. So those that disagree with us will use their opinions to our injury and prejudice. Now, if this resolution is simply to be spread on the journal and not made part of the context of the Constitution in any way, I have very little objection to it. If we could without imperiling our existence or prospects as a state vote for an amendment to the Constitution to allow compensation to every loyal man I would do it—surely I would.

MR. LAMB. I feel that a few remarks from me are due to the position which I occupy on this committee. Most heartily did I give my consent to the resolution there reported. I could not do otherwise. I have no doubt on the subject with the best lights that I could bring to bear on it and the best judgment I could apply to it.

That the legislature of the new State will be bound under the Constitution which has already been ratified by the people to make compensation for the property which they thus take for a public benefit—that is all the resolution declares. And I hear from gentlemen on all sides of the house that they agree with this with the exception of the gentleman from Taylor who has just taken his seat. If there is a general agreement upon this subject are we going to ask the people of West Virginia to vote under a misapprehension in regard to the matter? If gentlemen apprehend that the declaration of the opinion of this Convention on that subject is to do this infinite mischief and endanger the defeat of the new State, the mischief is already done. The public will know what will be the result of this matter. Gentlemen may argue it as they please before the people. The mischief is done, if there is mischief to be apprehended from that. I ought to notice the argument of the gentleman from Taylor that there is no property taken away because it ceases to be property. Why didn't you put into your Constitution that private property shall not be taken for public use without compensation and the legislature pass a law not to take a man's property but to say it ceases to be property? I say the legislature cannot do it; this Convention does it. It is the organic law; it is of a different force and effect from action by the legislature. You are commencing a new government.

MR. LAMB. Neither the legislature nor the people can rightly violate the great fundamental principle of justice and truth.

MR. SINSEL. Have not the people whom we represent here the right to make a government to suit themselves?

MR. LAMB. Certainly they have; but they have no right to take my property and apply it for the public benefit without making just compensation to me unless I have forfeited it by treason to the State. If I have done so, I have no right to compensation at all.

MR. STEVENSON of Wood. The gentleman from Taylor denies that slaves coming under operation of this amendment are property; and the gentleman from Ohio asks if they are not property, what then is the use of this section 6? I ask whether there is not other property besides slaves that may be taken for public use? And if there is, that is reason enough for the provision found in the Constitution of the United States as well as in our own Constitution.

MR. LAMB. The gentleman misunderstands my position altogether. He does not state it correctly at all. The argument of the gentleman from Taylor was this that this act did not take private property for public use because it ceased to be property and you thus got rid of the great principle in any case; that by your Constitution or by your law you declared this thing or that thing, or any other, property and could declare that it ceases to be property, for property results from the law and is the creature of the law and you get rid of this great principle of moral justice. Sir, it is not merely as a constitutional principle. This is a principle high above the Constitution, a principle which exists and always will exist entirely independent of all constitutions.

I have here, Mr. President, the Ordinance of 1787, which some gentlemen are fond of quoting. That ordinance was enacted before the Constitution of the United States, and it provides as a fundamental and unalterable principle that should the public exigencies make it necessary for the common preservation to take any person's property or demand his particular services, full compensation shall be made for the same. It is a principle of justice independent of all constitutions, and it is a principle that is recognized everywhere, as much in the empire of Russia where the only constitution is the will of the autocrat as it is in the free republics of North America. Such being the state of the case, however, and I take it that as a constitutional principle and a principle of common right and justice independent of all constitutions, there can be no doubt in the mind of any man who has reflected on this subject. But such being the state of the case, why should we hesitate to say so? Do we intend to deceive the people in this matter; do we intend to carry that Constitution upon false pretenses? Sir, I do not. What I mean I intend the people shall understand. I shall not present that Constitution to them as meaning one thing when I know it means another. I will meet the question fairly, openly and boldly. Nor do I believe, gentlemen, that you endanger the new State by this course. I do believe the danger greatly preponderates on the other side. You here in the northwest are accustomed to confine your vision to your own particular section. You forget the section that you include in the new State towards the south. You forget the counties of Greenbrier, Monroe, Mercer are within your new State—that you intend to force them into the new State although they had nothing to do with forming the institutions which you framed for them; that though their voice has not been heard on this floor, or in any other convention which has been assembled in

this State, you make the Constitution for them, not simply for those counties but for a large number of other counties, and say they shall come into the new State; and you will take their property—or what they consider their property and they shall not have any compensation for it. Gentlemen, they will resist you to the death. If I were a citizen of Greenbrier, I would do so. I would submit to no legislation and no constitutional enactments of that character.

MR. SINSEL. I would like to ask a question: What legal effect will this resolution have if it is not made a part of the Constitution?

MR. LAMB. I will speak of that directly.

Look, then, at the other counties to the south of the Kanawha. You expect a vote there upon this question of the new Constitution—at least in some of them. What will be the effect of this matter coming before them upon this position, that their property shall be taken from them? Gentlemen in this Convention deny that they have any right whatever to compensation. If that is to be the impression given by your votes—if you vote down this resolution, that will be the impression given to the people of Greenbrier, Monroe and Mercer, that you never intend they shall receive any compensation. That will be the natural impression not merely to the people in the southern end of the new State but it will be the impression here, that you do not intend ever to make compensation for a single slave. Let this resolution as it has been introduced here, simply declaring that you think they have the right of compensation, be voted down, and what will be the impression in Greenbrier and Monroe when you seek to extend your government over them, and in the other counties along the southern border of the State—in Kanawha, Cabell, Wayne and Putnam, and other counties similarly situated? What will be the impression of the people there? I tell you there is ground to apprehend what the gentleman from Kanawha has told you here, that that people will and must vote against the Constitution that you propound to them under such circumstances.

Now, Mr. President, I think the people of the northwest are ready to meet this question fairly. I think they want to understand when they vote on this Constitution what it is they are voting for; and I think you will find, even in the northwest, that instead of increasing opposition to the Constitution, such a declaration as we propose to make will be calculated to quiet all schemes

of opposition that are perhaps—though I know not the fact—as stated by the gentleman from Marion, being got up. They will see that this Convention are disposed to do nothing but what is just and right; that they are willing to trust this matter to the people. That they have no such idea of the people as to suppose that it is necessary to deceive and cheat them in order to get them to vote for a measure which is essential to their greatest interests.

Mr. President, there was another view of the case which I wish to present to the Convention; and it is that in respect to the amount of compensation which is here involved. So far as I am concerned, I must confess this is not a consideration which would influence me. The principle is right and I am willing to stand up to it let the amount involved be what it may. But it is a consideration which will influence some, and I want to put it upon a correct footing.

There was by the census of 1860 some 12,600 slaves within the whole limits of the State of West Virginia. In the natural course of affairs, even had not our troubles come upon us, this class of population was decreasing. It would be now, even in the natural state of affairs, less than it was then. Considering what West Virginia has been subject to—that the tread of armed hosts has been upon every part of her territory; that raids of all kinds have taken place throughout it; that most of the large slave holders even in the undisturbed districts have moved their slaves off to the South; that immense numbers have run away—and taking into view all the information which we can gather in regard to it, I feel perfectly warranted in saying that there are not five thousand slaves in West Virginia today.

Then, sir, under the amendment proposed to us by Congress, slaves who are over twenty-one years of age on the 4th of July, 1863, are not affected at all. There is no compensation for them. They are not liberated. They are not liberated by the clause which I hope will be unanimously inserted in our Constitution.

I have the exact figures before me. We do know from the ordinary proportion of ages that of that 5000 slaves now in West Virginia 2000 at least must be 21 years of age on the 4th of July, 1863—21 and over. You have 3000 slaves left then, in which perhaps the question of compensation is involved. Now, if the slave on the 4th of July, 1863, is under 10 years of age he is to be manumitted on his arriving at the age of 21. Say that on the 4th day of July, 1863, he is just 10 years old, his manumission takes place 11 years after that. Say that on the 4th of July, 1863, he is one day

old, his manumission takes place 21 years after that. These slaves then will be liberated; and if the State is bound to make compensation for them, this class of slaves will be liberated and compensation must be provided for them within eleven to twenty-one years commencing at eleven and ending at 21 years after the 4th of July, 1863.

But let me call your attention to another consideration in this connection. You start with, say, 3000 slaves of which this is one class. All that die before they arrive at the age of 21 are eliminated from the State's liability, you do not have to pay for them. All that run off within that time you do not have to pay for. You would unquestionably reduce the number from these sources more than one-half.

But there is another class to which the emancipation directed in the Congressional amendment is to apply. It is the slaves who will be over the age of 10 but under 21 on the 4th of July, 1863. They are to be liberated at the age of 25. Now, if a slave on that day is 21 years of age, he is to be liberated four years afterwards, on his reaching the age of 25. The compensation for this class then will stretch along beginning at four years after the 4th of July, 1863, and extending until 15 years after that date; and of this class, as of the other, all that die before they arrive at the age of 25 are not to be paid for, and all of this class who escape are not to be paid for.

Am I in error, then, in taking this position, that at the very outside, apply this principle of compensation to the amendment which is proposed to us by Congress, at the very outside you may have some 1500 negroes to pay for. And to pay for them you commence four years after July, 1863, and extend it on to 21 years after that date. You have 21 years after that date, without interest. No interest in this question. You pay for them as they are manumitted. The 1500 negroes—I beg pardon, 1500 slaves—(I have been down at Richmond two or three times and may have become infected with the wrong term)—the 1500 slaves, I would not put upon them the price which the gentleman from Morgan does; because that would make them worth \$1500; but I don't think it would be worth while for us to discuss that question. But suppose they are worth \$300 apiece, you have \$450,000 to pay in 21 years.

MR. TICHENELL. They only average \$100 a head in our county.

MR. BROWN of Kanawha. The value of infant children at \$300 is very excessive.

MR. LAMB. I was putting the very extreme case—the very highest price; I wanted to argue the question fairly. I am very much inclined to think from the present state of the country, the estimate of the gentleman from Morgan is about right; and if a man gets rid of his slaves without anything to pay, he ought to be satisfied.

MR. WHEAT. What I stated is true; they have sold at that; sold at only half a dollar a head.

MR. LAMB. I am not disputing it at all.

Well, sir, if you put the extreme price, it amounts to about \$21,000 a year.

Now, gentlemen, I want this understood in regard to this question, for I do not want it to go back to the people that if this motion is to be carried here the people are going to be taxed in the sum of millions to meet this obligation. As a pecuniary question, it is really an insignificant one. Put the slaves at \$100 apiece and you have a little over \$7000 a year to pay, and not a cent to pay for four years to come. I take it for granted, Mr. President, also that the passage of a resolution of this character—and there is no gentleman who can answer as to that question better than I can—that the passage of a resolution of this character by this Convention saying that they hold the new State bound to make compensation for the slaves which may be liberated under this Congressional provision, will have a vast influence in Washington city in securing to us a similar provision on that subject to what Congress are disposed to offer to other states. Congress may be very willing to say we will give nothing to the new State if the State have nothing to pay; but if the new State in consequence of the requisition which Congress has put upon it do hold themselves bound to pay for the negroes which they liberate, sir, we can appeal to Congress and say it is only just and right you should do so; you are bound by every consideration of fair dealing to do so.

I must confess, Mr. President, that I should regret as a public misfortune—a misfortune to the new State—that this resolution should be voted down. I want merely to add in regard to the calculations which I have submitted, I have omitted one material point. But it will show that the results I arrive at are entirely too large. We do not propose if any of these slaves are held by disloyal peo-

ple to compensate them at all; and of course the number will be so much reduced and the amount of payment reduced to correspond.

MR. PINNELL. If it is desirable to take a vote, I will yield it. The question under consideration presents an enigma to my mind very difficult to understand. If we take the resolution from its inception to its development before this body for consideration, it appears to me the framers of the resolution have enveloped it in mystery and that mystery has seemed to call forth an opposition which I must confess in my own mind has been improperly construed. It has been a conceded point by the able gentlemen composing that committee that this resolution imposed no new obligation; that the grievance complained of and the justice exacted was provided by a former session of this Convention in every particular; that the 6th section of the II article provides, in accordance with the Constitution of the United States, that no private property shall be taken for public use without compensation. Other gentlemen, some of them of high legal position, whose opinion among their constituents at home I know is regarded as valid, have come forward here, sir, in the very next breath and introduced a resolution requiring this Convention to re-affirm what has been reduced in the organic law of the State to a fixed fact; and they seem by their advocacy of this measure to attach more importance to the validity of this resolution than they do to the clause contained in the second article of the Constitution.

Now, sir, I take it as a settled fact that the Constitution, the work of this Convention at a former sitting, was sent out to the people of the different counties of the proposed new State with this clause of compensation for emancipation in it. In every county where there was a vote taken the people ratified this constitution by a large vote. They did more, sir, for in addition to that they took a vote on what is known as the Battelle resolution, and as far as I notice the statistics of the returns of the election on that the people, with singular unanimity adopted the Battelle proposition, which is nearly identical with Congressional amendment.

MR. BROWN of Kanawha. I would inquire of the gentleman if that resolution touched the slave property at all?

MR. PINNELL. I will explain that when I get to it. The idea I wished to present is this. Here is a Constitution emanating from a Convention and submitted to the people containing a clause that private property taken for public use shall be compensated for. In

addition to that there was placed before the people on the day of this election the Battelle resolution, introduced in the Convention, proposing to insert in the Constitution what was virtually this Congressional amendment. The people of my county voted on this Battelle resolution. There were seven hundred votes and only thirteen votes against this Battelle proposition. Did your county (addressing Mr. Brown of Kanawha) cast a majority for this Constitution?

MR. BROWN of Kanawha. Yes, sir; it did.

MR. PINNELL. As I expected. This Constitution, as ratified by the people, went up to Congress for its endorsement; and how was it received there? Congress found no objection to this instrument on the ground of constitutionality or expediency with the exception of the 7th section of article XI. And they proposed an amendment by endorsing, re-affirming the constitutional provision there that personal private property shall not be taken for public use without just compensation. This was a settled fact. That amendment virtually embodied the Battelle proposition which the Convention had refused to entertain or discuss. The Constitution presented to Congress was sent back with this amendment. The commissioners re-convened the Convention for what purpose, sir? To go over and reconsider this here in detail, to pass eulogies on the work of the Convention at its previous sitting; to say the members of this Convention did or did not do right in enacting the 6th section of the second article of this Constitution? No, verily. They were brought back here to perform a specific duty entrusted to us—at least I so understand it with regard to myself. What was that duty? We were sent here for the purpose of incorporating in this Constitution the amendment required to be made by the Senate's bill admitting West Virginia into the Union as one of the states. And what more? We were sent here to make arrangements to fix the earliest period possible for the vote of the people to be taken on the Constitution thus amended and provide for the soldiers to vote, and then return home. That was the duty assigned to each of us. It was to myself and I believe to the representatives of all the loyal constituencies of West Virginia. If we had kept ourselves within the land marks, the legitimate construction of representation, we would not have got into the melee in which we are found this evening. If I understand the true principle of representation, it is for the representative to act as his constituency would act for themselves if they were present to act.

And if we had kept ourselves within those bounds and not drawn up resolutions looking to re-affirming and endorsing the action of the preceding sitting of the Convention, we might have finished our work, as confidently expected when I left home, on this evening and returned home. But, sir, here we are, and we are told by men who say they have suffered all for the new State—we are told by them, sir, this morning in attempting to get a vote on the resolution accepting the amendment, that they were not going to vote on that until they were assured the second proposition would pass. There must be a guaranty that the second proposition would pass when the gentleman from Wood county (Mr. Van Winkle) has told the Convention over and over again that the second resolution had nothing binding in it; was worth nothing in point of law, nothing in point of fact, but was simply the expression of an opinion that we wish to do right. I believe, sir, there is not a representative on this floor that would say he would put his hand into his neighbor's pocket and take out the price of a darkey without contributing to pay for it. We never so understood out in my county. I thank God I represent as loyal a constituency as ever the sun of heaven shown upon. We have passed through a fiery ordeal and we are pure on that subject. We want none of our neighbors' property without paying for it, and if we will just send this instrument back to our people with the amendment in it, the difficulty will be quickly settled so far as we are concerned, and then the legislature can pay for these negroes. I belong to that old school of politicians which always understood that the agitation of the slavery question endangered the institution; and I believe it involved our country in the condition in which it is now placed and which has engendered unpleasant feelings in this body.

MR. POMEROY. In order to test the views of the Convention, as well as my own feelings on the subject, as it is Saturday evening, I move to adjourn until ten o'clock on Monday morning.

The motion was agreed to, and the Convention adjourned.

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LXII. MONDAY, FEBRUARY 16, 1863.

The Convention was opened with prayer by Rev. Samuel Barnes of the M. E. Church.

After reading of the journal,

Mr. Lamb remarked that the secretary of the commonwealth, who was also acting as secretary of the new State commissioners, had informed him that if they could check up and pass the ordinance providing for the submission of the amended Constitution to the people, he could have the poll books all ready by the time the Convention would adjourn, so they could be distributed to the counties by the returning members. If this is not done, continued Mr. Lamb, it will be almost impossible to get the poll books into many sections of the State. With a view therefore of expediting the business before the Convention that we have to attend to, although it is somewhat out of the regular course, and with the expectation, too, that we can pass this ordinance without too much discussion, or take much time, I will ask to report it on behalf of the special committee and that it be taken up and acted upon. If it leads to discussion and difficulty, we will have to lay it on the table and go on with the other subject.

MR. VAN WINKLE. The commissioners feel that it is highly important that these poll books should be got to their proper destinations if it is possible and that if they be got ready so the members can take them with them, it will not only ensure that result but save a monstrous deal of expense. With that view the commissioners have had, I believe, the ruling done and they can go no further until the Convention acts upon this ordinance before the printing part is done. This must be added, and I have no hesitation in saying that if we keep the Convention in session several days to effect that result, it will cost the commonwealth less than if they should go home leaving these poll books behind them. In the former elections we sent poll books to every county where elections were to be held without any regard to expense of sending them. A part of them never reached their destination. I hope therefore the motion of the gentleman from Ohio will prevail. It may take a half an hour to go through this ordinance, and there may be something in it to excite debate and take longer. In either case I think it had better be disposed of and let the other discussion be postponed until we dispose of this and then it can be resumed.

The ordinance reported back by Mr. Lamb from the committee was then taken up by the Convention, read by sections, some few amendments made and adopted in complete form as follows:

An Ordinance to Provide for Submitting to the People of West Virginia the Amended Constitution adopted by this Convention.

Sec. 1. Poll books, with the proper forms of oaths and returns attached, shall be prepared under the direction of the executive committee hereinafter named, for every place of voting in the forty-eight counties proposed to be included in the State of West Virginia; which books shall contain two columns, one to be headed "For the Amended Constitution," and the other "Against the Amended Constitution"; and the names of all qualified voters, who vote in favor of the ratification of the amended Constitution of West Virginia, shall be written in the first column, and those who vote against such ratification in the second column, under the respective headings aforesaid.

Sec. 2. The executive committee shall appoint three persons in each of the said forty-eight counties, (any two of whom may act, and who may fill vacancies in their own body) as superintendents of the polls hereby directed to be taken in the county; and shall furnish them with the proper poll books for every place of voting in said county at which a separate poll is to be taken. The superintendents for each county shall appoint three commissioners (any two of whom may act) and a conductor for every place of voting in such county, to superintend and conduct the polls to be held at such place, and shall distribute to them the proper poll books.

Sec. 3. In default of such appointment for any county or place of voting, the officers who superintend and conducted the polls in April last on the question of the ratification of the Constitution of West Virginia, at any place of voting in said forty-eight counties, shall attend at such place and superintend and conduct the polls hereby directed to be taken.

Sec. 4. If there be at any place of voting, at the time the polls should be opened, but one commissioner willing to act, he may associate with himself as a commissioner any freeholder of the county then present; and if there be no commissioner present willing to act, then any two freeholders of the county present and agreeing to act, shall be commissioners.

Sec. 5. The commissioners superintending the polls at any place of voting, are hereby authorized to administer the proper oaths to each other, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one, and they may also appoint clerks to record the votes. They shall admit all persons to vote entitled to do so, and shall reject the votes of all not entitled, and in all respects have the polls taken fairly according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of every person offering to vote, but rejected by them, if required by such person, shall be entered in a separate list on the poll book, showing the vote he desired to give.

Sec. 6. The said polls shall be taken on Thursday, the twenty-sixth day of March next. They shall not be opened sooner than sunrise, and shall be closed at sunset. But if it shall appear to the commissioners superintending the polls at any place of voting, that the persons present entitled to vote thereat cannot all be polled before sunset, or that many of those entitled to vote were prevented from attending by rain, rise of watercourses, or just apprehension of their personal safety, they shall keep the polls open for three days, including the first. And if on the day appointed for taking the polls there be a rebel force rendering it dangerous to hold the same at any place of voting in the said forty-eight counties, the voters may hold the said polls at any place within, or convenient to, their respective counties; and any voter prevented from voting on the said question in the county where he resides, by just apprehension of personal danger, or any other cause, may vote in any other county upon making oath that he is entitled to vote on the question of the ratification of the amended Constitution of West Virginia, and that he has not voted, and will not vote, elsewhere on that question.

Sec. 7. Every superintendent, commissioner, conductor and clerk, shall before entering on the discharge of his duties take the following oath or affirmation: "I do solemnly swear (or affirm) that in the polls about to be taken, I will faithfully, impartially and fairly discharge the duties pertaining to my office, according to law; and that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the ordinances of the Convention which assembled at

Richmond on the thirteenth day of February, one thousand eight hundred and sixty-one, to the contrary notwithstanding."

Sec. 8. Immediately after the polls at any place of voting shall be closed, the commissioners superintending such polls, and officers conducting the same, shall make and subscribe a certificate to the following effect: "We A B and C D, commissioners, and E F, conductor, for taking the polls at....., in the county of, do hereby certify that we have fairly and impartially taken the said polls this.....day of....., according to law, and that the result thereof, as more fully shown by the poll books hereto attached, is.....votes for the amended Constitution of West Virginia, and.....votes against the same." In the said certificate the number of votes shall be written out in words at length; and the commissioners and conductor shall within six days after the polls are closed, cause the poll books and certificates to be delivered to the superintendents of the polls of the county, who shall, as soon as possible thereafter, transmit their certificates of the number of votes cast within the county for and against the amended Constitution to the President of this Convention at the city of Wheeling, and deliver the poll books to the clerk of their county court, to be held subject to the order of the executive committee.

Sec. 9. All persons qualified to vote under the amended Constitution shall be entitled to vote on the question of its ratification. And the executive committee shall provide for taking at any time from the twelfth to the twenty-sixth day of March, next, including both of said days, and for certifying and returning the votes of such persons qualified as aforesaid, as may, at the time the polls are to be taken on the said question, be in the armies or service of the United States, whether within or beyond the boundaries of the proposed State of West Virginia; but any votes so taken beyond the said boundaries shall be distinctly so stated in the certificate of the returns thereof.

Sec. 10. The returns made as aforesaid to the President of this Convention, shall be opened by him and the result ascertained in the presence of the executive committee. And if it shall appear that a majority of the votes cast at the polls to be taken as aforesaid within the limits of the State of West Virginia, be in favor of the ratification of the said amended Constitution, then the President of this Convention shall, under his hand, certify to the Presi-

dent of the United States that the people of West Virginia, through this Convention, and by a vote taken at an election held within the limits of said State, at the time for that purpose provided by this Convention, have made and ratified the change in the Constitution of the said State of West Virginia proposed in the act of the Congress of the United States, approved December 31, 1862, entitled "An Act for the admission of West Virginia into the Union and for other purposes," which certificate shall be countersigned by said executive committee.

Sec. 11. It shall be the duty of James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell, Ephraim B. Hall, and Daniel Lamb, who are hereby appointed a committee, for the purpose, to be called the executive committee† of this Convention, and who may fill vacancies in their own body, and a majority of whom may act, to take such measures and do all such things not inconsistent with this ordinance, as they may deem expedient to cause the said polls to be fully, fairly and impartially taken in every part of the proposed State of West Virginia, and to procure the admission of the said State into the Union if the amended Constitution thereof be ratified by the people. And the said executive committee shall have power in their discretion, to re-convene the members of this Convention on such day as they shall prescribe; and if it be so re-convened, shall adopt proper measures to secure a representation therein from the counties proposed to be included in the said State not at present represented, and to fill any vacancies that may occur.

Respectfully submitted by order of the committee, February 14, 1863.

In reference to the provisions for taking the vote of citizens then in the Union army outside the limits of the State, in the consideration of section 9,

MR. LAMB said: This is the section which provides for certifying and returning the votes of the soldiers. It is the same in substance which was contained in the schedule formerly adopted by this Convention. It is the understanding, I believe, that the executive committee must appoint persons to visit the several regiments and take the vote and not send out a mere commission to a military officer which may never reach him, and in half the cases probably would not, and which might not be executed. It is con-

†For "Minutes of The Executive Committee appointed by The Constitutional Convention" see Appendix.

templated, therefore, that the executive committee will appoint persons and provide them with the necessary poll books, forms, etc., to visit the regiments and take the vote. If the regiment is in a body, they can perhaps do it in a day; if scattered in detachments, it may take much longer. I propose therefore for the purpose of facilitating the operation that as a section which is already passed prescribes a fixed day, the 26th day of March, next, for taking the vote, and as that provision is to apply to this Union soldiers' vote as well as to the other ones, that we alter it in the ordinance and I propose to add after the word "taking" in the 100th line these words: "at any time from the 12th to the 26th day of March, next, including both of said days, and for." This provision, I may remark, is, in substance at least, already in the schedule which we have adopted, and if there were any possible objection to it on other accounts, this Convention cannot undertake to submit the amended Constitution to any others than those to whom the original Constitution was submitted. The soldiers had the right to vote there; they must necessarily have the right to vote on the amended Constitution. The last clause: "but any votes so taken beyond the said boundaries shall be distinctly so stated in the certificate of the returns thereof," is rendered necessary by the act of Congress. That act of Congress requires the President of the United States before issuing his proclamation to be satisfied that the people of West Virginia, by a vote taken at an election held within the limits of the State of West Virginia, have ratified the change which Congress proposes."

MR. VAN WINKLE. It will not do for us to be putting an interpretation on that clause which would seem on its face to be antagonistic to the words as they stand, and this report is so constructed in reference to taking the vote of the military who may be outside the limits of the State that we shall have all the benefit from it that can possibly be had from it under any circumstances if we had means to do so. I have no doubt in my own mind the gentleman who drew that section intended by saying simply "within the limits of the new State" to say those living within the counties embraced in the State. He has unfortunately, however, chosen a form of words which might seem to mean that no vote shall be taken outside of those limits. Again, it would be a very fair construction of the words as they stand that if the votes of these soldiers might be taken under the authority of the new State, the place would not be of so much consequences. These are interpretations

that we might venture to put upon it; but our interpretation is not authority. The only power that is to interpret it is the President of the United States. If he does not think that votes taken beyond the limits of the State are proper under the act of Congress he will of course reject it. On the other hand, I apprehend if he thinks they are proper, if he takes the view I have just been taking and chooses to count those votes, I suppose he has the right to do so. The language is not that the President "shall" issue his proclamation but that he "may" issue it. This shows conclusively that it was intended to leave the whole matter in his discretion. But the Convention will observe that the votes taken outside the State are to be kept separate, and if we should have sufficient votes within the limits of the new State they would add nothing to it. If we should not get a majority of the votes cast within the limits of the State, we then take these votes of our own citizens who are in the service of the United States and happen to be beyond the limits, who being in the public service cannot control their motion, and present that vote with the vote taken within the State to the President and submit the question to his discretion whether with the two together, making a majority we are not entitled to have the proclamation issued. Well, if we do get sufficient votes—as I have no doubt we will—I would say to the members of this Convention that each should go to work most heartily in order to bring out every vote within their counties favorable to the new State; and if we do get the handsome majority possible within the limits it will be very gratifying to us for its effect everywhere where this question comes up to be able to say that besides that majority at home, if they could have been legally received we had these thousands of other votes in reserve of the men who are at the front defending their firesides and their government. I think therefore in the action proposed under this ordinance we are not to put an interpretation on the words of the act of Congress that will militate against us, but put on the one most in accordance with our views. We simply provide for taking the votes of the military under state authority wherever we can reach them, beyond the limits of the State from force of circumstances which neither can control. As they cannot get to their counties to vote, we take their vote with due care and formality where they are, and submit the matter to the President of the United States. Now, that is the most we can do under the circumstances. We are not to say the votes are not proper votes any more than we are to say they are. All we have to do is to ascertain what the vote would be and then submit the question as far as nec-

essary to the President. In proposing to take that vote, we cannot be accused of endeavoring to interpret that act of Congress for ourselves against what seems to be the plain reading of its face, because on the face of this ordinance it says that vote shall be kept separate; nor can it be said on the other hand that we have given it an interpretation which would militate against ourselves. In fact by passing this ordinance we give it no interpretation whatever. We simply provide that the vote shall be taken and kept separate, and if there should be a necessity for it they may be submitted to the President for his decision.

MR. WILLEY. I am happy to be able to relieve any apprehension that may exist upon the mind of any member of this Convention in regard to the clause suggested. This bill, in its general frame work was a bill reported to the House of Representatives in consequence of unexpected difficulties from an unexpected quarter in the last session of Congress. Our arrangements and propositions for the admission of the State made in the Senate were interfered with, and to expedite the matter the bill that had been reported in the House was modified. My attention in the Senate had not been directed specially to this clause. We were in the exigencies of the moment more interested in getting that modified—the question in regard to striking out the 7th section and inserting that which Congress requires us to insert. Now, my impression is, sir, that under the spirit of the law we would have a right to take the votes of the soldiers outside of the limits of the proposed State. It was not an exigency contemplated at the time that citizens should be called to the field when this question should be submitted to them; and I believe upon a fair legal interpretation of the act of Congress in connection with the circumstances, interpreted, as it would be, by those circumstances, the exigencies surrounding us, it would be legal and competent to take and count the votes of the soldiers fairly ascertained outside of the limits of the proposed State. But I rose specially to relieve the minds of gentlemen in regard to the term “may” in the act of Congress. The President has already decided that. One of the members of his cabinet, I happen to know, Mr. President, interposed that objection, and I happen to know that Mr. Lincoln decidedly said that he understood “may” in such a connection as that to mean “shall,” and if he signed the bill he would consider himself obliged to issue the proclamation provided the people of West Virginia ratified the amendment.

MR. VAN WINKLE. The President, nevertheless, must judge whether the certificate contains the information required. I am well aware the gentleman from Monongalia is not accountable in any respect for the language in which this act was couched. The Convention need not have any apprehension as it respects the discretion of the President, provided he should be satisfied the sense of the people of West Virginia has been ascertained in the mode prescribed. Of course, the doubt may exist on the part of gentlemen over the way. But I have the most perfect reliance on the abstract sense of justice of President Lincoln; and if he is satisfied the will of the people has been fairly ascertained you need have no apprehension at all—none whatever—that he will not issue the proclamation required.

MR. BROWN of Kanawha. Is it in order to offer a resolution at this time?

THE PRESIDENT. If there is no objection.

MR. BROWN of Kanawha. I propose to offer this resolution, which I will beg leave to read:

WHEREAS, by the ratification of the amendment imposed by Congress to the Constitution of West Virginia, slavery is gradually abolished therein; but under the operation of which provision it will not finally disappear during the lifetime of the slaves now in being—thus continuing an anomalous condition, neither wholly slave, nor wholly free—having the evils of both, without the benefits of either; AND WHEREAS, the troubles and complications which press upon us as a people in the condition of an embryo state, are in no small degree superinduced by the action of Congress in imposing upon us the necessity of adopting the said amendment to our Constitution; and WHEREAS, it is believed, under the circumstances which surround us, that it would be greatly to the present peace and future welfare and prosperity of the State and country if slavery could be abolished absolutely and at once within our borders, provided it can be done in strict accordance with justice and the Constitution and without depriving any loyal citizen of his property without just compensation; AND WHEREAS, the express policy of the President of the United States and the resolutions of Congress have given assurance and pledge of aid to any state that shall desire and request it, to enable such state to emancipate its slaves and abolish forever the institution within its jurisdiction, Therefore,

RESOLVED BY THIS CONVENTION, That Congress be and is hereby requested to appropriate two millions of dollars, which we believe moderate, just and reasonable, to the State of West Virginia, to enable the legislature to effect the desired object, which sum may be paid in bonds of the United States, bearing six per

cent interest, to be delivered to the Governor of the State of West Virginia upon the passage by the legislature thereof, of an act of immediate emancipation within the first year of our formation, abolishing absolutely and completely forever, the institution of slavery in said State, and making just compensation to the owners thus deprived of their property under the Constitution and laws of the State.

Mr. President, I offer that resolution with a view to meet what I understand to be the exigencies of the occasion, and with a view further to harmonize—for I believe it can be done—every sentiment in this Convention. The resolution sets forth the grounds and circumstances that surround us; the reasons that bring us to this present position. We adopted a constitution in which we provided upon this subject of slavery, leaving it entirely in the control of the legislature without undertaking to affect the institution in any way by the Convention, and the people ratified that Constitution with a unanimity hardly equalled in any constitution ever ratified by the people of Virginia. Congress imposed upon us a condition we are now here to consider and which it is proposed to adopt and ratify as part of the organic law of the State, which manumits one-half the slaves in the State and provides for the freedom of their posterity; and it is that fact that brings us into this difficulty and complication in which we find ourselves, and that too in the midst of a civil war. We have the highest motives, it seems to me, that can be presented to a people to secure our independent and complete organization to secure to our people their rights and their property, to secure to our country peace and harmony; to restore order, to restore law, to restore to the government the affections of the people. The events and circumstances that surround us we have not brought upon ourselves. They were brought on us by the agency of others in which we have been but little actors. These things are produced by circumstances over which we have no control, and it therefore becomes us to meet the issues as they are and provide for the contingencies as best we may. Under the provisions of the Constitution as adopted by the ratification which I take it will be carried by the people, and considering ourselves therefore in this embarrassed condition yet, destined to come forth invigorated and regenerated as a state, yet we come in this anomalous condition as the resolution declares of being neither wholly free nor wholly slave with many inconveniences and annoyances belonging to either condition and to a great extent the blessings of both, these are things we have not brought upon ourselves and

cannot help. The question is then, how can we secure the benefits of the greater good. The only way proposed to us and do equal and even-handed justice to all. It seems to me every rational mind that looks at this subject must say, as every rational mind must have seen from the beginning, that whenever we cut loose from the old state the institution of slavery is as certain under the laws of nature to disappear as all the legislation you can make can accomplish; and that every attempt to intermeddle with it to hasten it has only a tendency to interfere and complicate ourselves, as we now find ourselves complicated; does not make the result more certain. Looking then to these realities in order to rid ourselves of this thing at the earliest possible moment and secure to ourselves and posterity all the blessings of a state, we are pressing to promote, it seems to me now is the time to take advantages of these circumstances and act like men. What is the condition of things? One of the very difficulties that is now agitating us today, is this question of compensation, of doing injustice to our citizens by depriving them of property without compensating them. Here is the policy of the United States, adopting a policy clearly declared by the President, in more than one way, and argued at length; a policy pledging the government to aid and assist every state that shall undertake to rid itself of this difficulty and inconvenience; and there is a resolution of Congress adopted with unanimity without parallel, saying that they will do it. And here are members of Congress in the Senate and House of Representatives with bills, one just reported and other bills not reported, asking Congress to do just what they have proposed to do. And they meet the difficulty at every turn: Why, sir, your people and state don't ask us to do what you are asking. There is no request from your legislature or convention or any organized body of your people saying that thing would be acceptable to you or that you require and demand it under this declared policy of the President and Congress. There is a body now assembled to represent the sovereignty of the people of West Virginia in this Convention to frame the organic law; and it seems to me if it could come properly from anybody it could come directly from this body and enable our representatives in the House and Senate to say that they are speaking the sentiments of the people, they are speaking the declaration of an organized Convention representing the people when they say, make that appropriation, and the first legislature that shall assemble will then take into consideration this very subject and leave the lawyers to act and determine the whole question and thus settle forever that which

is now a source of irritation and evil and difficulty and danger in our midst.

I hope therefore that every member of this Convention will find himself willing to vote for this resolution, which if once adopted takes away the very objections urged against the resolution of the committee already pending and removes all the grounds of objection urged against it. I hope, therefore, it will be the pleasure of this Convention to consider and adopt the resolution.

MR. DERING. When I came to this Convention it was with a view of sitting and voting alone, not with any view, sir, of making any speeches or uttering any word except yea or nay on the questions that might be propounded to us. What was the object, sir, for which we were convened? It seems to me clear we were convened to incorporate the amendment required by the act of Congress into our Constitution, to prepare for our election and to go home. But, sir, we are met with new questions thrust upon this Convention and we are called upon to give some new action to the people for their consideration. Have we met here for the purpose of incorporating the "Willey Amendment" in the Constitution and preparing for an election by the people on that Constitution, or have we met to construe our work and to pass paper resolutions that will have no effect or validity at all in law? The gentleman asks us if we are willing to adjourn as a Convention and refuse to do justice to the slaveholders of West Virginia. I have never doubted that our Constitution provided amply for the compensation of the slave owners until I came into this room the other day, and I saw various able and legal gentlemen getting out resolutions and asking us to re-affirm just exactly what is in the Constitution. I must confess it has produced some doubt in my mind whether our Constitution does make the provision the gentlemen ask and which they say is so just. The language is plain and simple, so simple that any one that runs may read and understand it effectually. What is the provision for compensation? I am in favor of compensation, and I doubt not every member of this Convention is, at least every one who voted for the 6th section of article II of the Constitution. What is the language? "Private property shall not be taken for public use without just compensation." Is not the language, plain, clear and explicit? Is there any ambiguity whatever in it? To my mind it was as clear as that the sun shines.

MR. STUART of Doddridge. I ask the gentleman from Monongalia to yield the floor to permit me to move to lay the resolution

of the gentleman from Kanawha, on the table to be printed. I hope there will not be any discussion on a resolution of that length and importance until it is printed.

MR. STEVENSON of Wood. I would like to get leave of the Convention, if the gentleman will yield the floor a moment, to submit a report in reference to a matter referred to the Committee on Printing a day or two ago.

THE PRESIDENT. If there is no objection, the gentleman can proceed.

MR. VAN WINKLE. I believe reports from committees always take precedence.

Mr. Stevenson of Wood submitted the following report, which was read and laid on the table on motion of Mr. Brown of Kanawha.

The Committee on Printing and Expenditures having referred to them the following resolution, "RESOLVED, That 8,000 copies of the address of the gentleman from Monongalia to the Convention, be printed in English, and 2,000 in German, for the use of the Convention," would respectfully report that they have had the matter under consideration, and find that it will be impossible to get a translation of the address in German in time for distribution. They are of opinion that the publication of the address would promote the success of the new State. They therefore offer the following resolution:

RESOLVED, That 10,000 copies of the address be printed in English for use and distribution by the members of the Convention.

All of which is respectfully submitted,

W. E. Stevenson,

Chairman of Committee.

MR. DERING. (resuming) I said before we had passed, in a solemn and emphatic form, a provision in this Constitution for compensation for private property taken for public use; and I say, sir, that any resolutions that may be passed in relation to this subject will be nugatory, of no effect, so far as concerned their validity in law. We have done in our organic law what the gentlemen ask us to re-affirm and reiterate in the paper resolution, and it will be admitted by all that any paper resolution passed by this body cannot be used in any procedure hereafter in a legal sense.

MR. RUFFNER. I would inquire, sir, what is the subject before the Convention?

THE PRESIDENT. The report of the special committee was passed by only, as I understand it, and the Convention has resumed consideration of it.

MR. DERING. It does not pertain to our business to pass declaratory resolutions. We might as well go out in the street and hold a mass meeting and re-affirm the doctrine the gentlemen want us to re-affirm as to do it in convention. We have had convention upon convention, legislature after legislature, until the patience of our people is entirely worn out. The call upon us from every quarter to do the legitimate business of the Convention, prepare to hold the election and go home and inaugurate the new State. The doctrine of compensation is not denied by any except by one gentleman on this floor that I know of—not called in question at all. Gentlemen have first the organic law passed by us last winter, adopted and ratified by the people, and they have the constitutions of other states around and the Constitution of the United States to cite as precedents; and the laws of Europe have precedents all in favor of giving compensation. Suppose my venerable friend from Wood had twenty negroes who would come under the operation of this emancipation act as they arrive of age. Suppose his negroes when they arrive at the age should go to him and tell him, sir, you must emancipate these slaves. He would point to the organic law of our State which says private property shall not be taken for public use. He could say the State has failed to fulfill her part of the contract, therefore, I will not emancipate and set my slaves free. Suppose, sir, they will take his slaves off and endeavor to emancipate them by force, why he could go into the courts and get my friend from Kanawha, Judge Brown, and say they are endeavoring to force this emancipation when the State has failed to make compensation; and if Judge Brown would refuse a remedy, he could go into the higher courts of the State and there enforce this provision of the Constitution. He could claim compensation before emancipation would take place and the courts would give him the remedy. Sir, I have no fears but the Congress of the United States or the legislature will make compensation. A bill is now pending before the present Congress, or it will be introduced perhaps today, I see from the papers of yesterday to give a compensation of a million and a half to West Virginia. Why, then, take this useless and premature action on our part. Let us wait to see whether the United

States fail to comply with the provision laid down in our Constitution, or the State, before we decide prematurely to give them these resolutions. It resolves itself all into this. It is a question of expediency and that alone in reference to the adoption of the second resolution which the gentleman has presented for our consideration. I hold it will be entirely inexpedient to pass any such resolution. I hold it is our duty to pass the first resolution and then vote down the second. By passing the second resolution, what do we do? We put in jeopardy the existence of our work here and the new State, too. Gentlemen say, why it is in your Constitution that private property shall not be taken without compensation. Why not then, they say, pass it and incorporate it in the resolution and let it go out to the world in that shape? We have done so, sir, in the most emphatic form we can and ample provision is made and every one can understand it. But gentlemen want us to reiterate it in the resolution and give it into the hands of our enemies a club by which they can bruise us.

I admit their loyalty; I respect their opinions; but in this case, when the interests of the new State are in jeopardy, I take the liberty of thinking for myself and my constituents on this occasion. I say you will lose votes for the new State; throw before the community a fire brand and the enemies of the new State will magnify and misinterpret and will lose for us many votes for the new State. I am not so certain we are going to carry the new State by such overwhelming majority as the gentleman from Hancock intimated this morning. Our enemies are on the alert everywhere and forming secret organizations to defeat the prospects of this new State. They are arranging their forces in battle array and on the day of the election they will come up to our surprise with a tremendous vote against the organization of this new State. Let us give them no chance. The provision is there in the Constitution. If they want to handle anything, let them handle that. But I am not for sending forth to the world an empty resolution which has no force in law and reiterating the work we have already done. Gentlemen say by voting down this resolution will be to negative the very proposition we have incorporated in the Constitution; will be saying we do not provide for compensation, and we are not willing our people shall compensate for these negroes. Sir, I emphatically protest against any such construction as that. We have said it where it is effective. We don't come here to construe our work again or negative what we have already done. There it is and there it will remain. It has been ratified by the people, and they will not be called upon

to act again upon that clause of the Constitution for they have already ratified it. All they will be asked to do will be to ratify the amendment made by Congress to the Constitution, to vote for that. The people have already passed upon it then. I say it is law to all intents and purposes; and if we get our new State that law will exist and can be enforced by the gentleman from Kanawha. But, sir, shall we endanger this new State, jeopardize this whole movement, all our legislative action on the same, and everywhere else will be set at naught by passing the second resolution, by re-affirming what we have already done in its most solemn and emphatic form. They tell us in Europe and everywhere the compensation principle in reference to negro property, as we have manifested by the Constitution has been lived up to. I do not deny it. I am a compensationist as well as the gentleman from Kanawha, and I have there affirmed it in the most solemn form as a member of this Convention. I have no desire to retract it in the least; and when the time comes for the members of the legislature, if that subject should be before the legislature, I would be for instructing the members from my county to give just payment to those whose slaves will be taken by this emancipation act.

It is right we should do our work speedily, send it before the people and have a vote. Our new State should be inaugurated. I for one will not dot a single "i" nor cross a single "t" in the Constitution or re-affirm what we have done; but I am willing to go home with the Congressional amendment and say vote for that simply and we will have a new State. Sir, we are met with embarrassments on every hand as we progress. During the sessions of the last Convention we had embarrassment enough connected with the negro. Here, sir, we are again met with the embarrassment, again thrown into excitement and the same thing which operates in this Convention to excite and distract it will excite and distract our people; will produce heart-burnings and dissensions and give our enemies a club to break our heads. We have a war going on all around us in our midst and we have sometimes seen the vessel of state billowing in the storm, floundering like a drunken man, almost ready to plunge beneath the waves never to rise again. So with western Virginia. I have seen the new State matter progressing slowly, but then I have seen it checked and surrounded by storms. I have sometimes realized in fancy that this State will be inaugurated and we will go on a free and happy people; but, sir, my hopes have been almost blasted sometimes by our own friends in reference to this matter. Sir, let us put this matter through, as we have assembled for that

purpose, do our legitimate business and go home and see the new State inaugurated. We have not time to debate paper resolutions. The people are impatient, and all they ask of us is that we do the work assigned us and go home and let them manage the matter hereafter. Slaveholders will have compensation for their "property." This Convention is willing to abide by what it has done and they do not desire to be compelled to re-affirm or reconsider their work.

MR. SMITH. Mr. President, I regret as much perhaps as any one in this house that this subject has been brought before us. So far as I am concerned I can conscientiously say I had nothing to do with it. I had no part nor lot in it. I look around and see the members of this Convention, my friends, with whom we entered into what is regarded as a compromise and as an adjustment of this whole question. We did it for the very purpose of preventing excitement not only among ourselves but national excitement. This slave question was one that was, it may be said, in some respects has been, the cause of the difficulties of our country. But it certainly was at the time producing a very high state of excitement throughout the country and every measure that touched the subject was calculated to increase the excitement. I was one of those who have believed for twenty years that nothing could be more imprudent, more improper than the controversies that arose in our legislative halls in relation to the slave property. For twenty years I have refused to read what I have vulgarly called "negro speeches." No man in Congress could make a speech unless he introduced the question of slavery abolition on the one hand and extreme pro-slavery views on the other. I predicted ever since, by mingling in the community and mingling with politicians, that unless this was stayed it would lead to most unfortunate results to the country. I recollect with what pleasure I changed my whole opinions on this subject upon reading the great speech of Mr. Clay, and I believe the greatest speech of his life where he condemns the rejection of petitions and said all they had to do was to let the petitions come in and be laid aside and there end. In the House of Representatives, this subject was very near creating infinite excitement throughout the country, whilst in the Senate everything was calm. The mere simple adoption of that proposition of Mr. Clay's presented an argument of great force the power to quiet the whole of it. The difficulties that exist in the country have arisen there. I opposed and was denounced in my own country as an abolitionist for doing so, the re-

peal of the Missouri compromise. I denounced it then; I denounce it now, and for that very denunciation I am called an abolitionist and here I believe I am called a pro-slavery man. I, who have been moderate in my views in all time; I who was in favor of a gradual abolition of slavery in 1832; sustained that measure in the Legislature of Virginia. I have sustained it at all times. I have been in favor of it at all times. Yet I am called a pro-slavery man and looked upon with suspicion by those around me. Most unwarrantable and most unjust. It is a violation of every sentiment of my heart and every principle I have entertained for years so long as I had ability to think. I learned it from my father, from the early friends of my father, who, more than many abolitionists have done, liberated his own slaves and removed to Ohio where he said that labor was respectable. He removed to that state that he might raise his sons to habits of industry and to labor. All my friends entertain those views; yet I am looked upon here as a pro-slavery man. And why? Because I am a constitutional man, determined that justice shall be done so far as my voice is concerned. Whilst I am not a pro-slavery man I hope and trust I am a just man and ready to do justice to mankind and ready to do justice to the Constitution and to the great principles upon which that Constitution is founded.

I say I had nothing to do with bringing this question in here. Who brought it in here? It was Congress, not me. And who moved Congress? I know not. It was a compromise here; settled here; fully adjusted here, and every one was satisfied with it. My friend from Hancock joined heartily in it; my friend from Brooke joined heartily in it; my friend from Preston (Dille) rejoiced most heartily that it had been accomplished. But it has been disturbed. I never took any part in it after it left our hands. I never inquired what was doing. I understood there was some dissatisfaction somewhere, and I understand there was an informal vote taken in the country, not in my county, for it stood fast and firm on that Constitution as I stood firm and fast upon the Missouri compromise. But it was disturbed and that disturbance I have understood, it must be true, was carried into Congress and was the moving cause of the provision we are now called upon to adjust. I therefore say I am clear of that charge—say not I did it.

Well, that proposition now is before us, and there is a new provision introduced into this Constitution. I have examined into the principles of that amendment and I have endeavored to arrive at a just conclusion and my duty under all the circumstances, with a

sincere desire to carry this Constitution, with a sincere desire to act justly, with a sincere desire to act fairly by the people. Having this purpose in view I do favor the resolution that is offered. I think it would be better for us, as I will proceed to show that we should have adopted it in a different form. I take for granted that every man of this Convention desires that this resolution of Congress should be made effective. Does it do what it purports to do as it stands? Does it bring about that which it purports to bring about? It says these slaves shall be free. How? I say this resolution has not the power to free them only in the way which I shall point out before I sit down. There is a principle in the Constitution which provides that no state shall pass a bill of attainder, an *ex-post facto* law or a law impairing the obligation of contracts. That is the Constitution of the United States; and when I wilfully and knowingly violate it, I wish my right arm may be taken off. I never will depart from it. I value it highly. Now what is the effect of that clause of the Constitution which provides that no state shall pass a law impairing the obligation of a contract? That is an inhibition. You cannot do it knowing that it impairs a right growing out of a contract. You have no power to rescind or alter. This question has undergone the examination of the Supreme Court of the United States in a number of instances. In this case this very question has been brought up before the Supreme Court of the United States and it has received the construction of a Marshall, of a Story, of a Washington—all have decided the effect and meaning of the words "impair the obligation of a contract." I will beg leave with the permission of the Convention to call their attention to two cases that have been decided. One of the great and prominent cases was *Fletcher v. Peck*, 2nd Condensed Reports U. S. Supreme Court 320 (man's goods property) paragraph beginning with the words: "If the legislature felt, etc." to the end of it and the whole of the next two paragraphs. In the same book p. 321 beginning with the words: "When a law is then in its nature a contract, etc." to the close of that and the next paragraph. Same page beginning with the words "The Constitution of the United States declares that no state shall pass any bill, etc." or law impairing the obligation of contracts and thence consecutively to the conclusion of the paragraph ending with the words: "a bill of rights for the people of each state." Page 323, the whole of paragraph beginning with the words: "It is then the unanimous opinion, etc." These references will enable my legal friends to look up the case. (NOTE—The reporter is not now able to complete the quotations

made by Col. Smith in this argument, not having the authorities within reach; but they can be verified and completed by any one having a good law library.)

The State of Georgia conveyed to some New England company a tract of 500,000 acres of land. It was alleged that that conveyance was procured from Georgia by fraud on the part of the grantees; that they bribed members and others; that the grant was secured by bribery. This thing was subsequently ascertained; and Georgia at the next sitting of the legislature enacted a law repealing the law making the grant. These people who received the grant had made conveyances of the land, and they attempted to enforce their rights under that grant. Those that sold the land attempted to enforce the payment, and payment was resisted upon the ground that the title was destroyed by the repeal of the law under which the grant was issued. These people plead to it: I know nothing in the world about the fraud; I am an innocent purchaser; I hold under a grant, that grant executed, I hold the property, and that property is conveyed to me in fee simple by the grant, and if you disturb that you do it only by impairing the obligation of a contract. Well, the question came up. It was derived from a grant of the state; and the same question arose in the threshold—the preliminary question arose; Did this principle apply to a state as well as to a contract between individuals? Did it arise in the case of a state as much as it did in the case of individuals? They say it was not intended to control the action of the state in her own grant but it was intended to prevent the state passing a law that would enable one individual to impair his obligation with another; that it was a matter only between individuals; did not affect states.

This question then was before Chief Justice Marshall. He says:

“If the legislature felt itself absolved from those rules of property which are common to all the constitutions of the United States and from those principles of equity which are acknowledged in all our courts, its act is to be supported by its power alone; and the same power may divest any other individual of his lands if it shall be the will of the legislature so to exert it.”

If the state is to be excluded from the inhibition of the constitution, then, he says “the will of the state is the only rule of property.” He proceeds further:

“It is not intended to speak with disrespect to the Legislature of Georgia. Far from it. The question is a general question and is treated as one; for although such powerful objections to a legis-

lative grant as are alleged against this grant can exist under the principle on which alone this rescinding act is to be supported may be applied to every case to which it shall be the will of any legislature to apply it. The principle is this: That a legislature may by its own act divest the vested estate of any man whatever for reasons which shall by itself be deemed sufficient."

That is the principle, he says, involved here, that a legislature may at its own will and pleasure divest the estate that has been vested in property.

"In this case the legislature could have had ample proof that the original grant was obtained by practices which can never be too much reprobated and which would have justified so far as it respected those to whom the crime was imputable. But the grant when issued conveyed an estate in fee simple to the grantee, clothed with all the which the law can bestow. This estate was transferable, and those who purchased parts of it were not stained by that guilt which infected the original transaction. Their case is not distinguished from the ordinary case of purchasers of legal estate without knowledge of any mere fraud which might have laid. According to the well known course of equity their rights could not be affected by such fraud. Their situation was the same, their title was the same with that of any other member of the community who holds lands by regular conveyance from the original patentee. But if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances having been made those conveyances are vested legal estate; and if those estates may be seized by the sovereign authority, still that the legislature vested is a fact and cannot cease to be a fact. It may well be doubted whether the nature of society and government does not prescribe some limits to the legislative power, and if any be prescribed where are they to be found if the property of an individual fairly and honestly acquired may be seized without compensation?"

There is the whole case: Where are the limits to the legislative power to be found if the property of an individual, fairly and honestly acquired may be seized without compensation?

So he says that a state is as much subject to the inhibition of the Constitution of the United States forbidding the impairment of the obligation of a contract as they are from impairing a contract between man and man; that a state is within the inhibition as well as an individual. He goes on further. I cannot talk more wisely and learnedly than when I talk in the language of Chief Justice

Marshall—I think the greatest jurist not only in this country, but in any other, I think he has no equal.

“In considering this very interesting question we immediately ask ourselves, what is a contract? Is a grant a contract? A contract is an agreement between two or more parties, and is either executive or executory. An executory contract is one in which a party binds himself to do or not to do a particular thing, that is where there is an obligation existing between parties that he will at a future day do something else.”

And the other will do something in place of it.

“A contract executed is one in which the object of the contract is performed.”

After you make a conveyance of land, it is an executed contract, for it is performed. You sell a negro and deliver him; there it is an executed contract, for the property is delivered over, and the contract is completed. That is an executed contract. But where I make a contract to buy a negro and there is to be a delivery, that is an executory contract. The contract between Georgia and the purchasers was executed by a grant. A contract executed, as well as one which is executory, contains an obligation binding on the parties. Since then in fact a grant is a contract executed, the obligation of which still continues although it is executed, as when you convey land you bind it by a fee simple forever. That contract gives you the land forever. You buy a negro, you buy him for life. That contract gives you a life estate in the negro, gives it to you as long as he is property. It may be a contract for a month, purchase his services for a month; it may be for a year; it may be for the life of another or it may be for the life of the slave. But it is a contract that determines the question of use; it is a contract that determines how long you are to hold him. And when you attempt to take any part of his time, as when you attempt to take my land, you impair my contract; you destroy it. I hold under the contract. Under the contract I have the services of the slave and if you take from me that service you violate that contract and impair it; you destroy it.

“And since the Constitution uses the general term ‘contract’ without distinguishing between those which are executory and those which are executed, it must be considered to comprehend the latter as well as the former.”

(Quotation beginning “A law annulling conveyances between individuals, etc.,” and ending: “If contracts made with the state are to be exempted from their operation, the exemption must arise

from the character of the contracting party, not from the words which are employed.”)

Now I call the attention of the Convention most respectfully to this next section which I shall read. Coming from the mouth of Judge Marshall, it is an admonition to us all, and I invoke every member to listen to it and let it control his conduct. There never was an occasion in which there was a more direct and palpable obligation of the law.

“Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the Constitution viewed with some apprehension the violent acts which grew out of the feelings of the moment; and that the people of the United States in adopting that instrument had manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions of the legislative power of the state are obviously founded on this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each state.”

The Constitution is intended to guard the people against sudden ebullition of passion, violent sentiment, strong impulses to do a thing; and it is to be regarded, this very clause of the Constitution, as a great bill of rights which the people themselves have inserted in the Constitution for the protection of this and other property. Bear that in mind, gentlemen. Here is a case in which the strong feeling is manifest to us all; that we are under strong impulses here and just in the condition to ride over and trample under foot constitutional law—a thing deeply to be deprecated; and you are warned here that you have a great shield and protection in that bill of rights of the Constitution which provides that the obligation of no contract shall be violated by state law.

Now, I will read another section from this same author.

“The state legislatures can pass no *ex post facto* law.”

An *ex post facto* law is one which alters the grade of punishment and makes it punishable in a manner different from that in which it was punishable when the offense was committed.

“The legislature is thus prohibited from passing a law by which a man’s estate or any part of it shall be seized for any crime which was not declared by some previous law to render him liable to that punishment. Why then should violence be done to the natural meaning of words for the purpose of leaving to the legislature the power of seizing for public use the estate of an individual in

the form of a law annulling the title by which he holds it? You cannot do it for crime. The Constitution guards your property from confiscation by crime, unless there is a law at the time the act is committed."

You cannot do it for crime; then under which laws, says Chief Justice Marshall, can you seize the property of a citizen who has committed no crime, done nothing but live an honest and loyal citizen, and confiscate that estate? How can you do it? This rescinding act would have the effect of an *ex post facto* law. It invalidates the estate of Fletcher for a crime not committed by himself and of those who purchased. This can be effected in the form of an *ex post facto* law or bill of attainder. How then undertake to do it by annulling the contract by which the property is held? And here:

"It is then the unanimous opinion of the court that in this case the estate having passed into the hands of a purchaser for a valuable consideration without notice, the State of Georgia was restrained by the general principles which are common to our free institutions or by the particular provisions of the Constitution of the United States from passing a law whereby the estate of the plaintiff in the premises so purchased could be constitutionally and legally impaired and rendered null and void."

There is the unanimous opinion of the Supreme Court of the United States and that opinion delivered by Chief Justice Marshall.

I will, Mr. President, call the attention of gentlemen to another case—a more prominent and leading case—the Dartmouth College, New Hampshire, case where there was an attempt made by the Legislature of New Hampshire to seize and convert to her own use what is called eleemosynary corporation, a corporation got up for charitable purposes by Dr. Wilcox* and his friends, by which they made a great deal of money and established Dartmouth College, which was chartered by the King of England.

The hour having arrived, the Convention took the usual recess.

AFTERNOON SESSION.

On the re-assembling of the Convention, Mr. Smith resumed his remarks.

MR. SMITH. Mr. President, in the forenoon I introduced to the Convention the decisions of Judge Marshall in the case of Fletcher vs. Peck, which contained my views most emphatically and clearly

*Reference is probably to Rev. Eleazer Wheelock, founder of Dartmouth College.

enunciated. I could not do justice to the subject or myself unless I introduced one other authority to the consideration of the Convention. The principle which I enunciated I wish to demonstrate beyond the question of doubt, that there may be no question about it, a solemn decision of the supreme court, in the only tribunal before whom a final decision can be had. It is the final tribunal on every question of constitutional law.

There is another leading case with which I imagine you yourself must be somewhat familiar. Almost every lawyer in the United States has some knowledge respecting it; and in New England particularly it was a question that aroused the whole public mind. One of their principal institutions was attempted to be seized by the legislative power and confiscated to their use—the Dartmouth College case. Dartmouth College was an eleemosynary institution resting upon the benefactions of individuals. It rested upon private gifts, private donations made to Dr. Wheeler, a man who has stamped his name on the records of fame, which I imagine as long as learning lasts will not be erased. On the first institute and school in New Hampshire for the instruction of Indians. He afterwards extended his purpose and also made it embrace white as well as Indian, and he sent his agent, a Mr. Whitaker, to London to ask grants of money for the furtherance of his purpose to enable him to establish a college. Those donations were made; and I imagine the founder of the Dartmouth was the principle man in granting means for the establishing of the institution. After it was established, after he had procured the necessary grants of money, he applied to the Crown and the Crown incorporated the institution with Dr. Wheeler* as its founder and gave him the right to hold real estate and to take further benefactions from the country and to build up a college to be called Dartmouth College. It has twelve trustees and they had the power of perpetuating themselves. This all transpired long before the revolution; and after the revolution, the State of New Hampshire conceived the idea that she, as a state, had a right to take charge of this college and appropriate it to the public use that it was a public college, got up for public purposes and did not come within the clause of the Constitution that forbid the seizure of private property for public use. These gifts had been executed; it was an executed contract; and nearly every one of the grantors—at least many of them—were dead at the time she took this matter in hand. She appointed twenty-five trustees by the legislature and made it completely a civil and political institution, and took it out of the hands of the

*See footnote page 615.

founder. Well, sir, the whole country of New England was aroused. It was considered a most unwarrantable and wanton attack on the vested rights of the trustees of that institution. They said the trustees had no beneficial interest in the property. They were simply the trustees to manage the funds without beneficial interest; that the grantors were dead; they had no interest in it for they had given it away. The question came up before the United States court; and I imagine the legal reputation of Daniel Webster rests on the argument made by him in behalf of the college in that cause. His friends say it is the greatest legal argument ever made. He had been a student in that college; his whole feelings and sympathies were enlisted in its behalf. It then came before the lucid mind of Chief Justice Marshall, and he discussed the question like a giant; and he made the whole question as clear as the noonday sun, and in a very brief opinion, too; for that is one of the great distinguishing characteristics of that great man's mind, that he expressed the idea in a few words and made it clear to the understanding of any one.

The proposition of the state was that this institution could be taken for the benefit of the State, because if the State had not a right to confiscate it why, then, they say, what power have they over the corporation of a county? Every county is an incorporation; it is a civil institution; they cannot touch that; they cannot touch a municipal corporation; they cannot touch any public municipal regulations in the country, and you destroy entirely the power of the legislature to carry on the government by the aid of these municipal institutions.

Chief Justice Marshall discusses that. He says: "It is admitted that the state legislature have power to enlarge, repeal and limit the authorities of public officers in their official capacities, in all cases where the constitutions of the states respectively do not prohibit them, and this, among others, for the very reason that there is no express or implied contract that they shall always during their continuance in office exercise such authorities, they are to exercise them only during the good pleasure of the legislature; and when the legislature makes a contract with a public officer, as in the case of a stipulated salary for his services."

But I am not reading the authority I intended. That, "The framers of the constitution could never have intended to insert in that instrument a provision so unnecessary, mischievous and repugnant to its general spirit that the term 'contract' must be understood in a mere limited sense. They could not understand it as

controlling the legislature in their action against towns, counties and municipal corporations that are to be used by states in the management of the government. It could never be understood in that sense; that it must be understood as intended to guard against the power of at least doubtful authority the abuse of which had been extensively felt and to restrain the legislature in future from violating the right of property. That anterior to the formation of the Constitution a course of legislation had prevailed in many, if not in all the states which weakened the confidence of man in man and embarrassed the transactions between individuals by dispensing with the faithful performance of engagements. To correct this mischief, the state legislatures were forbidden to pass any law impairing the obligation of contracts—that is, the contracts respecting property under which some individual could claim a right to something beneficial to himself. We see what this contract was introduced for. It was to protect the rights of property in those who had a beneficial interest in it and by depriving no damage would ensue to them; and that since the clause in the Constitution must in construction receive some limitation, it may be and ought to be confined to causes of this description where it involves property. That is the matter which it was intended to remedy. The general correctness of these observations cannot be controverted that the framers of the Constitution did not intend to restrain the states in the regulation of their civil institutions adapted for internal government and that the instrument we have is not to be so construed may be admitted. The provision of the Constitution never has been understood to embrace other contracts than those which respect property or some object of value and confer rights which may be asserted in a court of justice. That is what the term ‘impairing the obligation of a contract’ in the Constitution, has meant, to protect its property which a party holds and in which he has an interest and in which a state legislature may seek to confiscate it.”

I will call the attention of the Convention to another paragraph taken from Chief Justice Marshall’s opinion that I think is worthy of consideration here. Now, about six hundred years ago Magna Charta was enacted in England. It was drawn from King John, who had been lording it over the country, traveling over the country with his cavalcade, three, four or five thousand people and his purveyors of provisions riding through the country and seizing supplies wherever they could find them without compensation; confiscating the property of all citizens within his reach to support his

retinue he had with him, and it consisted of two or three thousand. The people became so indignant they would bear it no longer; and they had the Magna Charta enacted at Runnymede. Among other things this was provided for; and Mr. Blackstone has said that:

"If there was not another provision on Magna Charta, then that which guarded against the confiscation of property so entitled it to that distinguished appellation 'the great charter'; and in it it is provided that no man shall be deprived of property or liberty without process of law. It must be condemned by the courts and by forfeiture, confiscation for crime."

That was six hundred years ago, extracted by the spirit of liberty that then prevailed in England from the then ruling King of Great Britain; and since that day—since that hour—England has never dared to violate that noble, glorious principle that was included in Magna Charta. Never has been violated unless it is in the hour of revolution. In civil life, in civil bodies, no one has ever had the hardihood to attempt to violate that sacred, that invaluable principle.

Well, the Parliament of England is said to be omnipotent; and notwithstanding that Magna Charta she, in the exercises of that omnipotent power might have disregarded it, for she has no written constitution to guide her; only the opinions of the world and the sentiments of justice as a check upon her. But here is what Chief Justice Marshall says:

"According to the theory of the British constitution, their Parliament is omnipotent and only corporate might might give a check to popular opinion, which your government has chosen to avoid. But this power is not questioned; and Parliament, immediately after the manufacture of this Dartmouth College charter, the execution of those functions which followed it, annulled the instrument, so that the living donors would have witnessed the disappointment of their hopes. The perfidy of the transaction would have been universally acknowledged. Had Parliament, although she had the power, attempted to put in force such a principle as this, the perfidy of the transaction would have been visited universally upon all concerned in it. Yet then, as now, the donors would have had no interest in the property. Those who might be constituents would have had no rights to be violated. Then, as now, it might be said the trust confided to their protection under the contract would at that time have been deemed sacred by all. What has since occurred to strip it of its inviolability? No reason in justice or law. It is now what it was in 1769."

After the coming in of the Constitution of the United States, which forbids a state to make a law impairing the obligation of a contract, they have not the omnipotence of Parliament, because the Constitution is a check upon them. As Marshall said in the case of *Fletcher vs. Peck*, "a great public act that is a security against the violation of property." It is a "bill of rights."

I will call the attention of the Convention again to what Mr. Marshall says in this place:

"Before the Constitution was enacted, unless there was some prohibitory clause to the Constitution of New Hampshire, she had just the same right that the Parliament of England had to repeal this charter." Before the enactment of the Constitution, unless the Constitution of New Hampshire or in some other there was something prohibitory to the repeal of it, she had the power then, but he says the power of the government was also the same to repeal this charter at any time prior to the adoption of the present Constitution of the United States; but it would have been an extraordinary and unprecedented act of power but one which could not have been contested only by the state. But the Constitution of the United States has imposed this additional provision, that the legislature of a state shall pass no act impairing the obligation of a contract, and since the adoption of that Constitution they had no power to impair the contract or rights of the trustees in that property in which they had no beneficial interest. It had been placed in their hands by Dr. Wheeler, the founder, and it must remain in their hands in perpetuity, otherwise you impair their rights.

Now, I will come to Judge Story, not equal in mind but equal in purity, and distinguished as a lawyer, distinguished as a jurist; and perhaps he stands along side of Kent, and Parsons and Spencer—Kent and Spencer of New York and Story of Massachusetts. He stands in that class of jurists, and no one transcends him unless it is the great and glorious light of Marshall, of which we all ought to feel proud. They did homage to Chief Justice Marshall. Yes, sir, when I was in Richmond, they visited Marshall there as the great and learned man of the country—the great jurist of the country—made visits to him of respect, Kent and Spencer and Story, in his later days. They visited him as they would a patron saint; and he deserves the consideration of every man in this country; for he has laid the principles of the Constitution on the soundest basis they ever could have been laid by living man, and now they stand confirmed under his decisions and no man is so bold as to question them. When I find Marshall sustaining the construction

I seek, I may look no further; I want no other light; it is sufficient for me. But I will call the attention of those who have as much respect for Story as for him:

"But when the legislature makes a contract with a public officer, as in the case of a stipulated salary for his services during a limited period, it is just as much a contract within the purview of the constitutional prohibition as a like contract would be between two private citizens."

Now, you must bear in mind that the contract between citizens is a concession in all the argument. Lawyers who argue these causes never contested that fact; but the question was in the case of Peck and Fletcher whether a state would come within the purview of that prohibition. And now in this case, the question comes: Does a corporation come within the purview; and those gentlemen in arguing this case also say that it is just as binding on a corporation as between individuals. But when the legislature makes a contract, it is just as much a contract within the constitutional prohibition as a like contract would be between two private citizens. Will it be contended that the legislature of a state can diminish the salary of a judge holding his office during good behavior? Such an authority has never been asserted to our knowledge. It may also be admitted that corporations for mere public government may be subject to legislative control, in some matters, but it will hardly be contended that in respect to such corporations the legislative power is so transcendent that it may at its will take away the private property of the corporation or change the uses of its private funds acquired under the public faith. You may deal with the civil corporation and change its constitution, but will any man be so hardy to declare that if they have acquired property you may take and confiscate that property? Can the legislature confiscate to its own use the private funds which a municipal corporation holds under its charter without any default or consent of the corporators? If the municipal corporation be capable of granting donations for charitable uses, then the legislature, under our forms of limited government possess the authority to seize on those funds and appropriate them to other uses at its own arbitrary pleasure against the will of the donors or donees. From the very nature of our government the public faith is pledged the other way, and that pledge constitutes a valid compact and that compact is subject only to judicial inquiry, construction and direction. The state legislatures have no power over it. And here, in 579, the same author, is another objection growing out of and connected with that we have

been considering: "No grants are within the constitutional purview except such as respect property. No grant respecting property they admit is within the prohibition except such as respect property in the strict sense of the term—that is to say, beneficial tenements, hereditaments, etc., which may be sold for the grantees for the benefit—(quotation ended with "purview)."

(NOTE: References and quotation used by Mr. Smith in his remarks on the Dartmouth College case are as follows:

Dartmouth College vs. Woodward, 4th Cond. Reports U. S. Sup. Court 547—the whole of paragraph in p. 547, beginning "According to the theory, etc."

Page 552, whole of paragraph beginning "By the Revolution, etc."

Page 538 from the words "That it must be understood etc." to the words in next paragraph "in a court of justice" inclusive. This quotation precedes those on pages 547 and 552.

Story, 576, beginning with the words: "But when the legislature making a contract with, etc." to the word "abrogation" in same paragraph.

In page 579, beginning: "Another objection growing out of, etc." to the word "purview" in same paragraph.

Journals of Congress from 1782 to 1788, p. 753; the whole of 2nd article, p. 754; the whole of 6th article; Ordinance of 1787.

None of these authorities being at present within reach of the reporter, he is unable to complete these quotations; and in transcribing, in absence of the books, he is not always able to distinguish between the speaker's own matter and matter read by him.)

MR. SMITH. These are the authorities in the case of the Dartmouth College. I might quote a great many other matters from them but I confine myself to them.

Now, I ask you here, if you buy a tract of land, you take a conveyance for it, you hold that land under that conveyance, and that conveyance is for life, for years or in fee. Well, now, suppose before the termination of that estate, where it is a less estate than the fee, the legislature confiscated that without offense. You take it to your use without compensation. Can you do it? I say not without compensation. However, of that I will speak again. But if you do take it, is it not impairing a contract? By the contract you hold it for the term for which it is granted to you. By the contract you are entitled to it for the term for which it is granted,

and the State legislature passes a law, or makes an ordinance, or a constitutional provision, which is just as much prohibited as the state law; that they stand in the same category as far as the Constitution is concerned, for the Constitution of the United States is the supreme law over state constitutions and state laws. Now if the state interposes by convention or by legislature to divest that property before the contract is expired, you not only impair but you destroy that contract—utterly defeat it for the residue of the time. Say I buy a negro for a year; I buy him for ten years; or I buy him for his own life. It is an executed contract that these decisions have said is as much within the operation of the Constitution of the United States as an executory contract; one just as much as the other within it; and I buy a negro for life, and here comes the legislature or the convention and declares that I shall not have that property for the balance of his life; that they will take it from me and give it to the negro. Where is my contract in the meantime? By that I am entitled to the slave for his life; by the act of the legislature I am deprived of that life estate. Is not that an impairing of the obligation of a contract; doing violence to a contract? Unquestionably it is. You cannot do it. The state cannot do it in any form or shape whatever, unless you repeal that great charter of liberty, the Constitution of the United States. I fall back upon that as a shelter and security against the violence of legislative action. I have heard it said that a man was not sound as a politician; he was sound as a Union man, if he said one word about maintaining the Constitution. There is some such doctrine as that, and God deliver me from such politicians. Whenever the Constitution is to be wilfully violated and a man is to be denounced because he stands up resolutely, firmly and determinedly for the maintenance of the Constitution of the United States, then I wish to live no longer under this government. It is the Constitution of the United States that gives value to the government. It is the Constitution of the United States that makes me adhere to the Union and stand forth for it and firmly; and whilst there is a shred of that Constitution existing I will hang on to it, and I will fight those who resist that Constitution whether he comes from West Virginia, or whether he comes from the South, or whether he comes from the North. I hold him equally a traitor who attempts to prejudice the public mind in behalf of that great and glorious instrument. Never on earth give up one single star or stripe; never give up one letter or portion of that great instrument. Hang on to it. It is the great charter of liberty and when it is gone, we are little

worthless German principalities, in constant war with each other, exterminating each other and making us a disgrace and shame to the whole civilized world. And I say to hold every principle. Before I would yield one inch to secession, to rebellion, I never will give one inch or ask for peace or submit to peace short of submission to the Constitution. We are in the war. Let it go on, and fight on until the nation is destroyed or that government is re-established. I want none of your peace patched up by giving to that rebellious portion of the country an independent confederacy. When you permit that, you destroy your government and there is no hope left for constitutional liberty. None whatever. It is gone. Hence it is let us stand by this Constitution and halt and hesitate, cut off your right arm before you will violate one principle of it. Stand to it in evil and in good report and it has power enough in itself to carry you through the present trials; and there is no necessity of violating anything or of impinging upon it to carry on this country. Within itself it has all the power necessary to put down this rebellion. Sometimes you want to jump a short way to produce a legal result and want to stride over the Constitution. Follow it. Our fathers were wiser than we are and they framed a Constitution which thus far has met every requisition which is made on it. It is capable of meeting every exigency that may arise. Stand by it. We have not as much honesty as we had then; we have not as much patriotism—unselfish patriotism—as we had then. Selfishness has mingled all through in our affairs. Stand to it; that is my doctrine. Stand firmly to it.

Well, I say, I have here established by the decisions of the supreme court, who are the legally constituted body to decide the meaning of the Constitution and the laws and treaties made under it. The interpretation of these belongs to the supreme Court. They have taken up this very Constitution and they have declared that no state shall pass a law which in its effect shall confiscate private property. Cannot do it. As germane to this subject, I beg leave, for the purpose of showing the sentiment that pervaded this whole community in 1784, when Nathan Dane, who has been made distinguished and illustrious for having drawn up this document which was alluded to by my friend from Wheeling (Mr. Lamb). He drew up this and I do think there is more comprehended in it—more of the principles of liberty involved in a small space than I have ever seen connected together.

MR. LAMB. 1787?

MR. SMITH. Passed in '84 I believe.

MR. LAMB. No, sir.

MR. SMITH. Well, perhaps—yes, it is '87. The land of Virginia was ceded in '84, and this was an ordinance made in '87. Now I wish to call attention to these principles of liberty which those wise ancestors of ours incorporated in this ordinance, which is made a compact between the states then existing and those new states to be formed and cannot be altered. It is a compact. After going on and making provisions, he says that “the following articles shall be considered as articles of compact between the original states and the people and states in the said territory.”

“Article II. The inhabitants of said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; and of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law.”

That was denied to us a long while; that and proportionate representation. But in the beginning it is secured by this ordinance by this wise man to those states across the river.

“All persons shall beailable, unless for capital offenses where the proof shall be evident or the presumption great. All fines shall be moderate, and no cruel and unusual punishments shall be inflicted. No man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same.”

Wherever a public exigency requires you to take it, you shall make full compensation.

“And in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in the said territory that shall, in any manner whatever, interfere with or affect private contracts or engagements bona fide and without fraud previously formed.”

Now, there are the great fundamental principles of liberty put in a few words into this ordinance; and it is guaranteed to these states across the river. Haven't we the same right, same guaranty here? We made this contract with them; we were a party to that contract. I want to call attention while I am at it to another thing in this ordinance:

"Article VI. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes, whereof the party shall have been duly convicted: *Provided always* that any person escaping into the same from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."

Now, who makes this ordinance? It is adopted by the votes of: Massachusetts, aye; New York, aye; New Jersey, aye; Virginia, aye; North Carolina, aye; South Carolina, aye; Georgia, aye.

But one negative—one of three from New York in the negative. Now, under this compact we have a perfect right, it is secured to us in Virginia, should slaves escape and go into this territory across the river for which this contract was made, we have a right to go there and reclaim our slaves and they who resist us in doing so violate this solemn compact. Nathan Dane was the author of that compact—a Massachusetts man, whom Daniel Webster commended so highly for so noble an instrument, as it was; and it is the escutcheon now which is printed upon his tomb that he was the author of this great ordinance; and so great was it that in the Western Reserve some few years ago they had a convocation of the people to celebrate the passage of the ordinance. Well, I am one of those who take the whole. I say that ordinance gives back to the southern people their negroes when they run off. I want the whole to be executed according to its letter, according to its spirit and intent; and I do not want any violation of this law. Why, they will not allow them to take them in Ohio; but as I understand the opposition here you come right into our midst and take them. Ohio is secured against this taking of private property but we may not be secure against it. We were unfortunately better off under the law in Ohio than we are in the State of Virginia. Great God! Can such a sentiment as this be tolerated in this community for one moment? Can this Constitution of the United States be utterly disregarded and ignored by Virginians, citizens? And can this infamous doctrine of confiscation—I may use the language of the judges, of taking private property without just compensation—be tolerated for one moment in any civilized community? I call it a crime to attempt it or intimate that you are ready to do it. It is in violation of all the principles of our Constitution. It is in violation, says Marshall, of the spirit of our institutions. It is against everything that is held sacred and inviolable in this country. I then take it for granted that there can be no man—I lay it down as

a concession that there can be no man who has a right to adopt a doctrine so abhorrent to the citizen as that this property may be taken from the owners without compensation. He cannot be tolerated in any community. He is a hissing serpent and a reproach to civilization who will adopt it. So says the authority everywhere.

Then I think we clearly established the first proposition with which I set out, that it is not possible to take property without compensation. Now let us look at the position we occupy and see where we stand. Here is a proposition that declares that slaves over ten and under 21 shall be free at 25 and that slaves under 10 shall be free at 21. It is mandatory that they shall be free. Well, are we to presume the men who adopted this provision of the Constitution did not know what they were about; did not understand the force and effect of their own provision? Are we so to understand it, that they did not know that President Lincoln, who is a great constitutional lawyer, as my friend from Monongalia said this morning, an honest and upright man—and I endorse it with all my heart—and determined if he understands it to enforce the Constitution? He loves the Constitution. He is an old line Whig and cannot help loving it. He learned it from his infancy; drew it in with his mother's milk, and he cannot help loving the Constitution. And he adopted this kind of an understanding when he amended it. Did he contemplate such a result as this that these negroes should be confiscated without just compensation? Did not he contemplate that you yourselves who are eager for this new State that we who are eager for this new State, would not let so paltry a sum as the value of these negroes interfere with the carrying out of this principle? Did they intend this thing should not be so? Do you say now the Congress intended that this should be a mere *brutum fulmen*; that their declaration should be of no effect? For I tell you without some action on the part of the State or some one else this thing don't free the negroes. It don't free one of them. Not one. Now, do you intend to free them? Is it your desire to free them and leave it beyond doubt that they are to be free? Is that your object? If it is what these men who sent you this thing to vote on intended and if you do not free them you defeat that object, and you do not free them unless you make provision for compensation for them. You can do this. So far as I am concerned I do not care three straws about this because this *brutum fulmen* it has no effect and don't liberate the slaves. And here you propose to do that which you don't do. That is the amount of it. You cannot take this property. You cannot take this property without

impairing the contract only by the purchase of it. Cannot do it. Here is the Supreme Court of the United States has decided you cannot do it. You cannot impair the obligation of a contract. You cannot take from these men the right to the service of this property. Now, my opinion is—it has been the trouble with me all the while, you have been looking to the making of this State—this was your secret object. Have never thought that if there is nothing done here to satisfy Mr. Lincoln that this compensation in some shape or other is to be made that he had implied by his act that this was to be done, and nothing been done towards it that he would not interpose his objection? I know the attorney general considered this proposition. I do not know whether he did in his expressed opinion or not but in private conversation and I answered him by telling him this provision would be made; there would be no difficulty on that point. But suppose you go back to Abraham Lincoln. We all admit he is an honest man; and you take back this Constitution to Mr. Lincoln. You know he is a great man for compensation. Nearly all his last message was taken up with the necessity of making recompense for slaves—a necessity arising out of the unconstitutionality of taking them without it. Says he, "Have you made a provision on this subject?" Have you? Why, we say it is there in the Constitution. But, says he, "I want to see, like an old neighbor of mine who was going to be dragged into a mock duel. He didn't want it to be mockery; he would not let them load the guns unless he was present, and that spoiled the fun. He said he wanted to see the bullet go down." Mr. Lincoln may want to see the bullet go down.

Now, whilst we are guarding against one difficulty, let us shield ourselves against the other. Is not there just as much probability that Mr. Lincoln will send it back for some express provision satisfactory to him? And if you make a resolution showing your determination to do so take that with you and take it to Mr. Lincoln and he will be satisfied. But you don't do it. You vote this resolution down, and Mr. Lincoln hears you have voted it down. He says the resolution in your speeches was winged and floating through the air, never to be caught hold of again. He says I look at your acts. Here is your resolution in which that thing is brought expressly before you, and when you are brought to the test you refuse to vote on it, and that may be quoted against you; that may be a great difficulty in the way of getting a state. Now I apprehend more difficulty in that than the big club you talk of that is to be ruinous to us. Well, they say if you vote this resolution, and, lo,

it is to be very disastrous; we have a very illiberal people. They are told that here is a constitution that is to be carried and perhaps fifty cents or a dollar is all you will have to pay on it; and that is so alarming to them it will intimidate them from the execution of the contract. They will not vote for it. You will drive them off, and for fear of having to pay a little money. Now, I might say to my friend from Marshall, that his German constituent that he had a conversation with, suppose you go to the German and tell him that here is the Constitution. Yes, but says he you all said there in the Convention we have to pay for the negroes. Will you deny it to the German and say there was no such thing said? No, as an honest man, you cannot deny it. Well, then, if you said so, we will have it to pay. Yes, that is what we will have to do. There is no mistake about it. But you cannot. We tried to manage it very adroitly; and if it be so we could cheat you and we could conceal it and drag you into it by the very concealment you propose to carry it through; by committing a fraud upon those constituents, you expect to carry it through. Now, it is a settled principle of law that there is no distinction whatsoever in criminality between a suppression of the truth and the affirmance of a falsehood. In legal acceptation the criminality is precisely the same, and either is enough to set aside a contract. You invalidate a contract by the suppression of the truth and by the affirmation of a falsehood; and in morality and in law there is no distinction. So with a convention, who are set apart to form a constitution for the government of a great state. Are we to inaugurate this under a falsehood—apparent, flagrant falsehood and suppression of truth? Are we not doing it? You all say that if the fact as set down stares you in the face your constituents will not vote for it. We must conceal it from them. If they know the fact they will not vote for it. Therefore, we must be guilty of fraud and draw them into it. But suppose you are pressing this fraud upon them; you are exerting it upon them, and here comes up an adversary, one we are always looking to, speaking to. You are afraid of some enemy lying in ambush to seize you at some point or other and make assaults upon you. Now suppose one of these enemies meets you when you are out on the stump and he tells you whilst you are endeavoring to conceal the fact that they will have to pay for the negroes, he comes out and says you all averred the fact here on the floor but you had not the boldness and the magnanimity to come up and declare in writing what you affirm in speech. Hadn't the boldness to do it; and he will tell them that if they vote for

this Constitution they will have to pay for these negroes. You will have all the injury of the allegation that you pay for the negroes and then you will have it superadded to that allegation that you attempted to commit a fraud upon them. Now, to talk about keeping this from the public, concealing this from the public mind. You say it is in the Constitution. Yes, I know all about that. But you are afraid to declare it is so, and the reason you assign is that your people will not vote for it. You cannot get rid of it. You yourself said so (referring to Mr. Dering) ; said you were furnishing a club to break your head. So my friend from Marshall (Mr. Caldwell) said so; told us the instance of the Dutchman who would not vote for it. So all have told us. My friend from Marion said so; and when he finds he is a participant in the falsehood I believe he will retract his position. And I hope my friend, however deeply he may be steeped in this subject and deeply impressed against everything that may relate to the purchase of a negro, I believe he will in his honest convictions come out and say it is wrong. I have faith in his improvement; and I believe he will come out and maintain the sound doctrine, the honest truth. You will thereby furnish an evidence of integrity towards the Congress who have sent this to you. You will furnish evidence of integrity to the President who sent this to you; and this report and this resolution ought to accompany the vote that is sent on and let them see we have not worked in the dark; we have not worked by concealment, under fraud, but we have worked honestly, nobly, fairly. But I hope my friend when he comes to reconsider and see the position in which he has placed himself, I believe him to be honest, I think he will retract that false position which he has taken.

I would a great deal rather he would come out and say: I oppose it because I don't intend to pay, sir. That is the manly ground; not taking the ground that throws you into the position of attempting to practice a fraud upon your constituents. Cannot do it. No man can take a just position here and place himself right before the country and take any other than the fact that he is willing to declare here that which many respectable and intelligent and worthy and honest gentlemen have reiterated here to be our duty.

I have references to various other authorities to prove the proposition with which I originally set out. I have not availed myself of them because I do not wish to occupy time unnecessarily. I judge from what my friend an old and cherished acquaintance from Upshur (Dr. Pinnell) said, he is laboring under some great alienation (Laughter). I hate to say that, for I always think old line

Whigs are sound in all things; but he says he is a little suspicious; don't like the way this thing has been worked; there is something that is sinister in it, and he proposes fifteen. Well, I told him I was content with it. He wants some of the bone and sinew of the Convention added to this committee. He seems to lose confidence in the respectable gentlemen who framed this report. He is not satisfied with them; and I think he has indulged more in suspicion than he has in substance. Substantially there is nothing to complain of; but it rests in a vivid imagination, and when it is aroused up to belief that some sinister purpose is underlying, his imagination goes to work and like rumor, reaches to the skies. I know he is open to conviction, and I believe that he will throw aside all unwarrantable suspicions of that sort and not attempt to make the Convention believe that there is some improper movement going on to delude and deceive the unwary. That seems to have been the drift of it; but I know his better judgment and his kinder feelings have long since overcome that idea of suspicion, and now he has got all right. I am satisfied of it.

Well, my friend here from Taylor—I hardly know what to say to him. He has taken a position which to me is more novel than any I ever heard in the world. If his doctrine be true why all you have to do is to steal a man's horse and then say he had no property in him and therefore there was nothing to take. The very moment you lose the property he ceases to be yours and you cannot take him. That is his doctrine. I have no doubt he has retracted it before now. It is a hasty opinion he has taken, and he is right to surrender. I know he will surrender because he is a just and honest man. I know he wouldn't take a false opinion and stick to it against the belief of everybody else.

MR. STEVENSON of Wood (in his seat). Is he an old line Whig, too?

MR. SMITH. I do not know; I should doubt it.

Well, my friend from Morgan—(Mr. Wheat). He has said there is no taking of property for public use; that therefore we are not subject to the charge of violating the Constitution; we don't take it for public use. What do we take it for? Whose use do you take it for?

MR. WHEAT. You don't take it at all.

MR. SMITH. But you do. You say it shall be free. I will tell you who you take it for. You take it for the use of the negro. You take the service from me and give it to the negro.

MR. WHEAT (in his seat). He has the best right to it.

MR. SMITH. Why do you do it? Because you say there is a public exigency now that requires that this property shall be set free. I concur in the statement made by the chairman of the committee in the very able, and eloquent and learned speech he made here, when he said if this thing prevailed, our Constitution was carried into effect and our government got into operation property would be doubled in value, every sort of improvement would advance; we would have literature also sustained that would make us a growing and glorious state. What is all that? You take the negro for the purpose of effecting that end. Is not that taking for the public use? There is a public exigency. You take the negro to promote that great public interest. If so, what sort of propriety is there where all unite in the enjoyment and benefit—all have their share of the benefit where is the propriety of taking the price it costs off a few slaveholders? Now, it will not do to tell us that slavery is a curse; that we cannot hold property in slaves. Here, this very ordinance we have read from signed by every state in the Union has declared that there is property in slaves. The Constitution has declared it, and it has been declared by the laws of our country that slavery has been regulated for 240 years in this country. To come now and tell me that what has been so long regulated and has so long existed in this country and which all our country has been accustomed to and dealt with for that length of time—to tell us we cannot hold property in slaves! But you don't say so. I beg your pardon for intimating it. But I ask dare any one say so in the face of the truth. I can see how it is gentlemen coming from another state where slavery has not existed and where they have what are called the benefits of a free country and where popular prejudices run very high, and great excitement has been produced and abolition has been existing to prove that slavery was a curse to the dominion of God and man—I can see how they may come to that conclusion; but for a Virginian, born and raised, accustomed to all the habits of Virginians, accustomed to the use of slaves all their life and seeing how it is used—for them to raise the charge here in Virginia where there is now a law of the land at this moment fixing a penalty of \$500 for the man who denies that there is property in slaves! Any man denying that fact now is

liable to a prosecution and incurring a penalty of \$500. This very day, and this very hour, this is the law of Virginia!

Well, I have read a little history in my life; and in early times in the midst of passion and fury amidst great religious excitement, I recollect the time when they burned Servetus—I believe it was—for entertaining some free principles of religion. I believe it was the great founder of our church (I address myself to the gentleman from Hancock). In our church I believe there was a time when—who is the other Presbyterian gentleman? (A voice “Calvin”) Calvin burned Servetus, and burned him for the glory of God. Servetus, I believe, held liberal doctrines. I believe the doctrine of the old church, the Methodist—Calvin come up and burned him. Now I hope my friend from Hancock has not come here with any such sentiments as Calvin, that it will be for the glory of God to burn the slaveholders.

MR. POMEROY. I don't think it would be to burn the gentleman from Logan.

MR. SMITH. Don't think it would; we are too great friends; members of the same church, and therefore have more respect for each other. However, an outside member. My wife is a member of the church. I belong to the Methodists; but man and wife are one, and she is the one, so I am in the church with her.

MR. POMEROY. Yes, and I have no doubt in that case she is the best man of the two.

MR. SMITH. I have no doubt of the fact. All the neighbors say so.

Now, I want to deal with this thing seriously. It seems to have got up a growing sentiment here that slavery was to be thrust out; no sort of respect for it; it was not a property that should be paid for; and the whole community would be aroused and excited if you attempt to make them pay for negroes. Suppose my friend from Wheeling should have been more unfortunate than he is now (apparently referring to Mr. Paxton) and as banks in times past were obnoxious to the public censure and they were going to burn up the United States bank. Now suppose there had been a public furor here against banks and the crowds should have taken it into their heads that it would have been beneficial to them to have the banks of Wheeling and all their funds. What resistance and what an outcry there would have been over such a seizure of

the bank. This poor helpless creature that has no friends. How he would have invoked these authorities. You cannot impair the obligation of a contract, in the language of Story and Marshall. Although it may be regarded in some sense a public corporation; if they have funds in it, you cannot wrest it from them. But I do insist upon it that if any cases are to be dealt with harshly, I insist upon it my friend should make a voluntary donation of half his bank. Some gentlemen who have a good large quantity of land, we will confiscate some land too. We will not confine ourselves entirely to negroes. Let us confiscate some land to help pay for the negroes. We might as well do one thing. You can just confiscate land as well as negroes; banks as well as you can negroes. I do not know now in the public estimation that negroes are any more obnoxious to the public censure than banks.

I have a few words more to say as a reason why I have a right to claim at your hands as an act of justice to these slave holders that this resolution should pass. There is a good, a valid and substantial reason. You want them to vote for you; you desire it. Why are constitutions submitted to the people? Recollect according to this provision that an election is to be held to vote upon the ratification of this Congressional amendment, and that the proposed change is the only thing to be voted on. You are not to vote on the Constitution according to the provisions of this act of Congress. It is the change alone. Well, now, we will present this proposition on the face of which it is declared that the slave shall be free. No matter about that clause of the Constitution that says it shall be paid for. But this thing is submitted to the people for their consent to it; their consent to this other article; and if they give their assent to it they give it by vote and never afterwards can repudiate their assent. Now, you cannot impair a contract where you consent to it. It is not impairing a contract when you agree to it. You cannot impair it because the party who is entitled to the benefit of the contract has entered his consent by his vote. Now, there is my condition. I do not fear the effect of this proposition on my property. I have not the slightest fear of its effect upon it. You cannot take a single negro from me till you do pay me for it. Suppose when this proposition comes up and I am called upon to vote for it before the people and I either give my assent that my negro shall be free and my negro seeks his freedom by suit and the question is brought into court. He will bring a suit; that suit will be prosecuted in court. The negro will say under that clause, I am free. I say under the provision of the Constitution

you cannot impair the obligation of a contract. The negro says there was no contract to impair because you assented to it and therefore it is not violated; brings my vote, brings the vote of every slaveholder; and for his own protection, lest he might give assent to that clause of the Constitution, he is compelled to vote against it to secure his property; every slaveholder in the country is compelled to do it. People who have property are more sensitive on that than almost everything else. It is a sensitive nerve, the pocket nerve, and you cannot touch it; and there is none of us here but is sensitive. You think we ought not to make any fuss if we lose all our negroes; but you are all very unwilling to let your people pay fifty cents apiece for the negroes. But some could have \$20,000. I know one man who has no other property, a family; they are old Virginians that have been out in this country twenty-odd years, and I know my friend here knows—

MR. PINNELL. Are they in Dixie now?

MR. SMITH. No, sir, they are living, good Union people, and through their negroes. There's children dependent on it for support. You involve in a lawsuit about it. You involve the country about it.

Here is another thing. Here is Greenbrier; considerable holders of slaves; they have to be invited here; they have never been in this Convention; they have never yet been in our legislature; never participated with us at all; and we have never been able to learn what their sentiments are. We want to win them over. How do we do it? We take our Constitution and take this provision here, and they will say at once, you have involved their negro property in trouble; and with all that trouble you have thrown around our negro property you ask us to come in and be part of you and live honestly and peacefully with you. Well, now, we place ourselves in a very awkward position, to invite them in. Say it is Pocahontas, Pendleton and Hardy is in that condition. Morgan, I do not know what her slave population is. Hardy had a good deal of that population.

MR. WHEAT. Morgan, 48, sir.

MR. PINNELL. What is the slave population of Logan?

MR. SMITH. I suppose 150; a good many men there that own slaves; and in Wyoming there is a good many slaves. But we are going there with the olive branch asking them to come in and

participate with us in this Constitution and this government; and we go to them and tell them that the Convention—that they all spoke it in words; they all said they were willing to pay, but no one would put it down in writing. They want us to take their verbal obligation. Now, if you would give us your written obligations as an expression of your determination, we would take that and it would be a most beneficial thing in winning them over to us. But everything is subject to misconstruction and we are in doubt upon the legal effect of any measure. Why, if property is concerned, he will not trust an inch, he will not yield to doubt at all. He wants the thing certain. He wants to know what is to be the end of it. Therefore I say that if you want to get support you had better do this. You will not lose. I would volunteer if it was not venturing too much on the confidence I have in the honest community, but I will venture that where you would lose one vote you will gain two by adopting this resolution. Now, that resolution answers, is equivalent to me and to every man that holds slaves, as a protest to declare a contemporaneous exposition of the Constitution. You must recollect the Constitution and this provision was adopted before; but if there be anything of doubt resting upon the minds on whom we have to operate—we have to operate on slaveholders and satisfy them that there is no doubt, and according to the decisions of the supreme court and what state courts and contemporaneous exposition of a law is most potent authority in giving construction to the law. That is decided in the case of *Edwards, lessee, vs. Barbee*, about the city of Nashville. There the exposition of it by those who were about to perform, and the approval of that performance by the state, was received as evidence in the construction of the constitution. So it is everywhere.

MR. POMEROY. How many votes did Logan county give on the ratification of the constitution in April last?

MR. SMITH. I do not know. The army was there and could not hold a poll.

MR. POMEROY. Any probability of opening a poll on the submission of this amendment?

MR. SMITH. I hope so.

MR. BROWN of Kanawha. I would ask whether it gave half as many votes against it as his county did?

MR. POMEROY. The fact is Logan county gave no vote at all.

MR. SMITH. That is the reason it needs defense. Your county has had no oppression. Your county has known nothing but prosperity, and our country has been overrun and desolated, and you want to desolate it more. Logan and Boone, and all those counties, Wyoming, Kanawha, Fayette, Nicholas—they have all been desolated. I don't complain of that. They have borne more than any other part of the state, and it illy becomes the county of Hancock which has had nothing but prosperity to raise a question of that sort. She has had peace and plenty and been protected by Pennsylvania on one side and Ohio on the other. She is in the little panhandle and that runs up there and is like a sword in the scabbard, you cannot approach it. Not so with us. We are liable to assault from all quarters; to be overrun.

Now, I tell you this: I would have more faith in you if you had said this and given evidence of it; but when you say this and without any cause refuse to put it upon paper, it makes me distrust your people hereafter. You distrust your own constituents; you are afraid of them. If you are afraid to trust them, do you want us to do it? Gentlemen, I ask it as a favor to myself, to that portion of the community in which I reside—which I represent—to pass this resolution, which is nothing but just notice; and although you may entertain the opinion that it is offensive; that it ought not to be and is necessary to be done, we think it ought to be done; and in the spirit of compromise we ask you to do it; to give us the assurance of your pledge by a resolution that may be used here, that may be used at home, and which can do you no harm but may do good to us, we ask you as a favor to us, in the spirit of harmony we ask it as we desire that our whole State should harmonize, for we will have trials and difficulties to encounter a plenty without having quarrels among ourselves. Our State will have difficulties to encounter with old Virginia, and we should endear the State to every inhabitant as much as possible. We should do nothing to fret and provoke them; to drive their affections from the State. We should unite as a band of brothers and where one is unwilling to do this and the other is unwilling to do the other, we harmonize on middle ground. I thought and still think and believe that there should have been a different proposition. I have yielded my objection. I think they ought to take it yet; but I propose to add to it this: "To enable this Convention constitutionally to give effect and validity to the foregoing clauses which relate to slaves under ten and twenty-one and harmonize the same with the 6th section of the Constitution, it shall be the duty of the legislature of the

said State, and they are hereby required, to provide by law a just compensation for the owners of the slaves so liberated. Now, that I think would have a very beneficial effect with Mr. Lincoln; it would have a beneficial effect with the slaveholders in our section of the country; it would induce them, most probably, to vote for it, and I have no doubt a great many would vote for it. And without it I fear you cannot get the slaveholder to vote for it; and you are driving them off by your every action.

I have submitted my views on this subject, and I believe I have nothing more to say.

MR. SINSEL. As the gentleman is a legal man, acquainted with the decisions of the courts, I want to know how the State of New York liberated her slaves.

MR. SMITH. I do not know whether she liberated *antenati* or *postnati*. But I understand they were all gone but a few lame and blind that people did not want. She just told them they might go. Mr. Jefferson, the most advanced friend of emancipation proposed to act on the *postnati*; but he never dreamed of coupling the act on the *antenati*. No one has ever pretended so, and if any one has done so I am not aware of it. I do not know a single case; and if they did attempt it was where there was some old lame, halt and blind that it was a God's blessing to get rid of.

MR. STUART of Doddridge. I have been a very patient, and I hope honest, listener for the past two days. I was listening to the arguments on both sides. Permit me to say now, I have heard very little said on this floor that I cannot fully endorse; but before proceeding in the discussion of this matter for a very short time—and I would propose to be very brief—let me say to your Honor, I am exceedingly sorry this thing should have been agitated at the present time, although it was proposed to us by perhaps the wisest men of our Convention, those to whom I am disposed to give great respect. The gentleman from Logan before he entered into the discussion of the subject which he proposed to discuss desired very much to place himself right before this Convention; that his status heretofore had always been right; that he was one of the conservative party, an "old line Whig," that he was neither a slavery propagandist nor an anti-slavery man; that he opposed those parties who agitated; that it had been his course through life. I am willing to give the gentlemen full credit for that; but, Mr. President, it seems to be ordained—not ordained by

this Convention, but ordained by a higher power that this slavery agitation shall never cease; that there must be some party to stir up matters. You will recollect, gentlemen of the Convention, that the slavery propagandist was not satisfied with the Constitution of the United States, and the anti-slavery men were not satisfied with the Constitution of the United States. They have kept up an eternal dispute over that matter, and that very cause has brought upon us our present calamity. I am one of the men who say I can meet my friend from Logan and say I am one of those men opposed to these agitators; that I was willing to take the Constitution of my country as the heart Magna Charta, as spoken of, and I was willing to abide by and be governed by it; that I want no interpretations, I want no additions, but am willing to take it as security to me for my property, life, liberty and property; that I am satisfied with it. But these gentlemen, you know who went off into the rebellion were not satisfied with it. They were afraid that harm was going to be done with them; and when we appealed to them and told them the Constitution of the United States was sufficient guaranty to them for all their rights, that they had nothing to complain of, they said they were afraid something would be done and they wanted further guaranties and securities. That was the position they took; and now, Mr. President, as I desire, like my friend, to place myself correctly here before this Convention, let me say to you, as I have said heretofore, that I looked upon the Constitution of the United States as the one guaranty upon the face of the earth that I had for the security of my property in slaves. And when it was said in the Richmond convention that the rights of parties to slaves had never been violated, and when Mr. Baldwin, from Augusta, got up there and asked to be pointed to a solitary instance in which the rights of any man had been violated under this Constitution, I believe no man could point it out.

Now, sirs, who are the agitators now? Who is it now that is not willing to abide by the Constitution? I am, sir. It gives me all the security and right an American can ask. If you see cause to violate that Constitution, I will appeal to it as the higher law of the land and rectify myself under it. Here is my conservative friend now from the county of Logan who has always been fighting these agitators, these troublesome parties, these slavery propagandists and these anti-slavery men. He now, for the first time is not willing to trust the Constitution; not willing to trust his rights and the rights of his constituents under the Constitution; but he wants an interpretation passed upon that Constitution here now by this

body; a "cotemporaneous"—as he calls it—construction, interpretation, I suppose, of his rights to enjoy the protection of the Constitution of the United States. It is a beautiful contemporaneous interpretation, indeed! Nice, indeed, that we should set ourselves up now to pass explanatory resolutions here of the Constitution of the United States, under which we have been living for seventy-five or eighty years!—and without we do it, we are doing violence to our rights. The whole argument here is based on the assumption that the parties who oppose this resolution are contending here against these vested rights secured to us by the Constitution of the United States. Such is not the case. I deny the assertion. I do not want to be understood as denying the rights here of any man under this Constitution. No, sir. We have asserted here in the 6th section of the second article of our Constitution, we have proclaimed, the identical same doctrine which reads that "private property shall not be taken for public use without just compensation." The gentleman from Logan, it seems to me, desires somebody to infer that when we put that article in our Constitution we did not quite know what we were doing and it is necessary we should pass a resolution here explanatory of that section of our Constitution, thereby, Mr. President, in my opinion, admitting by our acts here that there may be some doubts on a question that I hold there is no doubt at all upon, that it is plain and evident to the mind of any reflecting man. This provision here in our Constitution means what it does say, that "private property shall not be taken for public use without just compensation." Can language be plainer? Can you employ any language that will make it more so? If you can gentlemen, you ought to have adopted it here when you were framing this Constitution. Can you put any interpretation, or pass any explanatory resolution that can be plainer than this, that will throw any light on the subject? This is the very same clause which is found in the Constitution of the United States; which has been expounded and illustrated by the arguments and opinions of the ablest judges in the United States: so admitted by my friend from Logan. It is totally unnecessary for me to review those arguments and opinions of Judge Marshall and other men; we all concede them.

Now, sir, we have adopted in our Constitution here a section which has had the explanation for the last seventy-five years, has been understood and interpreted, my friend from the county of Logan says, by the ablest jurist that ever lived on the face of the earth; and although it has been so interpreted, yet he thinks it necessary that this body should approve and affirm these opinions

of Chief Justice Marshall to assure them the proper respect of the courts of the future! Now, is not that the position the gentleman puts himself into? You have a most tremendous opinion of yourself.

The question involved here under discussion has hardly even been touched by any of the gentlemen who have argued the question. It is true my friend from Logan got down to it towards the last of his argument, and he came about it in the way calculated to carry off and mislead the minds of this body very much. I know the ingenuity of the gentleman very well. I do not very much fear his resolution; but I do not want there to be any doubt on this question here, which I hold as vitally important and which I hold my vested rights under. I approach this subject, Mr. President, I think, impartially. I most assuredly look upon it from a different point of view from what many of my constituents look upon it. I happen to be one of these fortunate, or unfortunate, slaveholders, who own a few little negroes not twenty-one years of age; and I am perfectly willing to trust this Constitution, this 6th section of the 2nd article; and if that is not able to carry me through the difficulty, I will then appeal to the Constitution of the United States. There I will be rectified and sustained under the decisions read by my friend from the county of Logan. Now, sirs, it seems to me the only question here which is legitimate, which is germane, to the issue now before us is: Is it politic, is it right to pass this resolution? Will it have a good or a bad effect, or will it have any effect at all? Will it gain for us votes? We set ourselves up as the expounders of the law here and seek to throw more light on this subject than Chief Justice Marshall has done. Will it have a good effect? Is it necessary in order to enable us to obtain our new State? The gentleman has failed to show me that it was; he has not satisfied my mind at all that it is. Then, sir, the whole object of the resolution would fail. There is no necessity for it; none in the least. And yet, sir, I have never seen men labor harder to impress the necessity of passing this resolution without showing it would be of any account to us possible. Now, my friend from Kanawha, who addressed you yesterday—we differ very little; I agree to almost all his propositions and arguments—but one of his arguments I shall have to disagree with, and that was that rather than violate one particle of the Constitution of the United States he would vote against the proposition for a new State at all. Now, Mr. President, we are placed in an unfortunate position, one that I lament as much as any other man and one which I am willing to

lend my aid to get out of as much as any other man. Yet, Mr. President, we have got to choose between evils. If you set up that there is a wrong, I know there is another wrong, I think a greater wrong, than we are seeking to relieve ourselves from; and when I am called to pass upon this Constitution and vote for the new State I will reflect and consider. I may think, in my opinion, you may have violated some of the provisions of the Constitution. I would not violate it myself; I would not vote for anything in this body that I thought was a violation of the Constitution of the United States; but if a majority of you pass a resolution here which I think does not comport exactly with the Constitution of the United States, yet, sir, when I am called upon to pass upon the new State question, I would look at the evils and I will avoid the greater and submit to the less. Never, sir, will I give up the new State, even if certain I did insert something here I think not exactly constitutional; because I hold here, gentlemen, that my all and your all is at stake in this matter. The new State is of more importance, the most vitally important to us at this time of all things before us. Besides, we know as a matter of fact, that anything we do here which conflicts with the Constitution of the United States is simply a nullity—amounts to nothing. And although, Mr. President, I am willing to sustain this government, to fight for the suppression of the rebellion, yet, sir, if by any act of our people we lose the new State I will feel that I have not a great deal to fight for in western Virginia. I will fight for the Union; I will fight for the restoration of our government; but be assured, Mr. President, if we lose the new State we lose that which is of vast importance to us. It certainly surpasses any little interest I may have in a few little negroes. I was pleased with a remark of my friend from Kanawha (Dr. Patrick). He was a delegate in the legislature. He said he lived in the county of Kanawha, that he had lost 25 slaves. Said he: "Let the slaves go to the devil, but give me the new State!" Now, sir, I say let my slaves go, too, to father Abraham's bosom, but give me the new State (Laughter and applause). That is my feeling about that. But I am willing, sir, to trust the Constitution; willing to trust our great Magna Charta that has been illustrated and explained and expounded by our Chief Justice Marshall, if I desire to get the benefit of my property if you seek to take it from me without just compensation.

MR. BROWN of Kanawha. The gentleman makes a remark

that I think may lead to the impression when he speaks of his "friend from Kanawha," that the reference is to myself.

MR. STUART of Doddridge. You were not in the legislature last winter; but I was, and one of your county men said that.

Now, Mr. President, I hold that this can only be addressed to us here as a matter of policy; that it can have no possible effect or bearing on the Constitution we propose to submit to our people—a mere simple naked resolution on our part has nothing to do with it. If we desire to insert a clause here giving these guaranties that these gentlemen seek to get by their resolution; get the guaranty they seek to get by this supposed interpretation of the Constitution, then there would be some object to be attained and it seems to me the arguments of gentlemen would be directed to some tenable and proper issue; but under the resolution you are seeking to impose on us now, it gives you no rights more than you have under the Constitution. It must be admitted by every man, it certainly must be the opinion of this body, will have little or nothing to do with it. Now, if the gentleman from Kanawha and the gentleman from Logan desire to give a cotemporaneous interpretation of this section of the Constitution, all they have got to do is to write a little book on the subject and let it date in 1863, and we will have it. Or the gentlemen can get it here when their names are called to vote on it, and say—I do not like to dictate to any gentleman but I only want to indicate the course I should pursue: "Mr. President, I vote for this amendment because in my opinion all the vested rights of me and my constituents are reserved to us in the Constitution anyhow; that this takes nothing away from us; that these slaveholders who own slaves will hold their property until they are compensated for it." Then you will have that interpretation put upon it at the time the law is made. But it is an anomaly in the history of our or any other country that a body of men will go on and make a constitution or a law that it is in itself more lucid than any possible explanation of it can be, and then pass a resolution giving the opinion of the body that it was intended to mean so and so, and that such and such rights were vested in parties under it. It would certainly not be very flattering to us that we had gone on and made a constitution and submitted it to our people, and that we cannot understand it ourselves until we have passed an explanatory resolution as to what it does mean. If that is the fact and this Constitution cannot be understood and we do not know what our rights are under it, we had better tear it up and make

another; and I do not believe this body will do that. But I don't want to admit that we have done a thing that needs an explanatory resolution in order to satisfy our people what we did do. We present them a constitution, and they must be the judges. Whenever any question comes up before a proper tribunal, that Constitution must be looked up and be decided on according to the Constitution itself and not according to explanatory resolutions which go upon the journal here. Certainly not. Who ever heard of such a thing? But what I want gentlemen to do in order to have a proper explanatory and contemporaneous interpretation of this matter is to write a little book on this subject and we will use it in future allegations that may arise under it; and I hope my friend from Logan will take the pains to do it.

MR. SMITH. I am afraid to do it. You misunderstand this so, I am afraid you would not understand it.

MR. STUART of Doddridge. Now, I know I may be very obtuse; I am; I am not very bright or able to catch a thing in a hurry; but one thing I think I do know: I know what the 6th section of the second article says, and I know what Judge Marshall said it meant under the Constitution of the United States.

Now, Mr. President, the gentleman from the county of Ohio (Mr. Lamb)—we have many gentlemen pressing this resolution for whose opinion I have great deference, I do assure you; but that gentleman turned around at last and made an appeal to us—the gentleman from Logan, I believe, did the same thing—and says he “What interpretation will be given to our Constitution if we vote down this resolution?” That, Mr. President, is begging the question.

MR. LAMB. I do not think the gentleman quotes my language exactly right. I think the inquiry I made was; what interpretation would be given to your intention if you vote it down?

MR. STUART of Doddridge. Very well; that is the same thing, I believe. What interpretation will be given to our action then if we vote down this resolution? I say, Mr. President, that is begging the question; there is no argument in it. If gentlemen see cause to introduce a resolution here which we think is unnecessary, that is making what I call entangling alliances here with our Constitution, and we do not choose to vote for it, they have no right to draw any false interpretation from our votes and our actions here. I want it said, and I declare it now publicly, that I do not take issue

with the gentleman or seek to controvert one solitary argument he made when he was arguing the question here, that private property could not be taken for public uses without just compensation. I do not controvert that argument; I do not meet the gentleman; I do not take issue with him on this question at all, for I admit everything he says. And I say it is in this Constitution. If I cannot convince my people it is, why then I will admit it may perhaps need some interpretation; but I am not able to give it.

The gentleman from the county of Kanawha was very pathetic. He appealed to the sympathies of this body. He argued to this Convention: Are you going to refuse to pass this resolution and take from the orphans and the widows the property by which only they can live? Why, my dear sir, there is not a man in this body—except the gentleman from the county of Taylor—and I hope he does not entertain that kind of a sentiment—that has argued a proposition of that kind. Let me say to you, my friend, the orphan and the widow and the helpless are secure and are protected under the Constitution of the United States and under our present Constitution; and if they were not, in the name of common sense we cannot protect them by simply passing a little resolution explanatory and placing it upon our journal here, which is not the law of the land, which is not constitution nor law. Now, is not that the truth?

MR. BROWN of Kanawha. I did not propose this resolution. I only accepted it as a proposition others proposed to me. I proposed to put it in the Constitution plain and positively explicit, that those who run may read.

MR. STUART of Doddridge. That is honest, Mr. President, but if the gentleman had come up with a proposition of that kind—

MR. BROWN. I have.

MR. STUART of Doddridge. There would have been some excuse for this lengthy discussion of the present question on the minds of this body. But they didn't come here with that. I understand the gentleman comes up here and argues a question he is bound to argue—the question in issue, and the one question here that was under discussion and was now to be decided upon by this Convention, the resolution offered by the gentleman from the county of Wood.

MR. VAN WINKLE. The resolution was offered by the direction of the committee.

MR. STUART of Doddridge. Very well. I am very sorry you give the precedent. A resolution—what is that resolution here that the gentleman from Kanawha made these sympathetic appeals for? What is it? What does it propose to do? And what does it do? Let me read it:

“RESOLVED, That in the opinion of this Convention, the owners of slaves in being at the time the Constitution goes into operation and emancipated under its provisions, will be constitutionally and legally entitled to recover from the State the actual value of such slaves at the time of emancipation, if they have not forfeited that right by disloyal acts.”

That they will be constitutionally and legally entitled to receive compensation from the State. Well now, if they are constitutionally entitled to it then, sir, they obtain their rights there under the Constitution. And does this resolution propose to go into the Constitution? They have all their rights, you say, under the Constitution. They are “constitutionally and legally” means the law of property interpreted gives to the parties the rights claimed. Then, sir, you say constitutionally they have the right, and not only “constitutionally” have got the right, but here you say by your resolution they have got it “legally.” Then they have got everything they want. They have every protection, every security they want. And why, I appeal to you, Mr. President, the necessity of agitating this question here, when the gentlemen in their resolution say that they have got it “constitutionally and legally?” They don’t propose to give it by this resolution. It don’t assert anything. It carries no such import on its face; and yet this resolution says they have everything which its advocates in all their arguments think they ought to have. And so say I “ditto.” Like the fellow in South Carolina. Two stumpers speaking; one a flowing eloquent fellow, and the other could not make a speech at all. The fluent fellow got up and made a blustering fine speech; carried off the resolution with a hurrah. The other fellow got up; and he halloed “Ditto! Ditto!” I say ditto to your resolution. It gives to the ophans you say they have got their property constitutionally and legally and I want to know how you are going to fix it unless by a cotemporaneous interpretation? I assure you, gentlemen, I have felt the kindest regard and entertained the highest opinion of you; and although I may cross your path and have a lit-

tle difference with you, my remarks are intended only in the kindest sense in which you can possibly take them.

Now, Mr. President, what are the facts? What are we here to do, or what ought we to do? But, first of all, let me refer to a remark of the gentleman from the county of Kanawha when he got up a few minutes ago and said he did want inserted in the Constitution the provisions indicated in these resolutions; that he did want it inserted and thereby change the Constitution and change the provision submitted to us by Congress. Now, I understand that is hardly saying we shall never become a new State but it is just as good. It is identically the same thing. To say that you desire to change the Constitution, different from that which Congress has now submitted to us is saying that you never expect to have the new State that you have not a hope of it.

Then we come to the question: What are we here for? What is our position now, Mr. President? I recognize Congress as a legitimate party to this contract; as having a right to impose conditions as fully illustrated by my friend from Monongalia in his able address the other day. We must defer to precedents which have been concurred in and supported even by contemporaneous interpretation. My friend from Logan, I want him to recollect that conditions were imposed by Congress at a time that these parties who framed the Constitution and lived, and those conditions were not controverted—the right of Congress to do that thing. Then, sirs, recognizing and admitting Congress as a legitimate party to this contract, we last February completed a constitution here and adopted it; our people ratified it; we submitted our proposition to the Legislature of Virginia; the Legislature of Virginia granted her consent. There was another party to it. We went before that party with our application, whose consent the Constitution of the United States says we must have; Congress admits us with a condition. What is that condition? It requires the gradual emancipation of a portion of our slaves. Now, if there is anything in this resolution which the gentlemen have been pressing so much here; if it affects the Constitution in any respect at all, why as a matter of course we can vote to refer ourselves back to Congress because it is exactly as in legal practice. We submit a question; they don't exactly take issue on it; they refer it back and we go back to the rebuttal. Otherwise we admit the proposition and submit the question to the people of West Virginia and then the President proclaims us as a state. We have nothing in the world to do, we can do nothing, unless we intend to refer this thing back to

Congress. We can do nothing more than to accept the proposition of Congress. I am not willing to dictate to my people. I understand that I came here for the purpose of either rejecting or accepting the proposition of Congress; and I do not feel disposed to reject it. Nor do I feel disposed to amend it. I desire it to go before my constituents and I want them to pass upon it; and I do not desire to dictate to them. I do not want to say to them that I want to attach another explanation to it. I have no right to do it. None in the world. There is no necessity for it; and if I were to do it my constituents would hold me accountable for it; and if we lose the State I don't want it imputed to any act of mine. I desire the people should pass upon it. The people have a right to say whether or not they are willing to accept the naked proposition submitted by Congress. I am willing to admit Congress is a legitimate contracting party here and I have no desire to dictate to my people. If they don't like it they can reject it. Then they will not have the members of this Convention to blame for it.

Now, Mr. President, the argument of gentlemen has seemed to be based on the fact that it was a matter of policy; that it was necessary in order to get these slaveholders to vote for our Constitution to adopt this resolution. I am like my friend from the county of Morgan: I don't expect to get many slaveholders to vote for it, let me do what I will, let me make whatever acknowledgments, get down on my knees and court their votes, I expect we will receive but very few of them. But I do desire to take issue with my friend from Morgan when he said there was no slaveholder a loyal man. Sirs, I stand here as an example; so does my friend from Logan and my friend from Kanawha. If my friend will come along with me, I will teach him how it is to be a loyal man.

MR. WHEAT. I had never seen a slaveholder that was loyal.

MR. STUART of Doddridge. Well, now, I want to show you one (Laughter) and if you don't believe he is loyal, come along with him and he will show you what sacrifices you have to make to be loyal. Mr. President, I would not have been here, I give you my word, I would not be standing on this floor today had it not been for the fear I had of the agitation of this present subject now before us. The soldiers of my people feared and trembled; they wanted to pass upon this; it is vital and all important to them. I was willing to make any sacrifice in order to give them that privilege and advantage; and I want to form no entangling alliances, to put no impediments in the way; I desire to give them the naked right of

voting on the proposition of Congress whether or not they are willing to become a state under that provision. But it was the matter of policy I was speaking to. The gentlemen were arguing it was necessary for us to do something that would get these slaveholders' votes. Now, my dear sirs—Mr. President (beg your pardon), what kind of position would I go home in when I appeal to my constituents and fellow citizens of Doddridge, what will be the policy, and what way will gentlemen use this thing? They will say to me: there is Stuart, one of the movers in this matter, appealing to us to vote for the new State; he is not willing to trust the Constitution for the protection of his rights; but he and the gentleman from Logan and other gentlemen must get up a contemporaneous explanation of this matter in order to be sure to get his own rights; he is not willing to trust the Constitution, the great Magna Charta the gentleman spoke of in order to secure his rights, but must have an explanatory resolution in order that he may be sure of his rights; that he may be certain he can make us pay for his little negroes. Is not that the truth?

MR. POMEROY. Yes.

MR. STUART of Doddridge. I have electioneered; I have mingled among the people, Mr. President; I know their sentiments; and I have mingled among the class of people whose vote it will be necessary to get in order to carry this Constitution. Let me say to you in all sincerity, you can do no act possible that will militate more against the prospects of this new State than to pass this resolution. Of that I am pretty decided. I am liable to be mistaken and that very often. I have been mistaken before this; but I think in this matter I am not mistaken as I understand the tone and character of the class of people that we will have to appeal to for the purpose of getting our new State through. I don't expect to have to appeal to those slaveholders, who are perhaps nine out of ten seeking to break down and destroy my government, the Constitution under which I hold these vested rights and which are made secure to me. Do I expect to appeal to a people of that class? If I do, do I expect to get their votes? But I don't want to be trammelled here by your explanatory resolutions. I am safe, sir, and secure, as I have before stated to you, under the Constitution of the United States; and I am secured by our own Constitution, which says private property shall not be taken for public use without just compensation. It means exactly what it says. But there is nobody here arguing for or proposing to take your property from

you without just compensation. But you are just like the gentlemen down at Richmond who said they had every right the Constitution guaranteed to them and it had never been abridged or violated by their constitution, yet they were afraid their rights would be; and I presume the gentlemen are afraid their property will be taken from them without just compensation. If you are, let me say to you, as I said to them, that you should have your remedy under your Constitution and you should appeal to the law of your country and be willing to abide by those laws. All good citizens, sir, are willing to abide by the laws of their country; and I, for one, am willing to live up to the Constitution of the United States. No man, not even excepting my friend from the county of Logan, admires that document, that great Magna Charta, more than I do; no man would be farther from violating one solitary provision of it than I would be.

Well, as a matter of policy, you know, the gentleman argues, look away down here in Greenbrier and Monroe and down in our end of the State. I want you to pass this resolution in order to accommodate the circumstances and situation in which my people are placed. Well, sir, I am very sorry they are placed in such circumstances. If they have ever given us any aid, I am not aware of it, and I have not the least hope they ever will give us a vote on our Constitution do what you will. I do not expect in the next twenty-six days of March (I believe that is the date on which you fixed in the ordinance for the election)—I really do not expect, I must say to my friend from Logan that in that time the circumstances will be such that we will get any aid from our friends in that quarter. I do not expect there will be a poll open; and yet he seems to suppose explanatory resolutions necessary in order to accommodate a people whom we are expecting nothing from, and thereby saying there is a doubt—at least arguing to the community that we have a doubt, whether the Constitution does protect us in our rights or not. Now, Mr. President, within the boundaries of the proposed State of West Virginia, from a calculation I have made, I have no idea that there are over 1200 slaveholders in it. I think I am correct in that estimate, and that there is not perhaps 200 out of that 1200 that are loyal or will give us the least support. Not 200, I doubt very much now; and I would be willing to take issue with any man on this floor that there are not 200 loyal slaveholders within the limits of the State of West Virginia; and that some of these are so circumstanced that it will not be possible for them to vote for the Constitution.

And, yet, Mr. President, as a matter of policy—a policy which is not to affect our Constitution in the least—we are to pass this resolution in order to accommodate our views to the circumstances of these few men, without giving them any benefit from you whatever—stir up this negro agitation again. Pass this resolution, stick it out in bold characters upon a signboard as we pass along and invite discussion upon it, thereby gaining votes, I suppose, for the new State. I say, sir, as I have said heretofore: let this question rest. Let me say to my friends from the counties of Logan and Kanawha, and Ohio, if they have any rights in this peculiar property, trust the Constitution; trust in it, sir, and it will do justice by you, and let us not now get up these entangling alliances and this discussion, pass this resolution and stick it out in bold colors and go home and get the constituents of Stuart to say to him: sir, you are very careful to pass a resolution interpreting this Constitution in such way that you will be paid for your little negroes, and who has got to pay it? That is the argument; that is the discussion you are seeking to get up here by the passage of this resolution will lead to—you say to get these 100 or 150 slaveholders to vote for it; I say to repel the votes of ten times as many who are not slaveholders.

Mr. President, I know this Convention is tired of this discussion. I did not intend to take issue with the gentlemen but upon very few issues. I deem it unnecessary to lengthen my argument. I could talk all day on it; but let me say to these gentlemen finally now: don't you do it. I feel that my rights are perfectly secure in this Constitution. I am satisfied from the argument of my friend from Logan he is satisfied of it. Why, he says if he votes for this Constitution he thereby votes away his rights because he voted for it. Well, now his resolution don't mend that—at any rate, don't aid him in the least. No lawyer living—I am a little lawyer; a very small one—but I can say to the gentleman, though it will not come with the force of the authorities he has quoted, that if he votes for this Constitution and he is thereby estopped from making demand for his rights, he will not cure himself by this resolution; and I do not believe there is a lawyer living that will say so. Then, Mr. President, I leave the subject with you.

MR. POMEROY. Mr. President, it has been suggested that the Convention wish to adjourn. It is now twenty minutes past five; and if that is the wish, I will not proceed with the few remarks I have to make.

SEVERAL MEMBERS. Go on! Go on!

MR. POMEROY. I do not expect to make a lengthy speech; but there is no use making a promise to the ear that may, like the promise of the gentleman who preceded me, be broken by the practice.

If I understand, it has been clearly and unmistakably stated by my friend from Doddridge that the great object in the reconvening of this Convention was that this Convention should ratify the amendment proposed by Congress and provide for the submission of that amendment to the people. I have no doubt that before the final adjournment of this body it will insert that amendment as required by Congress as a part of our Constitution. I have no doubt the people of West Virginia will by an overwhelming majority ratify their action. I care not—and I will say it now—how many obnoxious resolutions you may pass, I have a stronger faith than to believe even that will overturn and destroy the exceeding determination of the people to be free from their connection with eastern Virginia. At the same time, as has been well said, if we have a constitutional provision as old as the Constitution of the United States, under which we have all lived and been happy and a prosperous people, grown to our present greatness as a nation why is it necessary at this late day for a body like this, even admitting we are very wise and talented men, to make an interpretation of this kind and send it out to the voters; because every one who can read knows the same provision is in the Constitution of the United States, and will know that it is repeated word for word in the Constitution we submit to them? This will be one of the many cases where many words darken speech. The matter is as clear now as words can make it. Attempted interpretations by this body will only becloud the minds of the people and excite doubts and controversy. I impugn the motives of no man who brought this resolution here. Every member of this committee and I have acted together and made part of this Constitution. I can discuss this resolution without any feeling more than to discharge a solemn and responsible duty to my constituents and the people of this new State that we hope will soon sail into the harbor of safety and happiness. I say this resolution just accomplishes either good or evil. That is the doctrine. I don't know what my friend Hagar would preach on that subject, but the doctrine I preach is that there is no such a thing in this world as neutrality, a thing that is doing neither good nor evil; that a man is exerting an influence therefore for either good or evil. One of the two must be true. It

cannot be a thing that has no operative effect whatever. If so, why waste time discussing it here before this body and then before the people? What good can it accomplish? If the principles announced by my friend from Monongalia are correct, if the principles announced by the gentleman from Upshur are correct; if the principles elucidated so clearly by the gentleman from Doddridge are correct, and if the principles I concur in they have enunciated are correct, that every right of every man is secure in the Constitution of the United States, why at this late day go about explaining what the Constitution of the United States means? I love the Constitution as much as my friend from Logan; I have no disposition to violate it. I have a strong feeling that those men who are now violating it by armed resistance to the authority of the United States should be dealt with and suffer the penalty of the violence they are doing to that Constitution; and I am happy to know some of them are receiving it. They are going to receive a good deal more of it in a few days. Even this resolution can do no good. No great end can be accomplished by it. What is the great end to be accomplished, according to the argument? To get votes. Yet the gentleman who is better posted on statistics than I am tells you in language you cannot misunderstand that there is no more than 1200 slaveowners within the bounds of the entire new State, and of those not more than 200 are loyal. Perhaps one-half of them are what we call "sympathizers" with the South. Hence you are reduced down to perhaps a hundred; of whom about nine out of ten live in counties where no vote can be taken. Then how many votes are you going to gain by this resolution? The fact is, Mr. President, this is nothing more than opinion on the part of those making it. I claim no more for my opinion than I am willing to credit to them. It is only an opinion that this resolution would be even instrumental in getting us one vote. I admit in my county, to which the gentleman referred with so much earnestness, that the resolution would embarrass us and lose us votes; but I don't admit that we could not carry the county notwithstanding I make an admission of that kind. In Brooke you will lose a very large vote if this measure is adopted. In Ohio, which we are told is the battle ground in this contest, the most influential men in this city tell us we will lose largely in the vote if we pass a resolution of this kind. In Marshall, from what we have heard from its representative on this floor, you would lose votes there also. What do you hear when the gentleman from Upshur speaks on the subject?

MR. PINNELL. The people of Upshur will vote for the new State, constitution or no constitution. (A voice "Good!")

MR. POMEROY. I am glad to hear they are like that.

MR. VAN WINKLE. Will this objection be to the fact of making compensation, or simply to saying so?

MR. POMEROY. It will be that the Convention itself don't understand what is in the Constitution.

MR. VAN WINKLE. I would ask whether you mean the objection will be to making the compensation or to the Convention saying it should be made?

MR. POMEROY. I have no objection to the compensation. I go for the Constitution of the United States.

MR. VAN WINKLE. You say they will vote against this amendment to the Constitution on account of something. Well, now, is that because they find that it contains a provision that compensation must be made or is it because we propose to pass a resolution declaring that fact?

MR. POMEROY. Mr. President, I would prefer the gentleman would not interrupt me too often.

MR. SMITH. I should like to hear you answer that.

MR. POMEROY. Maintain here, and I thought I had made it plain enough, that the Constitution of the United States gives every man all the rights he needs; that to make an explanatory resolution we don't understand ourselves what we put in the Constitution is calculated to embrace the new State, to lead the people into the idea that all the legislating you are doing here is for the very thing you so publicly denounce, and that is the negro that pops his woolly head up in every wood pile.

MR. HERVEY. Let me answer the question?

MR. POMEROY. Certainly.

MR. HERVEY. There appears to be a disposition to get a laugh. I propose to answer the question so far as my county is concerned—answer it fully, right out. I say the people of Brooke county would prefer that the general government should pay for these slaves. That is my own doctrine. That is the true doctrine. The reason why I would oppose this proposition would be just this:

that we would be opposed to committing the State of West Virginia to a thing which we prefer the general government should do.

MR. SMITH. Suppose the general government does not do it, how then?

MR. VAN WINKLE. The gentleman has answered his own question, not mine.

Mr. Lauck addressed the Chair.

MR. POMEROY. I will yield to my friend.

MR. LAUCK. My explanation is this: that I have got just as good a constituency as any member in this house and of course I am going to represent them. (To Mr. Pomeroy:) I thought you were through. I just inquired.

MR. POMEROY. I do not make a practice of interrupting gentlemen when speaking. If I do not answer these questions, other gentlemen are perfectly competent to answer them themselves in their own way.

I take the ground that you by this explanatory resolution make it appear before the people that you have in the Constitution of the United States and in that of West Virginia a provision that will be construed to require payment for these slaves; that this resolution will be in the nature of an instruction binding on the Legislature of West Virginia, which will thus cut off a Congressional appropriation to compensate for these slaves. The impression thus made and the feeling excited in the popular mind by giving this special prominence to the question of paying for the slaves is likely to excite prejudice among people not very well informed on such questions against the Constitution itself. It is not that these men are going to lose their slaves and get no compensation for them. Let us go a step further. Because I say—I told the gentleman once before, about this one individual matter, I contended I knew a little more than he did, and that was that Congress would never agree that we should come into the Union as a slave state. “Oh” says the gentleman “keep quiet now on the negro question; no strife darkey; let us ignore the question.” Let us go to Congress. It is true they are nearly all black republicans; but, after all, maybe they will pass it through. How many votes did you get without an emancipation clause? Not one. When the matter was trembling in the balance as I can prove by gentlemen on this floor. Why was the haste of our Congressmen, who telegraphed to Wheeling for men

of the republican party to go on there "for we are in great danger of losing the new State." Gentlemen talk about the sacrifices they have made, I don't say much about that. I have traveled over the hills and through the valleys of Hancock when I could not see my horses head and then at a sacrifice of time, and leaving my following, I went to Washington because I thought I might have some influence with some one who had a vote. It took long and patient labor by all of us there to bring the members of the House around to understand our case and see it from our point of view. It seemed at one time certain the bill would be voted down, but at last it was voted through. Men talk of their sacrifices. I am willing to give you credit for all the sacrifices you have made and I ask very little for myself. I was a new State man from the beginning. I was here when we assembled first in May; when it was said that John Letcher's dogs were barking around the town of Grafton and would soon be in the city of Wheeling. And therefore if there is any man that can lay his hand on his heart and claim to be a new State man all the way through "the gentleman from Hancock" has good ground to make that claim. He has been with you all the time. He is going to be with you if you pass a dozen obnoxious resolutions. When the sun sets on the 26th of March it will set on West Virginia ratified by the vote of the people.

Why give us men who have labored through the burden and heat of the day this embarrassment? They say we do it on the simple question of harmony. Will this resolution produce harmony in this body? Does it produce harmony now? We differ widely on it. Why? The gentleman from Doddridge has already said it would not do to incorporate anything in addition to the amendment as it came to us from Congress. We must accept it just as it is. Then what is the use of the explanatory resolution? O, says one man it is done not only in the spirit of harmony and conciliation, not only in the spirit of engendering good feeling but in spirit of that old word of which we have heard so much—compromise. O, I know a little about "compromise." It has been asserted in the public prints that at a certain time, unexpectedly to everybody the gentleman from Hancock yielded to a compromise to oblige the gentleman from Logan and thus jeopardized the interests of the new State; that if he had stood firm, why the new State would have had an emancipation clause in it when it first went to Congress. It got into the prints that the man of all other men that they did not expect would compromise, that was tenacious about his rights, that he would not yield at all, that he yielded to this spirit of compro-

mise. Well, last winter we made one compromise after another; and if we could gain anything I would compromise again.

There is another matter I wish to call the attention of the Convention to and that is the informal vote taken in certain counties on this matter of gradual emancipation. It was not taken everywhere. There was no informal vote taken in the county the gentleman represents, neither a vote for the Constitution nor against it, nor for gradual emancipation nor against it. No man believes there will be any vote taken there now. Then why pass a resolution to catch votes when you have no opportunity to get any vote there? Well, then, may be we may catch some over in Greenbrier. Well, I think they will be like angels' visits, few and far between. Some gentleman says that is so, and I have no doubt of it. You are not going to get the votes of the people of Greenbrier. How will it be over in Monroe? The other day over in Monroe, they elected a man to represent them in the Confederate senate. Do you think there is a very strong new State feeling in Monroe going to come up in great streams and crowd around the polls with their caps off and their sleeves rolled up working for the new State in Monroe? What majority do you expect there?

MR. SMITH. Did you vote for Mr. Russell for that Congress?

MR. POMEROY. Never.

MR. SMITH. He is representing Hancock.

MR. POMEROY. No, we deny it. We deny that the man professes to represent this district in the rebel congress. We have a few rebel sympathizers in this country. We are not rebels up here. We are patriotic and loyal men, who know their rights and dare maintain them; and these rebels who fled to Richmond—we are well rid of them; and if I had my way I would drive every rebel in this land beyond the lines. I tell you if I had the power I would draw the line from Fortress Monroe to St. Louis, and I would drive every rebel, male and female, to the Gulf; and I would then say to the soldiers, wash yourself and go to the ground that is cleaned off. You would save life in the operation. I would people that country with a new kind of people. I would develop the resources of that country. I would make its bounds to be covered with flocks and herds; and I would have no rebel sympathizers among them. Who that is not for us is against us, and he that gathers not with us scatters abroad. If that plan had been taken there would be no

doubt arising in the minds at this time in regard to the success of our armies.

That is a little off the subject; but the gentleman called me off. You can charge that to him. If gentlemen don't want me to make a war speech, they must not ask me. Strong appeals have been made by legal gentlemen because they are learned in Blackstone that we are to vote for a resolution that will injure our cause, because they are going to vote for it. No, gentlemen; we accord you the same right, but we are going to judge for ourselves. I ask no man to vote for a resolution I vote for simply because I vote for it; and I make no appeal to vote against this resolution because I am going to vote against it. But I am happy to know the legal gentlemen on this floor are divided in opinion. Legal men are not agreed, all one way of thinking more than any other kind of people. Legal men, with all respect for them, do not know everything.

But then there is another argument used here—the queerest argument of all, used by a very honorable gentleman—as these men are all honorable gentlemen. Mark Antony said they were all “honorable men”—that Cæsar and Brutus were. Well, now, Mr. President, the argument is this: that there will be no money to pay for those little negroes. I will not say we will have to pay for them. That is, that these little negroes will all die—nearly all. I was very reminded, when my friend was urging that argument about their all dying, I could not help thinking of the anecdote of the boy that was away from his father's care for awhile, and his father came out and says he, Where are you? O, says the boy, I am catching rats; and if I had this one and another I would have two. I have not got any just yet. Well, how do you know these little negroes will die?

Another argument I want you to answer, and that is a queer one too: that you all ought to vote for this matter because the gentlemen of the committee agreed upon this. These five gentlemen who composed this committee. Just as good men as can be found here, or anywhere else, perhaps. I do not know whether that would be too much to allege. They agreed to report the resolution and then felt bound to support it because they did report it; think then everybody else must fall in and go with them. The appeal is made—a very strong one—that because the committee were unanimous, the Convention are to be unanimous also. Well, I would like to see the Convention unanimous, but that is no argument why we should go with this committee—none at all. There is another argument used, or designed for an argument: how do you

know this question? How are you able, you common men, to unravel this question? How do you know, if you do not make an explanatory resolution telling what the Constitution of the United States means that President Lincoln will say you ought to explain that; our people don't understand it, and therefore I will not issue the proclamation? You might say to President Lincoln: true, it is in the Constitution of the United States and in the Constitution of West Virginia. Then he would reply: I know that just as well as you gentlemen do; but still all through this long line of years there has been a mystery about what the Constitution meant, and you men, in the multitude of your counsel and the amount of your wisdom, you ought to have explained it. I want to stick to that Constitution. And old Abe is trying to do that, they say, and these men are praising him very highly. A great many of you did not vote for old Abe. I am not finding any fault about that. You are coming right now, and therefore you praise him. But here you throw out the idea that no matter how constitutionalist he is; no matter how firmly he abides by the Constitution, unless you explain the Constitution to him he may withhold the proclamation. Now, if you will permit a prediction, I will predict something about your object. The gentleman from Monongalia says there is no fear on that point, and I say there is no fear either. He is a man that deals justly by his friends. That is the kind of man that he is; and therefore, having signed this bill, how can he escape issuing the proclamation? Will he not say, the Constitution of the State is plain and explicit when it says no private property shall be taken for public use without just compensation? Cannot Abraham Lincoln understand that? Therefore will he not issue the proclamation? Certainly; and as soon as that vote is certified to by the President of this Convention. I have no doubt on that point whatever. He is not going to stultify himself before the public mind.

Let us adopt that policy, Mr. President, that will secure us most votes where votes will be polled. Where will that be? Not in all the 48 counties I am free to admit. Not because there may not be a new State element in every one of those counties. I do not say that; but I say they are surrounded by such circumstances they cannot vote at that time; and therefore because they cannot vote on that day we will get no votes in those counties.

There is another idea made in the way of an appeal by my honorable friend from Logan, in one of those sympathetic and tender and touching appeals he makes to us for our votes. The man that has been reared on the soil of Virginia, they certainly

understand matters of this kind. Those men that happened to be born in New York or Massachusetts or Pennsylvania are not capable of taking fit views of Virginia. He is not so much astonished that those men born outside the state should not happen to have such clear understandings. There happens to be a few of such men in the Convention who are so unfortunate as to have been born somewhere else. Douglas said of his state that Vermont was a very good state to be born in but a very poor one to live in. Now there is nothing in the argument at all that these natives understand things better than we do.

Now, there is another point: you are afraid to confide in the people. Where was that discovery made? How did the gentleman in his fertile imagination discover that any of us opposed to this resolution are afraid to trust the people? It is just because we are in favor of trusting the people that we are opposed to it. I say to vote like free men and when the time arrives you will so vote; and those of you who think otherwise, of course we cannot compel you to vote. But we are not afraid to trust the people. I have always been willing to confide in the people. That is why I said on this floor last winter and when some man was endeavoring to keep back these privileges from them, I went in every vote for the most liberal provisions. Why did I do it? Because I confided in the honesty, in the integrity of purpose, in the intelligence and patriotism of these people for whom this Constitution was being framed; and I am not afraid to do that now. And I tell you the people will ratify this Constitution far more readily than they would have done and by a far larger vote than they did without any Congressional amendment. There now is another prediction I make, that instead of voting 16,117 votes, you will have a far greater vote and for the very reasons assigned by my friend from Monongalia in his able address the other evening, that the people of this State believe every energy and power of this State have been crippled, retarded and impeded by the presence of the institution of American slavery on this soil; and when they feel they are to be rid of this, that their star is to go up on that star-spangled banner among that bright galaxy of stars, it is not to be a star of bondage but the bright morning star of American free men. That is the reason why that a man in his far eastern home is now in his mind contemplating moving into our valleys and upon our hills. That is the reason men in the old keystone of this confederacy, with all its advantages is devising ways and means by which to dispose of his property there and come in and make his lot with us. That is the reason

the man from Ohio has said now because you are to be a free people I am ready to cast in my lot with you and sail down the tide of time with you. That is the reason why the moment this vote was recorded in the House of Representatives men from the eastern states came around us and said, Give us your post-office address; for we and our neighbors may at some future time contemplate removing and now that you are free from the curse that has retarded your progress that has kept your forests and water power out of use, that has kept your industry from waking echoes in the wilderness, we hail you as a free and independent people. Why not, gentlemen, stand firmly by that which you believe a principle of justice and right? Why not do what your people have sent you to do? Engraft the amendment made by Congress into your Constitution; bear it back to the people and say, Here, we adopted this unanimously; though we have differed in opinion in regard to methods and details, now seeing it is a matter of life and death we come to you and confide to you the work of ratifying what we have done. This is what we are here for. We are not here to explain the Constitution of the United States. I never once dreamed that was the idea when my people were electing me.

I have listened with patience to the arguments of the legal gentlemen, and with some degree of delight, because, although I believed they were founded on a wrong foundation, although no good could be accomplished by them, yet the ingenuity displayed by gentlemen, the wisdom and learning brought to bear on this subject has been of profit to us all. But let us not be carried away by the ingenuity of these men. Let us do what we were sent here to do; and if there can be a compromise—although I have said as much as I have against compromise, I will not say that I will not compromise. I was never a man to make threats if I could not get my own way. That is what the southern people did when they went out of the Union. Well, I say they are not out of the Union. There is no such thing as secession. Every man ought to know that. Jeff Davis & company don't appear to know it but they will find it out before many months. There is revolution. We are all in the Union. The State of Virginia is in the Union. It will be ruled by other men in a few months. Let us set up for ourselves, a free and independent people, as my friend from Ohio said. Yet I do not believe there will be many little negroes to pay for.

MR. LAMB. I said nothing of the kind. I heard the gentleman talking about this. I had not the slightest conception that he meant me.

MR. POMEROY. The gentleman was speaking about the number to pay for and going into an exact calculation and the amount of money required to pay for them, and saying there would be so many of such age and so many of such other ages; and then this number would be greatly decreased by death.

MR. LAMB. O, yes; certainly. I am perfectly willing to admit that young negroes and old ones will all die, if that is the sentiment imputed to me.

MR. POMEROY. Well, that is a self-evident proposition; but you thought they would die much more rapidly than they had ever died before, and that the new State would affect them to die off like rotten sheep in the springtime.

Well, now, what is the use of this explanatory resolution? As my friend from Doddridge says, there are other men who have sacrificed a great deal—he is one of them—for this new State, for the cause of this country, and is making sacrifices now. But the fact of the business is this resolution can accomplish nothing. You cannot harmonize this Convention into this fitting. Members say they cannot vote for it. Why not abandon it and take something you can if you want compromise? They say the gentleman from Taylor represented a very strange idea. Well, I confess that is so; and I think it was so to some extent; but some of the rest advanced a very strange one too; and I tell you my friend from Taylor is not the only strange man there is in the world. Now, I really think—I am conscientious about it—I am speaking of what I believe about the sentiments of the people I represent here, that you need no more than what you have in the Constitution of the United States. You have got everything there that is reasonable to demand. I had hoped especially on account of the gentlemen who are so afraid of the mention of a negro in public discussion that they would brave secession rather than allow the subject to be discussed, that this subject would not be introduced here. But it has been; and though there has been some pretty plain talk, I cannot see that any harm has been done. I have had an idea that when we got the new State there would be so few negroes in it we would at once go to legislating for the white people and not for the negro; that it would not be necessary to pass any laws about the negro but begin to legislate for the white people, and this would be a state inhabited by white people, and I hope so. How many votes for instance, can we lose in McDowell on this subject? And they say they have not a colored man there, either slave or free. I have never learned yet

where McDowell is located. And she has no colored people at all. What object would she have to vote against this Constitution because this explanatory resolution was not there? Certainly none at all. I verily believe now—let me make another prediction, and I will close—that just as certainly as we will carry the county of Hancock, we will carry the county of Kanawha. Gentlemen may say what authority I have to show; say it is only a prediction, only my opinion. Let us see how I will come out there. I say we will carry it triumphantly and carry every county. I do not believe there will be any dips. The counties will not come in like ordinary elections. They will be like the handle of a jug—all on one side. Why, they say the most doubtful county in the whole State is Ohio. That has been noised abroad. I am not afraid of Ohio county. I do not know whether the gentlemen from that county are or not. I am not. She has more interest in voting for the new State than any county in the State. People will surely vote for their own interest if they know it, and the people of Ohio are not ignoramuses. She will certainly vote for it; so will they all.

Let us then take this first resolution, this Congressional amendment—a wise and judicious amendment—on which our future property depends, and let us adopt that, and then make regulations for these elections that are to take place; and when we have done that we have accomplished our work and I believe we have accomplished it well.

They said, too, in the public prints that the gentleman from Hancock had said we had made a better Constitution than the constitution of any other of the states. I say plainly and above-board, we have done so. There is no constitution in the United States equal to the Constitution of West Virginia. I do not claim much of it; I do not know whether my friend from Wood, who had so much to do with it, does or not. But I say we would have been great dunces if we had not done so. Had not we more light than any convention ever had before in regard to making a constitution? Hadn't we more constitutions to look at and select from?

A little incident that occurred at Washington city. We found a man (was it Harvey B. Hurd?) there who had been connected with the making of laws for Illinois, and particularly with writing on the subject of the constitution. "Now," says he, "you say you have got the township organization in your Constitution. Is that really true?" Why, he appeared to doubt that he had enough of wisdom to put that in. "Well" he says, "if you have I will see every

man in the Illinois delegation and ask him to vote for it, if you have got that in." And although he had written works on the subject that bore testimony to the fact that he knew what he was talking about, he said it was the best thing he had ever examined although he had himself written books on the subject of township organization.

Now, sir, we are standing on the very threshold of the consummation of our work, with every sail set to the breeze, just ready to sail into the harbor of peace and prosperity. Why do you throw an old root in our way, to snag us as we are going in? Don't do it; I beseech you not to do it. Let us go in with flying colors. Let us have to say we did what our constituents sent us here to do. We have accomplished our work. It is for you to set the seal of your approbation on it, and the new ship of state of West Virginia proudly on the way to prosperity and honor.

MR. BROWN of Kanawha. I want to ask the gentleman if he believes the resolution states the truth when it states that the parties are entitled to compensation?

MR. POMEROY. I believe it states things it ought not to.

Mr. Powell moved to adjourn.

MR. BROWN of Kanawha. I desire to have an answer if he is willing.

MR. POMEROY. Certainly I do. I believe that is in the Constitution. I believe the resolution is superfluous and injurious in its tendencies.

MR. HALL. I desire to suggest that we do not adjourn until this discussion is through and if it is necessary to complete it, to have a night session, and if needs be to sit until sunrise. I shall feel constrained to move the previous question as early as I can get the floor on the rising of another sun. The longer we talk about this thing the farther the parties are apart.

MR. STEVENSON of Wood. I would call the gentleman to order. Let him make a motion, and we can all pitch in.

MR. POWELL. I renew my motion to adjourn.

MR. POMEROY. If the gentleman wishes to have a night session let him make the motion and test it.

MR. POWELL. I move to amend and take a recess until seven o'clock in the evening.

MR. VAN WINKLE. I am not aware of any business ready for the Convention to act on that will occupy more than an hour or so in the morning, so that we may as well continue this discussion, if it is to be continued, at our ease, instead of being here tonight. There is one more ordinance to be prepared by the Committee on Revision which relates to the mode and manner of holding the election for state officers. The committee finds it an exceedingly difficult subject. I am certain it cannot be ready to present tomorrow, and probably if it is presented should be presented in the morning as members would desire to have it printed.

MR. POMEROY. It would be exceedingly ungenerous and unkind on my part, an act I am not going to do, to endeavor, now when I have had my say so to cut off discussion.

MR. LAMB. I want to make a statement in regard to the state of business. We are not losing any time in this discussion. I do not think there is any probability that the ordinance could be ready to submit tomorrow. If we stopped this discussion, then what have we to do? The gentleman from Marion who makes the suggestion is as perfectly aware as I am of the progress made in the preparation of that ordinance.

MR. STUART of Doddridge. I rise to a point of order. If there is a motion to adjourn I want it put; if not, I make that motion. It is not debatable.

The motion was put and the Convention adjourned.

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LXIII. TUESDAY, FEBRUARY 17, 1863

The Convention was opened with prayer by Rev. J. L. Clark, of the M. E. Church.

After reading and approval of the journal,

Mr. Pinnell offered the following resolution:

“Resolved, That a debate on the resolution now pending close today at the hour of four o'clock and the vote be then taken.”

The resolution was adopted.

Mr. Stevenson of Wood offered the following for reference to the Committee on Revision:

“RESOLVED that this Convention should appoint a committee of five persons to be called the Central Committee, whose duty it shall be to appoint sub-committees in each county to act in conjunction with the committee appointed by the legislature and adopt such measures as may be necessary to insure a thorough and successful canvass on the Amended Constitution.”

MR. VAN WINKLE. The legislature appointed two of that business committee. They are now appointed in nearly every county.

MR. STEVENSON of Wood. I was not aware of the fact. I did not want to bring it before the Convention immediately but thought I would refer it to the committee and let them exercise their judgment whether to appoint such a committee or not.

THE PRESIDENT. It will be so referred.

MR. HERVEY. I desire to offer a resolution and ask that it be laid on the table and printed. Following is the resolution, which was referred to the Committee on Revision:

“Within twenty days after the proclamation of the President of the United States declaring West Virginia one of the states of the Union, the volunteers in the army of the United States, who are citizens of the State of West Virginia, shall be entitled to vote at all elections during the continuance of the war, said vote to be taken and certified as provided in the ordinance for taking the vote upon the ratification of the Amended Constitution.”

The Convention resumed consideration of the motion made by the chairman of the special committee to adopt the two resolutions reported by the committee.

MR. SINSEL. Mr. President, as I stand solitary and alone, and have been made the subject of a little fun and whims, I feel it due to myself to make a further defense.

MR. STEVENSON of Wood. I would like to inquire whether the gentleman has not already made one speech on the subject before the house. I am not certain whether he spoke to the amendment or the original resolution. If he did, I wish to inquire whether there is a rule that no member shall speak twice until each member who desires to speak shall have spoken once.

MR. SINSEL. If there is objection, of course I will give way.

MR. STUART of Doddridge. I object because the discussion is cut off at 4 o'clock. If there are any members who have not addressed themselves to this subject, they have a right to be heard.

MR. BROWN of Kanawha. I think the gentleman has not a right to raise that objection, because I think it was understood that whole rule was suspended. That it was not the object to put it in operation. I suppose the object is to have free and open interchange of opinion on this subject.

MR. RUFFNER. Will it be in order to offer an amendment to the resolution pending?

THE PRESIDENT. I suppose so.

MR. RUFFNER. I move to strike out the words from the resolution "from the State," so that if the amendment should be adopted the resolution would read:

"RESOLVED, That in the opinion of this Convention, the owners of slaves in being at the time the Constitution goes into operation, and emancipated under its provisions, will be constitutionally and legally entitled to recover the actual value of such slaves at the time of emancipation, if they have not forfeited that right by disloyal acts."

I simply wish to make a remark or two on this question now before the house. The amendment if it prevail will resolve it as a simple proposition that compensation should be made to the owners of slaves thus emancipated. I think myself it is due to us representatives of the people and to the community that it be left in this condition. The Convention at its session forming this Constitution, agreed upon a compromise principle upon which this question of slavery should be settled. That compromise settled the opinion of the Convention and was ratified by the people, that this question of slavery should be left to future legislation, and it was understood on all hands that in our good time we would adopt the system of emancipation. The compromise prevailed with great unanimity, I believe but one member voting against it. It took from the State for the time being this agitating question; but, sir, I am sorry to be compelled to say that it only transferred it to the House of Congress. And in this connection I must be permitted to say for myself that I do not very well justify the ex parte vote that was taken on this question of emancipation before the people—I must say a private vote; for I confess in our part of the country we did not know that such a vote was about to be held; that

vote was carried to Congress and made the basis upon which this act was passed, representing that the people of West Virginia since the adoption of the Constitution had expressed a wish to have this very section incorporated in the act of Congress. Now, sir, was that fair, was it just, to this Convention or to the people who had thus quieted for the time being this question of slavery and bring it again into Congress and before the community? It seems to me, sir, it was unjust to us; it was unfair; and they bring thus upon us the necessity of adopting this very question and compensation shall result from it. I am sorry to see gentlemen place themselves in a very unenviable position when, while they confess our Constitution and the Constitution of the United States does provide for emancipation compensation, that this is acknowledging that principle, they oppose this resolution. Why, what do they mean by this position? Do they mean that because Congress has substituted to those words of our Constitution the imperative obligation to pay for the slaves has set aside that obligation and left it as a matter of question, whether under the law of Congress which we shall subsequently have we had ourselves placed in doubt the obligation of the State to pay for the negroes emancipated? How do gentlemen propose to go before their constituents with the question in this aspect; argue here that the Constitution provides yet unwilling to acknowledge it. Does not this open a question of the most agitating character before the community? Will not it be a handle for demagogues to misrepresent the actual state of facts—both sides, the pro-slavery and the anti-slavery men? I know sir, it is a very ungracious matter for a man who is a slave holder in these times of madness on that question to say anything about a just protection of the rights of a slave holder; but, sir, this madness will pass away and justice will have to be done sooner or later to all classes of our community if we expect to maintain in its integrity the principles of our Constitution. I look upon the stand taken by the members opposing this proposition as abolition in its sentiment. No class in the community except abolitionists outright ask for the abolition of slavery without compensation; and gentlemen who advocate the ground taken here in opposition place themselves in that category according to my conception.

MR. TICHENELL. I wish to call the gentleman to order. I deem it a slander on me to call me an abolitionist. I do not wish to be called an abolitionist in this hall.

MR. RUFFNER. I did not say that the gentlemen were abolitionists, but they place themselves on the footing of abolitionists by thus denying the right of slaveholders to compensation for their slaves; because in fact they do that by the arguments they urge here.

This is all I wish to say in reference to this matter, sir. Gentlemen may consider it as they please; but instead of leaving this question to the State they bring it now as a probable source of agitation throughout the State. We had in our previous action placed this thing out of view, to come up in its own time and our own way. I favor and have always favored emancipation; but I propose not to do it under coercion, which is now brought upon us, unless it is clearly understood we are to be compensated for our property. Notwithstanding, sir, the possessors of this odious—as the matter now stands—description of property, we are as much entitled to protection as any other class of people who own property. I think in that view, sir, we may justly leave it to be entered that we look to Congress at all events for compensation and place it entirely on our own obligation to make compensation.

MR. PARKER. I agree with the gentleman from Kanawha. It was the feeling of this Convention last winter, I think, to let the question alone provided the new State could be got without it. That is my feeling. If it could have been let alone and the new State obtained, it was my feeling and I believe the feeling of a large majority of our people. But of course, after we had gone as far as we had last winter, we wanted to go through with it; and of course, we were obliged to use the means necessary to obtain the vote. That is the way. Either do a thing or let it alone. We have got so far. We have been to Washington. There is no reflection upon anyone. Now, the only question is: can we take what has been prescribed, which they have a perfect right to prescribe, as the gentleman from Monongalia most ably demonstrated to every man's mind. They have a right to do it. No dictation on the part of Congress. They have a perfect right to say on what terms they will let us in. In order to get in we have got to comply with those terms. So far as the Constitution is concerned, we have to adopt or reject the specific prescribed amendment. I am not going to occupy the time but a short time. As every one seems to be defining his position it rather admonishes me to define mine. Now, the act of Congress presented here provides that West Virginia shall be a state, a member of the Union, under the present Constitution, upon the fulfill-

ing of a certain specified condition, namely: the Convention is to make and the people are to ratify the certain prescribed amendment to the Constitution. If we do less than this the condition will not be complied with. If we do more than this; if other amendments are attached and ratified along with the one prescribed, then the State would come into being with a different Constitution from that to which Congress consented. Therefore, of course, the President in looking it over will say, you have not done all that Congress approved. Therefore it is my duty instead of issuing a proclamation to refer this altered Constitution to Congress. That is an idea, I believe, we all agree on. We have got to keep within the prescribed amendment so far as the Constitution is concerned. But this Convention being the only body of West Virginia, is not precluded from doing any other act which does not take from nor add to the prescribed amendment that in the judgment of this body will be calculated to facilitate the adoption of the prescribed amendment and secure the practical effects contemplated, namely: the getting of a new and free state. I apprehend it is perfectly clear it is competent for this Convention to do anything not affecting this particular amendment but as an auxiliary to help carry through what we have been working for so long and consummate our wishes, why, we can do it. The only question seems to be whether the resolution should be amended as proposed by my friend from Kanawha. I should like it better in that shape. The only question about this resolution is whether it is going to help us in this great measure, or whether it will be a matter of policy and expediency—that is all. That is to be decided by the Convention from the best light and experience we have. Now, the object sought to be attained by the prescribed amendment requires a sacrifice of certain rights to or in slaves claimed by some of our loyal citizens, valued, as the gentleman from Ohio has shown, at about \$450,000. We have got to do this in order to secure the new and free State with all its immense benefits and blessings. It will enrich us; it will bring us everything that is glorious and desirable. The land we all agree is going to double in value, one item showing the public good that is ahead. Our Constitution provides that private property shall not be taken without just compensation. Is the right to slaves such property as is contemplated in this provision? Then is the public exigency such, because there must be a public necessity before you can take individual property. Otherwise, the State would go round and take all and become a great monopolist. There must be a public good; the public exigency that must exist—that is one great

point. Then the next point is whether the sacrifice or the infringement, the wiping out of this right of property, whether the wiping out of a certain number of slaves is a taking of it for public use? Now, there are three distinct questions. The first is about the property—whether it is such as contemplated there. The next is: does the public exigency exist which warrants it? And the next is: whether the sacrificing of this property is such public use as comes within the fair interpretation of that clause. Now, I understand if we fail to make out any of these we cannot take the property. These three conditions must exist. Well, now, as I understand, and I think I am right, nowhere in this country has either of these questions been judicially settled—that is, the particular points applying to our particular case. I do not understand that they have been judicially settled. Now, the question is: is it the property? Are these rights in the slaves that this sacrifice must be made in order to obtain our rights? The question is whether they are such property as is contemplated in this act. Does an exigency exist, and is it for the public use? There being no judiciary, certainly the acts of late respectable legislative bodies on this question is entitled to great consideration. If it has not been adjudicated by the courts, why, then legislative expositions become the authority. Now, we see here the act of our Congress, which is the highest legislative body known to the country—we see what they have done in the District of Columbia; simultaneously with their passing the act to abolish slavery they make a provision for compensation. Simultaneously, the appraiser goes to appraise the slave before the emancipation takes place. The money is paid over. Well, now that is pretty high authority. It is the highest legislative body in the land. Then there is the instances recited by the gentleman from Wood, the course taken by England, Russia, and those other countries. But it seems to me this act of Congress comes right home to us. Still, it is not a judicial decision which binds all parties; it leaves the question still a political and debatable question.

Well, now, what I desire to say is that the question can be settled here by this Convention and by all authorized bodies and powers just as far as it can be possible to settle it. We all agree, except my friend from Taylor, whom I was in hopes to hear before I made any remarks that he had fully gone through with his views; except that gentleman, if he is to be excepted—we, here, every one of us, representing every county in the State, we all agree on these points; that the property is there; that the exigency exists; that it is such a taking of it for the highest public good as we all

feel and see and that therefore it is for the public use. We all agree. Now, the question is: is there any use in our proclaiming it? That is the question. While I believe and have from the beginning that that proclamation of ours, that declaration, from the position in which we stand as a body, is the best thing we can do. So far as paying, I want to see them paid for. I would not touch them without payment. A loyal man who has invested his property in purchasing his negro; but you have got to sacrifice a thousand dollars. I don't sacrifice anything. I own land; you own slaves. Here is a great public act for us both and our children and the whole community. I could not do it. Says I, my friend, I will help you. The sacrifice is to be made for the public good of a property which a neighbor has honestly acquired with our sanction. Now, our loyal slaveholders being a small minority ask before they vote for this amendment a public declaration of this body that has made the Constitution that slave property is intended to be embraced and that the emancipation for the purpose of complying with the prescribed amendment is such a public use as is contemplated and such as will entitle them to the just compensation. They ask it, as I understand for the reasons, first that it will place on record with the Constitution the judgment of this body on the points carrying home to the minds of all our constituents whether slaveholding or non-slaveholding what we all agree to be the truth; what we all agree to be the local rights and duties of all. Need we be afraid to do it? I am not afraid to cast my vote for it. If my constituents are made up of such thin skin as that, let them go and get somebody else to represent them. I believe my constituents know a great deal more than I do; they are a great ways ahead of me. Now, I want this so that our constituents when they vote on this important measure shall have all the light which their loyal representatives can give on the subject. I know my friend from Hancock—I know him so well he would not abate a tittle on the subject. Now, will this be any more than doing our duty to our constituents? It strikes me not. Shall we do our whole duty if we withhold it? That is the question. If we withhold it, shall we do our own duty as honest, conscientious representatives. They want us frankly to tell them how it is going.

The second reason is because it will enable every loyal slave owner to vote for the amendment without any apprehension that by a silent vote without a protest he may waive his right. I know it will prevent a great many honest men. There are loyal men that have got some property, just as loyal as we are. I am going to

vote for that because I consent to it. It is an honest question and men disagree on it.

Well, third, because it will satisfy all loyal slave owners—satisfy them all, and therefore no just ground for complaint to any honest man. No just ground. Well, you conciliate all these loyal friends. You want them. We have got a great enemy, however, that is pressing upon us. We want no differences between us here. We want to mingle into one. We shall find it, probably before six months more, perhaps before, we get through this election. My feeling is to embrace them all in one harmonious united sympathizing whole. Then we will be strong. We cannot afford to have differences, to go along different ways. Therefore that point is very important in my point of view; and I do feel, and I don't think I am mistaken, if we pass this resolution without telling who is to pay, acknowledging the right; we tell the loyal slaveholders throughout the new State and their friends, if they have friends. Of course, to do that to our constituents the non-slaveholding, we take from them nothing. That is the safe way of reasoning.

Fourth, because it will be a contemporaneous and solemn declaration of the intention of the makers of the Constitution; and, sir, in future time serve as a guide to future legislatures and courts; and, which is very important, it will estop better than anything else the demagogue, the political demagogue, in and out of the legislature who will seek to sacrifice justice and right for the sake of their own base ends. We shall have them as long as the world stands, like the poor the blessed Savior says, we have always with us. So we have the political demagogue and always will have. Well, now, when you come to look at a legislature, don't you suppose there will be all sorts of interpretations on these three points. Of course, there will. Well, the demagogue will lay hold of them. But I tell you, Mr. President, if we can pass a unanimous declaration here of this body that made the Constitution, the voter can stand up with that thing in his hands and let the demagogue "holler." It will be the greatest estoppel against demagogues. It is the greatest one that is within our reach. It will be such an estoppel that it will settle the question. We shall never be together again to make this public declaration of what we agree to be right. If it were wrong, I am against it; but it is right, and I am for it.

Fifth, because it will show to the world that we have been honest in our professed desire to have a free state, by showing readiness to use the necessary means to make the necessary sacrifice; and not after having used this amendment for the sake of getting

into the Union let it remain a dead letter afterwards, rather than make the paltry sacrifice required. The gentleman from Logan yesterday established the great right in this matter beyond all question. We have got to pay before the emancipation takes effect. The State takes it; the State becomes the debtor. But we all hope it don't come. And our worthy Senator thinks we have a good deal of chance if we would only fit him out with the right resolution.

And, lastly, because it will place the new State upon high moral ground, expected by our friends everywhere, where the mother so long and gloriously stood. We may think we are not much of a body, but the whole country is looking to us. We are upon a hill. That by other and different kinds of feeling, it will entitle the new State not only to the mother's motto "*Sic Semper Tyrannis*" but to the far grander motto: "Justice and Equity to all men." Put them both together and they make a grand motto. I believe our loyal constituents are prepared to sustain us in doing whatever is honest, just and right though it shall involve us in a small additional tax and also in declaring whenever and wherever the occasion shall demand that such is our fixed purpose; in declaring the purpose when occasion demands it. It is not going to hurt anybody. I feel that such is the fixed purpose of our body. I feel that the occasion demands it in the form it is now. I would not say make the legislature pay. Make it look as well as you can but have the substance. I feel assured that my constituents will sustain me to a man. I believe the present occasion calls for a public declaration that the amended Constitution secures to loyal slave owners just compensation for all sacrifices required to be made by the prescribed amendment. I therefore shall give my vote for the resolution as it stands now. But I like it much better since that is stricken out. It will be less usable in the hands of demagogues. Our constituents will take care of themselves. Let us give them the light.

MR. CARSKADON. Coming as I do from one of the counties most interested in this institution, I hope I will not be considered intruding if I take a few moments to give the reasons for the vote I shall give on this resolution. I am sorry to see so much feeling evinced here on this subject by many gentlemen on either side. I don't think the occasion demands it, neither the subject under consideration. I had hoped we would adopt the amendment under consideration proposed by Congress without discussion but I cannot see the harm that some gentlemen see in the mild discussion of

the subject before the house; and I am at a loss to understand gentlemen when they say this right is so plainly laid down in the second article yet evince so much fear that this Convention may reiterate that right. Do they presume their constituents do not know a right is in the Constitution already; and is it their idea that they will hide from their constituents this right in the Constitution of compensation for property? Gentlemen upon the other side accuse certain gentlemen of agitating the question to the injury of the object to be accomplished. Yet these very men had it in their power if they don't wish agitation to have passed the resolution when it was brought before the house without agitating it at all and causing the discussion which they say is to be to the material injury of the new State. They had it in their power to have passed the resolution without this discussion, because the gentlemen who brought in this resolution did not care to have it discussed. They were willing for the Convention to simply pass upon the resolution, to let it pass by; but they, sir, chose to raise this discussion; they, sir, must be permitted to speak upon it and to bring the discussion more before the house and with them rests a great part of the responsibility of this discussion. It might have been unnecessary, and I don't say it was not, to bring the resolution before the house; but as the gentleman from Doddridge says the lawyers choose the less evil, for the greater evil was by discussing the question. Why not have passed it at once? As they say, it contains nothing new whatever, but simply a reiteration of the facts contained in the Constitution. It seems from the drift of the remarks of some gentlemen yesterday evening as though the Convention had resolved itself into a committee of the whole on the state of the Union. If that is the case I hope I may be indulged in a few general remarks in answer to the gentleman from Doddridge. He seems to be very much alarmed at the negro being brought before this Convention. I admit I was very willing to leave it out and would not have brought it up here myself before this Convention. But allow me to say to the gentleman from Doddridge and to any other member that neither he nor this Convention can keep this subject from before the people. It is the great question of the day, acknowledged as such by our able and patriotic President, who wishes to treat it as a principle subject before the country for action at this time and more especially, gentlemen, before the State of West Virginia. It is before us and you cannot hide it. The amendment proposed to the Constitution by Congress brings it up before this State, before this Convention. It is useless to attempt

to hide the fact. And, sir, this great idea, this great desire that action upon the part of the South and on the part of the gentlemen who advocate this institution has been the cause of not only an agitation in this State but of the whole world. Where, gentlemen, has the freedom of speech been denied but in that country that is now controlled, ruined almost, by this very thing. The founders of this government, the men who framed this Constitution, for whom you all seem to have such great reverence, they, sir, did not hesitate to say that the institution was a political, a moral and social evil; but the time came and has been but a few years since when if a man south of Mason's and Dixon's line had dared to utter those sentiments, he would have been fortunate if he escaped the halter.

This subject I say is up for discussion. It is being discussed on the field of battle. It is up for settlement by this country; and I may be allowed to say, gentlemen, though I have been raised with slaves, and though my father lived and died a slaveholder and I have a right to know something of the institution as well as other men, I say I believe today this institution is in the way of a permanent restoration of this government; that if you restore the power which has brought about this rebellion you do but restore the country again to the conditions which but a few years ago made life impossible in nearly one-half of the country to any man who was unwilling to surrender his right to free speech and liberty of action. Not that I would have any unwarrantable means taken against an institution tolerated by the letter of the law, but I say let us have freedom of speech, and let this like any other subject bear the light. If there is any question of public policy that cannot bear the light that very fact is the best reason in the world why it should be made to bear it.

But I say, gentlemen, that this resolution of the gentleman from Kanawha is but acting upon this great principle that we must settle the question. Why do you propose to refuse to ask Congress to appropriate money for that purpose. Why, I say, when it is before us, when the Constitution itself makes provision for the emancipation.

MR. STUART of Doddridge. Nobody here opposed the resolution asking Congress.

MR. CARSKADON. Well, if they do not oppose the resolution itself I understand there are gentlemen opposing anything but the amendment proposed by Congress. I have understood that to be the drift of gentlemen on this floor. They have wished nothing else

whatever but the amendment of Congress. Well, I say that would have been well enough; but I say, at the same time that I see no reason why this Convention in its official capacity should not ask of Congress this appropriation. For that reason, I am for the resolution of the gentleman from Kanawha. It simply asks the President that the money be appropriated to assist in this emancipation.

MR. STUART of Doddridge. That resolution is not before this body for discussion. It is not proposed.

MR. CARSKADON. Well, I understood it was offered by the gentleman and that the committee had it before them.

MR. STUART. Laid on the table. Not been called up.

MR. LAMB. A great many things have been discussed that were not before this body. It might be well to let the rule work on all sides.

MR. WILLEY. I understand the gentleman from Hampshire as rebutting the argument—which has certainly been repeated here time and again—that this Convention was brought here to do nothing at all but to respond to the act of Congress; and it is perfectly in order, as I understand to rebut the argument by allusion to the resolution.

MR. CARSKADON. That was my object, Mr. President.

THE PRESIDENT. The gentleman is in order.

MR. CARSKADON. I was struck with the remarks of the gentleman from Logan yesterday with regard to this institution, and he beautifully illustrates it by saying his father freed his slaves and removed to a place where his sons might be raised with the idea that men should be estimated not according to the number of negroes they owned but according to their mental and moral worth. It is upon this ground I say such action by this Convention as proposed in this resolution of the gentleman from Kanawha is appropriate. Because we have to get rid of slavery in some way. It is a part of the national issue, and I see no harm to accrue to the new State by making this request of Congress.

These, gentlemen, are my sentiments; these are my opinions, after due and candid consideration of this subject. I am not for ultra measures; for precipitating things in an unjust way; but I am for looking the subject in the face; not desiring to shirk from

it. We have got it to settle in some way; and I hold we must deal with it as a principal question and settle it as one; and that being the case, the measure proposed in the amendment made by Congress to the Constitution of West Virginia, to free the slaves, being before us for ratification, I hold it is proper and right in this Convention to assist our representatives in Congress by giving the expression of this Convention that we would receive an appropriation of Congress for that purpose.

MR. HAGAR. I live about the center from the Ohio river to the upper edge of Raleigh county. I have been traveling over the country very much for the last nine or ten years, born and reared and living there. I know a good deal about the minds of the people on this subject in that country. I believe now in reference to the country from Raleigh county to the Ohio river, and really to the Kentucky line, I am satisfied the majority of the people would be perfectly willing—perhaps six out of seven of them—to pay all the loyal slave-owners in that country for their slaves. I as one think it is right; and as much as may have been said in other days concerning it, I have always thought that where the law made slavery right that a man has as much right to invest his money in slaves as in anything else. I think it is right loyal men should have compensation for their slaves freed by the proposed amendment that Congress has inserted in the Constitution; and one reason that they are willing, among others: I am acquainted with all the slaveholders in Wyoming, Logan and Boone. I think I know every slaveholder, some forty or fifty of them; and I think there is one loyal slaveholder, John McCook, in the lower corner of Wyoming county. The balance have been engaged in this rebellion against the constitution that gave the right to their slaves as property. The people in that country have become soured and prejudiced to some extent against the slaveholder. They universally, with the exception of the man spoken of, were leaders in this rebellion. The Union men have been oppressed, their property destroyed—captured and carried off by these men; but if half of them were loyal men and each owned forty slaves that would come under the act proposed by Congress, I would be willing to pay my full part of the expense. I have tried to be a just man; ought to be an honest man, for I have tried to teach it to others. I for my part could not see why it was indispensably necessary this bill be added to the Constitution. I once thought I was in favor of it; and when I heard the excellent argument and exposition of the law by the gentleman from Logan,

who proved as clear as a sunbeam that the slaveholder had a right under the Constitution to recover pay, I have no serious objection against giving my assent or wish or expressing my desire they be paid if they be done in the way that will not admit all these rebels to come in with their slaves, making the poor Union men pay for them. For Virginia for years, and ever since I can recollect, oppressed the poor by exempting large slaveholders from taxation and only paying a proportion on the balance; only paying a part on the balance of the property they owned in slaves over twelve years old and all under exempt. But that is all passed by. We are fixing a better constitution; better state; better law. I want the slaveholders—the Union slaveholders—to act as honest men. Gentlemen presume because they own a few slaves that they should rule the whole Union, or state. There has been too much of this; and when I hear it said on this floor that unless this compensation is voted for you cannot get the vote of the slaveholders on these important matters—we heard such talk last winter. I was opposed to it then and am yet. It is an evidence of a principle we ought to frown down. We can carry it without you, but we want you and as one, I am willing you should be paid for your slaves. Perhaps in the Kanawha valley there are a hundred slaveholders and if there are nine of them loyal, I have never seen where they are. This is so—the men in Charleston, Patrick and perhaps one or two more, are loyal—in all Kanawha county. If they can hold slaves and be Union men under the present condition of things there, they ought to be paid for them!

Then you have my principle on this subject. I want to represent my constituents. I know more about the country from Kanawha to the Sandy river and Ohio to the far edge of Raleigh to Mercer, than any other man can know, does know or will know. I don't know so much about the surrounding country here but we who have traveled over it for twenty years know more about the people. I don't know much about law. I try to do justice and love mercy and walk humbly before God. It is an important matter we get the new State; and so I said last winter when we wanted Battelle's resolution in the Constitution. Now there would have been a Constitution going on. But we could not speak the truth then. We were not allowed to. But now the thing has come up. I want the Constitution and the new State, cost what it will. What are my few thousand dollars if we fail? Give us the new State and live; without it we will die. In this matter it is victory or death in western Virginia. Let us have it. We expect to get the new

State. But the enemy's point in this matter is this: I heard a Union man say we would like to have the new State, but if the negro is to be paid for we will be burdened to death with taxes. I tell you this will be used against us. I want a vote unanimous on the amendment; and if any differ on the other let us differ. I say the honest and loyal slaveholder ought to be paid; but those holders—as nineteen to twenty—throughout western Virginia have been engaged in the rebellion: I don't want them to be paid. I want it shaped so as not to affect the Constitution. I am to some extent pleased with the last amendment, and I will vote for it, as it suits me, when the thing comes up.

MR. BOGGS. I just rose up to show the position of Pendleton county, and what I was sent here to do. I am sorry to look over this audience and see so much confusion about this matter. Now, we way down on the frontier thought that was all done away with. We hoped so at least; but I see it is agitated on one side and upon the other. Now I don't raise here on this floor to agitate the subject. I rather got up as a compromise. The object I was sent here for was to insert in this Constitution the amendment of Congress and there by that all persons in the new State would be perfectly satisfied that the Constitution showed them that they had provisions made for every thing that was necessary. But I see that there are troubled waters here as well as yonder. We had no idea in Pendleton county that we have anything in the rear. We concluded it was all in front. We have got a good many there, but we had no idea we had negro behind us. And I come here, Mr. President, sorry to sit and listen to the jangling and wavering about that matter. We are perfectly willing in Pendleton to do justice by the loyal people of the new State. But there may be in this portion of the country, as we have got there, some little doubts about their loyalty I don't know—I don't wish to—don't get up for that purpose, to throw any insinuations on any set of men in this house. They have treated me kindly; but I can tell you one thing: you are going wrong, all of you!

Now, this is the opinion of Pendleton: We go in for the new State. We consider ourselves loyal there, I believe as loyal as any people, any county, in the new State. We are willing to do justice to all loyal men owning slaves. But yet, I am sorry—and I know my constituents would be sorry if they were to know the state of things existing here which does. The negro question, that is the thing that drove us off from eastern Virginia, because we were in

bondage by the negro. Our foes there owned them and we wished to be free, and therefore we clung to that thing called the new State. We did it under arms, because what voting we do we are compelled to do in that way. It does appear to me at least the money spent in arguing this negro question, if it had been appropriated to the defense of the frontier, it would have done more good than all your arguments (Laughter). Although we are willing to do anything called honest. One says—the gentleman from Hancock—he has rode in the night when he could not see his horse's head; but if he was down in our county, we would show him something more about loyalty than riding in one night, or two either. The gentleman from Doddridge says he has sacrificed a great deal. We will admit all that; but we contend we are right at the point where if there is any suffering going, it is. I have now come up here to vote on this question and agreeable to the opinion of my constituents. Therefore, I am sorry that there is so much difference of opinion about what way it shall be done. We think the Constitution as it stands in our county is perfectly right. We hold on to all things which are right, and therefore we go in for it.

MR. LAUCK. It is with much trepidation I enter on the discussion of this subject. The honorable committee has reported just precisely as eastern Virginia would have done—the negro, first, last and always. We are to say it is a fact, and then we are told the question is upon us and we are bound to meet it. We are told, Mr. President, that we are bound to vote for this or else we are branded at home by our constituents that we denied the right of emancipation. We believe, just as our people believe that the relation between master and slave is a sacred relation. The man that owns a servant, it is his property, just as his house, or ox, or anything else. But, sir, we here in this body believe those doctrines to be true. We have passed that constitutional provision that no property shall be taken for public use without just compensation covers the whole of it. I suppose the owner of the negro has it as safe as anybody else; but why do the owners of slaves wish to elevate that species of property above all other kinds of property. I am the owner of a slave; my friend from Monongalia is the owner of an ox. Has not he as much right to ask compensation for his ox as I for my slave? We are not a legislative body. We have declared a fundamental principle, and I say the fundamental principles we have adopted in our Constitution covers all species of property, and I regard one as sacred as another. But they are determined to force on this Convention an expression

of opinion, to convert us into a legislative body, to say that we are bound to give our opinion about negro property. I am willing to give my opinion in reference to all kinds but I am not willing to except one species there above another. Now, Mr. President, I admit the truth of the whole proposition. I cannot vote against it, nor I cannot vote for it. I say that we have provided for it; that the owners of that peculiar kind of property abide the issue as all other kinds of property abide it. I am sorry this question is sprung among us and that they are trying to force us to pass a resolution and interpret our acts here. We can do it by amendments, we can do it by substitutes; but as a question that we cannot vote upon I dare not go to my constituents and tell them that master and slave is a legal relation; I cannot tell them that I believe it. I believe that if the owner of a slave is justly entitled to compensation, if his slaves are taken for public use, the case is not different from other property. This Convention in its wisdom says the time is now present when we shall sever the relation and it is absolutely necessary the slave should be taken for the public good; that the necessity now does arise, and the Congress think so, and that all that species of property should be taken for the public good. Now, sir, if we are morally bound, constitutionally bound, because we think that exigency has arisen, and that is absolutely the fact, are we bound then to say that there is a difference between such property and other property? Congress says the time has now arrived when that relation should be severed and the slaves taken from the masters for the public good. Congress says that necessity now exists; and of course as we are going for the new State, we are bound to take it. * * * We wish this question to be brought right down to the constitutional provision. We don't want to exalt one species of property over and above another and attempt to extort an opinion of that kind. You must not mistake us—that in our zeal for a new State we will override principles. We want it all on the same level, and we are determined to have it. That is all there is of it. I know these are the views and sentiments of our people.

My idea is we should go before the community untrammelled by this resolution. We shall be asked why single out a certain, particular and favored species of property? Why should negro property over-ride everything else? That is what has brought on this rebellion. Why did we complain? Look at the taxes assessed on the northwest while that species of property was not half taxed? That is what we have been grumbling about; and the first thing we did when we came together the same aristocratic idea is brought

into this Convention by that resolution. The old fogysm of eastern Virginia. The same old doctrine. Smother it up as you please, the same old doctrine sticking out there. I had hoped all those appendages had been lopped off but I find they are still sticking there. When we get a new State we want to come on an equal footing, to stand on equal ground. I was delighted to hear my friend from Pendleton make those remarks, plain and to the point. He comes from the border where he suffered and his friends suffered. He says he expected when he came here he would find harmony, but he finds dissension and discord.

(NOTE: The reporter finds in his notes a memorandum that much of Mr. Lauck's address was inaudible at the reporter's table owing to the frequent dropping of his voice, so that parts of sentences, and sometimes whole sentences would be lost. The foregoing is therefore a very inadequate report of his remarks.)

MR. STEVENSON of Wood. I had designed, sir, making some remarks on the resolution, but as the Convention must be wearied with the discussion, which has been protracted now for two days, however anxious I might be to speak on the subject if there is no disposition on the part of the gentlemen who favor the resolution to make any further remarks, I shall forego the privilege of speaking myself and let the vote be taken either now or immediately after recess. If any others, however, are disposed to make remarks either for or against the resolution, of course I will feel at liberty to claim my privilege.

MR. BROWN of Kanawha. I understand we had a rule that stops anyone from speaking more than once until all others who wish have spoken once. If the gentleman intends speaking it is just he should not do so until others who have not spoken should have the opportunity.

MR. STEVENSON of Wood. Mr. President, as I have not spoken yet, the gentleman's remark does not apply.

MR. STUART. I understand on the amendment very few speeches have been made.

THE PRESIDENT. The gentleman from Wood has the floor.

MR. STEVENSON of Wood. In the discussion of amendments the practice certainly has been to embrace the entire question.

Mr. President, it seems to me that the great bulk of the argument used by the different gentlemen to support the second resolution has been to say the least of it, unnecessary. For instance, my colleague from Wood gave a very excellent argument of a historical kind, in which he undertook to prove that the principle of compensating parties whose private property had been taken for public purposes was the correct principle, and that the states of Holland and our humble and unselfish neighbor across the Atlantic, England, had settled this principle; that even the autocrat of the Russias, who sways his iron scepter over his sixty-five millions of subjects had also recognized the correctness of this principle; and so of other countries. The argument, sir, was a most excellent one, indeed, and would have been a very forcible one in favor of his position in reference to that particular matter if there was anybody here or anywhere else to dispute it. So far the argument really amounted to nothing as sustaining the position because it was not disputed. Otherwise, I say, it was an instructive and useful and edifying argument, and I was much pleased with it. And so with the argument of my friend from Logan county yesterday, where he made John Calvin burn Michael Servetus to a cinder because of a difference with him in matters of religion, and carried us back to the time when the darkness of the middle ages was just passing away and when a brighter morning of civilization and religion was just bursting upon the world—to the time of the good noblemen, to the times of Windsor Castle and King John, and Magna Charta, in order to show the same principle. And so I may say of the legal argument apart from this historical one over which gentlemen have labored with so much eloquence and with such numerous appeals to this body. The whole argument, sir, I repeat it, was unnecessary and uncalled for, as the principle they undertook to establish by it, that of compensating persons whose private property was taken for public uses, is not disputed by any body of men in the civilized world, in any christian country that I know of at the present time, and certainly has not been questioned by a single individual in this Convention. Now, sir, if I am correct in that I have already disposed of the great mass of argument which has been delivered on this floor for the last forty-eight hours or more. There was an argument of a different character introduced by my friend from the county of Ohio; an argument based on arithmetic, one of figures; and I presume no person in the Convention will deny that if an argument can be made that is conclusive and unanswerable upon that question the gentleman from Ohio is the very man who can do it,

and he has made such an argument, unfortunately for the position he assumes, which I think proves too much. I think instead of being in favor of the resolution, his argument, to my mind, if not conclusive is at least very strong against it. Let us see. The gentleman tells us that in 1860 there were 12,600 slaves within the counties of the new State; and that by a certain process of depletion and reduction from certain causes at work, which continue to work and will continue to work as long as there is a slave within the boundaries of the new State, the number of slaves within the short space of less than two years are reduced from 12,600 until at this moment there are but 1,500 slaves within the limits of the new State to be paid for; and that at a high estimate which my friend puts on these slaves, \$300.00 apiece, it would require but \$450,000.00 to buy the whole batch. Assuming the number of slaves he has calculated to be correct, I suppose a quarter of a million dollars would be a fair estimate for the value of them to be paid; and a much less amount if the position of the gentleman from Morgan that they had sold in his county for a dollar apiece, is correct. Now then, sir, he supposes the number of slaves within the limits of the State has been reduced from 12,600 until at the present moment there are but 1,500. Then how many will there be for us to be taxed to purchase when the new State has gone into full operation, when the first legislature has met and gathered all the facts in reference to this matter, and when it has adjusted, as it will adjust, a policy by which all the parties can be compensated.

MR. LAMB. Will the gentleman just allow me to correct him there. He has misunderstood the calculation. The calculation as stated by me was that there would be 1,500 slaves to be paid for at the time when they would have to be paid for. The gentleman says my calculation was that there were 1,500 here now. My idea was that when the time arrived to pay for them there might be 1,500 to be paid for.

MR. STEVENSON of Wood. I will accept the explanation of my friend from Ohio. I took it down on paper at the time and was under the impression he said the number of slaves at the present time would be 1,500. However, suppose it to be that at the time when the owners are to be compensated. The gentleman says he is satisfied there will not be that many. I question whether there will be half that many. I doubt, indeed, seriously, whether there will be a number sufficient to make it a matter of any importance even then in the legislature. Now, the insignificance of the number and

the rapidity with which the number has wasted away and become smaller; the trifling amount necessary to compensate the loyal owners of these slaves when the time for the payment of compensation arrives—is it not too insignificant a matter to bring into this Convention and ask that the Convention take an action which is unprecedented, without a parallel, I venture to say in any other constitutional body that ever assembled in this country or any other? Would it not be the part of wisdom to leave this matter until that time where the figures of my friend from Ohio county brought him; leave it to the circumstances that will then exist; and leave it to the courts and to the legislature which we have established by this Constitution to settle—as unquestionably they will settle at that time this whole question entirely to the satisfaction of all the parties interested?

I intend to use that very identical argument, and I am very glad my friend from Ohio county, in the exercise of that faculty with which he is peculiarly gifted, has brought the figures here on which I could base a calculation to make that argument. And I present it as one of the considerations, to my mind, why this Convention is entirely out of its place in entertaining or passing upon that question at all, at least in the shape in which it is presented in this resolution.

Now, I have disposed of this legal history and arithmetical arguments introduced here in favor of that position. Upon the legal question, sir, of course I do not undertake to venture an opinion of my own; but since the gentlemen on that committee, who are among the best in legal capacity in this Convention have agreed among themselves that the power is already in the Constitution so unequivocally, so undeniably, so plainly that there is no disputing it, I do not undertake to put myself or my judgment in opposition to theirs in that matter. I let it rest with them and consider the matter decided by them and, therefore, against the resolution which they intended to support by that very argument. So of this historical argument, however eloquent and beautiful. Strong in itself, it seems to have no bearing on the question, unless the principle intended to be established by it is—

MR. BROWN of Kanawha. I should like to ask whether you have any opinion as to whether the Constitution contains the provision or not?

MR. STEVENSON of Wood. I shall give the gentleman that opinion by-and-by, if it is worth anything. I say now, I am willing to

take as my opinion the opinion presented by the gentleman from Kanawha upon that question, and I am willing to take his argument just as he delivered it and put it on my side of the question to oppose the resolution which he intended to maintain by it. Now, if he understands what his argument was in regard to the construction of that 6th section, he has got mine precisely. Is that satisfactory?

MR. BROWN of Kanawha. No, sir; I don't consider it an answer.

MR. STEVENSON of Wood. Well, now, sir, having disposed of that part of his argument I don't know any other that remains that I can recollect of. But let me suggest now some objections against the introduction of the resolution and apart from this. I believe my friend from Kanawha and my colleague from Wood and I do not know but all the gentlemen as far as I can comprehend their argument in favor of this resolution admit that this Congressional amendment does not affect in any way the 6th section of the 2nd article of our Constitution in regard to taking private property for public use without compensation. They tell us this Congressional amendment leaves that article untouched, unimpaired, just as it came from the hands of the Convention. Is that so? Well, sir, if it is, I ask what construction the members of this Convention, or what construction can any sensible man (for there are a few sensible men living, outside of this Convention) put on the action of this Convention if it puts that resolution on its record? What but this: that this Convention while holding a session of some three months, after deliberating day by day on this Constitution actually inserted in it a provision so uncertain in its language, so ambiguous, so difficult of interpretation that neither the Convention itself nor the people outside the Convention could understand what it meant unless the Convention made a resolution to explain what it actually did mean. Now, if that don't put the Convention in an awkward, ridiculous and childish position, I confess I don't understand what would. I defy any man to look at it and put any other construction upon it. If it is true that it is left unimpaired, untrammelled, unaltered and unaffected by this Congressional amendment, then no other construction can be put on the adoption of this resolution than the one I have just given to it. And I would not for the little reputation I have as a member of this Convention have that thing thrown into my teeth as it may be a hundred times even before the vote is taken on the amended Con-

stitution that the people had selected us to make a Constitution simple, plain and easily understood in its provisions, and yet there was a provision so uncertain and ambiguous and difficult we had actually to accompany it with explanations of our own in order that our constituents might understand what it meant. Now, I have, in addition to the argument made by my friend who has just taken his seat, which he has anticipated here, that this gives this slave property some advantages which no other property has in this Constitution and thereby creates a distinction that will be justly offensive to men who hold other kinds of property—and there are a few left besides those who hold negroes within the limits of this new State, and I am one of them. In addition to that, sir, we have the prospect—a very good prospect it seems to me at the present time—if we act wisely on this subject, of having this payment made to these loyal owners by the general government itself. Now, sir, let us put upon our record the original resolution as offered, or even with the amendment proposed by my friend from Kanawha, which implies at least that the people of the State may be taxed to pay for these negroes, and there you have committed a blunder; committed the people in favor of paying for these slaves by taxation and have weakened your prospects of getting compensation by the general government. That is as plain as the nose on any man's face. You do it to that extent. I will admit it is only a paper resolution; it don't amount to anything as a legal provision one way or the other; but its moral effect will be such that when you go up to Congress, and when you go—as my friend of Doddridge was about to put us all—into Father Abraham's bosom—and ask him to compensate these loyal slave owners for their slaves, it will be said: why, you, in your Convention, representing the sovereign people have implied by a resolution which you put upon the record there that you do not desire the general government to pay for these slaves; you intend to pay for them yourselves by taxing your people. I urge that, sir, as a consideration of some weight in opposition to the adoption of the resolution.

Well, now, I have another consideration, and a number of them, that are stronger than any, I think, yet presented; and I deem any one of these leading considerations sufficient in itself to debar favorable action on the part of this Convention on that second resolution. And I tell the gentlemen of this Convention before they vote in favor of putting this resolution on the record of their proceedings they should consider well what they are here for; consider well what the loyal people who are just now trembling on

the verge of uncertainty about this new State have sent us here to do. It is just as clear as the shining sun at noonday that nine-tenths—ninety-nine out of every hundred of the loyal people within the limits of this new State don't desire the introduction of that subject at this time and in this manner into this Convention. I have not seen the first man—not a single man, in all my intercourse with the people since this Convention last assembled outside of this Convention that desired the introduction of this in that shape into this Convention. Since I came to the city of Wheeling, I have conversed with men from the different counties of the State and I have yet to see the first man, private or public, not a member of this Convention, who desired the introduction of this subject in this way into this body. On the contrary, I have not met any such man who did not consider the introduction of this question in this shape at this time and in this body as extremely impolitic, unwise and calculated to do a vast amount of mischief to the prospects and success of the new State Constitution in the coming political contest. Now, you are here not to put your own private opinions on the record. I am not here for that purpose, nor any of you. You are here to reflect the will of the people on this question. The people have confided to this Convention the delicate task not of embarrassing or overloading the issues of this new State question but of giving efficacy, giving strength, giving certainty to the last grand effort they shall be called upon to make for this new State at the coming election and in order that they may realize what they have so long labored for and hoped for and gain a final triumph on this new State question. I know, sir, we have been told by some of the gentlemen here, but so far as my inquiry has gone—and I have taken some pains to inquire about it of gentlemen from different parts of the country—that it is a mistake to suppose that any considerable number of people within the limits of this new State desire the introduction of this question at this time and in this shape into this Convention. Now mark it, as you please, as a prediction, for I shall make the prophecy, like my friend from Hancock, now and then as I go along, you will discover if you do adopt this resolution you will have done what a large, and overwhelming, majority of your constituency desired you would not do. The people expected us to come on here; they expected us to take deliberate, cautious, considerate action upon the amendment proposed by Congress to our Constitution. They desire us, after having done that, to make such regulations as would fairly and successfully put the machinery of this new State into successful operation. I am satis-

fied, sir, that the people did not desire, did not expect should go any, certainly not much, farther than that. Above all things, sir, they do not desire that any outside question should be introduced here, especially if that question was calculated to bring discord and disunion into the Convention, to be carried out of the Convention amongst the people. I am not prepared to say the people would be displeased, that they would very seriously object to a proposition simply declaring the wish of this Convention that the general government would make the compensation to loyal owners of slaves within the limits of the new State; because that is a matter it seems to me about which there would be very little division of sentiment among our constituency. But even that I would regard as a matter of supererogation. But still I do not know that the people would seriously object to that. But certainly they did consider that our special and I might say almost our only business here was to act on this proposed amendment and make the ordinances necessary to give effect to the Constitution and put the new State into operation.

A good deal has been said here touching the expediency of this resolution, and although gentlemen seem to think expediency should not have much to do with the action of this Convention, I must be allowed to differ with them in that opinion. It is a matter of very great importance that we shall introduce no question into this Convention, however important it may be, unless it is absolutely necessary that will carry outside this Convention any new issue to be brought into this canvass. Gentlemen have said with a good deal of exultation, don't you admit the resolution contains the truth? Well, suppose I do admit it, why, sir, you might begin with the first article of this Constitution and go to the end and make a resolution explaining each provision, every part, each article, every section in each article; and all these resolutions might be true in themselves; but would it be wise to put all those resolutions on the journal? And what is true of a large number of resolutions is equally true, as far as it goes, of one resolution. The resolution may contain the truth or it may not. There may be differences of opinion upon that. A red rag is a harmless thing in itself; but if we are going to cross a field where a bull is grazing we do not flaunt that red rag in his face.

My position is this: that we have as many issues already growing out of the adoption of this new State Constitution as we can successfully explain to the people in the several counties.

The hour for recess having arrived, the Convention took a recess.

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AFTERNOON SESSION.

The Convention re-assembled at 2 o'clock P. M.

Mr. Ross presented a petition of about eighty citizens of Ohio county, praying that their fellow citizens serving their country in the Union army outside the State be allowed to vote on the ratification of the amended Constitution.

The Convention resumed consideration of the second resolution reported and recommended by the special committee.

MR. STEVENSON of Wood resumed his remarks and spoke as follows:

Mr. President, when the Convention took a recess I was about to urge another consideration in addition to a number which I had already presented why this Convention should not express an opinion such as is presented in the second resolution under consideration. I trust the Convention will bear in mind the considerations which I have already presented, because I don't propose to refer to them again except by way of recapitulation when I have got through with the entire number which I intended to offer.

It is not properly the business of this Convention to put constructions upon the instrument which it is assembled here to make. I am not aware—although my information probably is limited—I think I am correct in saying that in very few cases, if indeed it is true in any case, has a body of this character undertaken by resolution to explain and construe articles in the Constitution framed by them. I do not know of any precedent that will justify action of this kind in this Convention. There may be such, but I think the gentlemen will admit, all of them, that if there are any, there are very few. So far then as the matter of precedent is concerned, I think we ought not to act favorably upon the resolution. This Convention was called together for the particular purpose of framing an organic law for the government of the people of West Virginia. I do not understand that it was called together for the purpose of putting a construction on the Constitution when they should submit it to the people, with a view of influencing the judg-

ment of the people upon their work, or for the purpose of influencing the action of the legislature or the courts when they came to act under that Constitution. I should admit this Convention might have the power but not that it has the right to put itself in the position and assume functions of the very tribunals it has created to pass upon or act under its provisions. There is an obvious impropriety in it, to say the least. Is it not the business of the courts provided for in this Constitution to pass upon the meaning of the provisions found in it? Or is it so that this Convention is so "omnipotent"—that is the expression, I believe, that it is not only invested with the particular power to frame a constitution but that it embodies within itself all the powers and can perform all the functions which belong to the bodies created by the Constitution they have made, such as the courts and the legislature? If it has such power, if it is so "omnipotent" as this, I think it would be very injudicious, to say the least, to exercise the power. It is the duty of the legislature created by this Constitution, to pass such laws, to make such provisions, to adopt such regulations as will put this organic law into successful operation; and it is the duty of the courts of justice created by this same instrument, where there is any doubt, any contest, any difference of opinion, any conflicting interest that may grow out of this Constitution, it is the business of those courts—and that is the purpose for which they are instituted—at least one of them—to put a construction on the provisions of the Constitution which may be in question. Now, sir, if this is correct, then to say the very least of it, it would be very improper and very unusual for this Convention to convert itself into a legislature or into a supreme court of the State of West Virginia to pass on the nature, the character, the meaning of the provision or any provision, in the Constitution they have made.

We are told the adoption of this resolution is necessary in order that the courts may understand how to construe a certain provision of this Constitution. Is not it just as important that we should put a resolution on the record explaining every other provision, and especially those that may be doubtful. If there is a propriety in one case is it not equally proper in every other, if it is the business of this Convention to do so? It is said that kind of authority—I believe our friends call it "cotemporaneous" authority—is useful and proper in putting a construction upon the provisions of an instrument which may have been made for the government of the people. That is to say, that the debates which occurred upon that Constitution, the opinions which were expressed by the body that

made it, that the comments published at the time in reference to it, are all to be taken into consideration by the tribunal that puts a construction on a constitution. That matter, sir, has been very fully answered, but I propose here to interpose an idea or argument which has not been, I believe mentioned in connection with that position. I give it to you as my opinion as a lawyer. I hope it will be cited to by the other legal gentlemen in the Convention. And that is this: that this kind of authority, this "cotemporaneous interpretation," as it is called is used only to put a construction upon a provision of a constitution when that provision is doubtful. Gentlemen of excellent legal attainments have informed me that such has been the practice in the courts; that they put constructions on the provisions of their State or national Constitution; that in other cases such authority is comparatively worthless; that where the language of the article is unambiguous, where its expressions are clear, where its meaning is unquestioned and undoubted, such authority is not deemed admissible for the purpose of construing the provision. Now, I appeal to my friends here, my brethren of the legal profession, whether there is any ambiguity about this 6th section of article II. I appeal to the speeches—the eloquent, impressive, pathetic appeals which have been made to this Convention, whether or not there is any doubt about the meaning or can be any doubt about the construction put on this provision: "Private property shall not be taken for public use without compensation." A man who can see beyond the point of his nose can see there is no ambiguity there. "No person in time of peace shall be deprived of life, liberty or property without due process of law." If that was written with a sunbeam on the face of the sky, it could not be plainer. These gentlemen have shown to every unbiased mind in this Convention that the practice of every civilized country and every Christian nation from the time people extorted the Magna Charta from the unwilling hands of King John at Windsor Castle this principle has been practiced and acted upon and is now a part of the common law of all these countries. Now, what becomes of your cotemporaneous argument if that position is a correct one?

When the Convention took a recess, I was about calling the attention of the Convention that it was very dangerous for us to introduce into this coming canvass where we were to take a vote on this amendment, any new issue. I don't doubt that you might properly raise a dozen of different issues on this Constitution; and they will be properly raised at the proper time. But for the sake of the success of this new State movement I ask the Convention not

to inject any new unnecessary issue into this canvass. We have got as much as we can carry through. We are loaded down already with issues growing out of the Constitution, the provisions of which are nearly all new, at least to the people of our State who have not had the benefit of the discussions here and the reasons for many things which may seem to them of doubtful propriety. Remember, gentlemen, there is some truth in the proverb that it is the last pound that breaks the camel's back. The entire contents of your Constitution are about to be submitted to the people for examination. We have made radical changes in the organic law of our State compared with the institutions under which we have been living. Here we have introduced, for instance, a system of free schools—a new feature. Not entirely new, it is true. We have something resembling it in the code of Virginia; but as a general system of public instruction for all the children of the State and to be supported by the State as a State, it is a new system. There is one issue you have got to meet before the people. You have your anti-free school men, to meet and overcome the prejudice on that subject. You have to meet and if you can conquer and explain away the best way you can. I tell you that system, however noble it is and however desirable and however inestimable in point of value to the people of this new State, is one that will meet with vigorous opposition on the part of those who probably conscientiously think or from interested motives will act in opposition to it. There is one feature of your Constitution that raises an issue before the people upon which you have to meet them and combat them. Here comes in your court system. You have abolished the old system which you had; you have made a radical change in the judiciary of the new State compared with what it was under the old one. You have the adherents and friends of that old system as well as the friends of the new one. The new system, if it has no real objections at least has many imaginary ones in the minds of these gentlemen. They will tell you if the old court system had its abuses, so has this system of courts by judges its abuses, and they can point out the cases, the states and the times where these abuses have occurred. There is another issue you have to meet before the people. There is another class of men you have to convince or confound on that question. Well, sir, does it stop there? The financial feature of the Constitution is entirely different from the old. You have the internal improvement men; you have the men connected with corporations, connected with great companies of improvement, with banking institutions, with councils, with railroads and slack water navi-

gation companies, and a dozen of others to meet and to them you will have to explain if you can the provisions you have introduced into this Constitution in regard to the contraction and payment of debts of this new State. There is another issue that is raised necessarily because the feature introduced is a comparatively new one. Does it stop there? No, I could go from one end of this Constitution to the other and almost every feature is a new one and necessarily involves the discussion of the principle introduced in that provision. The township system is a new and novel feature in the organization of this State. What does it involve? All the elements in the social organization of the people of the State—an entire change. In everything almost in reference to the government of the people, in the primary assemblies and in the districts or portions of country which they are cut up into by the introduction of this provision in reference to the system of townships. You have your men who cling to fond associations and recollections—the present system of division of counties, districts, precincts, etc., you have that class of men to satisfy. You have to convince the people who are to vote now on this Constitution; because all these issues will again be brought into the canvass, that this township system is a system calculated to contribute more to the prosperity, to the elevation, to the advancement of the people in the new State than the social system under which we now live. There is an issue raised upon that question and one that will require all the time that even my friend from the county of Logan, who makes his speeches by the hour, can give it. It will require all the time he can occupy in a single speech to explain that one feature of this Constitution satisfactorily to the people, particularly those who object to its introduction. I speak so not because there are not other subjects which give rise to issues in this canvass but to show you that we have already introduced into this contest about this new State as many issues as we can successfully meet, explain and carry through in one single campaign. And hence I say, as I said a few moments ago, that although there are a hundred issues that must ultimately grow out of the operations of this Constitution; and I say that likewise men we should let them slip until the proper time and when they are to be brought out before the people and canvassed. Do not let us hold down this new State movement that is already overburdened with opposition and with objection on the part of those who have conspired for its defeat and overthrow.

Now, sir, what about this matter of expediency? I was not only astonished but almost amazed when I heard the gentleman

here from Boone, a man who knows the people and their associations, who has been associated with what gentlemen term the common people. He knows the sentiments of the people; knows the sentiment of these particular gentlemen who are par excellence so anxious to have protection under this Constitution; and he tells us that in a number of counties which he enumerated, out of all the slaveholders in them with whom he was well acquainted, there was one man, one righteous man in Sodom, who stood up in defense of his country; and that even here in the county of Kanawha, so ably represented on this floor the number of loyal slaveholders were so inconceivably few that they could be numbered by a few dozen.

MR. RUFFNER. I beg to correct the gentleman. I did not accept the statement of the gentleman from Boone as true in regard to Kanawha.

MR. BROWN of Kanawha. I wish to add, Mr. President, that the gentleman from Boone is wholly mistaken in his statement in regard to Kanawha. That I know to be so; and if he is not better posted in regard to his statements as to the other counties, I could rely very little upon them.

MR. HAGAR. I did not profess to understand Kanawha county. I said as far as my information was, there were three citizens there; that there was but few Union slave owners there and three gentlemen from Charleston, Doctor Patrick and a few others.

MR. STEVENSON of Wood. It is simply a matter of veracity between these gentlemen—perhaps a little difference in the standard of what constitutes a loyal man. They all represent the same district of country.

MR. SMITH. It is a matter of knowledge, information, not of veracity.

MR. BROWN of Kanawha. The gentleman does not know.

MR. STEVENSON of Wood. The very matter of knowledge is a matter about which the Convention is to judge; they are to judge between the declarations of these gentlemen; and if they dispute the statements of each other then it becomes only a matter of knowledge, of veracity, and about that the Convention is the judge. But, sir, I will suppose that to be an exaggeration, if you like; but I have not yet heard anybody dispute the computation made by the gentleman from Doddridge—and he made it twenty-four hours ago

—that out of all the slaveholders within the boundaries of this new State there are about two hundred slaveholders that are loyal men. Now in reference to the men whose money is invested in this slave property, how many votes will gain from them by the adoption of this declaratory resolution. Suppose you get the whole two hundred that are loyal. It is a very important consideration to know how many votes you are going to lose by it, on the question of expediency. I put it to you without regard to other features. The argument necessarily brings it up. But simply as a question of policy, as it was urged, in order to conciliate these men, in order that they might be protected against evidence that might be brought up to show that they had voted for this Constitution and thus assented to the taking of their property, that this Convention should take the unprecedented and extraordinary course of spreading upon its journal an explanation of what the 6th section of the second article in this Constitution meant.

While I am upon this subject, I desire to make a few remarks that I did not get the opportunity of making before dinner, whether the position taken by the gentleman from Wetzel when he says that the introduction of a resolution so unusual as this in reference to a particular kind of property is a discrimination against the other property held by citizens of this State that is not slave property. I think sir, it will bear that construction; and if it don't, you may rest assured of one thing that the men who have leagued together for the purpose of destroying this new State project will put that construction on it for you. You know how justly sensitive the minds of the people in this new State are on that question. And why? Because ever since they were a people, for a number of generations, special legislation and special laws and special enactments have been made to discriminate against the property of the non-slaveholder and in favor of property held in slaves. Now, what will the demagogue say when he gets on the stump to the people of this new State? Will not he be justified if we pass this resolution in reminding the people how they have suffered heretofore in this State from the discrimination in favor of slave property, of which they complained for generations; that every enactment of the legislature in reference to taxation discriminated against the rights of the non-slaveholding citizen in favor of the man who held that particular kind of property; that even when this rebellion broke out every slave under twelve years of age escaped taxation altogether while everything the non-slaveholder had down to the smallest articles were taxed on their full cash value,

while a slave worth \$1,500 to \$2,000, under the same kind of legislation could not be taxed more than \$300 worth of real estate. Mr. Demagogue will say to the people: that is the way you suffered; that was the kind of discrimination kept up year after year in favor of the man who owned a negro and against every man who did not. And now this Convention, he will say, who got together in the city of Wheeling to make a constitution to remedy this state of things, has stepped out of its proper place and proper duties to spread upon its minutes a resolution that proposes that same kind of discrimination in favor of the owner of a negro against the white people of the State. I can see, sir, that these issues will grow out of this action; that it will re-open this old question; and hence I dread its introduction.

In addition to all these considerations, I have to ask this question: what good will the introduction and passage of this resolution do? If we understand public sentiment outside this Convention, we ought to know and realize the evils to grow out of the putting this kind of a question before our people with this amended Constitution. Now, what good is to result from it? Is it going to give any additional security to our loyal friends who are either so fortunate or unfortunate, as the case may be, as to hold property in slaves? They tell us it gives no additional security, throws no additional light on this 6th section of article II; that they are perfectly secure now in their property rights under that section. If that is the case, I want to know why in the name of common sense we should encumber the journals of this Convention with a resolution that according to the reasoning of our friends on the other side must be, to say the least of it, entirely superfluous, and I have tried to show you harmful.

One word more about the expediency of this matter. It is said we should not be afraid to go before the people with a truthful construction of the provisions of this Constitution. I will grant it; but I have already shown that if you multiply the issues that necessarily and inevitably grow out of the discussion of this Constitution you endanger its success; because the multiplication of these issues will render it difficult if not impossible to explain them all satisfactorily to the different classes of objectors who will rise up necessarily as the canvass progresses. But it is not a truthful construction we dread. It is a misconstruction that these gentlemen will put on these different provisions and on this resolution, that evil will arise out of it. It is upon a subject that of all others can be misconstrued, can be distorted and misrepresented. It is one

upon which the public mind is more tender and agitated at the present time than probably any other—that of taxation. These gentlemen who have leagued together to destroy this amended Constitution will not be as honest as my friend from Ohio, and you will learn that, gentlemen, every one of you before the end of this canvass. They will not tell the people there are only 1,500 slaves to be paid for and it will only take a quarter of a million of dollars to pay for them. No sir, they will have the census of 1850 and the census of 1860 and go out into the mountains where the people have probably never seen a census, or at least very few of them, where they do not conceive it their interest particularly to be acquainted with it, and show them the number of slaves within the boundaries of the new State when the census was taken. They will be careful not to tell them about the causes which my friend says have been operating to decrease the number. They will tell you about the ten to twelve thousand slaves that these poor men will be taxed to pay for, and that instead of being a quarter of a million or half million it will be three or four millions. I tell you falsehood in this case will prove like it does in many others: It will travel a mile while truth is getting its boots on. These misrepresentations, these distortions of what we do here by a simple resolution will be so magnified that I feel confident it would drive hundreds, perhaps thousands, from the polls or induce them to vote against this Amended Constitution.

I propose to occupy the Convention only a few minutes in restating the positions which I have endeavored to establish in opposition to the passage of this resolution. (A pencil memorandum was here handed to Mr. Stevenson, who remarked: "Doctor, you have been writing prescriptions so long I cannot understand your writing.")

My first position is, sir, we are here to reflect the will of the people; and so far as I have been able to gather from my own observation, from my own knowledge and from information received from others—and I have been very careful in making inquiries—I am led to believe firmly, solemnly that if we pass this resolution—if we introduce this subject in this place and express an opinion upon it, we will not reflect the wishes of the great majority of the people within the limits of this new State—the loyal new State people; but, on the contrary, we will commit an act that we may regret ourselves when too late to remedy the evil, and one which nine-tenths of our people will condemn.

My next is, that if we pass this resolution, either expressly state or by implication will bear the construction that the people of this State are to be taxed for the payment of this particular kind of property that we commit these people in advance by our very act in favor of the position that these slaves must be paid for by taxation on our people, and by that very act weaken our prospects which are very bright at the present time of receiving compensation from the general government. I feel confident, sir, that if this Convention, in its wisdom, would see proper to put no such provision as that on the minutes, that the loyal owners of these slaves will receive within a short period of time a full and fair compensation for their slaves and that they will have all the benefits of a free state and of the value of their property, and the general government will pay for it and not ask us to pay a single cent. But if we adopt this policy now it will be implied, it will be understood, it will be used as an argument against us, that we do not desire, we are a little too independent, a little too saucy as a new State to take any such compensation from the general government, and that we are able to pay for our slaves and we intend to do it; and that we have committed the people of this State by the action of this Convention in favor of that mode of paying for this property.

In the next place, I have endeavored to show that it is not particularly the business of this Convention—that it would be unusual, unprecedented; that by doing so the Convention would convert itself into a court and undertake to put a construction upon the provisions of the instrument which itself had made but which is properly the business of the tribunals which in this Constitution the Convention has established.

I have endeavored to show, and other gentlemen have conclusively shown, and I think it has been admitted if I recollect without a single exception by the gentlemen who have favored the passage of this resolution, that this proposed amendment of Congress does not impair, does not change, does not affect the 6th section of article II of our Constitution in reference to the taking of private property for public use without compensation, and this being true, no other construction could be placed upon this resolution if passed than this: that this Convention inserted a provision that was so difficult of construction, so ambiguous in its language and of such doubtful interpretation that the Convention actually did not know what it was doing and that they had, in order to enable the people to understand what that provision meant and passed a resolution here to put it on the record for that purpose.

In addition to all that, sir, I have endeavored to show that the introduction of the resolution and its passage is entirely superfluous, that it cannot accomplish any good purpose; that it adds no additional strength to any provision in the Constitution; that it gives no additional guaranty to the men who have this kind of property, who are as well secured as they possibly can be by the provisions of our Constitution, and that if they were not they can appeal to the higher law and the Constitution that has been tested by our people for 75 years and maintain their rights; and that hence the introduction of the resolution is entirely uncalled for an entirely superfluous.

In addition to all that, sir, I have urged an argument, and I urge it here in all sincerity and in the confident belief it is true, that it is impolitic and unwise to put upon the minutes of this Convention a resolution of that character because it will be distorted, misrepresented and tortured into every conceivable shape within the short time this canvass shall last by men who have determined to use every means fair or foul for the defeat of this great object which the people of this new State have cherished and hoped for for many generations. Remember that the people understand this issue better than this Convention does. We must be exceedingly careful to introduce no issue here that we do not feel confident the people generally desire, especially if it is one that is likely to impair the success or injure this new State. The people cherish this new State project more dearly just now than they do anything on this side of heaven. They know better than we know that every hope, all there is, every interest, everything connected with their material and social prosperity depends upon this issue; that without it everything in the future is dark and unpromising; that without it every interest and every hope of this people is blasted for this generation at least. They know that without this new State their homes will be desolate, their cities depopulated and that every mountain and valley in the great northwest will be a desolation. I call upon gentlemen to think well and to weigh well the appeals that have been made here so pathetically and so eloquently and with so much learning and be not deceived into putting upon record a resolution of that character which may work a vast amount of injury and can do no good whatever to the prosperity of this new State.

MR. BROWN of Kanawha. I inquire of the gentleman if he would answer me a question when he commenced and I under-

stood him to say he would do it before he sat down; but I have listened with all attention and have been unable to ascertain whether the gentleman intends me now to understand that it is his belief that the Constitution contains a provision for compensation to the slaveowner or not.

MR. STEVENSON of Wood. I said I believed as you did. I said as I was not a lawyer I was willing to go with that line of argument and adopt it as mine; but I felt it was my duty to use it against the resolution and not in favor of it. So far as I understand the argument, I think the gentleman has made a plain case. If it is possible to overturn it, I might change my opinion. But my position is that the gentleman has made a pretty clear case that he has a right to his property under that provision, and that hence the assertion of this Convention by a declaration to the effect will not secure his property any further.

MR. BROWN of Kanawha. I only desire the gentleman to answer the question. It is what I expected, sir, and I will put it to the gentleman and every member of this house if after the very lucid argument he has made, the objection that is made on the other side, and as I believe I heard an eminent lawyer say in the case.

MR. STEVENSON of Wood. I must call the gentleman to order. I believe he has made one speech on this question and is not entitled to make another if anybody else who has not spoken desires to do so. I suggest the rule would give that person the floor instead of him.

MR. BROWN of Kanawha. I wished to reply to the gentleman when he was through.

THE PRESIDENT. It can be done only by unanimous consent.

MR. LAMB. I take it for granted the question of order can only be raised by some member who has not spoken claiming the floor. If any member claims the floor, he can take it from the gentleman from Kanawha.

MR. VAN WINKLE. I myself give notice that I shall claim the privilege—It is usually accorded to the chairman of the committee, to close this debate with a few remarks.

MR. WILLEY. I beg leave to say I had intended to express my opinion on this matter, but as it would be eminently unjust to the gentleman who wished to reply, I shall waive it entirely. But I

shall give notice now that I intend offering the following substitute for the resolution and the amendments:

“RESOLVED, That in the opinion of the Convention every right of every kind of property is amply provided for and secured by the Constitution as it now stand, and that no addition or amendment thereto in that behalf is necessary or proper.”

MR. GRIFFITH. It was not my intention to say anything on the resolution. It has been ably, honorably and fairly discussed on both sides of the question. I came here with the intention and was sent here by the people of Mason, as loyal a county as in the bounds of the new State—a county that has done as much towards crushing out the rebellion as any other. I came here for the purpose—was ordered or required to come to vote on the Amended Constitution and do some other business and go back home. It was not expected by my constituency that there would be any explanatory resolution made. We wanted the “Willey Bill,” the Constitution as Congress gave it to us without the crossing of a “t” or the dotting of an “i”. This is what we wanted, and this is what we intend to fight for to the bitter end. I say we are loyal. We are a new State county; we are all in favor of the new State. It is paramount to everything else save the government of the United States and our Creator. We do not wish—it is not our intention—to do anything that will jeopardize the new State. But, Mr. President, such has not been the case. There is something rotten in Denmark, behind the curtain yet to be shown. The epithet “abolition” is an old one. I had it thrown at me at the commencement of this rebellion. I heard it today from the gentleman from Kanawha. It is no stigma. I consider it no stigma. I was one who, when I dared say anything against secession was termed an “abolitionist.” It is the old thing that is brought before this Convention. Everything that was not “secession” was “abolition.” Everything that could not see a negro in it was “abolition.” It seems to be the same here. I had hoped we would have got along smoothly; that the negro would not have made his appearance; but like Banquo’s ghost he has made his appearance and will not down at our bidding. Who has sprung this question upon us? I for one did not intend to allude to the negro nor the right nor title in slave property until the gentlemen who have such tender consciences, who have come from a region of country where all their interests are identified with slavery, have sprung it; and if there is any defect brought about in the new State, if it is defeated in consequence of

the passage of this resolution, upon them rests the responsibility of the loss of all the hope and brightness and honor. But I truly hope, after the elaborate, the sound, the logical and convincing argument of my worthy friend from Wood that they are now ready to repent of their sins, and if my friend from Marion (Tichenell) would invite them to the altar, I think they would forsake their sins and show fruits for repentance by their work for the new State in fact and in deed.

Now, it is not my intention to detain this Convention long, but I felt that I was bound to speak out something in behalf of my constituency. They have all spoken their pieces. I think it would perhaps be best for me to speak mine. We are a new State people, first, last and forever, and will oppose anything that will jeopardize the new State. The constitutionality or the right of compensating owners for their slaves none have pretended on this floor to dispute. But it is a question of practicability. Is it practicable? If by passing this resolution you defeat our darling object, the new State, will it not be proof conclusive that such could not be the case, that the resolution should not have passed? Now, I say for one that I know something about the panhandle. In Marshall my eyes first saw the light. I know how they stand in Marshall, on Fish Creek, Bonar's Ridge, Fork Ridge, Rock Ridge. They are a loyal people. If the Convention pass this resolution, two-thirds of them will vote against the new State, and two to one in the city of Wheeling will vote against it. I have talked to several in the city and all say they will never consent to the principle of paying rich aristocrats, slaveholders, who have ruled everything from the commencement of the government until now; have broken up the government for their negroes, a species of property that never did them any good; they will not do it. Whether the principle be correct or incorrect, they will not do it. Hence it is a practical question. We want the new State, and intend to have it. As to the loyalty, I give my reasons just as they bubble up. As to the loyalty of the slaveholders, there are some—I thank God for it who have taken the bull by the horns; but nine-tenths of them have gone over to the enemy. I am well acquainted with a great many slaveholders of Mason. I know one who is loyal and willing to sacrifice his slaves for the success of the new State. John McColloch, of Kanawha is likewise willing. We have another down there who is a good Union man. He is for the new State provided the negro is not brought up; provided he can get compensation for his negroes, if it is a clear case that he can. I heard him say the

new State might go to the devil; and this represents a majority of the slaveholders of Mason county. I have been credibly informed such is the case in the Kanawha valley. Now it happened once upon a time, I was hunting a location to practice medicine. I designed going to Charleston and stopped at Columbia, met with some persons who formerly lived at Charleston. They asked me if I was going to Charleston. I asked what the prospects were. They said it depends on circumstances. Do you own a negro? Told them I did not; would not be willing to own one if they cost only a dollar apiece. They said lots of people got sick at Charleston; but unless I owned a "nigger"—if I had the daring independence to saddle and bridle my own horse—I would not be recognized amongst the "upper ten," and consequently could not get anything to do.

This, gentlemen, from what acquaintance I have had with the peculiar institution of slavery is the nature of it and the nature of a majority of the loyalty of the Kanawha valley, in the neighborhood of Charleston. These are the gentlemen who have sprung this question upon us. They have been instrumental in bringing about indirectly the difficulties which now agitate this house. We all know, too that this has been the cause of the difficulties which is now shaking the republican institutions from center to circumference—the peculiar institution of slavery. A few slaveholders were bound if they could not rule they would ruin; they would break up our country. The same principle is being inaugurated in the new State. A few slaveholders must have everything or they will defeat the movement. Mark the reason for my opposition to the resolution. It will defeat the Constitution though I would vote for it right or wrong *fiat justitia*. I would vote for it though the heavens fell. But there are gentlemen who will not. Take this congressional district. Our honorable chivalrous Sherrard Clemens is announced to canvass the district. I have heard him on the stump. He is a wily, cunning politician. He will go over to Fish Creek where he used to go—the Tenth Legion of Democracy—Democracy then; Democracy yet—a majority of the loyal but their old love can be revived. He will get on the stump and say: you Germans, you hard-fisted yeomanry, are you willing to be taxed to death to pay these rich nabobs for their "niggers"? He don't care. Others will not care, so they carry their point. They will not put the estimate at \$300; they will put it at a thousand. In the eyes of some people a "nigger" is worth as much as he ever was. Such will be the principle; such will be the course conducted to defeat the new State. Beyond this, Mr. President, there is an organization now

working calculated to defeat the new State movement. Rebels and their sympathizers are moving heaven and earth to defeat it. There is something behind the curtains, gentlemen. There is something rotten in the state of Denmark. About two years ago, down in South Carolina there was a peculiar kind of disease sprung up. Its symptoms were various. It baffled the skill of the best physicians and raged as an epidemic. The rich principally, though many of the poor, were victims. It spread east and west, north and south, confined to politicians principally, editors, such as the Cincinnati Enquirer—papers of that class. People got crazy on it many of them had to be imprisoned. They were sent to Camp Chase. Their cry all the time was “Nigger! Nigger! Nigger!” “We are deprived of our rights!” That disease is now being cured by sulphur-nitre, saltpeter and brimstone, with the addition of hemp. That disease is called “nigger on the brain.” I am afraid members of this Convention will catch it. Some constitutions are peculiarly susceptible to take on diseases. Any disease is born with it. It is a peculiar predisposition of the system to take it on, the same as consumption. The disease is showing itself here, and if it is not checked it may show itself to an alarming extent. We intend, though curing it by the defeat of that resolution by an overwhelming majority. It has to be done. It will be done. If so strong free-state men as the author of this resolution are content to adopt this resolution, they need a little religious refreshment. Brother Tichenell can tell you it is characteristic of a good Christian to make any sacrifice to a good cause. Is not that good theology? Cannot these loyal Union men, then, who hail from the regions of sin and darkness of Kanawha, are they in Wheeling to sacrifice their interests in the negro for the sake of harmonizing the Convention and giving us a new State? Are they not gentlemen of intelligence sufficient to know that they are behind the times? Why gentlemen, you are fifty years behind the times. You will be ashamed of yourselves four years hence to think that you advocated a resolution so repugnant to the people of West Virginia. The principle for which we are now standing is onward and upward, the principles of constitutional liberty. So waken up. You are attempted to be destroyed by the peculiar institution of slavery. The “irrepressible conflict” doctrine has got the ascendancy. The people are no longer going to be imposed upon by a few aristocratic slaveholders. The people of West Virginia whose interests are not peculiar, in accordance with the peculiar institution, are not in favor of slavery. They are opposed to it. Therefore, gentlemen, do

not pass the resolution. It is opposed to the interests of the people. And, by the way, while we are on the Kanawha valley, these gentlemen represent some of the loyal people, I don't doubt, but I will venture that a majority of the loyal people whom they represent are anti-coercion men; opposed to the prosecution of the war; uncompromisingly opposed to the President's proclamation; opposed to arming the negroes; opposed to everything that will bring about a speedy restoration of peace and the crushing out of the rebellion. They are "loyal men"; but the negro—they are "loyal men"; but don't hurt anybody! The thing behind the curtain is this: many of them got tired of living in Dixie. They have come home. They want to get back to the old ship. Don't blame them. Anybody would get tired of living in Secessia, where fine-combs are legal tender (Laughter). They are tired of it. They come home poor, as a matter of course. No money out there. They had interests in negroes. No ex post facto law is to be passed. They will come home and take the oath of allegiance—and they want to get paid for their negroes. That is the great secret of it. It is to pay disloyal men for negroes. It is to pay secession sympathizers for their negroes. That is the object. That is why the thing is so urgently brought before this Convention. The practicability of the thing they know is plain and clear. They have found out a majority of the Convention is opposed to a resolution; and why don't they come over on the Lord's side? We intend putting down the resolution for reasons already given. Let me ask, let me plead with you, in the name of reason, by all the bright hopes of a glorious future which is to redound to the new State if it is adopted, not to pass the resolution. I plead with you. If I could only cry, I would weep, (Laughter) not to pass that resolution. If you do, the dog is dead. The new State is defeated if the resolution is passed. The people will condemn us if it is passed. I for one do not want to go. I do not know where I would go. I would not go to Dixie. I would have to go to Canada. The people have taken into their own hands, and if the resolution is passed, they will vote it down. They will form another convention and send men of the right stamp who will make a constitution to suit them, and a new state to suit them. But this resolution will not pass; I am satisfied of that.

A word on constitutional guaranties and I have done. Now I concede freely the arguments presented by the distinguished gentleman from Logan yesterday. I do not wish to take any property from any individual without just compensation; but there is

always a thing of practicability. Is it practicable to bring this question now before the house before the people, seeing that it will jeopardize the new State? If it will, can we not in all justice forego any declaration of that principle for the present and thereby secure the speedy admission of the State, leaving the question to the tribunals to which it belongs. I for one am willing to make a sacrifice—anything that is reasonable or unreasonable; but I am opposed to any compromise. If principle is right, it is right, and there is no such thing as compromising principle. But the peculiar institution of slavery seems to show itself in everything that goes. It has divided our churches; it has divided our nation. But the thing is to soon “play out,” and I hope we will give it a death-blow in the new State today. It is dying hard. It always makes me feel bad to see a person die hard. Gentlemen die hard in holding up their cause. I sincerely sympathize with them, but they might have known. They have sowed the storm and reaped the whirlwind. It is their fault. We have pleaded with them; we have urged them time and again to wipe the thing out, to let it go. Why hold on to it with such a grasp when it is going to drag you down? We are making history, gentlemen, and forming reputations which are to last as long as the memory of the new State lasts. I for one would not have my name on the record that I voted for that resolution and let my children after me find it there that I have given them such a system, such a resolution as was calculated to defeat our new State. I know not what course the honorable gentleman from Monongalia will take. I understand he is ready to speak; but I think from the nature of the resolution that he is on our side. I shall not detain the Convention any longer.

MR. HERVEY. I feel, Mr. President, that it is due to the little county of Brooke which I have the honor to represent on this floor that her voice should be heard on this question. I feel proud that I am from the county of Brooke. There are men on this floor who will bear me out in this declaration: it was the county of Brooke which first enunciated the movement to drive back rebellion from the State of Virginia. I stand upon this floor as the representative of the county which first struck the blow to drive back rebellion. I, too, have been in the habit of being considered somewhat conservative touching this negro question, although I knew, as the gentleman who has just taken his seat remarked, that if those men—I speak of the men at large, not in the Convention, undertook to sow the wind that they must reap the whirlwind.

Now, sir, when this question is sprung here; when this Convention is solemnly abjured to take a position extra-judicial, a position into which they cannot force this Convention—a position which we warn them not to take, they must abide the consequences. What is the character of this Convention? Is it a court? Are we deciding upon law and upon evidence? Are we here enacting law? No, sir, but the fountain source of law, the Constitution. Now, sir, by a side issue, by a side thrust, whether it is nolens or volens, I do not declare, but by a side thrust as it were under the fifth rib of this Convention, they determine that this Convention shall come to the rack—fodder or no fodder. Well, sir, whenever and wherever it is sought to force upon me or the loyal people whom I represent—I do not claim to represent anything else—any issue unwarranted by the facts, unwarranted by our true position, I will hurl it from me. I will vote no upon this resolution. Gentlemen will not force me into any position here which alleges that I am bound to take a construction so or not. I am not in the position of the gentleman from Cabell. I will not stand up here in the face of this Convention and say he fools his constituents. Sir, I cannot fool my constituents.

MR. PARKER. The gentleman entirely misunderstood me.

MR. HERVEY. I took the remark down. It may have been playful. You drew that inference from the fact that a former convention had enacted a constitution which was plighted with the people. Sirs, this new State has a deep-seated, determined, unflinching, untiring enemy. We will meet them in the breach; we meet them everywhere. The papers this morning allege that the proposition has been introduced into the Congress of the United States which proposes to destroy the Constitution on the ground that certain counties within the boundaries of this new State have not been heard from on this question. I tell you, sir, and I tell the authors of it, that trickery, that attempt to play with the rights of the people of the new State will most surely fail. What does that mean, sir? Why that this Constitution must go back to be declared null and void by Congress; that after while we will have another Congress inimical to us. There are men within and without the new State who have determined that they will go back to the fleshpots of Egypt; men who formerly acted with us—some of them; some of those men who initiated this movement. That the whole thing shall be overthrown and destroyed. Mr. President, if the gentlemen who advocate this resolution could show by any

process of reasoning, right or wrong, that it was proper and right that we should so declare, I would have no objection to voting for it.

There is another point, of figures. It will be admitted that whenever the friends of a particular measure differ widely upon any particular point that they have disproved their own cause. Let us take the figures of the gentleman from Ohio and of the gentleman from Kanawha. The gentleman from Ohio has by a process of mathematics undertaken to demonstrate to this Convention that \$450,000 will settle this whole bill. What has the gentleman from Kanawha figured upon this subject? He has told this Convention he desires the Congress of the United States to pass a bill appropriating \$2,000,000 for this purpose.

MR. LAMB. Will the gentleman excuse me a moment. I want to show the gentleman he is entirely mistaken. The proposition of the gentleman from Kanawha is to free all the blacks instantler. He supposes very properly it will take two millions of dollars. The proposition embodied in the congressional amendment is a different proposition entirely and would require a different measure of compensation altogether. The discrepancy even between the gentleman from Kanawha and myself, which the gentleman is imagining exists, is solely in his imagination.

MR. HERVEY. I would have told the gentleman before he gave his explanation the purport of it; but, sir, take the figures of the gentleman from Ohio as to the number of slaves within the boundaries of the new State at the present time and divide two millions by that number of slaves and see what product you will have. It will take two millions of dollars to buy these slaves. One thing I know according to the papers: Certain members of Congress have come to the opinion that a million and a half of dollars will be required.

Now, sir, there is another thing I am sorry. The inquiry has been so often put to members who have addressed the Convention on the other side of the question. That is this: are you opposed to getting the compensation? Do you intend to take them without paying for them? That question has been put repeatedly to almost every member.

MR. BROWN of Kanawha. That is not the question: do you believe the Constitution as it is provides for it? I put it to you now.

MR. HERVEY. I will answer any question the gentleman can propose. It is the same thing in Dutch. I propose this, that instead of shouldering up the law, placing the entire responsibility or weight of this debt on the people of the State, which I contend the gentleman from Kanawha would inevitably aid by his resolution asking this Convention to say that the State should do it, I propose in lieu of that to say to Congress on the part of this Convention, the highest body in the State, I believe: members of Congress—we respectfully ask you in the multiplicity of your benefactions as you have initiated a process by which you propose to do this very thing, inasmuch as you have voted \$20,000,000 to the State of Missouri; inasmuch as you have a bill before the Congress of the United States which provides a million and a half of dollars paid to West Virginia, \$400,000 to Delaware; \$10,000,000 to Maryland, I propose to join in this band of border states and shout our way rejoicing. It does strike me that our worthy friends from Kanawha, Putnam and these border counties have got into the slough of despair. We are not your enemies; we are not opposing your interests; we do not desire to do it; we will not do it. But we say, come. You have been harassed; you have been plundered and robbed in company with all those loyal men along the border here. Why not now take a course which will relieve you from this thing? Why not now take a course which will relieve our people from this thing? I tell you we can go before the people with this thing. The gentleman cannot make any club that can beat our brains out; but they are trying to get one to beat their own brains out with. We propose to say to the people of West Virginia: fellow citizens, State of West Virginia, the members of this Convention have had this most mischievous hobgoblin question up—the negro—and they have adopted a plan which will not only relieve you pecuniarily but which will forever relieve you from all liability, from all difficulty. How have you done it? The gentleman from Hampshire well said that our people are well posted as we are. How have you done it? Why, in this way. We thought of your sufferings, we thought of your wrongs, we thought of this robbery, this rebellion, that now you were tattered and torn, property destroyed, and, gentlemen, we have proposed a plan by which you shall be remunerated without taxation so far as yourselves are concerned.

Now, why in the name of common sense do you not stop? What is the use of discussing abstract right here? What is the use of setting the new State on fire upon a proposition about which there is no dispute? If you love it, we don't. Go with us and get

out of it in the economical money-saving way. Why, I tell gentlemen on the other side of this question you are certainly acting in the most ungracious way towards your constituents. In addition to all these disasters turn round and tell them we have been up here at Wheeling at a sort of solemn conclave. Their conclusion is you have got to lose all your negroes and you have got to pay for it too. We have heard the paramount call of the visible Uncle Sam on the one hand and you on the other. We said to Uncle Sam although you are scattering your benefits all around to everybody, we will not look at it. We will not have anything to do with that. We standing back, sir, upon the Old Virginia notion which prevailed in the State of Virginia, take money out of the treasury which has been lying there for years subject to our call, appropriations out of the land fund lying in the treasury of Virginia for years. We were too proud; to self-sufficient, to reach out our hands and accept it. That money laid there until the reorganized Government of Virginia stepped forward and accepted the money.

Now, I do hold, sir, that all this allegation of this charge that we propose to perpetrate a fraud on the people is unfounded. Why, we agreed to your proposition, but we prefer a different course. Now, sir, that is the whole of it so far as I am concerned.

Mr. President, every interest which a loyal West Virginian holds dear is wrapped up in this movement. Let us go together as a band of brothers, not fighting, squabbling, searching every woodpile we come to to find a negro in it. We can meet the blow directly. Permit Congressional payment. Stops the thing forever and at once. The provision of the Willey amendment passed by Congress will not do. Twenty-five, thirty or forty years may find the dregs of slavery in our midst. Now, why affirm a political thesis upon a basis which looks towards the continuance of this institution forty years. For that is based upon the figures of the gentleman from Ohio. I hope that five, three or two years will not find a solitary slave in the boundaries of West Virginia. I say the proposition of the gentleman from Ohio, I mean his figures are based upon a wrong hypothesis and looks right in the very face of a proposition for Congressional remuneration. It is based on the fact that slavery is to remain and continue. How if his plan is to be worked out, it entirely defeats the other, for you cannot embrace the other. Now, I prefer the direct road. I don't see any propriety in traveling away round Robin Hood's barn. I don't see any propriety in carrying a stone in one end of the bag and corn in the

other. The result will come. That is a fixed fact. It will come, new State or no new State—I mean the broken institution so far we are concerned. Now, then, sir, drive your arrow straight to the mark. No propriety in cutting cover, as farmers say. We have got the ground all cleared off. We are ready with one act of ours to end the entire question. That is my plan. That is my answer to these interrogatories about compensation. They are satisfactory to me. They furnish the basis on which I shall act. And, consequently, so appearing to me, it is a wonder to me everybody else don't see just as I do.

MR. POWELL. Mr. President, I had thought I would say nothing on this question. There is such a small portion of time allotted to me it is scarcely necessary to enter into the discussion of the question. I wish to remark, however, that I am in favor of the first resolution. I do not know that any gentleman has expressed himself as opposed to the first resolution; but we have been told here that if we did not give them the second that at least they would be inclined not to grant us the first. I am in favor of the first and opposed to the second, notwithstanding threats that have been made. I might if I had time give many reasons, some that perhaps have not yet been brought forward. There is one thing, however, that has been urged on the opposite side that has not been noticed by any of the gentlemen who have spoken on our side. We were told by the gentleman from Kanawha here that a private election was held; that the vote polled on that private occasion was carried up to Congress and that was the cause of our now being engaged in the squabble here. Now, if it is a private affair to publish it in the papers for weeks that such an election will be held, and we contend that there was no private election held; it was a public affair, published to the world; and if gentlemen did not see fit to open polls in their counties and precincts, we are not to blame for that; and if that election was the cause of our being here, re-assembled, for the purpose for which we are here, I am glad it was held. Because today our prospect is bright for a new State and a free State. Then, Mr. President, as I have remarked I am glad that election was held. There are other things that had I time I would notice; but the hour is at hand fixed for taking the vote and closing the discussion; consequently I yield the floor.

MR. DILLE. I think, Mr. President, it is due to this Committee upon Revision that the time for this discussion be extended, that the chairman or some member of the committee be permitted

to close this discussion. It is usual. I believe it has been the uniform practice of the Convention always and under all circumstances to permit the chairman of a committee at least to close a discussion. I think we are very generally satisfied with the discussion; and for the purpose of letting the chairman or any member of the committee who may represent that committee to close the discussion, I move that the time be extended a half hour.

MR. STUART of Doddridge. I want to call the gentleman to order. Not that I have any particular desire to cut off this discussion if I supposed any new light could be thrown on this question. The only way to do it is to reconsider the vote we took fixing this hour for closure, and I hope this body will not do it.

MR. DILLE. I voted for this. I think it is due, although I am as willing and anxious as the gentleman from Doddridge can be to have this discussion closed; but I move a reconsideration of this question.

MR. VAN WINKLE. I should be very happy to have the gentleman from Monongalia reply.

MR. WILLEY. Not intending to do so, I have taken no notes at all; and expecting the chairman of the committee would reply, I waive the courtesy and hope he will do so.

MR. WHEAT. I want ten minutes myself, and would not vote to extend the time unless I can have it. I have much to gain and nothing to lose.

MR. PINNELL. I certainly entertain the kindest feelings towards all the gentlemen present; but I offered that resolution this morning early so that all might have ample time to conclude—which I thought myself much too long. I am here to perform a duty to my constituents and my business urges me to leave here, and not over an hour ago I received a telegraphic dispatch from Parkersburg that my son is dangerously ill. I cannot leave without voting on this question. While it would be courteous to extend the time to any member of that committee, yet common courtesy would then require that other gentlemen who have not spoken should be permitted to do so. The thing would go on ad infinitum. I am in hopes therefore that the Convention will not re-open the door to discussion; that they will abide by their resolution to close debate at the hour fixed, and proceed at once to vote.

MR. HALL. I was just going to remark, if I may be privileged to make it, I believe I occupy the position of the most resolute advocate of closing debate, as I rose last evening for that purpose. But, gentlemen, I never saw a case when the chairman of a committee or some member of it was not permitted to reply to a discussion. The whole day has been occupied by the other side, with a notice from the chairman that he desired to close the debate. Yet you occupy the time up to the hour fixed; and it would be a thing I never saw done in any deliberative body, and it has been the universal practice here since this Convention began. I am anxious to close this discussion; at the same time I am unwilling to play anything that is not fair. I think it becomes us to look to this thing. It is a matter of downright right.

MR. PINNELL. I would say to the gentleman that no argument he has made would induce me—

MR. POMEROY. I would like just to correct one mistake. I have listened to this discussion; and if I was able to understand when gentlemen have spoken, this has not been a one sided discussion. The gentleman from Kanawha, when he offered an amendment this morning made a speech on one side and the gentleman from Hampshire made a speech on the same side. The gentleman from Cabell made a lengthy speech on the same side.

MR. HALL. I referred to the time occupied since the matter was spoken of this afternoon.

MR. POMEROY. Exactly so. The suggestion was made for the whole of it. Yesterday nearly the whole day was occupied by gentlemen on the other side—speeches two hours long on the other side. I have no objection if gentlemen wish to open up this discussion again. The chairman has a right to close discussion only as a matter of courtesy. As such this Convention has extended it time and again; but there is no such rule. I have no objection to its being done now if the Convention sees proper to reconsider the vote; but it would certainly be very uncourteous and unkind for any gentleman at the close of the chairman's speech to call for the previous question and cut off debate. If you open up discussion you open it up ad infinitum, until you see proper to close; and I do not think you ought then to close it until all others who wish to speak have had an opportunity to do so. There are other gentlemen on this floor who have been taking notes and are anxious to speak. The chairman of this committee knows I have treated him with

the utmost kindness and am always ready to do so hereafter. If there has not been light enough thrown on the subject yet, let the gentleman go on.

MR. POWELL. I am opposed to the reconsideration of the resolution of this morning. If it had been a motion to extend the time a few minutes to allow the chairman of the committee to make a few statements, I should not have had such serious objections; but I am opposed to a reconsideration and thereby opening up a way for the resumption of general discussion. If we reconsider and allow one gentleman to speak, we must allow others, and when this debate will end no one can tell. If it was to extend the time just for the chairman of the committee to make a few remarks, I should not have such serious objection; but to reconsider I cannot consent.

MR. DILLE. I expressly announced when I moved a reconsideration it was for that purpose and that alone of permitting the chairman to close this debate. I do this because the chairman of that committee when he had the opportunity of closing the debate within the time fixed by the Convention announced that he would claim the right. The time was consumed up to the hour and he had no opportunity to do so.

MR. LAUCK. The motion to close this discussion passed unanimously. I was looking for this; calculated that would be the end of it. That was the calculation, too, on the other side. So far as the discussion has been carried on, the friends of the resolution have had an opportunity to discuss it. The chairman has perhaps made the most lengthy address to this house, but four very long speeches were made on that side. But, sir, I for one don't feel willing to extend the time. I am willing to open it up today and tomorrow and next day, and all the time; but, sir, when we all voted for that resolution this morning, I think we should abide by it.

MR. STUART of Doddridge. I want it to be understood before I vote an opportunity to these gentlemen on the committee—I believe there are five of them—we have heard from four of them at least—I sincerely hope we will not open up this discussion again, as a reconsideration would do. Like my friend from the county of Upshur, I want to leave and will have to leave and I want to pass upon these momentous questions before I go. Although I would be willing to extend to my friend from Wood every courtesy possible,

but, sir, it conflicts with my interests and the interests of others. We have had the combined argument of the committee in their report and have had four separate and lengthy arguments from members of the committee. If it was any gentleman who had not yet made a speech appealing to be heard it would be different; but it is these gentlemen who have been voluminously heard who are asking to be heard again.

On the motion to reconsider, Mr. Pinnell asked for the vote by yeas and nays. The vote was taken and resulted: Yeas, 30; Nays, 24. So the motion to reconsider was agreed to.

MR. STUART of Doddridge. I will now move the discussion close at half-past five o'clock.

MR. RYAN. I move to amend by making it five.

MR. STUART. I will accept the amendment.

The motion was agreed to.

MR. VAN WINKLE. Mr. President, I am obliged to the Convention for the consideration extended to me. My friends have brought me out into a very conspicuous place in the Convention; but I hope the Convention will not therefore infer that I expect to make any great things of a speech, or a very lengthy one.

In endeavoring to claim the usual courtesy on such occasions, or rather in notifying the Convention that I would expect it, I had most in view the rebuke of the aspersions that have been thrown on the motives of the committee and those who have acted with them. I am not going to recapitulate them or state what they were. And I could not perhaps remember all of them if I tried; but I wish to say this, sir: that the resolution that is now pending before this house, reported by the committee, was considered, and was in fact, a compromise when it was offered here. When I arrived at this place, before the opening of the Convention, I was told it would be difficult here on account of there being no provision for compensation; that by the amendment of Congress slaves in existence at the time the Constitution went into operation would be freed by the mere operation of the Constitution. It was to me, sir, a novel case. I had not known of one such happening within the United States, unless, indeed, when Massachusetts offered the few slaves that remained in her territory, I think about the time of the revolution; and when New York, after her gradual emancipation laws had been in force for at least thirty years, on the establishment of a new

constitution, freed the few slaves remaining by one act, who must have been rather old people. But I believe there was a prohibition ordained that those who had had their services should support them, that they should not be allowed to go on the counties as paupers. But there is no single instance of a state setting out for the purpose of freeing itself from slavery at one stroke. New York, New Jersey, Pennsylvania, to say nothing of the New England states all passed laws for the emancipation of their slaves, but for gradual emancipation, and they all guarded it with certain checks for the benefit of the slaves which were to become freemen and for the benefit of their citizens; but in neither of these cases did they pretend to make emancipation without compensation.

Well, sir, the very argument used on this floor so often, merely that the Constitution was sufficient; that it was there in the Constitution, that private property shall not be taken for public use without compensation, was urged. I went to see gentlemen whom I supposed to be of both parties here. I exerted myself, in conjunction with some friends, principally those of the committee in talking this matter over, in trying to get some arrangement with those who thought the interest was so large in the counties they represented that something must be done in reference to the subject. They very kindly agreed to accept instead of a constitutional provision, which even if we might with propriety have introduced it here might have been the means nevertheless of subjecting us to delay. I mean to say if that addition to the Constitution would not in fact have changed any substantial feature of it, advantage might have been taken of it to make objections, and so have injured the great object we all have in view. Now, under these circumstances, with a sincere desire to effect a compromise so to accommodate matters that there should be no hard feelings even between members of this Convention—and I desire to be thankful with all my heart that we did separate at the close of the last session with, I believe, entire absence of any ill or unkind feeling in the breast of a single member. My associates of the committee kindly co-operated in this, and I had reason to believe when I offered the proposition that a committee should be appointed to consider this matter that what the committee might do would be acceptable to gentlemen who called themselves the other side. I had hoped there was no sides in this Convention. And now what have they proposed? What is to be the consequence? We find in the Constitution we have ourselves made this provision in reference to making compensation for private property taken for public uses.

Now, sir, to quiet the doubts, to enable this Convention again to come together as a whole and to act in such a way would be to its own credit and to meet the approbation of every intelligent man throughout the entire State when he will reflect seriously upon it and examine into the circumstances connected with it, to guide themselves and go again before the people, as we are bound to do, with the endorsement of a united Convention, of a fraternal convention, as it proved itself at the former session, we offered simply a declaration of this Convention.

Now, sir, what is this declaration? It amounts to simply this, that a fact is a fact; and if gentlemen can make anything more of it I should like to know how they will do it. It simply affirms that the slaves in being when this Constitution goes into operation or are freed by its provisions, that the owners of such slaves are entitled to receive compensation from the State. Now, sir, if there is any gentleman prepared to deny that proposition, in or out of the Convention, I do not know who he is, if he has at all undertaken to look into the subject. I say, sir, I believe this confidently because if the case is as I have stated it, that it does propose on the one hand to take private property for public use, it does provide on the other hand, that if it is taken, just compensation shall be made for it. No sane man—for it requires no great degree of intelligence to perceive it—no sane mind, one that is not twisted and contorted and turned aside from everything that is good and true and right, can deny that proposition. Because, sir, to deny it would be a very solecism in language. You would have to make your words on the one hand, express a different meaning from the meaning the same words have on the other hand, and that I believe is beyond the power of logic. Now, sir, these are the circumstances under which this resolution has come before this body. Gentlemen will bear me witness that I have been endeavoring since this matter has been before the Convention to find out from them what they would have short of the absolute defeat of the resolution, and, sir, I have not had a proposition of that kind. It is true, it has talked of a substitute for it, a resolution in reference to the compensated emancipation which is under consideration in Congress under the resolutions of the President, as they are called; but, sir, that does not apply to nor affect this case. It does not meet the difficulty found on one side here; it does not meet at all the difficulty that these gentlemen representing a slave-holding interest may be assailed if no satisfactory assurance about compensation shall be given. At any rate if Congress shall be willing to make

the appropriation, on such terms as they are making others, I suppose the slaves all through their country will be freed by a given year; and unless the aid tendered to the State will be so managed as then to make the compensation. But that has nothing to do with this. And yet gentlemen have talked so much about slave holders wanting to perpetuate slavery. Where does the resolution come from that proposes to free the whole State of all the slaves in it? Why, sir, gentlemen who have been talking of that kind of philanthropy for years, who have seen that slavery was an injury to the State; who have supposed the continuance of it here would be an injury to our best interests. They have not been willing to accept this concession from those who they say are standing up here for the slaveholders; will not enter into the spirit of harmony and compromise in which it was offered and adopt this resolution by which they may satisfy their immediate constituency. I hear talk of the slaveholder; of his haughtiness; that a man must not saddle his own horse. Sir, I repudiate the doctrine. There may have been cases in the east; but I appeal to any man around me here if he ever saw anything of the kind in western Virginia. I know the answer will be, as it has been given to me by my friend on the right, from every quarter. Why, they are as good at least as any of our citizens. Doubtless they have their faults, and it may be true that a majority of them have gone over to secession. I should regret very much if they have; but those who in the face of the inducements held out have remained faithful are doubly worthy the consideration of this Convention. Now, sir, again, it is simply proposed to make a declaratory resolution. One gentleman from Kanawha has proposed to strike out the words which confined the compensatory feature to the State; but finally the gentleman from Monongalia who has had the very burden and worry of all this battle and who has stood up in the Senate of the United States and fought your battle there; who is daily assailed in the press of your city; this gentleman also, as one of the committee asks you to pass this resolution; and he himself in the same spirit of compromise, has offered a resolution in still more general terms, but I do not find that this is received with any more consideration or favor at the hands of gentlemen than the one originally offered by the committee.

Sir, I take the liberty to say here that I was opposed to the insertion of the emancipation clause in the Constitution at last session believing it would lead to the indulgence of negro feelings of which we have had some specimens here this afternoon. It never

entered my mind for a moment that the perpetuity of slavery in this State would be a consequence of excluding it there. Sir, we all saw it was dying out, and we thought the insertion of the clause, which we did as a compromise forbidding the importation of slaves from outside would be sufficient to assure the gradual extinction of the system. And therefore there was but one voice throughout this whole commonwealth but what acknowledged its willingness that slavery should cease within its borders. I wish to take the opportunity to say this here: when I found we could obtain the assent of Congress on no other terms than those which are to be put into our Constitution now, I wrote to the gentleman from Monongalia and other friends in Congress to tell them to urge it with that in. I was willing, when I thought that was the only condition on which it could be had, to take it; and I promise now that wherever that gentleman may be assailed for placing that clause in the bill before the Senate, I shall feel it my duty to defend him.

Now, sir, we have no objections to the emancipation clause itself. These gentlemen whom it is attempted to deride because they have a few slaves to help them are willing this Constitution should go on; and what do they ask? Any extraordinary provisions for the benefit of the slaveholder; any provision that the free holders (those who have been called that) even the "abolition" party—the original anti-slavery men, the Garrison set who have led the movement for abolition before there could be said to have been a political party on the subject, has not their cry always been "compensation?" Where did the project originate? It originated in the North, sir, and so it has been that good intelligent men there opposed slavery; but I do not know that they have ever proposed to take the slave without compensation.

The matter more immediately in hand is this: what are the evils to flow from the adoption of this resolution, in the modified form offered by the gentleman from Monongalia, if you please? I have listened to these debates with all the attention I could but I have failed to learn of any reason but that it was likely to injure this cause before the people. I have been told if you told these people, who have been longing for the new State, you can have it but these slave owners will have to be compensated by a little taxation, they will fly the track and have nothing to do with it. It is about thirty years since I came to reside in western Virginia. I profess to know something about the people of that region. I have been intimate with them in almost every relation, and I tell you that is not the character of the people of western Virginia. They are

emphatically a thinking people. Although they may not have the acuteness of the "yankees" yet for good sense—common sense—I will put them against any other people that I ever was acquainted with; and if the advantages of education which people have in other states had been afforded the people of western Virginia, I have not the slightest doubt they would have been among the superior people of this country. I have more confidence in them than that. I have had to appeal to them on various occasions. In 1850 I was one of the candidates—proposed to be one—for the constitutional convention that met at Richmond in that year. The district from which I and the other delegate were to be elected consisted of seven counties. The majority in the seven was enormously Democratic. I went around the few days I had to spare, after I finally consented and was met very frequently with the remark from them when I had occasion to ask them about it: we have determined that this shall not be a political strife; and in my district, and I believe in every one but one or two in the state they did of their own accord divide honors as it were, between the two parties. Now, sir, don't tell me a people who when they see their interests require it will sacrifice party feelings on the altar of their country will be frightened from what they think just and right by a few dollars of taxes. Another instance fresh in the minds of all here. You may bring up a common political election. All our elections for Congress until within the last three or four years have been in that way. In our section we had nothing to expect from Congress. We did expect to receive patent office reports and things of that kind, but that is as far as it went. Well, then, of course, when a candidate was put up for Congress they voted according to their party sentiments. But when it fell to the people of West Virginia to be called to vote upon the question whether their state should be razed from the Union, what became of party and every other consideration except patriotism then? Sir, in my county I asked one of the best calculators there how much majority will we be able to give? He said 1200. We held the election, and the vote at the court house was some nine or ten or twelve hundred. I asked him again before the return had come in. "Well," he says, "Van, I reckon it will get to 1500." Well, sir, it went to 1700. I was at Clarksburg a little before the election. I inquired how the county was going. Smith thought it was going to be 400. Another said 700 and another, who was very sanguine said he thought they would get 800. Well, it went a thousand. Why, sir, no man knows the strength and uprightness in the hearts of this people until he gets better acquainted with

them than we seem to be. I will trust them on this question, which comes home, like that did, to their hearts, and bosom. Where their interests are at stake, they are true to their interests; and I will trust them on every occasion to be true to those interests when they understand that those interests are in danger. I will trust them now, sir, if we should be under the necessity of voting millions for the sake of doing an act of sheer justice. There is no man that is so eloquent as to persuade me that any considerable portion of the people of West Virginia would reject this new State, which they have been so long seeking. It is a question they understand. No, sir, they are not going to reject it for the sake of a few dollars and cents. You tell me of other difficulties involved in the Constitution—these issues and those issues—all of them. Sir, they have already been disposed of. This Convention, which has been compelled to listen to a lecture on its conduct from a member hardly warm in his seat—I don't care to go into particulars; to hunt up this or that argument and compare them specially; but I place myself on the general considerations involved in this matter. It proposes simply to signify the willingness of this people to do an act of justice, to give that assurance to this community that these people are ready to do an act of justice. And where is the man that will stand up here and tell me the people of West Virginia are not willing to do this whenever demanded at their hands? Sir, I should for myself, while I continue to be one of that people scorn the imputation. I know them better. Again, sir, nothing was ever gained by concealing the truth, and if everything could be gained in this case by concealing the truth, it is already too late. Sir, these debates, with every idea on every proposition to consider this subject has gone forth, and these debates have gone with it. Do gentlemen suppose this idea sprung up here; that the payment of compensation was never heard of until this Convention assembled? Why, this thing was talked of among the populations most interested in this subject long ago. How, then, are you going to keep it from the people? You are not, I am sure. I can say it for every member, they are not going before the people with a lie on their lips. If they are asked if this Constitution does not require that compensation shall be made for these slaves, they are not going to reply that it does not. And don't you think that question will not be asked? Now, sir, prepare yourselves to show that compensation is an act of sheer justice. It seems to me you may explain to them how cheaply that act of justice can be accomplished. Sir, these statistics brought forward by the gentleman who sits before me (Mr.

Lamb) are to my mind as true as they can be. I do not think the whole number to be compensated for will be 1500, and that spread over a period of 17 years, and not a dollar paid for four years. This may be something to frighten children, but depend on it, it is not going to frighten the intelligent citizens of West Virginia.

MR. WILLEY. I suppose my amendment is not now in order, there being two already?

THE PRESIDENT. The motion is to adopt the resolution to which an amendment has been offered by the gentleman from Morgan and another by the gentleman from Kanawha.

MR. RUFFNER. In order that the gentleman from Monongalia may have an opportunity of presenting his substitute, I beg leave to withdraw my amendment.

MR. WILLEY. Then I move to amend the amendment by striking out the original resolution and the amendment and substituting the following:

“RESOLVED, That in the opinion of the Convention every right to every kind of property is amply provided for and secured by the Constitution as it now stands, and that no addition or amendment thereto, in that behalf, is necessary or proper.”

MR. STUART of Doddridge. If this new question is to be sprung upon us in this way, I would move to lay the second resolution and the amendments on the table; because I don't want to pass immediately on this subject without an opportunity of investigating and discussing it.

MR. POMEROY. Is it in order to make that motion until we have voted on the first resolution?

MR. STUART. My motion is in order and it is not debatable.

MR. POMEROY. Will the Chair inform me whether when two resolutions are pending before we take a vote on the first can we strike out the second or something in place of it?

MR. STUART of Doddridge. I hope the Chair will put my motion, if it is in order, to lay the second resolution and the amendments on the table.

THE PRESIDENT. The impression of the Chair is that the motion to lay on the table would not be in order until the Convention has voted on the first resolution.

MR. VAN WINKLE. It is a matter for the Convention itself to decide. The gentleman can vote for the substitute if they prefer it to the resolution offered by the committee. Why, then, the question comes up on the first resolution. The other then comes up again for its final vote.

MR. STUART of Doddridge. The gentleman from Wood—

MR. POMEROY. The Chair has decided, and I think correctly, in accordance with all parliamentary rules, that the motion of the gentleman from Doddridge is not in order until we have disposed of the first; and as the Chair has so decided, I move that the Congressional amendment be inserted in lieu of the section to be stricken out, and that the vote be taken by yeas and nays, and that we proceed to take the vote.

MR. WILLEY. The gentleman from Doddridge is perfectly in order. A motion was pending, and before it was put he moves to lay it on the table. Certainly, sir, that motion is in order; but I would say to my friend that if this substitute were adopted instead of the second resolution he would still have his substitute to be adopted by a vote the same as if the second resolution the same as if the original second resolution were pending. It only places the substitute where the second resolution stands now.

MR. POMEROY. The Chair decided that if you laid one resolution on the table, it carried the whole with it. The Chair having made that decision over again I am not disposed to question whether the Chair is right or not. It stands as the decision of this body that if you put one upon the table you carry the whole with it, both resolutions having been reported together by the committee and so taken up and considered by the Convention, with statement by the chairman of the committee and by the Chair that when we came to vote the question would be divided on demand of any member. The Chair has again decided the motion of the gentleman from Doddridge out of order. I hope gentlemen will not quibble with the decision of the Chair.

MR. STUART of Doddridge. The gentleman from Monongalia offers a substitute for the second resolution and the amendments thereto. Unless we lay that on the table now under the rule we have adopted to take a vote at 5 o'clock we are necessarily compelled to pass between the substitute and the second resolution without having examined it at all. The gentleman from Hancock

understands you have to vote on this amendment before you reach the first resolution, and his amendment is out of order because it is an amendment to the amendment. Because I desire to examine or explain before I pass upon it.

MR. SMITH. When this vote is taken it may be adopted as a substitute for the other. It then takes the place of that other and becomes the committee's second resolution. In that position then you can ask that it be printed or make such other disposition as you think proper; but in the name of common sense—

MR. STUART of Doddridge. I have to vote on the proposition of the gentleman from Monongalia as a motion to substitute without having ever examined. You vote for it as a substitute.

MR. SMITH. I imagine it is not more offensive to you than the other. You have heard it read, and I know you have got sense. I don't know whether I will vote for it after it is adopted as a substitute. I may claim the privilege of determining hereafter. But this everybody has heard read. I understand the proposition of the gentleman from Monongalia is to make it as acceptable as practicable, to make it more acceptable to the Convention.

MR. DERING. Is the gentleman in order in the motion to lay on the table?

MR. SMITH. Well, I am giving reasons why it shall not be laid on the table. It looks to me like there is a determination—but I want to be quiet and calm—a determination to thrust out everything that may come in here that may be at all acceptable but that which may please yourselves. Now, I ask it as a favor of the house to give every proposition that may be offered a fair opportunity of being heard. Don't stifle it.

MR. VAN WINKLE. I think this is all a misunderstanding. I can say for the gentlemen with whom I am acting we have no desire to prevent the first vote being taken on the first resolution. We could not prevent it if we did. There can be no harm, however, in voting whether the substitute of the gentleman from Monongalia is preferred to the report of the committee. The second vote on that will be, shall it be taken as the sense of the house? If the substitute is preferred, why then we come back as if the original two resolutions, being the one providing for emancipation and the declaratory resolution (original or substitute.)

MR. STUART of Doddridge. The time has arrived for voting.

THE PRESIDENT. For the second resolution a substitute is offered, and there is a motion to lay that substitute on the table.

MR. VAN WINKLE. That carries everything with it, sir. You cannot put a part of that on the table without putting it all.

MR. STUART. Well, I differ in opinion from my friend.

MR. VAN WINKLE. That is all I have to state. I cannot see how any advantage can be taken of the course I suggest. We vote on the resolution amending the Constitution; then vote on the second resolution reported by the Committee or the substitute for it.

THE PRESIDENT. I look upon these two resolutions as so distinct that a motion of that kind cannot be entertained.

MR. VAN WINKLE. The gentleman cannot divide my motion, which was that the two resolutions be adopted. How can they divide it?

MR. PAXTON. What is the decision of the Chair in regard to the motion of the gentleman from Doddridge?

THE PRESIDENT. It is in order.

MR. PAXTON. Then it is not debatable?

THE PRESIDENT. The doubt in the mind of the Chair was this: whether or not there ought not to have been a vote on the first resolution before the vote was taken on the motion to lay on the table.

MR. BROWN of Kanawha. I hope we will be allowed to come to a vote. I confess I preferred the resolution as originally reported, but I do not like the amendment of the gentleman from Morgan.

MR. STUART of Doddridge. If the motion to lay on the table has been entertained, I desire that motion to be put.

MR. POMEROY. Will the Chair state decidedly what the motion is.

MR. WILLEY. I ask the ayes and noes.

THE PRESIDENT. The question is this: a substitute is offered for the second resolution of the committee, and the motion is to lay that substitute on the table. If adopted the effect would be to

carry to the table also the resolution and the amendment offered by the gentleman from Morgan. Upon the motion to lay on the table the ayes and noes are demanded.

The vote was taken and the motion was agreed to by the following vote:

YEAS—Messrs. Soper (President), Brown of Preston, Boggs, Caldwell, Cook, Dering, Griffith, Gibson, Hervey, Hagar, Hoback, Irvine, Lauck, Mahon, Parsons, Powell, Paxton, Pomeroy, Pinnell, Ryan, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Taylor, Tichenell, Trainer, Walker, and Wheat—28.

NAYS—Messrs. Brown of Kanawha, Brumfield, Chapman, Carskadon, Dille, Dolly, Hall, Harrison, Hubbs, Lamb, Montague, McCutchen, Mann, O'Brien, Parker, Ruffner, Ross, Sinsel, Simmons, Stephenson of Clay, Sheets, Smith, Van Winkle, Willey, Warder, and Wilson—26.

MR. STEVENSON of Wood. Now, Mr. President, I move the adoption of the first resolution reported by the committee.

The following is the resolution as reported by the Secretary:

RESOLVED, That the seventh section of the eleventh article of the Constitution be stricken out and the following inserted in its place:

“7. The children of slaves born within the limits of this State after the fourth day of July in the year one thousand eight hundred and sixty-three, shall be free; and all slaves within the limits of the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years, shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein.”

The roll was called and the resolution adopted by unanimous vote as follows:

YEAS—Messrs. Soper (President), Brown of Preston, Brown of Kanawha, Boggs, Brumfield, Chapman, Caldwell, Carskadon, Cook, Dering, Dille, Dolly, Griffith, Gibson, Hall, Harrison, Hubbs, Hervey, Hagar, Hoback, Irvine, Lamb, Lauck, Montague, Mahon, McCutchen, Mann, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Pinnell, Ruffner, Ryan, Ross, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wood, Stuart of Doddridge,

Sheets, Smith, Taylor, Tichenell, Trainer, Van Winkle, Willey, Walker, Warder, Wilson, and Wheat—54.

NAYS—None.

ABSENT—Messrs. Hansley, and Robinson.

And on motion of Mr. Brown of Preston, the Convention adjourned.

* * * * *

LXIV. WEDNESDAY, FEBRUARY 18, 1863

The Convention was opened with prayer by Rev. Joseph S. Pomeroy, member from Hancock.

Following the reading of the journal, Mr. Dering moved that \$500 worth of the Amended Constitution be printed by the Executive Committee for distribution among the people. This was agreed to when

MR. VAN WINKLE reminded the Convention that the Constitution, as amended, had not yet been adopted by the Convention. He said:

We have voted on the amendment, and the question recurs now, according to parliamentary usage, on the adoption of the Constitution as amended. I therefore move it.

MR. BROWN of Kanawha. There is one thing that strikes me. It will be borne in mind that there are several provisions about the legislative department, the senate and the judiciary which embrace counties that have not come into the State. Therefore, there are clauses standing in those sections that have reference to counties under the apprehension that they would come in, and if they did the number of the house of delegates would be so much (42, 45 and so on). It occurs to me we ought to leave out those parts which really are no portion of the Constitution, just as the gentleman from Marion has suggested in regard to the 7th section for which we have substituted the Congressional section. We are not now adopting, as I understand, those clauses that relate to those counties that did not choose to come in with us, and to our people when they read it in its present shape it will create confusion. To those

of us who understand it it does not. I should like to see it go out perfect, free from mistakes of matter.

MR. VAN WINKLE. I should think, Mr. President, it is still open for those counties to come in if they take a vote under the late act of the legislature, and as to those words remaining in the Constitution, it can do no harm, and if we take them out it might be said to be an alteration in the Constitution; and I think the matter had better remain as it is.

I would like to say my motion to adopt the Constitution as amended must not be understood to include the schedule. It is necessary that portions of that schedule be engrossed. It is only an ordinance. The motion is that the Constitution as amended be adopted, it being understood that the schedule is to be no part of the Constitution.

MR. LAMB. The gentleman from Kanawha will see in attempting to reduce his suggestion to practice that it will be impracticable. Let him look, for instance, at the last clause of the 14th section, page 10: "The number of the house of delegates shall be in the first case 57 and in the last 52." So if he will look at any other of the provisions he will see the alterations could not be introduced without a long explanation, which would tend to confuse the matter more than the Constitution as it is.

MR. BROWN of Kanawha. I must be content to take it as it is. I suppose the new schedule will be printed with the Constitution, as the one that puts it into operation.

MR. STEVENSON of Wood. I understand the motion to be that the printing committee be instructed to print as many copies as \$500 will pay for.

MR. VAN WINKLE. That was passed.

THE PRESIDENT. The question is on the motion of the gentleman from Wood, to adopt the Constitution as amended by the substitution of a new section 7 of article XI for the old one.

Mr. Lamb asked for the yeas and nays; and the roll being called the votes on the motion to adopt resulted as follows:

YEAS—Messrs. Soper (President), Brown of Kanawha, Brown of Preston, Boggs, Brumfield, Chapman, Caldwell, Carskadon, Cook, Dering, Dille, Dolly, Griffith, Gibson, Hall, Harrison, Hervey, Hubbs, Hagar, Irvine, Lamb, Lauck, Montague, Mahon, McCutchen,

Mann, O'Brien, Paxton, Parsons, Powell, Parker, Pomeroy, Pinnell, Ruffner, Ryan, Ross, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Smith, Taylor, Tichenell, Trainer, Van Winkle, Walker, Warder, Wilson, and Wheat—52.

NAYS—None.

So the Amended Constitution was unanimously adopted.

MR. PARSONS. I move that this Convention adjourn Friday, 20th.

MR. STEVENSON of Wood. I was going to suggest that the absent members have liberty to record their votes at any time during the session.

MR. POWELL. I would like to take until Friday. I move to lay the resolution on the table for the present. We had better get through and then adjourn, whenever that may be.

The motion to lay on the table was agreed to.

MR. LAMB. Mr. President, a resolution was passed by the Convention instructing the Committee on Revision to report an address on behalf of the Convention to the people of West Virginia explaining the principal measures adopted and the reasons for the same and examining the objections made to the new State. The committee are ready to comply with the resolution. They have an address here which I will request Mr. Van Winkle to read. The address was accordingly read by Mr. Van Winkle as follows:

(See Appendix for Address Issued by the Convention)

MR. STEVENSON of Wood. I would offer a resolution in regard to the address and ask the Secretary to read it. The Secretary read as follows:

“RESOLVED, that the address reported by the Committee on Revision be adopted by the Convention and signed by the President and Secretary and ten thousand copies printed for distribution among the people of West Virginia.”

The resolution was adopted.

Mr. Dering offered the following. I trust, he said, it will be considered a peace offering by our friends from the southwestern part of the State and will be unanimous:

"RESOLVED, That this Convention respectfully ask the Congress of the United States to appropriate two millions of dollars to aid West Virginia in emancipating her slaves."

MR. DERING. It seems to me, Mr. President, that resolution contemplates all that our friends from the Kanawha country could reasonably ask for. It instantly recognizes the doctrine that the State is bound to see her slaveholders compensated for the loss of property taken for public uses. It seems to me it is a fair compromise and one which gentlemen from all sections can properly and justly to their constituents and themselves adopt. It comes in and asks Congress to do what they are proposing to do in other directions. It obviates any difficulty on their part then that we might make a proposition of our own to provide compensation for our slaves; it asks Congress to do so. If the resolution before the Convention yesterday had been passed Congress, in my opinion, would not have given us any aid. They would have said this Convention has provided a mode by which the slaveholders of West Virginia can get aid from her own citizens. Then in justice, we ask Congress to do for us just what she will do for Maryland, Kentucky and Missouri. It seems to me it is a reasonable request. Our representatives can meet it and do all they can to promote its object. I trust therefore this Convention will take this resolution, offered as a compromise and that it will be unanimously adopted by the whole Convention.

MR. CALDWELL. I trust, sir, with my friend we will adopt the suggestion; that he will strike out the sum designated and substitute something like this; request Congress to appropriate a sum adequate for the purpose without designating the sum. Some of the members of the Convention think the sum is too high, and there may be others who think it too small; and I think in the form I have suggested there is not a member but what would vote for it.

MR. DERING. I would suggest a modification. I do not know whether the word "aid" is in there; but it recognizes the doctrine that we are bound to see that they have compensation for their slaves. I acknowledged that in my few remarks the other day and every member of the Convention almost acknowledged it; and we understandingly put that fact in the resolution. It seems to me it is a proposition the gentleman from Marshall would very justly approve. Gentlemen may vary the sum if they see proper. I

have no objection to that; but it seems to me that is the proper form for the resolution. You may leave the sum blank if you see proper.

MR. CALDWELL. I change my suggestion then, sir, that the sum be stricken out and leave the amount blank, to be filled as Congress may please.

MR. WHEAT. On that question, I wish to make a few remarks.

MR. SINSEL. I would ask now that the former rules of this Convention be enforced in this discussion—only ten and five minutes speeches.

MR. STEVENSON of Wood. With the gentleman's permission, just a moment, I wish to suggest to the mover of the resolution whether it would not be better to alter the phraseology or language a little by instead of saying ".....dollars to aid West Virginia" say "to make an appropriation to aid West Virginia in providing compensation for the slaves," etc.

MR. SMITH. That will be better.

MR. DERING. I will accept the modification. Let it read "request Congress to make an appropriation to aid West Virginia in compensating the owners of slaves emancipated, etc."

MR. SMITH. I understand this to be offered as a peace offering, something for the southwestern portion of West Virginia. Now the suggestion made by the gentleman from Wood is much more acceptable to me than the original proposition: "to aid West Virginia in making compensation for the slaves emancipated."

MR. HERVEY. Let me appeal to the gentleman from Morgan to let the vote be taken on this question.

MR. POMEROY. He has not made a speech. He desires to do so.

MR. STUART of Doddridge. I want to inquire of the chairman of the committee whether he is prepared to report the ordinance in reference to the schedule? If so, I would be very glad if this Convention would take that up.

MR. LAMB. The committee have not acted on that subject. I intended to propose that when the Convention adjourns; they adjourn until tomorrow morning at eleven o'clock; that if the committee agreed upon an ordinance they should have authority to have it printed and laid on the members' seats tomorrow morning.

MR. WHEAT. I had the floor before this question was called.

MR. STEVENSON of Wood. I was under the impression the suggestion I was about to make would simply alter the phraseology and probably make it more acceptable. I do not know whether it will satisfy all parties, but I have fixed it so that I think the Clerk can read it as I would have it modified.

The Secretary read the modified resolution as follows:

"RESOLVED, That this Convention respectfully ask the Congress of the United States to make an appropriation to aid West Virginia in emancipating her slaves."

MR. DERING. I accept the modification.

MR. RYAN. It seems to me something ought to be said about whose slaves are to be compensated.

SEVERAL MEMBERS. No difficulty about that.

MR. TICHENELL. I hope you will put "loyal" in that resolution. I want to vote for it, and I don't want to vote anything to traitors.

MR. LAMB. I would suggest with that view that the expression in the resolution be altered in this way: "To aid West Virginia in making compensation to the owners of slaves who have not forfeited their rights to compensation by disloyal acts."

MR. IRVINE. I object to that.

MR. WHEAT. I move an amendment—that is, that it read “compensation for slaves emancipated under the operation of this Constitution.” (Cries, No, No, No!); and upon that I intend to make a five minutes speech.

MR. SMITH. The mover accepts the amendment and suggests he be allowed to re-write the resolution.

The resolution, as perfected, was then read as follows:

"RESOLVED, That this Convention respectfully ask the Congress of the United States to make an appropriation to aid West Virginia in making compensation to the owners of slaves who have not forfeited their rights by disloyal acts."

MR. WHEAT. I have the floor, but I will forego it.

MR. SINSEL. We do not know about emancipating slaves. The word is left out.

MR. STUART of Doddridge. It strikes me the previous question ought not to be called on that resolution at present. I do not want to be captious, but I would like gentlemen to say whether they can possibly mature it. I suggest that the resolution lie upon the table.

MR. DERING. The Convention is drawing to its close. I think if we hold the resolution over, whenever you open Pandora's box and let the negro out, we will always have discussion. I desire to see this Convention come to a close. I must call the gentleman down. It is not debatable.

MR. STEVENSON of Wood. I would ask the gentleman from Doddridge whether it would not be better to make it a special order for some hour today. Say two o'clock.

MR. STUART of Doddridge. I have no objections in the world.

MR. LAMB. I beg leave, in reply to the suggestion to say it will be just postponing the adjournment of this Convention. We can never get through unless we have an opportunity of reconvening the Committee on Revision and deliberately considering the ordinance to be reported to this Convention. If I had full, unlimited power on the subject, I would not undertake to report it here on my responsibility without the deliberate examination of the committee.

MR. POMEROY. If the committee wants to meet, let us go on until the regular hour of recess without laying it on the table; and then let the committee have this afternoon.

MR. STUART of Doddridge. I must call the gentleman down.

MR. DERING. I withdraw the motion.

MR. HERVEY. Will the gentleman suspend his motion half a minute.

MR. DERING. Yes, sir.

MR. HERVEY. I propose this:

"RESOLVED, That the Congress of the United States be and hereby is respectfully asked to pass a bill to compensate loyal citizens of West Virginia for slaves owned by them, for the purpose of emancipating such slaves, etc."

MR. DERING. A very different resolution, sir.

MR. HERVEY. Would not the first part: "Resolved that the

Congress of the United States be and hereby is respectfully requested to pass a bill to compensate loyal citizens for slaves owned by them, for the purpose of emancipating such slaves."

MR. DERING. No, sir, I do not accept it; it is a complicated resolution, and harder to understand than the simple form of my own.

MR. VAN WINKLE. I would suggest that the matter be referred to a special committee on the subject to report a proper form of resolution for the action of the Convention.

MR. POMEROY. Say a special committee of seven to be appointed by the Chair.

MR. TICHENELL. I move to lay the motion for a committee on the table.

The motion of Mr. Tichenell was rejected, and the motion of Mr. Van Winkle for a committee was agreed to.

Mr. Stevenson of Wood offered a resolution to go to the committee.

Mr. Brown of Kanawha said he supposed the resolution previously offered by him on the subject would also be considered by the committee.

Mr. Brown of Preston submitted the following:

"RESOLVED, That there be printed with the Amended Constitution the schedule adopted at the present session of this Convention providing for the election on the ratification of the said Amended Constitution, as well as such ordinances as may be adopted."

MR. VAN WINKLE. The committee has already directed the printing of a sufficient number of the ordinance already passed and the ordinance to accompany the poll-books is to come up tomorrow here. That will give them a thorough distribution throughout the State.

MR. BROWN of Preston. With that understanding, I withdraw the resolution.

The President announced the special committee to prepare a resolution addressed to Congress as follows: Dering, Stuart of Doddridge, Caldwell, Irvine and Ryan.

MR. SMITH. I merely remark that the parties most interested in this compromise are entirely ignored in that committee.

THE PRESIDENT. I thought of taking one of the gentlemen; but I had formed the impression that those gentlemen did not wish to take any active part in it.

MR. LAMB. I move that when the Convention adjourn, it adjourn to meet tomorrow morning at eleven o'clock.

The motion was agreed to.

Mr. Stuart of Doddridge offered the following:

"RESOLVED, That Joseph S. Wheat be allowed mileage from the county of Morgan for the last session of the Convention held on the 26th day of November, 1861, in the city of Wheeling."

MR. HERVEY. Other members of the Convention who attended here did not get, did not claim, any mileage; and further the Convention has no power to grant it.

MR. LAMB. There is another trouble about it. There is no appropriation made by the legislature for any such purpose. There is an appropriation for mileage for the present session but no appropriation to cover mileage for the former one.

THE PRESIDENT. I would like if some gentlemen would move that the special committee just appointed be increased in number.

Mr. Powell moved it be increased to seven. The motion was agreed to and the Chair added Messrs. McCutchen and Brown of Kanawha to the committee.

MR. SINSEL. I would remark in reference to that motion to allow mileage to the member from Morgan that no convention ever got mileage before, and the member from Morgan never appeared to my knowledge.

MR. STUART of Doddridge. It seems to strike the members with astonishment. It was not my motion. Some friends desired me to offer it. I had not specially looked into the correctness and propriety of the thing. There is, however, a reason for offering that resolution, that would strike every member of this body if they will reflect upon and consider it. The gentleman did appear here and asked a seat in this body. He was delegated here by citizens of Morgan county. For some cause or other his papers were mislaid and he could not get them before the committee. He was here

in attendance several days—a considerable length of time, and aided very much in the business before the Convention; but since that time his papers have come to light; and I will say had his papers been before the committee at the former session there would have been no dissenting voice in the Convention to refuse him a seat. He attended here in good faith, and his papers show he was regularly delegated a member of this body. He incurred all the expense of coming here and was not able to draw one cent's per diem. I thought it nothing but a matter of right and justice he should receive at least his mileage. Now, if he had been received as a member he would have received the same pay as other members received. I say his papers prove conclusively they were mailed through the postoffice and did not reach here until after he had left. Had they got before the committee and before the Convention there would not have been a solitary scruple in receiving him as a member of this body. That is the motive and reason for offering this resolution. The papers are in my possession and subject to the investigation of any member.

MR. HALL. Was he not here as a member of the legislature at that time?

MR. STUART of Doddridge. No, sir; not until this winter. I have simply stated the facts.

Mr. Stuart's resolution was rejected.

MR. VAN WINKLE. I have been trying to get up for an hour. It has come to my knowledge, sir, that Mr. Hall, reporter at the table there has taken notes in short-hand of all the proceedings of this Convention—all the debates of this Convention, since the beginning. Of course, nobody else could write them out. It seems to me it would be interesting to every member of the Convention and to a great many of our constituents if those were to be preserved. At the beginning of the first session, I think I proposed, or somebody did, that there should be a regular report of the debates, taken with a view of publication; but the uncertainty we were then placed in as to what funds would be accorded us, and the several monitions to economy we were daily receiving from the general assembly, I suppose induced members to forego it. It has been usual in all bodies of this kind that the debates should be preserved. They may serve as that "contemporaneous exposition" of which my friend from Logan spoke the other day, as the true spirit of our Constitution. It will be gratifying and hereafter when questions

may arise in reference to constitutional provisions it will be useful to have these debates for reference. The proposition I have to offer is that the Executive Committee should be authorized to contract for the purchase of the manuscript when it is written out and that they be authorized to publish it if they deem it expedient. I presume this second branch of the proposition will depend on the fact that until their functions are about closed it will not be known whether there is money for the purpose or not; but I think if there is a balance sufficient, if it is only to purchase the manuscript, every member would think it would be making a good application of the money. It is certainly no unusual thing; on the contrary, I have never known a constitutional convention assembled that did not provide for the publishing of its debates. The debates of the convention of 1850 were lost by the failure of the publishers, and there is not a copy extant except in abridged form. That Convention sat eight months, and there was a corps of eight reporters constantly on duty. They took turns of note-taking of fifteen minutes each; and it would take about an hour to write out what was spoken in fifteen minutes.

This, of course, must be considered for reporting and writing out. The question for the Convention is whether they desire to have it. This resolution has been drawn up and I think is perhaps in proper form. I will send it to the table. The question may be divided between the publishing and simply preparing the matter.

The resolution was read by the Secretary as follows:

RESOLVED, That the Executive Committee be authorized to contract with Granville D. Hall, who has reported all the debates and proceedings of this Convention, for the transcribing of the same, with a view to publication hereafter; and that said committee be also authorized to publish the same if they deem it expedient at this time or at any subsequent period.

MR. STUART of Doddridge. That question was considered fully before us in our last sitting, and I reckon was argued in extenso and was voted down; and I hope it will be voted down again. If Mr. Hall is entitled to compensation from this body for taking down the speeches, I am willing to pay him for it. But I see nothing to be gained by transcribing this thing and then having it printed which will cost several thousand dollars more. Every member of this body will subscribe to one copy, which would be only a drop in the bucket towards the expense incurred. We have a journal, sir, which gives every motion, every resolution and every vote; and

now I don't believe we are going to be very much enlightened by printing what we said on those things. I believe it will be an expense, sir, that will not be compensated by any advantages that will accrue from it. It will require an expense of several thousand dollars, and it will be only for the advantage perhaps of bestowing on the members of this Convention, sir, part of these copies. I talked a good deal in that Convention, and I have not the least disposition to look at it. I am satisfied with it. It may be as a dead letter. I succeeded in getting some of my views incorporated in that Constitution, it is true, and I am willing to accept it; but I have no disposition to refer back to anything I have said; and I don't believe there has been very much said on the subject that will be of any great interest to future generations. Well, the gentleman from Monongalia suggested that there may have been something said that I would not want to see, or want anybody else to see. I am rather inclined to that opinion. But in all deliberative bodies, when the discussions are to be published it has been the practice, invariably the practice that the parties who addressed the Convention have the privilege of revising their speeches. Let me say to the gentlemen of this Convention there has been very few speeches made here in a situation to be published. And in all other bodies—I recollect in the convention which met in Richmond, and of which my friend from Wood was a member, the debates were published; but those debates were never published until revised by the parties who made them. Now, sir, here is a promiscuous bundle—some worth publishing, some that never ought to be. Some might be worth paying for while the majority is not worth it; and I hope it will not be the pleasure of this Convention to incur an expense of several thousand dollars here for a purpose that would result in no good.

MR. SMITH. I do not propose that any action should be taken now towards printing these debates; but the preservation of the debates I think is of the last importance. The only publication we have of the debates of the Convention that formed the Constitution of the United States is the short notes of Mr. Madison. But they have been ever eagerly sought for, and there has been much regret that the notes are so brief as they are. They have been sought for with avidity, and afterwards published by Congress. Now, you preserve these debates, lodge them in the archives of the State; at some future time when the legislature have more means they may permit a publication of them. But if they are not published, they

are lodged in the archives for reference. They give us the body and character of the Convention there. It is a portion of the history of the country and as such it is of some importance. I would like to see them in the archives of the State; and if hereafter the legislature should deem them of sufficient importance to publish them, it can be done. They are there ready for publication. The cost of transcribing is small compared to the value they will be hereafter to the State. I hope, therefore, it will be the pleasure of the Convention at least to contract with the reporter for writing out from his shorthand notes the discussions of the Convention. We will all be benefited by it. We will all know on what motions we acted and the reasons; and although gentlemen may laugh at it, it is of great value to them. The cotemporaneous view of those who form a constitution—I know it is the fashion of the people to laugh at it, although the supreme court don't. The supreme court do look to cotemporaneous construction of anything done by the legislature or Convention. The Federalist was the cotemporaneous construction given by the distinguished men and it is now a work of the very highest authority. It is quoted in discussion before courts, and it is referred to as the highest exposition, given by Hamilton, Jay and Madison. And Madison's short notes are referred to by the courts as giving a history of the times and circumstances that existed, which induced the adoption of the particular provision; and although it is not law it is a species of authority that has been respected by the courts and by legislatures, by all deliberative bodies. I think we would be wanting in duty to ourselves to pass this by and not make provision to have this record preserved. It may not be worth much; it may exhibit a poor debate; I do not undertake to say whether that is true or not; but whether it is meager and poor, and a great deal of it worthless and trashy, but get it all together and you get the sense of the Convention and the reasons for the provisions in the Constitution and its adoption. It will aid very much when questions of difficulty in giving it interpretation arise.

I hope it will be the pleasure of the house to adopt the proposition—at least the first branch of it, as far as it relates to the transcribing of it, and then vote down the other if you choose; and the resolution directing when prepared to be delivered to the legislature to be lodged among the archives of the State.

MR. VAN WINKLE. I will in the proper time take a division of the question.

MR. BROWN of Kanawha. I would make one remark. Mr. President, I voted against the proposition to publish when the question was up before. But I never knew until day before yesterday that Mr. Hall had continued to take down the debates. I suppose they had all gone to the winds. Now, I learn that he had kept a complete short-hand record of them. I fully concur in the remarks of the gentleman from Logan in the importance of preserving all that has been done as part of the self-digested Constitution we are forming; and I would instance another idea. I suppose in the State of West Virginia, if we live any time—and I hope we shall live forever—we will have in this State, like every other state in the Union, a historical society. Of all things the historical society more in each of the states to get back to our foundation and preserve the facts and records that are of a character that people generally don't read and therefore are lost. Even the Legislature of Virginia have sent historical agents to London to there root around among old colonial records to find anything that might throw light on our colonial history. Well, here is origin of a great state that has just commenced to make its political history; and it does seem to me when it is now within our power, contrary to our expectations, to preserve this record of our first State body, which has been for months framing our fundamental law, that we should make provision here while we have it in our power to prevent this record from going to destruction. I am confident any historical society that may be formed to gather and preserve a knowledge of our history would regard it as the first step to secure these very notes. But where more justly could it be done than by the State itself? I am sure the State of West Virginia would take pride and pleasure in publishing these debates, although they may not do it now. Not for the purpose of seeing what good or what poor speeches any gentleman made, for I confess I would rather not be obliged to see mine—but that is not the object. It is a record of part of the facts and incidents transpiring in the very origin and construction of your organic law. There it is, and it is important. And as this gentleman has labored faithfully and assiduously, it seems to me an act of justice to him and at the same time a wise provision for those to come after us that we secure this record and copyright that it may be published hereafter if you have occasion. A hundred years hence—a thousand years hence—the citizens of this State may recur to this first organic law and see what was said and done when it was constructed. I hope therefore it will be the pleasure of the Convention, and I shall vote for it, although I voted very

decidedly against the publication in the beginning, to preserve the record that has been made without our expectation.

MR. HALL. I would say, in addition to the remarks last made, I, too, voted against the publication of the proceedings; but I did so because I was under the impression that if it was understood all the remarks made here were to be published it would very much prolong the session by set speeches; that it would favor the idea of gentlemen making a record for themselves—a thing which I had no disposition to contribute to. It is, however, a matter of the greatest interest and of the first importance that we should have this record; and whether this Convention will take the necessary steps to preserve it or not, I know that the country and posterity will say to him who has preserved it that he is a public benefactor; and if we refuse to compensate, I know that posterity will compensate. That is a long credit. They will not have to wait, however, for it to be done by posterity.

In addition to the remark made that the beginning of every state is a period of historical interest, there never has been a state that has started under just the circumstances that we have; and the very movement in the reorganization of this government—with which this is indispensably connected—is a matter not only of state but of national interest. There is no page in the history of the times—however rapidly we have made interesting history in the last few years—there is no part of that history of more interest to the statesmen throughout the whole world than will be the history of the peculiar movement of our people here in the reorganization of the government and the formation of the State of West Virginia. I know that was the sentiment expressed by those with whom I mingled at Washington. It was the universal expression. There was an interest felt in this, and you will find it is so throughout the whole country. And whilst that is a fact, it has been looked to as an example; and in history you will find that notwithstanding that this is the interest manifested throughout the country, there is a general ignorance of what were our operations and movements in this matter. It may be said that a great deal of this matter would not appear necessarily in the proceedings of this Convention, yet I believe without the proceedings of this Convention you will be at a loss to get a correct history of a great part of this movement that will be of the highest interest. I am not disposed to lavish the public funds unnecessarily. We should economize. But there may be economy that is extravagance we all know; and I think that we

should take such steps, such measures as will secure and make this a public property that we may have the benefit of it.

MR. POMEROY. When this matter was up before I advocated printing these debates, not because the gentleman from Doddridge wanted to see in print any remarks he had made in this Convention; but because I believed it would be a matter of great interest not only to ourselves but to the people of the State; not only to those now on the stage of action but to those that would come after. I believe also it had been customary for the debates of every constitutional convention with which I was at all conversant to publish their debates. Now, as the President very well knows, the debates of the convention which amended the Constitution of the State of New York, were published, and so also the State of Pennsylvania and the State of Ohio. There are very important provisions made in this Constitution that I do claim the honor of having some feeble part in advocating placed in there that I think will be an honor to us all in after days. Now, I could not see any great propriety or benefit if it was well ascertained that no subsequent body, the legislature, would publish these debates of simply preserving them written out. They might be of some benefit in that form, but I would not feel very much like supporting that if we should fail in the other. I would vote to compensate this gentleman, who with so much care and labor has taken down these debates and preserving them, but I do hope we will also leave it discretionary with our Executive Committee to publish. If they find there are not funds enough to publish they can join in a request to the first legislature that will assemble that these debates be published, and it may influence us some in getting good men into the first legislature to go for publishing these debates.

MR. PINNELL. I am inclined, with due deference to the opinion of the gentlemen who have spoken on this resolution, to oppose it. I cannot see any particular practical good that is to grow out of this expenditure. It was not my pleasure to hear the debates that have gone before in the preceding sittings of this Convention; but I have paid some attention to the debates that have taken place here in the last few days. But I can see nothing at all, I have heard nothing that warrants me in the belief that my constituents would desire to have as a part of their library the debates of this Convention. They have the siftings of the debates in the form of a constitution. Each delegate has the journal of the proceedings of this Convention to take home to look at and peruse at his leisure; but,

sir, the project now on foot to impose a tax on this infant new State of West Virginia and burden it to print the debates of this Convention, I conceive impolitic. I do not think it is warranted either on the principle of present or future expediency. I cannot conceive, sir, that there is any cotemporaneous circumstances connected with the occasion to warrant it. I know there is a common and prevailing sentiment that there is too much expenditure at the city of Wheeling in reference to this new State; that there is a strong effort to glean from the hard earnings of the taxes that are collected by the officers of West Virginia from individuals whose only crop, whose only means of support have buckled on their arms and are now standing defending the frontier. Here, sir, we have very necessarily made an appropriation to distribute among the people the Constitution. That is wise. The people want to know what has been the result of our debate; but in addition to that, there is a disposition, with due respect to entail another burden on our constituents by publishing to the world a heterogeneous mass of controversies, of impulsive debate, which sifted down amounts, with due respect to all—not the most important volume that has ever been published. There is great propriety sometimes in individuals taking a retrospective of their defects. That had better be done in a spirit of solemn meditation. But to make their defects a matter of public record, and let the children see the defects of the parent. I know there is something sad here. A man would hate very much for his children to read and say: Father delivered that speech in the Convention of West Virginia (Laughter). Let us do something that he at least will not be ashamed of: pass over the consideration of the expense of publishing these debates for the present. I am glad I have had the privilege at least to vote against that, or hope I will.

MR. MAHON. The time for recess has arrived.

MR. ROSS. I desire to say a few words. I do not presume any gentleman who advocates this resolution is influenced by any kind of sentiment of vanity on the subject whatever. I had not the pleasure and privilege to participate in any of the debates of this Convention in its preceding session. I do not know what their merits may be one way or the other. I presume they are very much like the debates of all similar bodies. You may find the enunciation and advocacy and elucidation of great principles embodied in these debates. Yet there is a great deal connected with it that in that point of view has no very especial interest or value. But I advocate

the passage of this resolution on other and far different grounds. These are acts connected with the origin of a state. They are acts connected with the origin of a state under very peculiar circumstances. Mr. President, in the act connected with the origin of this State we have performed what may probably with great propriety be called a revolution. These acts we have to vindicate before the world; and whatever will show the animus of the Convention that formed that Constitution; whatever will show the spirit with which all this has been conducted; whatever will tend to vindicate our action before the world—ought to be preserved. It is in that point of view that I was pleased this morning to vote for the publication of ten thousand copies of the address which is to accompany our Constitution. I believe it to be a vindication of the efforts of the people of West Virginia in establishing for themselves a government and in securing for themselves a new State. And precisely for a like reason I shall vote for the present resolution, because no matter how worthless these speeches may be as specimens of forensic eloquence, how little they may contain of principle either in politics or morality—and I do not judge them so, especially after what I have heard in the debates in this session—they will show the spirit of this Convention; they will record the spirit of this people in the action which they have taken; they will prove a vindication of the action of the people of West Virginia in all the movements they have taken. And let me tell you likewise, they will be no worthless body of witness as to the meaning and interpretation of that Constitution which you have formed. I believe in cotemporaneous interpretation; and I believe that those debates should be written out and preserved, as advocated by the gentleman from Logan.

(Cries of "Question! Question! Question!".)

The question was put on the first branch of the resolution authorizing the committee to contract for the transcription of the debates, and it was agreed to.

The question was then taken on the second branch, to authorize the committee to have the debates published in their discretion, and it was rejected.

Mr. Mahon moved to adjourn.

MR. LAMB. I understand this hall will be appropriated this afternoon to another committee. I would request the Committee

on Revision, if agreeable to them, to meet at my house this afternoon at half past two.

And thereupon, Mr. Mahon's motion was put and adopted and the Convention adjourned to 11 A. M. tomorrow.

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LXV. THURSDAY, FEBRUARY 19, 1863

Prayer by Rev. Dr. Drummond, of the Methodist Episcopal Church.

MR. DERING. I hold in my hand the report of the Special Committee to whom were referred the several resolutions on the subject of slave compensation. I do not desire to discuss at all the resolution recommended by the committee; will only say to the Convention that I hope the resolution will be received in the same kind and conciliatory spirit in which it is offered by the committee.

The Secretary read the report as follows:

"The special committee to whom was referred the several resolutions upon the subject of slave compensation, respectfully submit the following resolution for the adoption of this Convention:

"RESOLVED, That this Convention respectfully ask the Congress of the United States to appropriate the sum of two million of dollars to aid the new State of West Virginia emancipating her slaves under the Act of Congress, approved on the 31st day of December, 1862: Provided, however, that none but loyal slaveholders shall be so compensated.

By order of the committee.

H. Dering, chairman."

MR. VAN WINKLE. I understand the two millions is asked for to emancipate slaves only under the act. I ask if I understand it correctly? You ask Congress to appropriate that sum to compensate for slaves emancipated under the act of December last, which we have accepted?

MR. DERING. Under that amendment.

MR. VAN WINKLE. It will not take a half million.

MR. DERING. I can only say our members of Congress can reg-

ulate that matter as the exigencies of the case may demand. It is only asking for an appropriation.

MR. BROWN of Kanawha. The committee found this difficulty. It was desirable we might ask for a sum that would enable us to settle this question completely. On the other hand some of the committee desired in the language asking not to go outside of the resolution of Congress, the action of Congress; but that if Congress shall make an appropriation large enough to enable the legislature hereafter to dispose of the subject as they shall think proper; and if they do not choose to do that and the sum is in excess, then the bonds will be in the hands of the Governor subject to the order of Congress, and we may get them appropriated for educational purposes, or any other, as we have no idea Congress will withdraw or take back the appropriation if it is made. The legislature will provide for the compensation of each individual as the case may arise under some judicial proceeding to ascertain the amount to each individual. If that sum should be in excess it would be either appropriated by the legislature for the manumission of the whole body of slaves in the State, as Congress may prescribe; or if they do not prescribe it, it may be appropriated to discretionary purposes. The object, in the language of the request is to keep within the language of Congress itself; to ask a sum which will enable us to accomplish the whole object by leaving to our members in the House to satisfy Congress in all difficulties which may arise.

MR. VAN WINKLE. I would rather the amount would not be specified, if it is confined to the slaves emancipated under the act. I supposed the object was a general emancipation.

MR. BROWN of Kanawha. Yes, sir, that is one object.

MR. VAN WINKLE. I have not understood the resolution correctly. I would be obliged to the Clerk to read it again.

The Secretary complied with the request.

MR. VAN WINKLE. Well, sir, it seems to me that amount ought to be reduced or left blank. If Congress is expected to make an appropriation for a general emancipation, the resolution ought to be enlarged. If you should add "including those emancipated under the act of December last," it would cover the whole case. Now two million dollars is a sum sufficient to emancipate all the slaves in the State. I am willing to vote for the resolution in the form submitted if they reduce the amount or simply say they shall ap-

propriate a sum sufficient for that purpose. I cannot join in wanting two millions to pay for a half a million slaves.

MR. WHEAT. Any objections I may have urged against this resolution heretofore, if the gentleman's suggestion is the wish of this house, I shall have no objection to vote for the subject of this resolution; not otherwise.

MR. STEVENSON of Wood. I would like just to ask a question of any member of the committee for my own information: whether striking out the amount in the report of the committee and simply asking for an appropriation sufficient for the purpose would not be acceptable to members of the committee. I prefer it in that shape. I do not know whether it would meet the views of the committee or not.

MR. SMITH. I move to amend the resolution by inserting after the words "1862" the words: "as well as those not thereby emancipated." That would cover the whole difficulty.

MR. BROWN of Kanawha. If that meets the approbation of the gentleman from Wood, I have no objection, so far as I am concerned.

MR. DERING. I move the yeas and nays be called on this question.

MR. DILLE. Let us act on the amendment first.

MR. SMITH. The committee has accepted it.

The amendment was agreed to; and on the adoption of the resolution the roll was called, and the resolution as amended was adopted by the following vote.

YEAS—Messrs. Soper (President), Brown of Preston, Brown of Kanawha, Boggs, Brumfield, Chapman, Caldwell, Carskadon, Cook, Dering, Dille, Dolly, Griffith, Gibson, Hall, Harrison, Hubbs, Hervey, Hagar, Irvine, Lamb, Lauck, Montague, Mahon, McCutchen, Mann, O'Brien, Parsons, Powell, Parker, Pomeroy, Ruffner, Ryan, Ross, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Sheets, Smith, Tichenell, Trainer, Van Winkle, Walker, Warder and Wilson—47.

NAYS—Mr. Wheat—1.

MR. LAMB. Mr. President, I have a report to make on behalf of the Committee on Revision. Other printed copies will be handed in and distributed, I understand, in a few minutes.

The Secretary reported the paper as follows:

The Committee on Revision, who were instructed to report an Ordinance regulating the first election under the Amended Constitution for members of the legislature and state and county offices, and fixing the time when said election shall be held, and when the legislature shall assemble, respectfully report—

AN ORDINANCE TO PROVIDE FOR THE ORGANIZATION OF
THE STATE OF WEST VIRGINIA.

Sec. 1. When the President of the United States issues his proclamation under the Act of Congress, approved December 31, 1862 entitled "An Act for the admission of the State of West Virginia into the Union and for other purposes," then an election shall be held on the Thursday next succeeding the thirty-fifth day from the date of said proclamation, at the several places of voting in the forty-eight counties to be included in the said State, for the election, under the Amended Constitution thereof, of senators and delegates, a governor, secretary of the state, treasurer, auditor and attorney general, three judges of the supreme court of appeals, a judge for each circuit, and the following officers for each county, that is to say, a clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands, and recorder.

Sec. 2. The terms of office of the persons then to be elected shall commence on, and include the sixty-first day from the date of said proclamation; but shall continue and be computed as if the same had begun on the first day of January, one thousand eight hundred and sixty-three; except that the terms of the governor, secretary of the state, treasurer, and auditor, shall continue and be computed as if the same had begun on the fourth day of March, one thousand eight hundred and sixty-three.

Sec. 3. As soon as possible after the President of the United States issues his said Proclamation, the Executive Committee of this Convention shall by their proclamation give notice of the election to be held as aforesaid, stating the time when the same is to be held, and the different offices to be filled. And the said Execu-

tive Committee after the issuing of the said proclamation by the President of the United States, shall have authority to take such measures and do all such things, not inconsistent with the Amended Constitution or with this Ordinance, as may be requisite to cause the said election to be fairly and impartially held and returned in every part of the said forty-eight counties, and to carry into operation the said Amended Constitution. But the authority hereby granted to the said Executive Committee shall cease and determine as soon as the Legislature of West Virginia is assembled and organized.

Sec. 4. The said election shall be held, and the results thereof ascertained, certified and returned according to the following regulations, that is to say:

I. Poll books, with the proper forms of oaths and returns, shall be prepared under the direction of the Executive Committee of this Convention for every place of voting in the said forty-eight counties.

II. The said Executive Committee as soon as possible after the President of the United States issues his said Proclamation, shall appoint three persons in each of said counties as superintendents of the election for the county, and furnish them with the proper poll books and forms. Any two of the superintendents for a county may act, and they may fill vacancies in their own body. The superintendents for each county shall for every place of voting in their county appoint three commissioners, any two of whom may act, and a conductor, to superintend and conduct the elections at the place for which they are appointed, and shall furnish them with the proper ballot boxes, poll books and forms.

III. In default of such appointment for any county or place of voting, the officers who may superintend and conduct the polls to be taken on the twenty-sixth day of March next, on the question of the ratification of the Amended Constitution, at any place of voting in the said forty-eight counties, shall procure proper ballot boxes, poll books and forms, and attend therewith at such place, and superintend and conduct the election and make due return thereof.

IV. If at any place of voting there be, at the time the polls should be opened, but one commissioner willing to act, he shall associate with himself as commissioner some free-holder of the county then present; and if there be no commissioner present will-

ing to act, any two freeholders of the county present and willing to act, shall be commissioners.

V. The commissioners at any place of voting are hereby authorized to administer the proper oaths to each other, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one. They may also appoint clerks to record the names of the voters, assist in counting the ballots and ascertaining the result, and making proper return thereof. They shall admit all persons to vote entitled to do so under the first section of the third article of the Amended Constitution, and shall reject the votes of all not so entitled and in all respects have the said election fairly and impartially held and returned according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of every person offering to vote who is rejected by them, shall, if required by such person, be entered on a separate list on the poll books, under the heading, REJECTED VOTES; and in such case the ballot offered shall be sealed up and endorsed on the envelope or cover as follows:—"The ballot of A. B. rejected this.....day of....., 1863," and returned along with the other ballots.

VI. The polls shall not be opened sooner than sunrise, and shall be closed at sunset. But if it appear to the commissioners at any place of voting, that the persons present entitled to vote at such place cannot all be polled before sunset, or that many were prevented from attending by rain, rise of water-courses, or just apprehension of personal danger, they may keep the polls open for three days, including the first.

VII. Every superintendent, commissioner, conductor and clerk, shall before entering on the discharge of his duties take the following oath or affirmation: "I do solemnly swear (or affirm) that in the polls about to be taken, I will faithfully, impartially and fairly discharge the duties pertaining to my office, according to law; and that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the Ordinances of the Convention which assembled at Richmond on the thirteenth day of February, one thousand eight hundred and sixty-one, to the contrary notwithstanding."

VIII. The superintendents of the election for each county shall cause to be delivered to the commissioners for every place of

voting in said county a proper ballot-box, with an aperture in the lid thereof for the purpose of receiving the ballots of those entitled to vote; which ballot box, while the polls are open, shall be kept by the commissioners in a place where it may be seen by the voters. Every person desiring to vote shall offer to the conductor a single ballot or piece of paper, on which there is printed or written the names of all the persons for whom he wishes to vote, with a proper designation of the office each is intended to fill. The ballot shall be rolled up or folded so that the contents may not be seen. The conductor shall then proclaim the name of the person offering to vote, and deliver the ballot to one of the commissioners. The commissioners may inspect such ballot so far only as to ascertain if it be single, but without opening or unrolling it, and if satisfied it is single, and that the person offering the same is entitled to vote at the said polls, one of them shall put the ballot into the ballot box through the aperture in the lid, and the name of the voter shall be entered on the poll books under the following heading:—"Names of the voters at....., in the county of....., on theday of....., 1863."

IX. As soon as the polls at any place of voting are closed, the names of the voters entered on the poll books shall be counted, and the number thereof set down in words at length, at the foot of the list which shall then be signed by the commissioners and conductor, and countersigned by the clerk or clerks who kept such list. The ballot box shall then be opened by the commissioners, and one of them shall take out the ballots, one at a time, and read therefrom distinctly the names of the persons voted for, and the designation of the office each is intended to fill, and deliver the same to the other commissioner or commissioners, who, having examined it and being satisfied that the vote was correctly announced, shall pass it to the conductor to be strung by him upon a thread and carefully preserved. The ballots, as they are announced, shall be entered by the clerks, under the direction and supervision of the commissioners, in such a manner as to show the number of votes received by each person for any office to be filled; and the said Executive Committee may prescribe proper forms and regulations for the purpose.

X. Whenever two or more ballots are found folded or rolled together, they shall be rejected; and if a ballot be found to contain more than the proper number of names for any office, it shall not be counted as to said office.

XI. When the result is ascertained, the commissioners and conductor shall immediately make and subscribe two certificates to the following effect, viz: "We A B and C D, commissioners, and E F, conductor of the election held at....., in the county of....., this.....day of....., 1863, do hereby certify that we have fairly and impartially held the said election according to law, and the result thereof is as follows, that is to say: For senator, G H received.....votes, and J K.....votes; For delegate, L M received.....votes, and N O.....votes; For governor, P Q received.....votes, and R S.....votes;" and so on throughout according to the truth, stating the name of every person voted for, and the number of votes received by each person for any office. The ballots shall then be delivered up to the commissioners, who shall seal up the same in an envelope or cover, writing their names across the seals and endorsing on the envelope or cover, "Ballots at the election held at....., in the county of.....on the.....day of....., 1863." The ballots so sealed up, the poll books and one of the certificates signed as aforesaid, shall be delivered by the commissioners and conductor, or one of them, within six days after the polls are closed, to the superintendents of the election for the county, or one of them, and the conductor shall retain and carefully preserve the other certificate subject to the order of the superintendents of the election for the county.

XII. The superintendents of the election for each county shall, as soon as the returns are received by them as aforesaid, carefully and impartially ascertain therefrom the result of the election in their county as to all the offices to be filled; for which purpose they may, if found necessary, open and examine the sealed packages of ballots delivered to them, but in such case they shall carefully seal up the same in another envelope or cover, enclosing the original envelope or cover, and write their names across the seals, and endorse on the outside "Ballots at the election held at.....in the county of.....on the.....day of.....1863, opened by A B and C D, superintendents, this.....day of.....1863."

XIII. The said superintendents shall, as soon as possible thereafter, cause to be delivered to each of the persons who shall appear to have received, within the county, the highest number of votes as delegate, clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands, or recorder, a certificate, signed by the said superintendents, to the following effect, viz: "We A B and

C D superintendents of the election held in the county of.....
on the.....day of.....1863, having carefully and
impartially examined the returns made to us of the said election,
do hereby certify that for the office of delegate for said county, (or
clerk of the circuit court for said county, sheriff of said county, or
otherwise as the case may be), E F received, at the said election
.....votes, G H.....votes, and I K.....votes, and that the said E F
having received the highest number of votes, is therefore duly
elected to the said office. Given under our hands, this.....
day of.....1863.”

XIV. But where two or more counties are included in a district for the election of delegates to the legislature, under the tenth section of the fourth article of the Amended Constitution, the result of the election for delegates in such district shall be ascertained and certified as follows: One or more of the superintendents of the election for each county in the delegate district, shall meet together on the tenth day after the election, as follows, viz: The superintendents for Pleasants and Wood counties shall meet at the court house of Wood county; those of Calhoun and Gilmer at the court house of Gilmer county; those of Clay and Nicholas at the court house of Nicholas county; those of Webster and Pocahontas at the court house of Webster county; those of Tucker and Randolph at the court house of Randolph county; and those of McDowell, Wyoming and Raleigh at the court house of Wyoming county, or at such other convenient place as they may have previously agreed upon among themselves; and shall there together carefully and impartially examine the returns received by them of the election in their respective counties for delegate or delegates of the district, and give to the person, who shall appear to have received the highest number of votes in the district for that office, a certificate, signed by them, to the following effect, viz: “We, A B and C D superintendents for the county of.....and E F and G H superintendents for the county of.....of the elections held on the.....day of.....1863, having together carefully and impartially examined the returns made to us of the election for delegates of the district composed of the said counties, do hereby certify that for the office of delegate of said district I K received.....votes, and L M.....votes, and that the said I K having received the highest number of votes, is therefore duly elected to the said office. Given under our hands, this.....day of.....1863.”

XV. If for any cause the superintendents of the election for the counties included in a delegate district fail to meet as aforesaid, then it shall be the duty of the superintendents of each of the said counties immediately to transmit their certificate of the result within their county, of the election for delegate of the district, to the Executive Committee of this Convention, observing, as far as possible, the regulations specified in the said next succeeding paragraph of this Ordinance.

XVI. The superintendents of the election for each of the said forty-eight counties shall, as soon as possible after the returns of their county are received by them, carefully and impartially ascertain therefrom the result, within their county, of the election for senator, governor, secretary of the state, treasurer, auditor, attorney general, judges of the court of appeals, and judge for the circuit; and forthwith make and sign two certificates thereof to the following effect, viz: "We, A B and C D superintendents of the election held in the county of.....this.....day of1863, having carefully and impartially examined the returns made to us of the said election, do hereby certify that in our said county, for senator of this district, E F received.....votes, and G H.....votes; for judge for this circuit, I K received.....votes, and L M.....votes; for governor of the State, N O received.....votes, and R S.....votes; and so on throughout according to the truth;" and concluding the certificate as follows:....."Given under our hands this.....day of.....1863." And the said superintendents shall then, without delay, seal up one of their said certificates in an envelope addressed "To the Executive Committee, Wheeling, West Virginia," and write their names across the seals, and transmit the same by some speedy and safe conveyance to the Executive Committee of this Convention; and shall retain and carefully preserve the other certificate, subject to the order of the said Executive Committee, or of the Legislature of West Virginia.

XVII. In all the certificates hereinbefore required to be made, wherever the number of votes for any person is stated, such number shall be written out in words at length, and also stated in figures.

XVIII. The Executive Committee shall carefully and impartially examine the returns made to them as aforesaid, and may, if necessary or proper, send for the poll books, ballots and duplicate certificates of any one or more counties. They shall give notice of

their election to the persons respectively they believe to be elected; but shall submit all the returns and evidences of the election in their hands to the Legislature of West Virginia as soon as it is organized; who shall, by joint resolution, declare the result, except that as to members of the legislature; each branch, pursuant to the Amended Constitution, shall be the judge of the elections, qualifications and returns of its own members.

XIX. The ballot boxes, poll books and ballots for each county shall be returned to and carefully preserved by the clerk of the county court for such county, to be transferred to the recorder of the county when elected and qualified.

XX. If two or more persons have an equal and the highest number of votes, the persons authorized to give the certificate or notice of election, shall decide by lot to whom the certificate or notice shall be given.

XXI. Any person in the service of the United States as a volunteer soldier, or officer of the Virginia militia, who has been a resident of the State of West Virginia for one year, and of the county in which he offers to vote, for thirty days before he entered such service, and is otherwise qualified, may send his ballot, under seal, to the superintendents of the election for the county in which he resided and if a majority of the superintendents are satisfied that the person so transmitting his ballot is a citizen of the United States, and was, at the time he entered such service a resident as aforesaid of the State and county, qualified to vote, they shall deposit his ballot in the ballot box at some place of voting in the county on the day of the election, and the name of the person so voting shall be entered on the poll books, to have the same effect as if the ballot had been given by the voter in person.

Sec. 5. The senators and delegates shall assemble at the city of Wheeling on the sixty-first day after the President of the United States shall have issued his said proclamation, at eleven o'clock in the forenoon, and proceed to organize themselves, in their respective branches, as the Legislature of West Virginia. It shall be the duty of the said Executive Committee to provide suitable rooms and accommodations for each branch.

Sec. 6. All officers acting within the said forty eight counties by the authority of the laws of Virginia, at the time the Amended Constitution of West Virginia goes into operation, shall

continue to exercise the powers and perform the duties of their respective offices, in the name and under the authority of the State of West Virginia, until the officers elected or appointed under the Amended Constitution for the discharge of similar duties be qualified.

MR. LAMB. I ask that the ordinance take the usual course—be taken up section by section.

The first section was read.

MR. LAMB. The first question which would occur naturally under this section is, whether this election can take place before the act of Congress is in full effect. That act of Congress will not go into effect until sixty days after the issuing of the proclamation. We propose the election shall take place on the Thursday succeeding the 35th day. That will be necessary within from 36 to 41 days after the President's proclamation is issued. I cannot say that I have very carefully considered that subject, but with my colleagues on the committee I had no particular reason to doubt that it would be fully competent to hold the election while the sixty days were running. I believe, and if I am mistaken in the facts I will ask to be corrected by gentlemen who are better informed, that in the cases of Kentucky and Maine and Vermont, states were formed, like we are about forming, within the limits of another state; their constitution was adopted and their officers elected before they were formally admitted.

As to the time we have selected, supposing it is proper to hold the election before the expiration of the 60 days, it will require an election to take place within 36 to 41 days before the expiration of the 60 days succeeding the President's proclamation, when the act of Congress goes into effect. It will leave us, then, 20 days for getting in the returns of the election and having the parties who are elected assembled here in the city of Wheeling, preparatory to the legislature getting into full operation on the 61st day after the proclamation.

There is another explanation that is necessary to make in regard to this section. The 5th section of the 7th article of the Constitution already adopted by the people, prescribes that the voters of their county shall elect a sheriff, prosecuting attorney, surveyor of lands, recorder, one or more assessors, and such other county officers as the legislature from time to time authorize or direct. It does not prescribe the number of assessors or their duties; it re-

quires the election of officers by that name without prescribing their number or duties. We did not think it would be proper to go into that subject in this Ordinance. The legislature will meet on the 61st day after the election is to be held.

MR. VAN WINKLE. After the proclamation.

MR. LAMB. If these officers are necessary, if the assessors of the State are necessary, to be appointed immediately, the legislature can forthwith provide for their appointment, prescribing the proper number to be elected in every county. I believe, however, that with this single exception of the assessors, we have in this first article of the Ordinance which we report every officer specified in the Amended Constitution to be elected by the people for State and county purposes. I will move the adoption of the first section.

MR. PARKER. Mr. President, I move to strike out in the 6th line "thirty-fifth" and insert "sixtieth"; so it will read the sixtieth day from the date of the proclamation.

My object in that is that it strikes me very clear that the legal election cannot be held here until the new State comes into being. I was surprised last night when I heard the gentlemen of the committee were anticipating to report an election to be held within the sixty days. By the term of the act of Congress—no gentleman here, of course, none of us, can doubt for a moment, and it is conceded, I believe, by the chairman of the committee, that the new State does not come into being until sixty days after the date of the President's proclamation. If you will refer to the last section of that act—of course, in the previous part of the act Congress by that act gives its consent to the formation of the new State. I suppose it will be conceded, Mr. President, by every one present that the consent of the legislature of the mother state and the consent of Congress is absolutely necessary in order to be recognized as a new State. Therefore, before West Virginia can have any legal or constitutional being these two facts must concur. When we get the consent of the legislature of the mother state, that is one fact. But West Virginia is no more a state than she was ten or fifteen years ago; nor is she in being, in law, in the eye of the law, or in the eye of the Constitution, she has no being until the last moment of the sixty days from the date of the President's proclamation—until the last moment of the sixty days has expired has she any being whatever, either known to the law or to the Constitution of Virginia or the Constitution of the United States; she

has no more being than West Virginia had twenty years ago. One moment, one day before that 59 days have expired, West Virginia, such a legal and constitutional entity, has no more existence in view of the law and Constitution than it had twenty years ago, or fifty years ago. And it struck me last night we might with equal propriety, when the convention of 1830 had made provision to elect officers, the Governor and all the officers under the new Constitution might with just as much propriety have been elected at the same election when the people voted on the ratification of the Constitution—because we would have the State sometime and be sure to have them already. Well, now, it struck me with great force. I may be mistaken but it seems to me that it is clear. Well, now, the election is a thing in a republican government where all power emanates from the people. Why, it is the election that gives life to the officers; it is not his going in on the 61st day and taking the oath. That is not what gives life and power. Now, I ask what power have we, at this city here, to come together on the 35th day after the proclamation? We might have done it ten years ago. They may get together in Ohio next week and undertake to elect a governor in Gov. Todd's place with the same propriety, it seems to me. We are a legal something or nothing. We are nothing until everything Congress has laid down in this act, in every particular, is complied with; and when the sixty days expires, why of course West Virginia rises then to a legal and constitutional being. We agree as to that. The vote we give, it strikes me, before that election that we hold is a nullity. It is either something or nothing. Now suppose it should turn out to be a nullity, what would be the consequence? Why, we have got enemies all around to take every possible exception, to make every difficulty they can in inaugurating our government the first year. Therefore, it behooves us to keep it clear; to have all the certainty that is possible. As we have gone on so far, carefully taken all our steps legally, let us continue to do so. But suppose we should make this mistake and undertake to start our State machinery, and if it should turn out to be a nullity when carried to the Supreme Court, of course we have got enemies here that will push it. Then what? Why, great litigation. Every act the governor did would be void—be no government at all. All our sheriffs, courts, executive officers would be a nullity. Everything they had done of course would be void. We would have our courts and the mother courts would still remain with us; and the old officers would continue until the new ones were qualified to take their places. Well, now, Mr. President, it is an alarming future,

of great confusion. The human mind cannot conceive what would be the result. How should we stand then with our enemies present around us on all sides, with our "bogus government?" We should make it a "bogus" government. In the last finishing act of our long, hard labors we would crown it with its "bogus" character. It seems to me perfectly clear. The preamble to the act of Congress says "Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State." In the first section it says: "That the State of West Virginia be, and is hereby, declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever." Congress must first assent to the division, and then she must admit. Now, here is the last section:

"That whenever the people of West Virginia shall, through their said Convention, and by a vote to be taken at an election to be held within the limits of the said State, at such time as their convenience may provide, make and ratify the change aforesaid, and properly certify the same under the hand of the President of the Convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact, and thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation."

MR. SINSEL. I rise to a point of order. The gentleman's time has expired.

MR. LAMB. O, let him go on.

MR. PARKER. I thought, and those around me so understood, those rules were in abeyance. If the rules are in force, I abide by them. If they are not, I want other gentlemen to be governed by them.

THE PRESIDENT. (to Mr. Sinsel) Do you insist on your point of order?

MR. SINSEL. I do.

MR. LAMB. The rule certainly was adopted for a special purpose it seems to me, according to my recollection.

MR. PARKER. I am pretty near done. I want to know how the rules are?

SEVERAL MEMBERS. "Go on."

MR. RYAN. The rule has been totally disregarded for several days. ("Go on!" "Go on!")

MR. PARKER. I don't know that I have much more to say. I want the rule understood. But it seems to me, Mr. President, out of abundant caution, even if there were no more than a doubt, we should have no doubt at all because it is so important.

MR. ROSS. On the admission of states into the Union, in anticipation of an act of Congress admitting a state into the Union, I believe I am right in stating that it has frequently been the case and is probably a general rule, that the territory making the application has elected its officers so as to be able to put the machinery of the state in operation promptly at the time the state comes into actual being. Therefore I do not see the force of the objection of the gentleman from Cabell. The section of the act of Congress quoted by him indicates that the election may be held to suit the convenience of the people concerned and our convenience is certainly promoted by holding it in the manner provided for in this ordinance. I believe it to be important to us that these officers be elected as soon as possible; and I do not see with the practice of the country before me in regard to the admission of new states—the almost uniform practice of electing their State officers in anticipation of an act of Congress admitting them—that there is any force whatever in the objections of the gentleman from Cabell.

MR. PARKER. Permit me to ask a question.

MR. ROSS. Certainly.

MR. PARKER. What states similarly situated as West Virginia, formed out of other states elected their state officers before the consent of Congress?

MR. ROSS. I do not know that I could recite any state that has been exactly situated as West Virginia is at the present time that has elected officers in anticipation of being admitted by Congress; nor do I presume it is at all necessary that we should have an exactly analagous case. The general principle, I believe, has been recognized throughout the country that states in anticipation of an act of admission have elected their state officers. The great fact is all that we want. I refer the gentleman to the instance of Kansas being admitted into the Union; and I think if the gentleman will recur to the various instances of the admission of states he will find it has been the almost universal practice that they have

elected their officers in anticipation of an act of admission. I cannot see anything at all in the circumstances of the case that would invalidate in any matter whatever the commissions of officers chosen at such election as we propose. These officers do not come into being, perform any legal act until after the State is fully admitted into the Union. They are only officers in futuro; and there is nothing, to my mind, in the case at all that need in any manner operate to delay the election. Under this interpretation of our powers, the election for officers of the State of West Virginia could not take place until some time in July. I deem it important the election should take place as soon as possible, and therefore I shall vote for the section as it stands.

MR. VAN WINKLE. It appears to me there ought not to be even a doubt on this subject. If gentlemen will only examine one moment the effect of this amendment as it passed, they must see that any supposition of that kind, is, with all respect, preposterous. Now, can it be supposed that law, legislation or anything else ever intended there should be a perfect interregnum for twenty or thirty days—no government whatever for West Virginia? Now, such contention, I think must be preposterous. You may say we have provided that the officers of the old state may act; but that is not the authority of the new State. There will be, no doubt, the geographical State, but there will be no such State as West Virginia as a political entity until there is a government; and this ordinance is so framed that the legislature will take their seats, examine the returns for the election of governor and other state officers; and the government will be in operation in perhaps an hour after that body meets. There will be no interregnum except from twelve o'clock midnight until about noon.

The cases of other states have been spoken of, and the gentleman who spoke last was called upon to state a precisely similar case to this, of where a state had been formed out of another state. I suppose, sir, everybody knows that it is the uniform practice, at least for many years past, that the moment any of these states created out of public territory, that in three minutes after the admission was complete their senators and delegates appeared on the floors of their respective houses and were sworn in. In every case of late years, the senators and representatives in Congress have been elected before the bill was passed. That required the prior election and organization of a legislature and of the members of the House of Representatives.

MR. PARKER. I would ask whether under all these cases, created out of territories, there have not been enabling acts, either of Congress or territorial legislative acts?

MR. VAN WINKLE. I am coming right to that. It used to be the practice when a new state was to be formed Congress passed an enabling act authorizing the state to prepare a constitution and submit it, and it was this that gave them authority to elect a legislature and state officers previous to their acts of admission into the Union. Now, I should doubt very much whether in the case of any state that was formed, without knowing what the precise circumstances were, that in the case of any state erected within the jurisdiction of another state—as were Kentucky, Vermont and Maine, that they needed any enabling act of Congress. Their enabling act would perhaps come from the legislature of the state from which they were about to separate, as ours did. We have had an enabling act from the legislature of the State of Virginia to go on and form this new State with its government and everything else pertaining to a state. But, sir, I contend the act of Congress is an enabling act; and the sixty days, I apprehend, was interposed between the issue of the President's proclamation and the date for our becoming a state for the express purpose of enabling us to organize. If that was not the object in delaying sixty days after the amendment was accepted and the President satisfied, I am utterly unable to imagine what purpose it might have been for; but I apprehend no gentleman will be able to enlighten me on that subject. No one will be able to say, I think, if that is not the reason, why we have been compelled to wait sixty days after the requirement of Congress had been complied with and the President could be satisfied the preliminaries had all been conducted correctly, if it was not to give us the necessary time to organize the new State so that there should be no interregnum. Although I have not seen the debates enough to know whether that matter was publicly stated on the floor of Congress, I should hesitate little in expressing my belief that the very purpose was to enable us to organize.

But, sir, it will be remembered there is something peculiar in this. The President, when he is satisfied that the returns of the election to be made to him by the President of this Convention, when he receives the returns from the President of the Convention and finds them satisfactory, he issues his proclamation stating the facts of the case and that West Virginia is to be one of the United States sixty days from that date. Well, sir, it is what we always

would call "immediately." On the issue of that proclamation, the State inchoate—it is an embryo State—the legal gentlemen here know that there is enough legislation on the subject of embryo existence—is a state in everything but organization, waiting merely for the time when it would spring into active being as a state. It would have a geographical existence without the election of these members and officers. If you call a state what is merely a piece of territory, it would be a state. But a state in the correct definition of the term is the organization which gives it life. It is not a state in fact until that organization takes place; until then it is not alive. Now, we are by the terms of the proclamation to be a state sixty days after the date of that proclamation. How then can we be a state at that time unless we are provided with an organization? It appears to me there can be no doubt about this.

But then we hear the denouement: this matter is to go into the courts. Yet gentlemen know this legislature is to be the judge itself whether its election is right or wrong. It, and nobody else in the world, is to judge whether the election and returns of its members are correct. And when the gentleman talks about this coming before the Supreme Court, he forgets the decision in the Rhode Island case. The Supreme Court said in that case they have nothing to do but to go and count the votes and examine the returns; that it is a matter for the political authorities, not the courts. They would not go and see who had voted for this or that legislature, as they insisted in Rhode Island. They had nothing to do with that. They put it on the express ground that the Constitution of the United States requires a republican form of government and obligates the United States to defend the state in case of invasion or insurrection; that if rival state governments are set up, the Congress, if it is in session, or the President if it is not, shall decide between them, and that all the courts are bound by such act of the President or of Congress. The Supreme Court expressly refused to take any cognizance whatever of how this legislature came to be elected. It found them acting as the legislature, and that is all they know about it. The question in the Rhode Island case and the other which arose out of the immigration (?) law of the war of 1812—in all these cases they decided it is not a judicial matter. Now, sir, who is to call it in question? Will this body, elected under this ordinance, when they come here decide their election is informal and illegal and go home? Will they not decide, if they had no other reason for it, whatever then, that it was necessary to prevent an interregnum, a cessation of all government over this territory—

most probably they will decide the election was legal, and that they are properly returned and are the proper legislature of the State. Then as to the governor and other officers—who is to decide as to them? The legislature; the same legislature; and whenever they do decide, the question is closed. Has anybody the least idea the United States would refuse to acknowledge this as the legitimate government of West Virginia because the members were elected twenty days before the expiration of the time named in the President's proclamation? When territories are constantly coming into the Union with all their officers elected long before the state is admitted? Why, sir, the case has been as strong as this: that Senators were standing just outside of the bar; and when the state was admitted, in five minutes they were there and sworn in as Senators, elected months and months before. They had come with certificates of election granted to those Senators before the state had been admitted and were received by that body, and admitted to seats on the floor, ten minutes perhaps after the vote had been announced on the bill admitting the state those Senators were voting on questions before the Senate.

Sir, I come back to the first position. I say if there is not another argument to be presented here that is sufficient to settle the question, it is sufficient to say this is done to prevent the cessation of all government. I think, sir, there is force enough in that one consideration to justify all we propose to do by this ordinance.

MR. PARKER. The gentleman from Ohio seems to think this is justifiable for practice. I ask him, for I wish light if I am wrong to instance any case. I have been unable to find any case, that is either in forming new states out of old states or forming states out of Federal territory. I have been unable to find any instance. We have had a great many troubles in this country, and I do want to get along without any more. If I am wrong, I want to be set right. If there is any authority in point, I certainly do not know what; and unless there is such a precedent I submit, Mr. President, they have not answered my argument. The gentleman from Ohio speaks of this practice. I put the question to him: can he or any other gentleman say where a state was born out of old territory, such as the State of Maine or Kentucky, such a state standing as we stand here. I undertake to say there was no election in either of those states, or any of them, until the state had become consummated—until it had a legal being, not an embryo being. A state is a state.

MR. ROSS. I would ask whether the gentleman states that as a fact or simply upon hypothesis.

MR. PARKER. What?

MR. ROSS. That Tennessee, Kentucky and the State of Maine, for instance, did not have their election previous, and Vermont?

MR. PARKER. Well, I examined the proceedings of Kentucky in the case of her admission. On that point I cannot speak from an absolute certainty; but from a very strong impression I have now that there was no election until after the state was consummated. In regard to the State of Maine, I have the same impression. Now, when we come to form states out of Federal territory, that is another thing. Of course, the people of the United States are living upon the territory. They have no mother states to consult. Well, now, the gentleman from Wood. In all these cases, and if there is an instance, I ask any gentleman to state it. In every case in forming new states out of Federal territory where the people are citizens of the United States living within that territory. Well, now, in every case where they have undertaken to organize a government—because you cannot organize in our case here where our officers had committed treason and abdicated, as our friend argued very lucidly and understandingly yesterday—but unless in such case, can a people get together in general town meeting, without an authority from some source, emanating from some organized body?

I heard the argument of Mr. Webster in the Rhode Island case. You talk about the Dorr case; but I know the very foundation he took in that argument was that Dorr undertook to get together without any authority or warrant emanating from any established authority—that was the way—undertook to get up his government against the old charter government of Rhode Island. Mr. Webster starting from that claimed all the way through his argument that Dorr's was a mere mob, a mere gathering of people coming together and organizing themselves without emanating from any organized body. Hence it is, when we have a convention amending our Constitution here, it has to be authorized. The convention in Richmond which passed the ordinance of secession emanated from our legislature. You never hear of the getting together of a body unless it is by warrant or authority from some regular existing body. This case of ours is the only case that affords an exception.

The hour having arrived the Convention took a recess.

AFTERNOON SESSION

The Convention re-assembled.

MR. BROWN of Preston. Before the regular business of the Convention is taken up, I desire to ask—and I think it will be done by common consent—to change the phraseology of the resolution submitted this morning by the Committee on Revision. The change is very slight and does not alter at all the sense and construction that is intended to be placed upon this resolution by the Convention by the vote this morning adopting it. But the language is more specific. To enable the Convention to understand the change I suggest, I will read the resolution as we propose it should read:

“RESOLVED, That this Convention respectfully ask the Congress of the United States to appropriate the sum of Two Million Dollars to aid the new State of West Virginia in paying for her slaves emancipated under the act of Congress approved December 31, 1862, as well as those not thereby emancipated: Provided, however, that none but loyal slaveholders shall be compensated.”

The resolution which was adopted was to appropriate the sum of two million dollars to aid the State of West Virginia in emancipating her slaves. Now the money is appropriated to pay for the slaves emancipated and not at all for emancipating the slaves; but to pay for those emancipated by the act of Congress as well as those not embraced in the act. I think, sir, there can be no objection whatever to the verbal amendment suggested in the resolution I now offer. I ask that the verbal amendment be made by the Convention so that there may be no misconstruction of the resolution.

MR. DERING. As it does not alter the sense of the resolution in any respect I for one will freely consent the alteration shall be made. But in connection therewith, I move you a copy of the resolution, signed by the President of this Convention, the Secretary of the Convention and the commissioners of this Convention be authorized to transmit it to our Representatives in Congress.

MR. POWELL. Will it not require a reconsideration of the vote by which the resolution was adopted?

THE PRESIDENT. It can be done by unanimous consent.

MR. BROWN of Kanawha. I fully concur with the gentleman in regard to transmitting this resolution to Congress, and I think it ought to be done at once so our representatives may have the benefit of it there. The time is short.

MR. STUART of Doddridge. I hope before any action is taken it will rest there.

THE PRESIDENT. Is there any objection to the amendment proposed to the resolution?

MR. SINSEL. Read the resolution as adopted. It is a material difference.

MR. IRVINE. I think it alters the sense very materially.

MR. SINSEL. It reads to me like there is a material difference. The one passed this morning looks to the emancipation of all the slaves; and that is a very desirable object.

MR. DILLE. Well, so does this one.

MR. SINSEL. Well not so much so. I don't think myself Congress has passed an act emancipating any slaves here.

MR. DILLE. Creating the State of West Virginia.

MR. ROSS. The difference between the two resolutions is simply this that we alter the expression to accomplish what was the real intent of the resolution as passed, while that resolution as adopted does not express it. The one expresses the intention in clear language. The other leaves it open to misconstruction and misconception likewise.

MR. LAMB. It seems to me that is the only difference between the two forms of the resolution. As I understand the resolution it is just as express and positive in regard to the general emancipation as the other.

THE PRESIDENT. Any objections to the amendment proposed? If not it will be so amended by unanimous consent.

MR. STUART of Doddridge. I would rather, Mr. President, it should rest a few moments.

THE PRESIDENT. Very well, sir.

MR. BROWN of Kanawha. Would it be in order, then, Mr. President, to let the President sign this resolution and let it be transmitted to the Senate?

MR. LAMB. The whole had better lie on the table together.

THE PRESIDENT. The question is on the amendment proposed to the ordinance under consideration.

MR. RYAN. I confess that resolution is not just exactly what I would like to have it.

THE PRESIDENT. It is laid over for consideration.

MR. PARKER. I was alluding to the authorities and what has been the practice hitherto. As suggested by my friend from Wood, the matter can be considered again when the whole report comes up for adoption. I am just as desirous of hastening the matter as any gentleman in the Convention; but I want to be sure it is right. I therefore simply remark that the effect of the peculiar language of the act of Congress precludes any idea that this new State can have any being previous to the expiration of the 60 days. The very language itself is so clear it seems to me it precludes any such idea. "And thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation." That then by implication carries with it the conclusion that the act shall have no force and effect prior to that time. Well, now, if it has not, then we are citizens of Virginia until the consent of Congress is consummated and completed. Now, can we as such elect a governor, sheriff and all the officers for the State of West Virginia? I should be glad to see what the practice is. Certainly the difficulty is in my mind. I cannot give it up. I shall say no more now if the Convention pass upon it; and in the meantime before it comes up on the whole report, why I shall examine the documents. If we can get the organization, get it ready to step in when the 60 days shall have expired, why—but still that is going to have an illegal government—why, sir better wait thirty days longer and have a legal government.

MR. LAMB. I had not time to make much examination in regard to the subject but the examination which I did make since the Convention adjourned this morning has satisfied me that Vermont and Maine were admitted into the Union, if I may so express myself, full-fledged—not merely with their constitutions but with their legislators and officers all in operation. That was not the case, however, as to Kentucky. She I think formed her constitution after the act passed Congress admitting her into the Union. I have not been able to see much difficulty in this question; and even on the construction which the gentleman has given the act of Congress, I see but very little difficulty. We must construe the whole act to-

gether. It is true one section says it shall take effect and be enforced from and after the 60 days from the date of the proclamation. But, if this is to govern, as the gentleman contends, let us see what would of necessity follow: It follows that the act of Congress relating to our admission is not in force and cannot be until some undetermined date in the future—sixty days after the issue of a proclamation by the President. That proclamation cannot issue until the President has received proper evidence that an amendment to our Constitution to be proposed by this act of Congress when it becomes operative at some future time has been ratified by Convention and people. But how can such ratification take place or be certified until such amendment has been legally proposed by an act of Congress in force? Until such certification, how can the President issue his proclamation? Until he does how can the act of Congress become operative? It follows that the recalling of this Convention and everything it has done since has been without authority. We could not ratify an amendment that has not yet been legally proposed; nor can we ask the people to confirm an illegal ratification by this Convention. We cannot certify to the President what has not been and cannot be done. He cannot issue any proclamation. No proclamation being issued, the act of Congress never becomes operative at all; and everything since our application to Congress in May, 1862, falls to the ground. These are some of the absurdities that we must face if we accept the construction put upon this act of Congress by the gentleman from Cabell. Clearly the intention of the last clause in the last section of the act was to say that the admission of the State would not be complete until 60 days after the date of the proclamation. That meaning makes the whole act consistent and workable. The other makes it a mere jumble of impossibilities. Therefore we must construe the act as a whole; and thus construed its meaning and intent are entirely clear. That last section is a singular piece of drafting; but it is apparent, taking the whole act together, that it was in the contemplation of Congress, at least, that this Convention should be re-assembled; that this Convention should act on the amendment which is here proposed and accepted; that that amendment after acceptance by the Convention should be submitted to the people for their ratification or rejection; and that in all these particulars the act should have effect, though the last section says it is not to have effect until the expiration of these 60 days. There is certainly nothing in the construction of the act, taking the whole of it together, I say, that would militate against our action in this partic-

ular. This is a matter which the people, according to all our recognized principles always have in their hands. We cannot be admitted as a state into the Union, it is true, until after the sixty days; but in all other respects, I take it we are competent to do what is necessary to prepare for that event—competent, if the good people of West Virginia decide we shall do so, to act as a State before or after that date under their authority.

I think there is no difficulty in accepting the proposition as it has been reported by the committee. Though I have no very great objection if the Convention should prefer it to put this first election off some twenty days longer, I think it would be better—it would be an important thing gained, to avoid the interregnum; to avoid having West Virginia even for three weeks without a government—even for three weeks after this act shall have gone into effect according to the last clause of it.

MR. SMITH. Mr. President, in order to form a just opinion of the powers of this body and their right to hold this election we must look at the condition in which we are and at the power of the respective parties who operate on this subject. It is the Convention representing the people that is one party; the Legislature of Virginia represents another party; the Congress represents the United States. There are the three parties. All the power that Congress has is to give assent. All the power which the Legislature have is to give assent. All the balance of the power belongs to the Convention.

MR. LAMB. And the people.

MR. SMITH. To the people of this State. This is the division of power between the three bodies who are to act upon this matter. Congress gives her assent, and in her own form; and all that we do up to the time that assent is given is done by the power of the people acting for themselves. Now Congress has only said our assent shall be given by the President; the assent shall be indicated by the proclamation of the President; that assent, although indicated and given sixty days beforehand, it shall not take effect until the end of sixty days after the date of the proclamation. Therefore, under that assent, we are not authorized to form the government, to act as a government; but the people say we have a right to prepare for giving effect to that assent when the time arrives. Now, that is a power belonging to the people, to make provision to coincide with the consent of Congress. That is all the power she has. She

has no other control over this subject but to give her consent; and we have all the balance of the organization in our own hands, and the only limitation on that power is that you shall not organize your government; the legislature shall not meet; your governor shall not be sworn in and your other officers shall not be sworn in before that time. But it don't prohibit us from preparing those officers and getting ready to give effect to it when the time arrives.

MR. PARKER. I should like to suggest to the gentleman the question whether the citizens of Virginia can elect the officers for the state of West Virginia.

MR. SMITH. Certainly. They are the people acting here, and it is confined to the people, who through their legislature have given assent to the erection of this separate state; who through their Convention in the summer of 1861 authorized us, citizens of Virginia, to come here and make an organic law for that state. Their assent to the creation of the State has passed beyond control; it cannot be taken back. The citizens of Virginia living within the boundaries drawn for the new State have been empowered to do what is necessary to set their state government in motion when the assent of Congress becomes operative. It is the people who live within the bounds of the State who are to elect the officers; and when the consent of Congress takes effect those officers will be ready to act and thus prevent any interregnum in the government of this territory. But, sir, if we do not do it, the old governor cannot act in this territory; the legislature cannot act here; we have no state officers at all, and we are entirely without any authority whatever except the judges below. I suppose they might act and the magistrates might act. But we have no governor in case of emergency; if there is an invasion or anything of that sort our hands are tied. We cannot do anything. I say it seems to me that we who have said the people should be cut off and make a new state should have the power to say the people thus separated have a right to vote. We, the people, regulate this matter ourselves. Congress has no right or power over this subject nor has the Legislature of Virginia any right to intermeddle. We are acting for the people and with the people so this may be done. The only thing is that although we do it, we cannot act as a state until the time elapses; but we will be ready to act the very moment it does elapse and we people say we will make that preparation. Now, when you look at the different powers that operate here and separate them and see the authority which each one has, they act harmoniously

and there is no conflict at all. It is the people that regulate this whole matter, not Congress, not the legislature; but the people who make the State. What right have we to make a state? We have to make that preparatory to getting the assent, and we have to elect the officers preparatory to going into operation. All this must be done by the Convention; all these provisions must be made by the Convention. Another thing, suppose we happen to be wrong—it is a political question; the legislature adopts it; all the officers of the government adopt it; and who can gainsay it? The courts have no jurisdiction over a political question at all. It is to be settled by the legislature, it is true, if there is any question; but I imagine if the legislature is elected very few will want to go home and say, this is all nonsense and you have no power and you got here without authority. There is nobody that can call it in question when they meet together. I say there is a good deal of force in what the gentleman says but I think there is more force in sustaining the proposition of the committee.

The question was taken on Mr. Parker's amendment, and it was rejected.

MR. LAMB. If there is no other amendment, to suggest, Mr. President, I move the adoption of the first section.

The motion was agreed to, the section adopted and the second section reported by the Secretary.

MR. LAMB. I merely remark by the Constitution already adopted, the terms of the governor, secretary of state, treasurer and auditor are required to begin on the 4th of March; and the terms of all the other state officers and county officers on the first day of January. It is necessary to fix in the ordinance the year. The date when these terms commence is fixed by the Constitution. I move the adoption of the second section.

MR. HARRISON. I move to amend this second section by inserting in the 19th line, after the words "except that" the words "the term of the senators shall continue and be computed as if the same had begun on the first day of January, 1864." I suggest this amendment for this reason, that the members who will be elected to this legislature will probably be as good men as we can get at any time for the legislature during this year. They will probably not commence their work before the first of July, and it is equally probable not before the first of August. As the Constitution now

stands, we will have to elect another set of delegates in October following. Now, I apprehend that the first legislature assembled under this provision will scarcely more than get to work by the time another set of delegates are to be elected. It is admitted we need experienced legislators. We may expect we will have men in here who have no experience and it will take them some time to learn. If we hold another election and it should turn out that these men should be removed from office by that election, which they would be by the first of January succeeding, within six months, after they first commence their work, we will have another set of no more experience than those when they first begun. It seems to me, so far as this class of officers is concerned, it would be best to retain them until the succeeding October election.

MR. SINSEL. Will the gentleman permit me a suggestion: instead of making the term commence at that time would it not be better to make it end at the first of January, 1865? You would have them in office really before their term was beginning.

MR. HARRISON. The idea would be to make it continue till 1865.

MR. SINSEL. I know what your idea is.

MR. LAMB. Mr. President, the gentleman is aware, I suppose,—supposing the first legislature to assemble on the first of August, that its term would last until the first of January next afterward, notwithstanding the election for their successors would be held in October it would not terminate their office. They would continue in office as a legislature from the first of August to the first of January, some five months, and they could be in session all that time. I do not know but what even the first legislature will be able to get through in five months. I hope they will. But I have no particular objections to the amendment suggested by the gentleman from Harrison.

MR. VAN WINKLE. With a view of fixing the clause in the schedule so if they lost but a few months of their term—that is to say if they were elected within a few months after the regular term commenced why they should lose it but if over six months had expired when they occupied their seats, they should hold the next year also, I am rather inclined to favor the amendment so far as members of the legislature are concerned; and I suppose there is no great objection to having it also as to others. Now, they would

take their seats, in my opinion, before the first of July and on the first of July the first six months would be up. They would then only hold their offices for six months. There would then be another election in October; and the amendment of the gentleman would avoid the election in October. It would be hardly more than fair towards these gentlemen that having made their arrangements that they should not go out of office at the end of six months. I am inclined to vote for the amendment proposed. I am only trying, in doing so, to do what would be fair and just both to the persons so elected and to the public interests; and I think that dispensing with an election next October, postponing the second election until October, 1864, would perhaps be better than to have another election so soon.

MR. TICHENELL. I think the member from Harrison as well as the member from Marion ought to be especially in favor of a short term. We have tried one experiment at electing delegates under the new term, and if they had been for six months instead of a year, it would be infinitely to our advantage, as we have to try new men again. I hope it will be a short term, not a long one. And I don't know it may be so again. If it does require but a short term I prefer the amendment of the gentleman carry. I hope the amendment will not prevail; be glad if the gentleman would withdraw it.

MR. DILLE. I desire to make a remark or two in reference to this amendment. I am decidedly in favor of the report as it stands. My impression is the time given here for the first session of the legislature is quite enough. It cannot be less than five months, and it may be near six months. A longer session of the legislature at the first term I deem unnecessary. I have no idea we shall have a revision of our code during the first session, and it may be the task of that legislature to elect commissioners to take charge of the revision of the Code, and regulate it so that it could be adapted to the Constitution we are about to put in operation. It strikes me that six months is ample time. Five months is ample time to put the machinery of this government in operation. Yet if they have not time to revise the Code, why that can be done, as it is uniformly done, I believe, not only in this State but in all other states through commissioners—men selected to prepare a code and submit it to a subsequent session of the legislature. I think the better plan, as we are about to commence under this thing is to select good men, and I think good men will not wish to stay here longer than the time authorized by this provision. I think if you modified it as

intimated by the gentleman from Harrison that instead of a session of five months we would in all probability have a session commencing in July and ending in January a year afterwards. I think this would be an inducement held out to that body to continue that length of time. I am decidedly opposed to such sessions. I uniformly when this subject was up was opposed to it, and I shall ever be opposed to long sessions, because I think it is the fruitful source of injury to the people.

MR. POMEROY. I concur with the gentleman who has last taken his seat. I think from the action this body is about to take there will be a legislature elected early in the month of June. They may be elected perhaps before the month of May and be able to meet in June. From that day till the first of January will be over six months. They can certainly transact all the business that will be necessary for the legislature to transact during that time. The legislature that will be elected in the month of October are required to meet on the third Tuesday of January. There will be a short recess between the adjournment of one body and the meeting of the other; and I think not more than the people will likely demand. I think if there is any one thing that has been the curse of this country it has been too much legislation; legislative bodies spending too much time unprofitably. I voted I believe when all these provisions were up to make the sessions short and the pay low. Well I will not use the word "low". The pay is about right.

MR. VAN WINKLE. You don't destroy the lengthy session by what you propose. If this legislature that is to be now elected sits till the first of January there will be another ready to go right on and begin their session. You gain nothing on the question of too much session, for they may sit right on until the next fall.

MR. POMEROY. If there is any honor, the first legislature will have that honor. It will be the first legislature of the new State. Let them have abundance of time to do all the business of the legislature that might be performed. Now, if they meet—as it is very evident they will from the provisions we are about to make in the month of June, they have all the time until the first of January. Then they can retire if they are not re-elected. Another legislature, which will perhaps be equally as competent to do business is required to meet on the third Tuesday of January; and if they are found to be good men, faithful and competent, it will be an easy matter for the people to re-elect them. If they are not good men,

every man on this floor will say the six months they will consume will be too long. Suppose the people make a mistake and elect bad men, the sooner we get rid of them the better. But if they are good men, they will very likely be returned to the legislature. At least they can be if it is the desire of the people. Let them have the opportunity of electing these men over again if they wish to. And how would you make the arrangement in regard to senators without making the alteration? They go out one class in one year, the other class in two years. I think, as my friend from Preston remarks, if you elect these men giving them this inducement, there may be some men in the body that would be disposed to continue the session from the day on which they met in June until January, 1865. There is nothing to throw them out. If you extend the time over beyond the first of January what is to prevent them from sitting until the next January. They will say, it is our only chance; we will never be members of the legislature again; let us make a good thing here now when we have it. It is a good rule, I think, not to place temptation in the way of men. There can be no evil result from this. I have no idea there is going to be a code made by the legislature. There will be a commission appointed to make that; and therefore I think there is sound reason in the argument of the gentleman from Preston, that we ought not to hold out any inducement to sit longer than five months.

MR. BROWN of Kanawha. I understand the amendment proposes to lengthen the term of the senators and delegates. I confess, sir, I prefer it as it stands. From the time this legislature will assemble the eyes of the people will be on them; and from June till October will be time enough to understand what they are doing and whether they may show the cloven foot or not it is well to have a rod over them, that if they don't behave themselves in October we can get a better. As I understand there will be a general election in October, they may as well elect all these, and if they are good men, re-elect them.

MR. STUART of Doddridge. It strikes me if the members of the Convention look at this thing right—all predicated their arguments on the fact that this new legislature is certain to go into power in June. We have no positive assurance of that fact; but suppose it does not convene before October. It may very easily so happen; and it will be recollected that under our Constitution the first legislature is not limited in length of time; and it is very well known to every member who is acquainted with the business, and the nec-

essary business, the first legislature will have to go through, it will take a considerable time to do it. It might be, sir, they would have a very few days to do it in if the section be adopted as reported by the committee. It did not occur to me at the time, and I am satisfied it did not occur to the committee. I do not know of any necessity, Mr. President, of holding an election in October if we hold an election any time in August or September. But even that is provided for in this ordinance. It may be in October or afterwards. It may be in November. We know not what may happen, and it would be much better, it seems to me, to adopt the amendment of the gentleman from the county of Harrison. It is understood, Mr. President, to be incumbent on the people to get if possible their very best men that come to our legislature. I look forward, I hope for that. It is necessary, and if we get them there I would hate to see their business curtailed in a month or two and the other legislature that meets thereafter limited in time. It might be an impossibility to do the business that would be necessary to be done and we would be in a confused state for years perhaps before we could have our code modified to suit the present Constitution. It is not going to be a day's work, or a month's work, in arranging our laws adapted to the present Constitution. I am in favor of short sessions. I voted for them in the Convention that framed the Constitution; but knowing the necessary business that will devolve on the first legislature, I fear the ordinance we propose to adopt must undoubtedly—might, at least and in all probability will curtail their labors when we don't desire it to be done. I will vote for the amendment cheerfully, and hope it will be the pleasure of this body to do so. If you don't do it, gentlemen, you may get into trouble hereafter.

MR. LAMB. Mr. President, I do not see that any trouble can be involved in the section as it stands, or that we are not sure the legislature first to be elected would not have ample time to perform their duties. But I wish to say, in general, that the reason why the committee inserted 1863 and 1864 was that as the first election must necessarily take place in the very disturbed state of the country in many of the districts of the State, many of the districts of the State will not be represented probably in the first legislature. Their inhabitants will not have an opportunity of casting their votes for these high offices; and it was therefore considered improper that we should put their terms at the earlier period in order that as soon as possible the whole of West Virginia might have an opportunity, in peace and quiet, of electing the officers to whom

their destinies were to be entrusted; and I must confess the consideration which was urged by the gentleman from Marion has always had a great influence with me. I have seen so many instances in which since the terms of State officers have been extended we have had men in office that the very salvation of the country almost depended on our getting rid of them somehow or other; and I have therefore, in opposition to an almost fixed opinion I formerly entertained—I have therefore since Secession and Rebellion took place, been in favor of shortening the terms of office as much as possible. I do think that the section as it stands will afford ample time, and that for the considerations mentioned—though I am not tenacious in that respect—it would perhaps be better that it should remain as it is.

MR. STUART of Doddridge. Pardon me for asking what time they will have? You say ample time: what length of time will they have?

MR. LAMB. I do not see how it can possibly be extended beyond the first of August.

MR. VAN WINKLE. Then they will not have a half a term.

MR. LAMB. That gives them until the first of January, 1864, to continue in session if they see proper to do so. Their term does not expire when the election takes place in October. It continues until the first of January succeeding the election. And if a new legislature is elected in October and is assembled here on the third Tuesday of January, that second legislature is convened by the Constitution, for a term of 45 days; and we cannot therefore in any state of the case have a legislature sitting for eighteen months at a stretch.

MR. HERVEY. One remark, Mr. President. The question of time is not the largest matter before the Convention. Suppose they do run on till the third Tuesday of January, the time the other session should commence to take effect, that subsequent legislature could just take up the business and proceed with it; and if the members who have been getting the laws of the State reformed have been doing their duty they will be returned. The question of time has nothing whatever to do with it. It seems to me the argument is overwhelmingly in favor of continuing it just as it is.

MR. STEVENSON of Wood. I merely want to call the attention of members to a fact that has not been referred to that the session

of this second legislature is not necessarily confined to 45 days. If it is found that the business is so exceedingly important that the public interests require an extension of the term, 46 of the members elected to both branches can extend the term I suppose as long as they please.

MR. VAN WINKLE. If it is in order to say a word or two more, this question whether these terms shall begin in 1863 or 1864, or be computed from '63 or '64, is certainly one on which there may be a very fair difference of opinion. But I certainly cannot permit to go by in silence some of the reasons alleged in favor of shortening these terms and decreasing them by more than one-half. Now, sir, there has been a great outcry against this legislature which has been sitting in this room most of the time it has been in session; and there have been insinuations that the legislature elected by the people of this State and sent up here to do their business, for the sake of a pitiful three dollars a day have prolonged their sessions beyond the time demanded by the public interests. Perhaps it may be meant to implicate this body; but it applies to all future legislatures that are to be elected in this new State. I don't believe that out of fifty men sent here by the people of this State for any purpose whatever, you can find a dozen that would be actuated by such motives; and I take pleasure and pride in saying in reference to this late legislature that was here, although so much outcry has been made against them for protracting their sessions it seemed on the very face of the proceedings of those who made the outcry that they were endeavoring to make place for themselves, allowing I say for the inexperience of those who composed this legislature.

MR. DERING. Do you mean to say persons who oppose these resolutions were endeavoring to make place for themselves?

MR. VAN WINKLE. I say it seemed so in reading them. It looked so on the face of it.

MR. DERING. Such is not the fact, sir.

MR. VAN WINKLE. I saw several disclaimers of the kind in the papers afterwards. I say allowing for the inexperience of the gentlemen composing that legislature, and who necessarily did not get along so smoothly at first, I believe there has never been a legislature of the State of Virginia that dispatched more business in the same time. I had occasion to be in this city during a good

deal of the time of both its sessions—or three sessions, I think there were, and I feel very well satisfied business was dispatched about as promptly as ever I saw it dispatched in the Richmond body. I do not remember any subject that occupied it more than a day. There may have been one or two. I think all this talk about how long these sessions of the legislature are to last are aside from the proper considerations before us. The Constitution fixes the terms of members of the House at one year. You say if this election cannot take place till the first of August, we consequently instead of electing for one year elect for five months. The provision in the old schedule was this, that if they were elected within six months after the time fixed for commencing the term they should have held for the residue of that year; if they were elected after the expiration of six months, they should hold for the unexpired time of that year and for an additional year. That is simply the question—what would be right or just in reference to this? The governor is elected for two years. You cut off seven months of the governor and leave him a term of 17 months. The question is whether you shall lengthen or shorten that term in order to give him as near as possible the constitutional term. That is all the question, in my opinion.

I will say, Mr. President, before sitting down, I did not intend to say anything offensive to anybody. Of course, I do not suppose every body who attended those meetings had any such views, and some I suppose were active in getting them up. But really, according to my own view of things and the observations of other people in reference to this legislature, they were not justly liable to censure. We came together in this Convention—when we first came together—there were but three or four persons on the floor who had had any legislative experience. We were some time in learning the rules and adapting ourselves to the business. I suppose it was about the same thing in the legislature. It took some time to get warm in the harness. After that I don't see but the business progressed as fast and well as in any legislature with which I have had any acquaintance.

MR. DERING. I rise to a question as personal to myself. I happened to be in one of the meetings that originated in Monongalia that complained of the long sessions of the legislature. I can say for myself I did not vote, get up or advocate the resolutions that did so complain of the legislature. But I desire to defend my friends from Monongalia who did get up those resolutions; who

were acting and voting for those resolutions and who were active in getting up the meeting. They are high-minded, honorable men who are as far from seeking a seat in the legislature perhaps as the gentleman from Wood; and so far as those gentlemen are concerned I desire, as they are my constituents, to do justice to them before this body and say they were actuated by no such motives. It is due to those gentlemen I should say so.

The question on the amendment was taken, and it was rejected. The section was adopted and the second section read.

MR. BROWN of Kanawha. I do not like this phrase "the 48 counties". I think we may now assume the word "state." I move to insert the word "state" in lieu of "48 counties."

MR. LAMB. This is a question of style, possibly of propriety. Throughout this the attempt is made, before they have become a state, to call them "the 48 counties;" and after they become a state, to call it a "state."

Mr. Brown expressed his acquiescence and withdrew the motion.

MR. HERVEY. I would inquire whether or not Berkeley county would be included.

MR. LAMB. No, sir; Berkeley county cannot be included in the new State until the whole thing is in operation.

The third section was adopted and the 4th reported.

MR. DILLE. I would suggest that we read through, if there be no objection, stop at each paragraph, and put the whole together.

MR. VAN WINKLE. No objection or amendment it will be considered adopted.

Upon reading of paragraph VI of section 4,

MR. POMEROY. Why say "sooner than sunrise" and closed "at sunset"?

MR. LAMB. It is the present law, and if it is wrong I do not know any better. I have endeavored to follow the present law throughout wherever I supposed it was proper, wherever there was not an obvious impropriety in applying it to the present case. The first sentence there I think is exactly in the words of the present law. If there should be any difficulty—if the commissioners should

not be willing to open the polls at the proper time, any two free-holders present can take the job in their hands.

MR. DILLE. I desire to ask the chairman what is meant by this expression, that if the persons present cannot "all be polled." I would inquire whether the persons are "polled"?

MR. LAMB. I believe the expression is perfectly correct. You "poll" the voters. But I am not responsible for that, gentlemen, correct or incorrect. I found it in the law, and I put it here. I think the meaning of it anyhow is very obvious.

MR. BROWN of Kanawha. I believe we have an expression in the courts when a verdict is brought in and some gentlemen of the jury may entertain a different opinion, the court asks that the "jury be polled," and the clerk immediately calls the names and takes the vote. It is taking the vote and is I think the most brief expression we can get.

MR. SINSEL. Go on! Go on!

THE SECRETARY. Are you in a very great hurry? (Laughter.)

Upon the reading of paragraph IX,

Mr. Harrison asked if these commissioners were immediately on the close of the polls to commence to count the ballots?

MR. SMITH. No, No; they may if they choose.

MR. LAMB. That was my idea, that as soon as the polls closed they should go to work; should not be allowed to take the poll books away; should go right to work and count the votes, if it took all night. I take it if you adopt the mode of voting by ballot, it is essential that the counting should be done immediately after the polls are closed, so there may be no opportunity of tampering with the ballot box.

MR. VAN WINKLE. It does not say here, as I perceive, who is to count these votes. I would therefore move to transfer the words "commissioners and conductor," and say as soon as the polls at any place of voting are closed "the commissioners and conductor shall proceed to count the names of the voters entered on the poll books and the number thereof set down at length at the foot of the list, which shall then be signed by them and countersigned by the clerk or clerks who kept said list." The idea is the commissioners and

conductor shall count the names on the poll list. It does not say here who shall do it.

MR. LAMB. What follows, in the same sentence and in the succeeding sentences, if the gentlemen will observe, shows very plainly by whom all these things are to be done.

MR. VAN WINKLE. O, well, then, sir, I withdraw the amendment.

MR. STEVENSON of Wood. Some gentlemen were speaking about counting the votes as soon as the polls are closed. I suppose it is understood, but it seems to me it ought to be, if the polls are kept open three days, or more than one day, that no count of the vote should be taken.

MR. LAMB. The last day is the closing of the polls.

MR. STEVENSON of Wood. Well, I would like that to be understood, because the counting the first day might operate very unfavorably on some of the candidates.

MR. LAMB. They could not be counted at the end of the first day because the polls are not closed until the night of the last day.

Upon the reading of paragraph XI,

MR. LAMB. It was agreed by the committee to omit the initials "A B and C D" and simply say "We, commissioners and conductor."

MR. BROWN of Kanawha. What is the reason?

MR. LAMB. To obviate the necessity of so many blanks in the certificates you issue.

MR. BROWN. Then, Mr. President, as "A B and C D" are always entitled to lead, if you strike them off there you will have to substitute them for "E F and G H" below.

MR. VAN WINKLE. Well, let that be done by the Committee on Revision.

MR. LAMB. An amendment has been suggested to me: instead of "within six days after the polls are closed" to say "within six days after the commencement of the polls." The polls may continue six days, and it postpones too long the ascertaining of the vote.

MR. HARRISON. Substitute the word "commenced" for "closed".

MR. VAN WINKLE. Say on the 2nd of April.

MR. BROWN of Kanawha. The objection to that is that the very contingency that may superinduce the continuing of the polls will generally be the same that will delay the commissioners in the various portions of the county from arriving with their county. You may have impassable waters; and if you limit the time and they are not in by that time you have to cut them all off, and you have taken the trouble of holding an election and have then thrown it away.

MR. DERING. I concur in the remarks of the gentleman from Kanawha. In my county many precincts are very distant from the courthouse and they don't get the poll books for a week.

MR. SINSEL. Take Monongalia. There are ten places of voting. Nine may close their polls on the first day of election. One may keep it open. Now, these nine places will meet within the six days to compare the returns. Those other places will absolutely be left out under this arrangement. This dating it from the beginning overcomes that difficulty.

MR. LAMB. I understand that the present regulations for elections within Virginia require the returns to be made within six days after the polls are commenced. That is my understanding of the law. I have not the code here to refer to, and we have had no difficulty in operating under it. Another thing in regard to this, and it is a general principle that will apply, I take it, and ought to be understood if it is a correct one, will apply to all these minute and particular provisions—that they are what the lawyers call directory merely. The failure to comply with them, if there is no fraud, and actual malpractice in the matter, does not invalidate the proceedings. The distinction which I believe is pretty well established between what are called directory and mandatory laws. In regard to all these minute and particular provisions fixing days, etc., if there be no fraud or malpractice, I take it the elections and their returns may and will still be valid according to the settled rules that govern elections although they may not have been precisely complied with. They are put there for the direction of the officers, to be complied with if possible; but if they have acted in good faith and it be impossible to comply with them, people do not lose their votes. I would, with a view of carrying out that idea, in line 40 ask to put in the word "directions" instead of "regulations," in the first sentence of section 4.

MR. VAN WINKLE. I hope that will be done by general consent. It has been suggested here, in reference to an objection made by my colleague about which there might be some misunderstanding, as soon as the polls are closed, to insert the word "final." Then there can be no misunderstanding about it. It may be even important to instruct the commissioners and others conducting the election that they are not to open the boxes before the polls are finally closed.

THE PRESIDENT. There being no objection, the Secretary will make the insertion. Has the chairman any more amendments to make?

MR. LAMB. Yes, sir, in lines 173 and 174, instead of "within six days after the polls are closed" insert "within six days after the commencement of the polls."

MR. TICHENELL. I want to make an inquiry. I know many of these townships are very large, and if there be natural obstructions, such as high waters, etc., it would be impossible for them to get in within the six days after the commencement. Is there any provision by which that could be overcome? I am satisfied there are precincts that at certain times it would be impossible for a messenger with safety to his life to get to the court house within that time. I would not like to vote to exclude if Providence should hedge up the way of getting in.

MR. VAN WINKLE. Does that state of things often last six days?

MR. TICHENELL. Often lasts long enough to prevent them coming. The very thing that would protract the election three days might be in existence six days. We have broad streams to cross and no bridges, and difficulties to overcome; and there will without doubt polls be lost if that is the law and no extension of time for distance.

MR. HERVEY. It seems to me the time is ample to get the vote from any county in the proposed State. I have traveled from Minnesota to Brooke in two days and a half.

MR. BROWN of Kanawha. You didn't travel in West Virginia.

MR. HERVEY. Came 250 miles of that distance by water.

THE SECRETARY. It is amended so as to read: "The ballots so sealed up, the poll books and one of the certificates signed as

aforesaid, shall be delivered by the commissioners and conductor, or one of them, within six days after the commencement of the polls."

The amendment was rejected.

MR. MCCUTCHEN. In the XIVth section I would move, in line 218, where it requires the commissioners to meet at the court house of Webster county, to strike out Webster and insert Pocahontas.

The alteration was agreed to.

MR. STUART of Doddridge. Seems to me in the 210th line we ought to strike out the words "or more". What is the use of two or three commissioners going along to an adjoining county; expense for nothing in the world.

MR. HALL. I think it had better remain as it is. One may be sufficient as it is. If there is no necessity more than one should go, let one go. There are times and circumstances when the parties interested in the certificates might not agree upon what one should go, and I should like it so left. While it is very uncertain, it will not hurt to send one to watch the other, and let the other watch the one. I think it would be the best as it is.

MR. STUART. I don't think any of the commissioners would suffer themselves to be candidates. It would be very singular to see two or three commissioners going to carry these poll books. I am one of those men who have confidence in man. I expect they would be honest men and one could do it just as well as two or three of them.

MR. HALL. I have confidence in man, Mr. President, but that confidence has been very often misplaced. And whilst it is not that I suppose these commissioners are not honest men, we know that men are not always honest. When we legislate or make legal provision, whether it has reference to government or what not, we do so with reference to the possibility of the dishonesty of men, and it will not then be in the way of honest men. As I suggested before, I apprehend, being honest men, unless there is reason for it only one of them will go; so that there will be no unnecessary expense; but if there is reason for more than one going, then I would prefer to leave it as it is. I would prefer to trust their honesty that they would not go unnecessarily than to bar them from the right to go when it might be necessary in order to render satisfaction and in order to secure justice that more than one should go.

"Question! Question!"

The motion was agreed to.

MR. VAN WINKLE. I would suggest, Mr. President, in the 299th line to transfer the word "volunteer" so as to bring it in after "Virginia" in the same line. The "Virginia Volunteer Militia" is the official title given to troops now in the field in the service of the United States from this State, and as this is confined to them, it will be shown more plainly.

MR. ROSS. This article does not provide for the vote of persons in the military hospitals.

MR. VAN WINKLE. They are in the "soldiers and officers of the Virginia Volunteer Militia." I think they are included.

MR. ROSS. I regard this as a very important part of this ordinance that we are about to pass, and I would particularly draw the attention of members to its importance and especially to the importance of having it so perfected that no advantage can be taken of this article by those who are opposed to the soldiers voting. I believe, Mr. President, that upon principle the volunteer soldier in the service of his country should have a vote. If there is any individual belonging to the country whose claims on the country to the exercise of this privilege of citizenship is stronger than another it is the individual whose patriotism has arisen to the standard that he is willing to go forward and fight for his country; and I believe it would be doing a great wrong and be a discouragement to the volunteer soldiers of the country if in this exigency of the country's history they should be denied the privilege of voting—that privilege which all freemen value so highly and prize so dearly. I believe, Mr. President, that upon general principles the right of the volunteer soldier in the service of his country to vote is clearly recognized. I would call attention to one of the articles of this Constitution where I think the principle of the right of the volunteer soldier in the service of his country to vote is clearly recognized. I refer to the third section of the third article. "No voter, during the continuance of an election . . . shall be liable . . . except in time of war or public danger, to render military service." Here, Mr. President, the soldier, or the voter, is not required to perform military service except in time of war or public danger. Then this may be required of him; but he is still recognized as a voter by the Constitution and by the law. And I take it, there-

fore, we are not going beyond the Constitution at all in giving the soldier in the service of his country the privilege to vote; and I take it on general principles, on principles of justice—sheer justice to the soldier—he should be permitted to vote. There can be no possible objection to this that can be valid in the minds of any individual. If it be possible for this Convention to devise a plan by which the voting of the soldier should be properly guarded from fraud or from improper influences. And that this is precisely the business of this Convention at the present time; that is, to devise a plan by which the vote of the volunteer soldier in the armies of the United States can be taken, it will be entirely free from all suspicion of fraud and it will be surrounded by the proper guarantees. Thus it will give confidence to the community in the vote that is thus taken. Now, Mr. President, you will observe here that the principle that is adopted in this provision is one that entirely gets rid of the objections; it provides that the ballot of the voter shall be recorded in the county of which he is a resident. There was the difficulty that met the members of the committee at once in devising any plan. The Constitution requires the voter to vote in the county of which he is a resident. The great question was to devise some plan by which we might get rid of that difficulty, permit the soldier to vote and still keep within the spirit of the Constitution. We do that simply in this way: we permit the soldier to enclose his ballot in an envelope securely sealed and transmitted by mail or some other secure method of conveyance to the superintendent of election at the court house of the county in which he is a resident. If the majority of the superintendents at the court house are satisfied this individual is really entitled to vote at this election precinct they are allowed to cast that vote for him at the ballot box; and here then the soldier is voting in the county and precinct of which he is a resident.

I think the section is scarcely guarded enough; that it has not been perfected as it might be in order to afford the requisite security to individuals for the vote, and there can be amendments made to that section which will make it altogether unobjectionable. I do not know what may occur to the minds of other gentlemen in thinking over the subject but I would suggest one or two things which I think would secure this vote and prevent all fraud and all objection to the measure. I propose, Mr. President, that the section be so altered that it shall require, in the first place, the voter to enclose his ballot in a securely sealed envelope; that he shall endorse upon the back of this envelope some endorsement like the

following: "I vote the endorsed ballot at the fall election of 1863" or whatever it may be, signed by the name of the soldier; that this shall be done in the presence of his commanding officer, the captain of the company, and that the captain shall certify below on the back of the envelope enclosing his ballot a certificate to the following effect: "I hereby certify that the above named (John Doe) is a soldier of my company and that he endorsed the ticket and signed his name thereto before me this (12th day of September, 1863)." Signed by the captain or other proper officer of the company. I then propose, Mr. President, that this envelope be enclosed in another directed to the superintendent of election in the county where the soldier resides, and that upon the day of election the name be called out by the conductor in order to give opportunity for challenge if any is made. Then let the name be entered on the poll book, and then let the conductor open the envelope and deposit the ballot in the ballot box without opening the same, and then it will be counted as the other ballots.

Something like this, Mr. President, I deem to be necessary in order that this poll be properly guarded, divested of all appearance of fraud, and that it may be perfected as a general standing rule or measure by which the volunteer soldier in the service of the state of West Virginia during the continuance of the war may be still secured in the enjoyment of his political rights. I deem, this, Mr. President, a matter due to the soldier, due to the whole country, that the individual who will volunteer to fight for his country shall not thereupon lose his civil privileges and find that while he is fighting the enemy in front there is a fire in the rear which he has probably more reason to dread than the foe that is before him.

I conceive, Mr. President, we shall not be at all singular in making this arrangement. I believe the attention of the whole country has been drawn with so much force to this subject that a regulation similar to this will be made in probably almost every State in the Union. I take the suggestion of this method from regulations which are now being made in the legislature of Ohio. They are now, as I understand, attempting to perfect a system of voting for the soldier of which this method that you propose here contains the radical idea. I would therefore ask the members of the Convention to turn their very serious attention to the consideration of this subject.

MR. STUART of Doddridge. I hope the gentleman will submit his amendment. Let it be stated and we will know what we are

discussing and what we are proposing to adopt. Nobody is disputing the right to vote; and if he submits any proposition, let it be in writing.

MR. ROSS. I was very well aware that I was not speaking to any amendment that had been offered here; but I wanted to throw out some general suggestions in regard to the importance of the subject and regulations which might result in recommitting this section so we shall be enabled to perfect it in a way that would render it acceptable to all.

THE PRESIDENT. Would the gentleman make a motion?

MR. ROSS. I could not on the spur of the moment prepare such a provision as I would like to see; but if any gentleman will move to recommit this section I would try to do so.

MR. STUART of Doddridge. I have an amendment I want to offer. In the 308th line, before the word "qualified" I want to insert the words "and if at the time qualified to vote." The way this reads it would make the soldier vote who was at the time he was enlisted qualified to vote. But since their enlistment many of these soldiers have arrived at the age of twenty-one and would not be entitled to vote when they enlisted.

MR. LAMB. Just put it: "at the time of the election qualified to vote."

MR. STUART. Yes, sir; I suppose it can be done by general consent.

THE PRESIDENT. There being no objection, it will be done.

MR. POMEROY. Would it not be better if the word "volunteer" in the 209th line should be stricken out? It is well known Congress is passing a bill by which there will be a great many drafted men. They will not be in the service by the—

MR. VAN WINKLE. They are all called volunteers.

MR. BROWN of Kanawha. I imagine the drafted men would not be volunteer militia. That is their discrimination on the books of the Adjutant General. That cannot be corrected because a man that is compelled to go is not a volunteer.

MR. VAN WINKLE. That is the way they got most of their volunteers in the South I understand.

MR. POMEROY. It would do no injury and make the section far better. They are not volunteers certainly. There is a difference in the pay.

MR. BROWN of Kanawha. It seems to me under the head of Virginia militia, a broader term.

MR. LAMB. Mr. President, this section was very carefully considered in the committee, whether we have got it right or wrong; and I must confess, with the best consideration I have been able to give the proposition made here by my colleague, I do not think it would be at all an improvement upon it.

THE PRESIDENT. It is not before the house now.

MR. LAMB. The proposition is to recommit the section, and I speak as to that. We have very carefully guarded the matter as will be seen by an attentive consideration of the section as it now stands. But with all the professions, all the directions, all the forms that could be gone through with under this proposition, it is breaking the word of promise that we seem to hold out entirely, it appears to me. The soldier could scarcely get up his vote if we complicate the matter with all these forms, and the officers would scarcely be willing—many of them would be unwilling—to take the necessary pains which would be required under such a regulation to send in the vote according to our law. I beg leave to remark while I am speaking on this question further that it was the intention of the committee to submit nothing here that they did not consider in precise conformity to the Constitution of the State of West Virginia as we have already adopted it and as the people have ratified it. We think we have done this. We think the mode of voting here prescribed is in conformity with all the requisitions of our Constitution, and that the vote when deposited in the ballot box will be a strictly legal vote under that Constitution. It is true the Constitution prescribes the mode of voting shall be by ballot; but it does not say how that ballot shall be transmitted. If it is the ballot of the voter, it is perfectly within the power of this Convention, as it would be in the power of the legislature assembled under this Constitution, to prescribe the mode by which that ballot may be transmitted to be deposited in the ballot box; and this provision is virtually nothing more than that. It is the true construction, I take it, of the preceding section of the Constitution that the party must have been for thirty days before the election a resident of the county in which the vote is to be given. We do know

that it is the established law that a soldier of the United States, a resident of another state, may be here fifty years without losing his residence in that other state and without acquiring one here. The reverse is equally true. The man who is a resident of the State of Virginia and enters into the service of the United States as a volunteer may be taken off to Vicksburg or to any other part of the country and remain there for years; yet he does not lose his rights as a resident of Virginia. He is still in the eyes of the law, according to all the well establishing principles that govern that branch of the subject, a resident of the State and county which he left. A vote that is given under this section transmitted to the ballot box, in full compliance with the regulations of law being the ballot of an actual voter, that voter retaining his residence in the county and State, is a vote given lawfully under the Constitution of the State. I take it, Mr. President, therefore, that we have accomplished the two objects we aimed at. This Constitution having been ratified by the people of West Virginia, this Convention are not at liberty to change it, without submitting their action again to the ratification of the people; and on the other hand, to give to parties who are actual legal residents the right to vote in the county where they reside.

MR. ROSS. I would explain why I regard some of these formalities that have been indicated in the course I had spoken of before as necessary; why they should be introduced. In the first place, it will be necessary that the name of the soldier should be endorsed on the outside of the envelope which encloses his ballot. That is the first form to be gone through with; that he shall endorse his name on the outside so that it may be known whose vote is inside. Suppose it were to go to the superintendent of the election with no other endorsement on it than that, we have no kind of assurance that some one of his comrades might not have undertaken to transmit his ballot for him.

MR. LAMB. Will the gentleman excuse me one moment. The provision of this is that the ballots shall be transmitted "under seal to the superintendents of the election for the county in which he resided; and if a majority of the superintendents are satisfied that the person so transmitting his ballot is a citizen of the United States and was at the time he entered such service a resident as aforesaid of the State and county qualified to vote, they shall deposit his ballot in the box, etc." The superintendents must be satisfied.

MR. ROSS. They must be satisfied as to the person. There might be a fraud put upon them here; and we want this guaranty to prevent them from being imposed upon by any such fraud; and in order to prevent that we require the certificate of his commander or of some other officer, that he saw him, this identical person whose name is written above, enclose that ballot and seal it up and write his name on the back of the envelope. This I would regard as a very necessary precaution to prevent fraud. I should like to see it incorporated in the system which we shall introduce. And when this ballot arrives in the county where he proposes to vote, I think there ought to be some safeguards likewise there in order that it may be certainly ascertained whether the individual has the right to vote in the county in which he proposes to vote. It is to be sure. The superintendents must be satisfied of that but can we not go a little further and require the name to be called out when he proposes to enter the vote that there may be opportunity for challenge; that if there is no challenge the vote may be deposited. I do not think any of these are superfluous regulations. But all that I want, Mr. President, is to have secured to the soldier that he shall have his vote and security to the community that that vote shall not be the subject of fraud in any way; that it shall express the opinion of the soldier.

MR. SMITH. Mr. President, I fully appreciate the remarks made by the gentleman from Ohio, and if it were a permanent system the regulations he suggests would be very proper.

MR. STUART of Doddridge. I know the gentleman from Logan will pardon my asking what is the section?

THE PRESIDENT. The motion is to recommit.

MR. ROSS. The motion has not been formally submitted.

MR. VAN WINKLE. The motion is on the adoption of the section.

MR. STUART of Doddridge. I understand if there is no amendment to be suggested, why, there is no right of discussion. We are going over making amendments.

THE PRESIDENT. The gentleman from Ohio said he wished some gentleman would make the motion.

MR. GRIFFITH. I move it be recommitted.

MR. SMITH. I say I appreciate the object of the gentleman. If we were inaugurating a system for perpetuity, it would be very proper to guard it as he proposes. I look upon the authority here given, to send tickets, as stretching the Constitution pretty considerably, and rather a tight fit to let it pass; but I am willing to let it go without any objections. I will say to the gentleman it is only applicable to a single election; and although the human mind has a great deal of ingenuity and will resort to a great many practices to perpetrate fraud, yet the mind is not so very active as to do it at the first election, and it may be trusted without any serious damage at this single election that is to take place; but if the principle is to be adopted as intimated by the gentleman, why, then, it would be equivalent of the right of voting to the soldier because if these preparations of the certificate of the colonel and endorsements on the letter and everything of that sort is to be gone through with, it is so complex, no soldier would undertake the labor of sending on his vote under the difficulties presented to him. I think it is hardly worth while to send this to the committee again; because the proposition now here is sufficient for the single time so as to last for but one election. That requires that the ballot should be sealed up in a letter and of course the name of the man signed to the letter and addressed to the commissioners of election. It must have all the appearances of fairness. It must be brought by a messenger or by mail; and the commissioners are only to allow it in the event that under all its aspects they believe it to be fair and just and proper to be received. I don't think there is any necessity for any change of it at present. Let us try it once; and when the legislature comes to regulate this right of voting by sending the ballot—which I hope they will never do—they will guard that properly themselves. But we need not go to legislating about that in this Convention for one single election.

MR. ROSS. I think the difficulties are greatly magnified in the minds of gentlemen who have objected to this. The system has been represented as an exceedingly intricate one. It has been so represented as though there were a great many formalities to be gone through with and a great deal of work to be done previous to the soldier getting his vote. Now what is it? Why, he shall simply enclose his vote in an envelope and write his name on the back of it and get the certificate of his commanding officer that it was he, the veritable soldier that enclosed that vote and transmitted it to the superintendent of election. Now, where is the great intricacy

of this system? Where is the inextricable formality that has to be gone through with? It does seem to me that in order to produce confidence in the minds of the community we should have some of this kind of guaranties. I do not like the very fact which my friend intimated here that we were trenching very closely on the bounds of the Constitution in giving this right at all. That is the very fact, Mr. President, that incites me to guard this matter with all the guaranties I can throw around it, so that no advantage can be taken of it by our enemies.

MR. PAXTON. I suggest to my colleague that probably I could offer an amendment that might obviate the necessity of recommitting this to meet his views. I wish merely to suggest it. It is this, that in the 303rd line after the words "under seal" insert the words "endorsed by himself and certified by the officer in command of his company."

MR. ROSS. I will accept that amendment.

MR. GRIFFITH. I withdraw the motion to recommit.

MR. STUART of Doddridge. I am opposed to the amendment.

MR. BROWN of Kanawha. I confess I feel a little perplexed. I am with the gentleman from Ohio on my left. While I feel disposed to accord to every voter the right to vote as far as possible consistent with our right and duty, it is equally a very high duty on us to guard against fraudulent votes in order that those who are entitled to vote may not have their votes counteracted by illegal votes. The one is as high a duty as the other. Now, when these votes come in as proposed in this section as it is now by mail or otherwise, how are these commissioners to be satisfied? Because a man's name is written on a paper can that satisfy the commissioner; and if it does not he must of necessity cast that vote away. Unless they have evidence, they cannot be satisfied by the mere impress or the mere appearance of a paper that comes from they know not whom and where. The very object in voting, the very right secured to every voter shall be he who professes to be the judge must have some evidence to satisfy him of that fact. And how are you providing for this? Unless the amendment of the gentleman from Ohio on my right be adopted and even that is a defective one. It is a question whether we had not better send a commissioner to these regiments as we propose in the case of voting upon the Constitution at once and receive the votes and bring

them here and let them be considered in the proper place. No, with some such provision as that the result would be if they send their votes they will be thrown away, for there will be no evidence to satisfy any intelligent mind that they are proper votes. And you cannot take this on negative evidence if it is not otherwise proved. The positive fact that each man who sends a letter and has a right to vote must be proved; and if you take the paper as the evidence, the whole army of the United States can send in their names to vote. Because the commissioners cannot know the names of these soldiers. It would be better to send a commissioner at once to take the votes.

MR. DILLE. They cannot vote out of the county.

MR. BROWN of Kanawha. If he cannot go down there and receive the votes, what is the difference between sending them by mail? If one is voting in the county, the other is. Can it be any more voting out of the county for the commissioner to go to the regiment, and he can testify who they are, than to send them by mail or by some unknown hand, and call that voting in the county? The ground then that it is voting out of the county cannot avail because if one is, the other is voting out of the county.

MR. STUART of Doddridge. Would the Clerk please report the amendment proposed?

The Secretary having complied,

MR. STUART. I would like to strike out there "certified to by the officer of the company."

MR. HERVEY. I propose—

MR. STUART of Doddridge. Well, hold on (Laughter).

MR. HERVEY. I offer an amendment to the amendment.

MR. STUART of Doddridge. Mine is an amendment to the amendment.

Mr. President, if these soldiers are permitted to vote, I want them to be free from any control of their officers; that his vote shall not depend on the action of the officer at all. If you do not do that thing I do not want you to poll that vote at all, because it will not be the soldiers voting. It will be the officers voting. In military matters, gentlemen, you know very little about the power and influence the officers presume to exercise over the soldiers, and

I want these men to send their ballots endorsed by themselves; and it goes to the county where this party would be entitled to vote if at home. The commissioners are acquainted with him; and if he sends his vote there—it is presumed all these soldiers will send their votes—well, sir, how can it be counterfeited? If there comes two ballots for one man, it will of course show that one is a fraud, and if the commissioners do not know the handwriting of the party, they will not count the vote at all. I have no fears that any fraud can be practiced. But I don't want it felt that the officers can have any control over it at all, and thereby deny the soldiers' right to vote as they please. These officers, Mr. President, will have friends they desire to elevate to office. Some of these officers will want office themselves. They will hold this matter over the soldiers and control their vote; and if they do not vote for a friend, they will throw some impedient in the way so that he cannot vote at all. For that reason, I much prefer the provision as it is now, and I hope the amendment of the gentleman from Ohio will not be adopted. I am a soldier and the friend of the soldiers, and I know something about them.

MR. WHEAT. I am extremely anxious to have the soldiers vote; but I do not see any plan that they can vote, with all I have heard. I am satisfied if it was so that a vote could be taken legally, as represented by the gentleman by letter, it would be embarrassing to the voter and not one-tenth of them would be able to vote. I have my eye especially on three hundred now lying at North Mountain who have pressed me since I have been here to have them allowed the privilege of voting. I could readily have that vote taken; but I have since heard the question being sprung that there are some soldiers (?) at Vicksburg for them; and I do not see much probability. This single letter writing would be pretty difficult getting their letters here in time if they had already heard of it. I could obviate the difficulty with these 300 by some special commissioners to go down there and take the votes, and instead of sending them singly let him take the list of names and put the entire polls in one envelope and let him come up and testify that these men voted that package. But I see no probable way to manage it other than that, and that would be partial. Some companies you know where they lie and you can provide for them; but they are scattered all over Dixie and you could not get commissioners to meet all the exigencies; and I am at a loss to know unless something of the kind partially might be adopted by the Convention—

MR. STUART of Doddridge. The gentleman should confine himself to the motion before this body.

MR. WHEAT. I make these remarks—

MR. STUART. Too many general remarks.

MR. WHEAT. I desire to substitute, where it can be done, special commissioners in lieu of the plan proposed.

MR. DERING. I desire to say I am very well satisfied with this section as reported by the committee. I am entirely opposed to recommitting and opposed to any of the amendments offered. In reference to the last amendment offered by the gentleman from Doddridge, I do not anticipate any difficulty on that score; and even if the gentleman from Doddridge had the direction of the vote in his regiment I have so much confidence in his judgment and honesty I would be very willing to see him have his direction and give it to the soldiers in reference to their vote. I think we need anticipate no difficulty on this score; because the soldiers are generally independent in the expression of their principles and votes and there is no necessity of any such amendment as he offers. I would much prefer the Convention would adopt the section as it stands instead of throwing around it these complications. I trust the amendments will fail and we will adopt the section as it stands.

MR. SINSEL. We have the additional guaranty against frauds that all the voters of the county are registered at each election day; a list of the voters is furnished to those conductors of elections, and they can see by that list whether they are voters of the county, and those soldiers who had arrived at the age of 21 before their names were registered will be known by our citizens. We know our soldiers. I know nearly all the soldiers that went from Taylor county.

MR. PAXTON. I am very well satisfied with this section as reported by the committee. I should have no objection to see it amended so as to provide that the soldier should endorse the envelope in which he mails his ballot.

MR. VAN WINKLE. Most certainly, put his name somewhere.

MR. PAXTON. It is in the inside, for he is to write a letter and that is enclosed with the ballot in the sealed envelope; but it would be very well that his name should be also on the outside of the envelope.

MR. VAN WINKLE. His name will be called and everybody will have an opportunity to challenge the vote. The commissioners are bound to be satisfied that he is qualified to vote or they cannot receive it.

MR. STUART of Doddridge. I have not the least objection to the gentleman's amendment as modified. I withdraw my amendment and accept his. It may appear as his amendment if the Clerk pleases.

MR. LAMB. I do not see that anything at all is accomplished by the amendment as it stands. The ballot is to be enclosed in the letter from the soldier, that letter being signed, of course. What additional security is given by having his name on the ballot itself or on the envelope that encloses the ballot, I cannot see.

MR. ROSS. Is it in contemplation of the section as it is worded there that the soldier would simply enclose his ballot in the letter?

MR. LAMB. His ballot certainly must be in such a condition that the conductors cannot read it. It ought to be sealed up.

MR. ROSS. A simple endorsement—

MR. LAMB. It will not do any harm that I see.

MR. SINSEL. This is the way I understand it. That I will write out my ballot and enclose it in the envelope, and on the back of this envelope I will write my name. Then I will write a letter enclosing this envelope in it and direct it with my name signed to it to the conductors of the election. (A voice: "No need of a letter at all.") They will open this envelope, take out the ballot and cry out who has voted and drop the ballot in the box and record my name.

MR. VAN WINKLE. I do not see that it adds to it at all.

MR. LAMB. I would suggest as the only way of ending this matter that we recommit the section. The gentleman from Ohio then will be able to submit to the committee any provisions that may be wanted to be inserted and we can possibly strike out with something better than this. I do not know. It is the only way in which all the suggestions can be fairly considered. I make that motion.

MR. STUART of Doddridge. I must vote against this thing. We gave this great consideration last evening in the committee, and if any amendment is proposed let us fix it up now.

MR. HALL. If it is to recommit, I will say nothing further on that motion.

The motion to recommit was not agreed to.

MR. HALL. The language is that "he has been a resident of the State of West Virginia for one year." We have not in other parts of the ordinance regarded the State of West Virginia as in existence. Whether that had not better be modified in some form. It would be difficult for him to have been a resident of the State a year before the State had an existence.

MR. LAMB. The gentleman from Marion will see that same difficulty applies to every voter in the commonwealth. If he will look at article III, section 1, of our Constitution, he will find it expressly provides that no person shall vote who has not been a resident of the State for one year. Now, in that connection, and in this connection, the necessary construction of that clause is: who has not been a resident of the territory that is to be included in this State for one year. But at any rate the same objection applies in the one case that applies to the other—applies to every voter in the State. You must construe the word state to mean a designation of certain territory.

MR. HALL. I did not observe the fact that was the same language applying to others; and if it were different it occurred to me it might raise a question which I wish to avoid. If that is the case, I would not desire to change this.

MR. VAN WINKLE. I ask indulgence to make one remark. It says "may send his ballot under seal." That is now "endorsed by himself." Well, that makes it on the ballot, not on the enclosure. That defeats the object of a secret ballot; for then the officers reading the ballots for tally could identify every vote with the voter. I would propose to correct that in this way: "may send his ballot with his name written on another piece of paper."

MR. PAXTON. What is "under seal"?

MR. VAN WINKLE. In a sealed envelope.

MR. PAXTON. It says he shall send his ballot "under seal endorsed by himself." Of course, that is on the envelope.

MR. LAMB. Much better to recommit.

MR. BROWN of Kanawha. I move to add the word "envelope" there.

MR. HARRISON. I fear we have committed an error in striking out "volunteer". The Virginia militia is a different thing from a "Virginia volunteer," and therefore we ought to have the word "volunteer" in.

MR. VAN WINKLE. I suggested it in the beginning; but when the drafted men were alluded to I withdrew it. They are militia; so ranked in our ordinance and in the act of the legislature.

MR. LAMB. I would ask to change the expression so as to read: "may send his ballot in a sealed envelope endorsed by himself."

MR. PAXTON. I was going to suggest: "name endorsed thereon."

MR. STUART of Doddridge. I was going to suggest he might not be able to endorse it himself.

MR. RYAN. So much confusion, I move to recommit.

MR. STUART of Doddridge. We know more about it now than we will tomorrow.

The motion to recommit was rejected.

The Secretary read the two concluding sections.

MR. LAMB. There being no objection to that clause, I want to propose an additional one. This ordinance and the one formerly adopted by the Convention completely supercedes the schedule. The schedule properly belonging to the original constitution, at any rate, it did not belong to the Amended Constitution; but to obviate any difficulty of construction in regard to a matter of that kind, I propose the following section:

"The schedule attached to the Constitution is hereby repealed; but such repeal shall not affect the validity of any act done in pursuance of said schedule."

Mr. Lamb immediately re-stated the section in the following form:

"The schedule annexed to the original Constitution is hereby repealed; but such repeal shall not affect any act done in pursuance of the same."

MR. LAMB. Mr. President, I rise to suggest a matter of contemporaneous construction. We have appointed certain days—six days, etc., after a certain event, in several cases through this ordinance; and I presume without any declaration about it, the rule of law will require that where the day falls on Sunday, the next is the day. There need be no difference of opinion, it is clear, about that.

MR. BROWN of Kanawha. How is the case of a protested bill?

MR. SMITH. The law provides for it.

MR. LAMB. That law, I take it, applies to this case.

MR. BROWN of Kanawha. I wish to inquire whether the committee considered the question of making provision for the election of Congressmen?

MR. LAMB. We cannot do it, sir. The Constitution requires that to be done by the legislature. The legislature have to lay off the districts. The districts that are laid off in the 48 counties for the State of Virginia have expired, as a matter of course; and the new legislature has to lay districts for West Virginia and provide for election of members of Congress.

MR. STEVENSON of Wood. I would like to suggest to the gentlemen whether it would be better to let the vote be taken in the morning. I do not suppose there would be any material change, but something might occur on further consideration.

MR. HALL. I simply wish to ask if any of the members have seen a copy of the United States census of 1860? I lost one off my table yesterday, and I suppose some of the gentlemen may have seen it (Laughter).

MR. DERING. In order that the Convention may hear the resolution they adopted this morning with the small amendment added to it, and that motion which I made that the Executive Committee of this body shall have transcribed that resolution over the signatures of the President and Secretary and transmit it speedily to our representatives in Congress, I would like to have the chairman state—

MR. LAMB. Just direct that the President and Secretary transmit it.

MR. DERING. To be certified by the President and Secretary.

MR. RYAN. I move to adjourn.

MR. POWELL. I would like to hear the amendment that is proposed.

The Secretary read the resolution.

MR. PAXTON. I was not on the floor yesterday when the vote on the Amended Constitution was taken. I desire to record my vote if it is in order.

THE PRESIDENT. The Chair will dispose of the motion of the gentleman from Monongalia.

MR. VAN WINKLE. I would suggest to the gentleman it might be passed by until morning.

MR. SMITH. It only lacked to give it universal consent, that of Mr. Stuart. He has given his consent.

MR. STUART of Doddridge. I gave my consent after it was modified; and as it has been modified, I have no objections to it.

MR. VAN WINKLE. Suppose we pass it by.

MR. DERING. It is very important it should go on to Congress. I would like the Secretary to transcribe it and have the President sign and send it on.

MR. VAN WINKLE. I understand it is too late for the mail tonight, and as Sunday is near, it could not be got to Congress before Monday morning.

MR. DERING. Not material, sir.

THE PRESIDENT. The gentleman from Ohio wishes his name placed in the affirmative.

MR. VAN WINKLE. I would like to say the poll books—or several of them—will be ready in the morning; and I hope each gentleman will see to getting those for his county before he goes. I will go and see the Provost Marshal and get him to station troops at every outlet, and not let any member of the Convention pass until he shows his poll books. (Laughter.)

Mr. Pomeroy gave notice that he wanted all the new State men to attend a meeting tonight.

On motion of Mr. Ryan, the Convention adjourned to ten A. M. tomorrow.

LXVI. FRIDAY, FEBRUARY 20, 1863

The Convention assembled, for its final session, at the appointed hour and was opened with prayer by Rev. David Hervey of the Presbyterian church, a resident of Wellsburg.

After reading and approval of the journal, the Convention resumed consideration of the ordinance to provide for the organization of the State of West Virginia.

MR. DERING. I desire, Mr. President, to ask a question of the committee that prepared this ordinance. As this is a very important ordinance, as it pertains particularly to the modes provided for voting, I would like to know if there are any arrangements in them with reference to the general distribution of this ordinance among the people of the counties of the new State. I think it is very important that the superintendents of elections at least, should have this ordinance as it is likely the modus provided of voting will be in mode for all time to come in our new State.

MR. LAMB. The committee has come to no further conclusion in regard to that matter than that it will be necessary to furnish a copy of that ordinance, with the poll books, to every place of voting within the new State. That far at least they will distribute them. Whether they will make any more general distribution of them, I don't know yet. It will take some thousand, or perhaps a little more than a thousand, copies to distribute them to all the different places of voting. Certainly, not merely the superintendents of election but the commissioners of the election, at every precinct will have to be furnished with a copy, or they will not know how to act at all.

MR. DERING. I think it proper the people should understand it, too.

MR. IRVINE. They are now distributing the poll books. The ordinances ought to accompany the poll books.

MR. LAMB. Not these poll books. The ordinance passed some days ago will accompany these poll books. That ordinance regulates the matter of voting on the Amended Constitution. This ordinance relates to a different matter. The first vote will be viva voce; but the vote under this ordinance will be by ballot; and the proper ordinance will accompany the poll books in each case.

Mr. President, I am directed by the Committee on Revision to report the following resolution:

"RESOLVED, That so much of the seven thousand dollars, appropriated by the Legislature of Virginia to pay the expenses of this body and of elections ordered by it, as may remain unexpended at the time of our adjournment be placed at the disposal of the Executive Committee of this Convention to defray the necessary expenses incurred in carrying into execution the ordinances of this Convention and the schedule annexed to the original Constitution; and that the said Executive Committee render their accounts thereof to the Legislature of West Virginia at their first session."

The resolution was adopted.

MR. STEVENSON of Wood. Mr. President, I have a resolution, sir, which I wish to offer:

"RESOLVED, That bound copies of the journal of the proceedings of the second session of this Convention be left with the Executive Committee to be disturbed by them as follows: One copy to each member of the Convention, and the remainder at their discretion; also that copies of the Constitution and address ordered to be printed by the Convention, shall be distributed by the same committee."

I wish to say in connection with that resolution that there is some complaint I believe on the part of some of the members of the Convention that they did not receive a copy of the proceedings of the first session of the Convention; but we do not think it necessary to offer a resolution to have another edition of the proceedings of the first session printed, as it would be very costly, the forms being destroyed altogether. It would require, of course, the setting up of the whole matter anew. On inquiry at the office of the printer, we have discovered that there are ten copies of the proceedings of the first session, without the accompanying papers—resolutions, propositions and other papers appended to the bound edition now. There are ten copies simply of the proceedings of the Convention, unbound, and the Committee on Printing have concluded to get them bound so that any member of the Convention who has not received it might get a copy of the proceedings of the first session. He will, of course be entitled to this, although he will not get with it the accompanying papers. That is the best the committee can do unless the Convention see proper to order the printing of an additional number of the first edition. That is with the Convention. The edition, I believe, is now entirely exhausted. I believe there is not a copy that has not been distributed and must be, of course, in

the possession of somebody. I understand the commissioners who are authorized the copies of the first proceedings have mailed copies to the different members; but for some cause or other it appears the copies did not reach them. I suppose that can be accounted for by the interruption of the mails, and probably a number of other things have prevented copies reaching their destination. There were but one hundred copies of them printed, that being the excess over the amount printed for the daily use of the Convention.

In regard to the printing of the proceedings of the second session of the Convention, we design, as the form is not yet completed and the printing is not yet done, to order a larger edition of the proceedings of this session; so that there can be no complaint, at least, on the part of members in not getting the proceedings of this session. And in regard to the distribution of the address and Constitution ordered to be printed by the Convention, I have this to say, that the committee did their utmost to get the address and Constitution printed before the dispersion of the Convention. We waited on the different establishments in the city, and in addition to that we telegraphed to Pittsburgh and Cleveland but found it impossible to get printing done as soon as it can be done by the establishment of the regular printer of the Convention. They have so arranged it, by working all the time and putting all their hands that they could possibly spare to work upon the manuscript of the address to get the address printed by tomorrow, sometime tomorrow. Against tomorrow evening the entire edition of 10,000 copies of the address will be ready for distribution; but before that time—in the forepart of the day, if any of the members remain they can get enough probably to take along, especially those who live at a distance. A form will be put upon the press tomorrow morning and the edition will be worked off as rapidly as can be until the number is worked. The Constitution it is not possible to get before the latter end of next week; and I suggest here to the members that they be very particular in arranging with the Executive Committee before they go the best means by which the committee can have these documents sent to them, such as they do not take away. They cannot, of course, take any copies of the Constitution. I suggest they be particular in suggesting to the committee, and particularly those that undertake an active part in the distribution of these documents, the mode and manner by which the committee can send the documents to them so as to be used by them at as early a day as possible.

I have made these remarks in order to put the matter before the Convention in a shape they can understand and so they can see the necessity before separating, of doing all they can to give the documents a wide circulation and the circulation the Convention intended them to have.

MR. BROWN of Kanawha. I did not understand from the resolution how this committee thought of distributing these documents. It seems to me it is merely at their discretion. And another difficulty: suppose we go to the printers tomorrow, the printer will not know, and each individual will not know, and it will all result in confusion, and one may get too many and another not enough. I think the committee knowing the population of the counties ought to give us a table so that each man can go with something definite and just count out the number he is entitled to. Otherwise, I don't see how we shall ever arrive at it when we get to the printer. I suppose that matter, of course, would be properly arranged by the committee. I am glad it is suggested, because, of course, the documents ought to be given out according to the numbers of the people to be reached. It is well enough to call the attention of the committee to the matter.

MR. VAN WINKLE. I would like to add to the remarks made, that those who have not received a copy of the journal of the former Convention can leave their names with the Clerk, so that if it is possible some of them may be supplied. I have an extra copy of the journal and several in sheets as it was published, and if other gentlemen preserved theirs and would send them here, the committee would have them bound. You can have those at the office bound also, but of course it cannot be done before the members disperse. In reference to these documents yet to be distributed, gentlemen should give full directions before they leave. I would advise this: there are a good many counties there beyond Charleston, for instance. Packages of the Constitution, first edition printed, were sent to Charleston for the benefit of those counties. I am not aware that they were sent to the special care of anybody in Charleston. Now, wherever along these railroads or the river, wherever the express reaches we can send them, as, for instance, we can send the bundle for Ritchie county as far as Pennsboro on the railroad. But then if the delegates from that county—I only speak of it for illustration—if it is to be sent to some point on the railroad for Ritchie county it ought to go to the care of some individual there who will take care of them until he has an opportunity to forward

them. If they cannot be sent by any known means of public conveyance where they belong, let them be sent to some place where it is certain they can be sent there to the care of some individual. I think that would insure their ultimate delivery, perhaps their speedy delivery. Now, gentlemen will take a recess before they leave and give directions and leave it with the Clerk. We will endeavor to do our best to get them out.

MR. DERING. I hope it will now be the pleasure of the Convention to hear read the resolution which was adopted yesterday with such great unanimity.

THE PRESIDENT. The resolution offered by the Chairman of the Printing Committee has not been disposed of.

The resolution offered by Mr. Stevenson of Wood was then adopted.

MR. DERING. I was going on to say I trust it will be the pleasure of the Convention to hear the resolution read as a merely verbal amendment was put in it at suggestion of my friend from Doddridge, which does not alter the sense at all and that by common consent it will be allowed to be adopted. I trust you will also take up the motion I had the honor to offer yesterday asking that the resolution be transcribed over your own signature and that of our Secretary and sent to our representatives and senators in Congress.

The Secretary read the resolution as follows:

“RESOLVED, That the Convention ask the Congress of the United States to appropriate the sum of two million of dollars to aid the new State of West Virginia in emancipating her slaves under the Act of Congress, approved on the 31st day of December, 1862, as well as those not thereby to be emancipated, Provided, however, That none but loyal slaveholders shall be so compensated.

“RESOLVED, That the foregoing resolution be attested by the President and Secretary of this Convention, and be transmitted to our representatives in Congress.”

MR. VAN WINKLE. I understand the journal shows this resolution adopted as first offered. I will move a reconsideration. This is intended to be an amendment; and in order to bring it regularly before the Convention I move to reconsider the vote by which it was adopted.

The motion was agreed to, the vote reconsidered; and Mr. Dering then offered as a substitute the resolution as read by the Secretary. The substitute was adopted in lieu of the original, and the resolution then adopted.

MR. LAMB. A letter has been received containing the credentials of Mr. Brown, who has acted as a member of this Convention from the county of Kanawha during this session in anticipation of their arrival. It would be proper to at least mention on the journal that the credentials have been received. I believe they are all in regular form. It is a letter from Mr. Slack to the New State Commissioners. The certificate is below. I only ask that the matter be entered on the journal.

THE PRESIDENT. It will be so entered if there be no objection.

MR. LAMB. I offer the following:

“RESOLVED, That the Sergeant-at-Arms and the Secretary of the Convention be allowed their mileage.”

A mere per diem would be a very poor compensation for these officers.

The resolution was adopted.

Mr. Stevenson of Wood offered the following:

“RESOLVED, That the Convention now proceed to appoint a vice president to be President of this Convention, in case of the death, disability to act, or resignation of the President thereof.”

MR. VAN WINKLE. It has been observed, I have no doubt, that it is required that the President of this Convention make the returns to the President of the United States. It is important there be no delay in making those returns, and it might happen when the time came the President might be ill and unable to attend to it. We would avoid such a possible contingency by electing a vice president who might act in his place if necessary. The chances, of course, would be less of having two sick men than one. But in the event of the removal of the President by the providence of God there would be nobody authorized to perform this duty and I apprehend nothing could be done till this Convention re-assembled and designated another president. There is nothing in the act of Congress by which any one but one exercising the office of president for the time being could certify those returns. Now, sir, when I was quite a young lad, a clerk in the counting room, an old gentleman gave me the following advice: always to act as if I might die

tomorrow and as if I were to live forever. It may perhaps suit this case. We ought to be prepared if possible for any contingency; and if the President should be under any disability at some time, some other person acting under authority of the Convention should be prepared to take up his duties in order that those returns may be made. If the President should be merely detained by difficulties of travel or from other temporary cause for a day or two, the vice president would not of course be called upon to act. It is only in case of such disability as prevent the President acting within a reasonable time. I think the Convention will see the propriety of providing for a possible contingency, which we all certainly hope will never occur.

MR. DERING. I fully concur in the resolution and I certainly trust no necessity will arise for action by the vice president; and it affords me pleasure, on the present occasion, to say that I would respectfully nominate, if that resolution should pass, Mr. John A. Dille, of the county of Preston. It affords me great pleasure to endorse him as a loyal Union man, and to say that he has every capacity to act as vice president of this Convention and that he is a representative of a county that has as few, if not fewer, "butter-nuts" in it than any other county within the bounds of this State.

MR. POWELL. The resolution is not adopted.

MR. DERING. I am done, sir.

The resolution was put to vote and adopted.

MR. DERING. Now, sir, I nominate Mr. John A. Dille, of the county of Preston.

No other nomination being made, Mr. Dille was appointed, nem. con.

MR. VAN WINKLE. If there is nothing immediately before the Convention, I would like to have their indulgence a few minutes to make a "cotemporaneous interpretation." I observe the bill that has been introduced in the Senate by our former friend, Mr. Carlile. Those who have read it will perceive it proceeds upon an entirely false assumption either as to what this Convention has done or what is required in the premises. In the resolutions that Mr. Carlile introduced, in the bill—or two or three bills—that were introduced and to which he assented, and that which was finally the subject of compromise, the same thing precisely appears. The ma-

jority of the voters in all the counties named were to be the legal majority in that case. Now, sir, that false assumption upon which he proceeds and which I wish to explain, because I find among the public a considerable want of knowledge on the subject—that is they have not seemed to take the right view of it. Counties are not the integral part of the State. That is, the State is not a conglomeration of counties. The United States is a Union of a number of distinct states, each a sovereignty as it were in itself. But counties do not bear the same relation to the state that states sustain to the United States; and taking the converse, the United States has not the same kind of a relation to the states that the states do to the counties composing them. Counties are mere geographical divisions made for convenience sake. We of this Convention have carried it a little further and made another subdivision called townships, for the further convenience of the people. It is therefore, sir, not required, nor can it be required that every county should cast a majority in favor of this new State. Suppose it were otherwise. Suppose the principle which is contained in that bill just introduced in the Senate were to prevail; and suppose that Braxton county in the very heart and center of the State cast its vote against it, are we to build a wall around her and only have the new State outside of Braxton? We will take it that one southern, one northern and one central county should each give a majority against the new State, are they to be excluded from the new State? That is to say, taking the people living within the whole boundaries, being a majority of the whole State, in consideration of their own interests and rights, must take these individual counties in, even though a majority within their territorial limits are unwilling. The State is the unit, and the majority of those voting must govern. There can be no doubt of this. But the principle involved in this bill pending before the Senate absolutely says no county is to come into the new State unless it votes to come in. Now, sir, this Convention having several sets of counties to deal with, one set being dependent on another in some instances, made different districts. They placed 44 in one district; and they say if a majority of the people in those 44 vote to come in then the whole 44 come in; and I should like to know how it can be done in any other way. They next make a district of four counties—of Pendleton Hampshire, Hardy and Morgan and say if a majority of the people of those four counties vote to come in and a majority of the counties vote to come in, that those four are also to form part of the new State. They then go further and make another district, of Berke-

ley, Jefferson and Frederick, and say the same as to them. If a majority of the votes cast in the three counties, and a majority of the counties—two out of three—vote to come in they are parts of the new State. But also there is a condition precedent there that the four first named should also come in, because if they did not these three could not come in without being disconnected with the rest of the State.

Now, there can be nothing plainer than this, that it is not a question of the counties at all. It is a question of the people; and if the majorities should be, as we have no doubt they will, overwhelming in the counties who can vote on the subject, it will evidently cover the majority of the people within the 48 counties. Now, that is all we require. Would we go to the legislature and ask it to give its consent that such counties as vote in favor of it should be formed into a separate state? No, sir; but that these 48 counties be formed into a separate state, provided the majority of the people within them vote that they so desire. The legislature gives its consent precisely on that condition, that if the majority of the people in the whole of these counties are in favor of the separation, then they consent to the separation.

Well, now, sir, can it be assumed that Congress has given its consent in any other way? Precisely meeting the terms of the Constitution, before them, that if a majority of the people in the 44 counties vote in favor of it, the majority of the people in the 4 counties also a majority of the counties are in favor of it, then Congress give their consent. So that the idea contained in the bill pending before the Senate is perfectly preposterous. It emanated from that very versatile mind of which we have had some experience here—a gentleman who is now set against the new State; who in the first Convention was altogether for it; for it in the second and against it in the third; a little for it after the bill passed; then a little against; then when he finds, according to his principles, the people rather like the thing, probably willing to take the thing with the Congressional amendment, he is a little for it again; but now I think he is sliding a little back. Well, I would like to place him if I could—if he would only hold still long enough to let me know where I could place him. But it is impossible to follow his tergiversations.

I thank the Convention for indulging me in the remarks I have made. It is certainly an argument which ought to be understood by our constituents everywhere, that this is not a question of coun-

ties at all; it is a question of the people and that a majority of the people is what is to decide on it.

MR. STEVENSON of Wood. I would like to make an inquiry of the Committee on Revision or at least of the chairman of that committee. I do not know whether it is a matter of sufficient importance to bring before the Convention or not, but my recollection of the language of the first ordinance as passed here which gives the Executive Committee power to reconvene the Convention if it becomes necessary is that there is no provision in the ordinance by which the Convention if it is not found necessary to reconvene it is adjourned sine die. I should like to know whether it is not necessary to have some action of the Convention determining that if it be found unnecessary to reconvene the Convention shall be dissolved.

MR. VAN WINKLE. We had some discussion on this subject at the close of the last session. The Convention has now necessarily appointed an Executive Committee to act for them after their adjournment if anything should be necessary and with power, I believe, to call it—with the President, I believe. If no resolution on the subject has been prepared—I forget exactly how far the ordinance goes on that subject, but to this effect that when this Convention adjourn today, it stand adjourned until convened by the President and if not so convened to stand adjourned sine die on the sixtieth day after the issuing of the President's proclamation.

MR. STEVENSON of Wood. That would meet the difficulty.

MR. BROWN of Kanawha. I do not think this Convention ought to adjourn in that way. Until the state government is organized this Convention ought not to dissolve. Suppose by some contingency an armed force should sweep through this whole territory here and we should not hold a solitary election on the 26th of March. Such a thing is possible, and if these rebel leaders were once to take it into their heads I have no doubt it is perfectly in their power to accomplish it. Then this Convention ought to be in existence to make further provision for a necessity that might within human probability arise. There are many contingencies which might place us in a position at the time specified whereby we may have no state government in operation. We ought not to be sent back to the people to re-elect a new convention, to organize and start again. I think this body ought to be kept in existence so that it could be reconvened if necessary until a state government is organized and put into operation.

MR. VAN WINKLE. I will accept that.

MR. BROWN of Kanawha. Any adjournment should be with a view that it will not be sine die unless the committee deem it unnecessary to recall the Convention sometime prior to the inauguration of the State under the Constitution. After that it must be, of course, *functus officio*.

MR. LAMB. In drawing up the ordinance on this subject, this question did not escape the notice of the committee entirely, but it was supposed that the ordinance as a whole have this power to reconvene but that such power would necessarily end without any express provision. There is no express provision, however, throughout the whole that this power would cease on the organization of the legislature of the new State. If gentlemen think it necessary to insert an express provision to that effect, be it so; but I take it without any express provision that understanding stands out upon every line and word of the ordinance, that when the state legislature shall be organized, then necessarily this Convention is, to use a technical expression *functus officio*—Othello's occupation is gone (Laughter).

MR. VAN WINKLE. I propose a distinct resolution to embody the suggestion made by the gentleman from Kanawha.

MR. STEVENSON of Wood. It seems to me there could be no objection to the passage of such a resolution. It would settle the matter beyond doubt.

MR. VAN WINKLE. Then I will offer the following resolution:

"RESOLVED, That when this Convention adjourn today, it adjourn until again convened by the Executive Committee; and if not so previously convened, that it stand adjourned from and after the organization of the State of West Virginia."

MR. HALL. Does not our ordinance prescribe that if it be reconvened it is done by the Executive Committee?

MR. VAN WINKLE. Does it?

MR. HALL. I think so.

MR. LAMB. Yes, sir.

MR. VAN WINKLE. We will just change the term. It might as well be left to the President. However, the Executive Committee is supposed to be here on the spot all the time.

MR. BROWN of Kanawha. I move to insert there the words "sine die."

MR. VAN WINKLE. I meant to put in "without day."

MR. BROWN. I like the old Latin, everybody understands it.

The resolution was put and adopted, "sine die" being first inserted.

MR. LAMB. I beg leave to offer the following resolution:

"RESOLVED, That the thanks of this Convention are hereby tendered to the President, for the able courteous and impartial manner in which he has presided over their deliberations."

This expression of the voice of the Convention is due to our President.

The Presiding Officer (Mr. Dille in the chair) put the motion and it was agreed to.

The following further resolutions were severally offered and unanimously agreed to:

By Mr. Stevenson of Wood.

"RESOLVED, That the promptness and correctness of the Secretary in the discharge of his complicated duties, has met the approbation of the Convention, and is entitled to this official acknowledgment."

By Mr. Warder:

"RESOLVED, That the thanks of this Convention are due to the reporters of the proceedings of this body, for the faithful and impartial manner in which they have reported the proceedings of this Convention."

By Mr. Van Winkle:

"RESOLVED, That the thanks of the Convention are justly due and are hereby presented to the late and present Sergeant-at-Arms, Pages and other officers of this Convention for the prompt and efficient discharge of their respective duties."

By Mr. Irvine:

"RESOLVED, That the clergy of the city of Wheeling and vicinity, who have opened the sessions with prayer, are hereby tendered the sincere and grateful acknowledgments of the members."

By Mr. Van Winkle:

"RESOLVED, That the thanks of this Convention are due to the citizens of this city for their hospitality shown to the members of this Convention."

MR. VAN WINKLE. In order that the Secretary may have time to make up his minutes, so that they be signed, as usual in the presence of the Convention, I move we now take a recess until three or four o'clock.

THE SECRETARY. There is considerable to write.

MR. VAN WINKLE. Well, say till 4 o'clock. I move this Convention now take a recess until four this p. m.

The motion was agreed to and the Convention took a recess.

CLOSING SESSION.

At 4 o'clock P. M., the Convention re-assembled.

MR. VAN WINKLE. Mr. President, the Executive Committee request me to offer the following resolution. It is simply a request to the field and line officers of the regiments whose vote is to be taken on the Amended Constitution that they will facilitate it so far as may be compatible with their duties. It is thought something of this kind coming authoritatively from this Convention would help them in getting through.

“RESOLVED, That this Convention respectfully request the field and line officers of the regiments of Virginia volunteer militia in the service of the United States, to facilitate the taking the votes of their respective commands on the Amended Constitution so far as may be compatible with their duties.”

The resolution was adopted.

MR. VAN WINKLE. If there is nothing before the house, I will offer the usual order:

"RESOLVED, That the journal of today's proceedings be read, approved and signed by the President and Secretary, and that the Convention adjourn in accordance with the resolution passed this morning."

The resolution was adopted.

MR. STEVENSON of Wood. There is a matter of a good deal of inquiry made of me about which I have not been able to give any information. Probably there is some gentleman here authorized to say something in reference to the distribution of the address of our member, Mr. Willey. I understand the speech is printed—some 10,000 copies of it—or if not entirely printed, nearly ready

for distribution. Quite a number of gentlemen here going to great distance are very anxious to take the speech along with them and they will leave this evening after the Convention adjourns. If any gentleman can say whether or not they can get the speeches, I wish he would.

MR. ROSS. I presume it is known that the address has been published by the Central Committee and that upon application to that committee in this city that address can be obtained. Mr. Hubbard, I believe is one of the principal members of that committee, and I presume he could give every information necessary in order to allow members to get it.

The completed journal was then read by the Secretary; and, in pursuance of the resolution offered by Mr. Van Winkle, the Convention adjourned.

Before pronouncing the adjournment, PRESIDENT SOPER addressed the Convention as follows:

Gentlemen: Before I pronounce this Convention adjourned, permit me to return to you, individually and collectively, my sincere thanks for the kindness I have received at your hands. The unanimity and good feeling which have characterized the Convention give assurance that the great object we had in view will be confirmed by an overwhelming majority of the people of this State; and I trust that in the providence of God a very large part of you, if not all, will be permitted to return to this city in the discharge of the high and important duty devolving on those who will be charged with putting into operation the Government of the State of West Virginia.

Gentlemen, I now take my leave of you, and bid you all an affectionate farewell.

This house stands adjourned according to the terms of your resolution.

THE END

APPENDIXES

M I N U T E S O F
The Meetings of the
BOARD OF COMMISSIONERS
appointed by the
CONSTITUTIONAL CONVENTION IN REGULAR SESSION.

Hall of the Convention
February 18, 1862.

The commissioners appointed in the schedule to the Constitution of West Virginia met in the hall of the Convention, and organized by calling John Hall, Esq, of Mason County, to the chair.

On motion of Mr. Van Winkle, L. A. Hagans was appointed Secretary.

On motion of Mr. Van Winkle, the Secretary of the board was authorized to distribute the Constitution, and to prepare forms of poll books, superintend their preparation and distribution, and to have the Constitution published one time in the various papers published in the State of West Virginia.

On motion the board adjourned.

L. A. Hagans, Secretary.

John Hall, President.

Secretary's Office
February 27th, 1862.

The Board met. Present Messrs. John Hall, Paxton and Caldwell.

Ordered, That pursuant to the 6th section of the schedule annexed to the Constitution of West Virginia, the colonels of the several Virginia regiments in the service of the United States, whether within or beyond the boundaries of the proposed State of West Virginia, be authorized and requested to cause an election to be held on the First Thursday of April, one thousand and eight hundred and sixty-two, for taking the vote for or against the proposed Constitution, of all persons in said regiments entitled to vote upon said question; and the said colonels are hereby authorized and requested to appoint and qualify the proper commissioners, conducting officers and clerks for holding said election; and to cause full and true returns thereof to be certified and returned to John Hall, Esq, chairman, at the city of Wheeling.

On motion the board adjourned.

L. A. Hagans, Sec.

John Hall, Pres.

Secretary's Office

April 10, 1862

Pursuant to call of the President, the Board of Commissioners met. Present, Mr. President Hall and Messrs. Caldwell and Paxton.

The following bills were presented, which having been examined, were ordered to be paid.

J. G. Jacob, Wellsburg Herald, Publishing Constitution.....			\$25.00
Campbell & McDermot, Wheel-			
ing Intelligencer,			
Binding and	"	"	65.94
Trowbridge & Co. A Press	"	"	40.00
Ritchie & Ben Gorgh,			
Fairmont National	"	"	25.00
J. E. Boyers, Plain Dealer	"	"	25.00
R. S. Northcott, National Telegraph	"	"	25.00
Day, Shriner & Co. Ritchie Press	"	"	25.00
J. E. Wharton, Parkersburg Gazette	"	"	25.00
C. M. Harmon,			
Ravenswood Chronicle	"	"	25.00
G. W. Tripett, Pt. Pleasant Register	"	"	25.00
E. W. Newton, Kanawha Republican	"	"	25.00

Returns of the election from a majority of the counties, on the adoption or rejection of the Constitution, reporting majorities sufficiently large to warrant the commissioners in believing that it had been adopted with great unanimity, having been received, the commissioners addressed the following communication to His Excellency, F. H. Peirpoint, Governor of Virginia:

"Wheeling, Va., April 10, 1862

His Excellency, F. H. Peirpoint:

Governor of Virginia.

Sir: The undersigned commissioners named in the 2nd section of the schedule to the Constitution framed for West Virginia, beg leave to represent to your Excellency, that in obedience to the provisions of the 4th section of the schedule aforesaid, we caused an election to be held on the first Thursday of April (3rd inst.) in as many of the counties mentioned in section second of article 1st of said Constitution, as the state of the country would permit, and that from the returns received by us, a very large majority of the votes cast were given for the adoption of said Constitution.

We therefore pray your Excellency, to issue your proclamation convening the general assembly of the state, to the end that the

consent of the same may be granted to the division of the state and the formation of the State of West Virginia.

We are, Governor,

Your obedient servants,

(signed) John Hall
E. H. Caldwell
J. W. Paxton."

No returns having been received from the counties of Morgan, Berkeley and Frederick and the commissioners believing that no election was held in said Counties on the First Thursday of this instant, in accordance with the provisions of section 4 of the schedule to the Constitution of West Virginia, they directed a notice to be printed for distribution in said counties, ordering an election to be held therein on Monday, the 5th day of May next, on the adoption or rejection of said Constitution.

On motion the board adjourned.

L. A. Hagans, Sec.

John Hall, Pres.

At a meeting of the Commissioners held at the residence of J. W. Paxton, Esq, in the city of Wheeling on Wednesday, the 24th day of December, 1862, present, all the commissioners.

The minutes of the preceding meeting were read and approved.

John Hall, Esq, delegate in the Convention from the county of Mason, and President thereof, and chairman of this commission, tendered in writing his resignation as such delegate, which was accepted, and the same ordered to be spread upon the minutes, and is as follows:

"Wheeling, December 24, 1862

To Messrs. J. W. Paxton, E. B. Hall, E. H. Caldwell and

P. G. Van Winkle, Commissioners, Constitutional Conv.;

Gentlemen:

The peculiar circumstances in which I am placed, and the fact that I must soon undergo a surgical operation, the lightest consequences of which may be bodily prostration, has induced me, in view of the probable early re-assembling of the Convention, hereby to resign my seat in that body, being unwilling that my constituents of the county of Mason, should in any possible contingency be unrepresented there.

I avail myself of this opportunity to renew my thanks for the confidence reposed in me by the Convention, and my assurance that

I part with every member with continued sentiments of regards and esteem.

With great respect
Your obedient servant,
John Hall."

Mr. Paxton was thereupon appointed chairman of this commission in place of Mr. John Hall.

A letter from B. H. Kitchen, Esq, delegate in the legislature from the county of Berkeley about the position of that county, Jefferson and Frederick, was received and referred to the chairman, with a request to correspond with Mr. Kitchen and others on the subject, and to suggest to the legislature such action as the circumstances may render desirable.

It appearing that the bill assenting to the erection of the new State having passed both houses of Congress, was in the hands of the President for his approval, and that in consequence of the temporary adjournment of the former no action could be had on the bill until on or after the sixth day of January next, it was ordered that this commission adjourn, to re-assemble on the call of the chairman.

L. A. Hagans, Secy.

J. W. Paxton, Pres.

At a meeting of the commissioners held on the 13th day of January, 1863, at the house of J. W. Paxton, Esq, in the city of Wheeling, present all the commissioners. The minutes of the last meeting were read and approved.

The chairman stated that the meeting had been called to take into consideration the act of Congress providing for the erection of the proposed new State, and laid before the commissioners an official copy thereof, upon consideration whereof it was,

RESOLVED, That the Convention be re-convened at the custom house in the city of Wheeling, on the twelfth of February next;

And it appearing that the counties of Greenbrier, Monroe, Morgan, Pendleton and Pocahontas have not been heretofore represented in the Convention, and that the counties of Greenbrier and Monroe are each entitled to two delegates, and the counties of Morgan, Pendleton and Pocahontas are each entitled to one delegate in the said Convention; and that a vacancy exists in the Ohio county by reason of the death of Gordon Battelle; and in the county of Marion by reason of the removal from the state of Hiram Haymond; and in the county of Mason, by reason of the

resignation of John Hall; and in the county of Kanawha by reason of the resignation of James H. Brown, it was further:

RESOLVED, That elections to fill the said vacancies in the representation in the Convention are hereby ordered and directed to be held on the fifth day of February next; it was also

RESOLVED, That Mr. Van Winkle be requested to prepare a proper form of proclamation re-convening the Convention, and ordering and directing the holding of the elections mentioned in the foregoing resolutions.

On motion, the Commissioners adjourned until tomorrow at 10 A. M. at the same place.

L. A. Hagans, Secy.

J. W. Paxton, Pres.

January 14th 1863.

The commissioners met pursuant to adjournment. Present all the members. The minutes of the preceding meeting were read and adopted.

Mr. Van Winkle submitted the following form of proclamation, which was adopted:

WEST VIRGINIA

A PROCLAMATION.

By the New State Commissioners.

WHEREAS, By the schedule annexed to the Constitution of West Virginia, the commissioners therein named, have power to re-convene the Convention which prepared and proposed the said Constitution: And whereas, the said commissioners, if they determine to re-convene the said Convention, are required to take the necessary steps to secure a representation therein, from the counties proposed to be included in the said State, not heretofore represented, and to fill all vacancies that have occurred:

Now, therefore, the undersigned commissioners, deeming it necessary to re-convene the said Convention, to take into consideration the Act of Congress, entitled "An Act for the admission of the State of West Virginia into the Union, and for other purposes," approved December 31st 1863, do by this our proclamation, re-convene the said Convention to meet at the custom house, in the city of Wheeling, on Thursday the 12th day of February next, and do order and direct that elections of delegates to the said Convention be held under and according to the laws of the State of Virginia, on Thursday, the 5th day of February next, in the following counties not heretofore represented, that is to say: the counties of Greenbrier and Monroe shall each elect two delegates, and the counties of Morgan, Pendleton and Pocahontas shall each elect one delegate; and that at the same time and in like manner, elections be

held to fill vacancies which have occurred in the representation in the said Convention, that is to say: the county of Ohio shall elect one delegate in place of Gordon Battelle, deceased; the county of Marion, one delegate in place of Hiram Haymond, removed from the State; the county of Mason one delegate in place of John Hall, resigned; and the county of Kanawha one delegate in place of James H. Brown, resigned; and that the results of the elections, in the various counties named, be certified to the undersigned commissioners at the City of Wheeling.

Given under our hands, at the city of Wheeling, this fourteenth day of January, 1863.

James W. Paxton,
P. G. Van Winkle,
E. H. Caldwell, Commissioners.
Ephraim B. Hall.

RESOLVED, That the proclamation adopted be published in all the newspapers printed within the boundaries of the said new State until the 12th of February next, and that 2000 copies thereof be printed in handbill form for general circulation.

RESOLVED, That the Secretary under the direction of the chairman, prepare the necessary poll books and blank certificates of election, and cause them to be distributed to the proper counties.

RESOLVED, that 3000 copies of the Constitution proposed by the Convention, together with the proclamation of the commissioners and the act of Congress, be printed for the use of the Convention and for circulation.

On motion the Commission adjourned to meet on the call of the chairman.

L. A. Hagans, Secy.

J. W. Paxton, Chairman.

January 19, 1863.

Pursuant to call, the commissioners met at the office of the Secretary of the commonwealth; present all the members. The minutes of the last meeting were read and approved.

The resignation of R. L. Brooks, late delegate for the county of Upshur in the Constitutional Convention, was received and accepted.

On motion a writ of election to fill the vacancy occasioned by the resignation of R. L. Brooks was issued:

“Office of Board of Commissioners
Wheeling, Virginia.

To the Sheriff of Upshur County:

Whereas, The resignation of R. L. Brooks, late delegate in the Constitutional Convention of West Virginia for Upshur County has this day been received and accepted:

Now, therefore, we the commissioners named in the schedule to the Constitution of West Virginia, by virtue of the power vested in us by said schedule, do order and direct, that an election be held in said county, on Thursday the 5th day of February, 1863, to fill said vacancy; and that due notice of said election be given at each place of voting in said county before the date fixed therefor.

Given under our hands, this 19th day of January 1863.

James W. Paxton,

P. G. Van Winkle,

E. H. Caldwell,

E. B. Hall,

Commissioners.

On motion the commission adjourned.

L. A. Hagans, Secy.

J. W. Paxton, Chairman.

ADDRESS OF THE DELEGATES
composing the
NEW STATE CONSTITUTIONAL CONVENTION
to their
CONSTITUENTS¹

Adopted February 18th, 1863.

Fellow-citizens: Your delegates in convention having made the change in the constitution proposed by Congress, have submitted the same, as amended, for your final ratification or rejection, at an election to be held on the twenty-sixth day of March next.

Before remarking on the proposed change, we call your attention to some of the features of the Constitution which differ from the system to which you have been accustomed. The most important is that which abolishes the county courts. In this we have the sanction of your frequently expressed opinions, and of the almost unanimous action of your delegates in the Constitutional Conventions of 1829 and 1850. Whatever may have been the merits of these courts as judicial tribunals, for which purpose the establishment of the circuit courts made them unnecessary, their inefficiency as administrators of county affairs, owing mainly to their want of adaptation to the purpose, has been apparent. The union, in one body, of judicial, legislative and executive powers, is sufficient to condemn them.

To supply their place in the judiciary we have raised the jurisdiction of the justices and increased the number of the terms of the circuit courts, by which much unnecessary expenditure will be avoided.

To secure a just and faithful administration of the fiscal and other concerns of the counties, they are sub-divided into townships, each of which elects annually a member of a county board charged with such administration; but to the people of each township is reserved the right to transact, under such regulations as the legis-

1. This address was not included in the debates and proceedings of the Convention as reported by Granville D. Hall. Nor was it printed in any available newspaper of the period. Explanation of these facts is found perhaps in the convention authorization of the printing and distribution of 10,000 copies, but at the time of the present printing only two copies of this sixteen page pamphlet could be found. One was in the New York Public Library, New York, the other in the State Department of Archives and History, Charleston, West Virginia.

lature may prescribe, the public business relating exclusively to their township. In short, the endeavor has been made to apply practically the maxim of Montesquieu, that "in a democracy the people ought to do for themselves whatever they conveniently can; and what they cannot do themselves, they should commit to the management of ministers chosen by themselves."

Objections are made to the township system on account of its novelty. It is indeed a novelty in practice in Virginia, but is not now first proposed. When the defects of the first state Constitution became apparent, and the propriety of revising it began to be discussed, Mr. Jefferson, in letters to different correspondents, proposed the division of the counties into wards. In one letter he says: "These wards, called townships in New England, are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation." He also says that this system, "by making every citizen an acting member of the government, and in the offices nearest and most interesting to him, will attach him by his strongest feelings to the independence of his country and its republican constitution." In another letter he says: "The wit of man cannot devise a more solid basis for a free, durable and well administered republic."

In the convention of 1829-30, the late Judge Lewis Summers, a distinguished jurist and an earnest and active friend of the West, proposed the adoption of the ward or township system; but it was defeated by a vote of fifty-two to thirty. This was the convention that feared to trust the people with the election of any officers besides members of the General Assembly, and whose constitution was condemned by the counties west of the Alleghanies by a vote of nearly twenty thousand against less than one thousand.

By the constitution now presented, the legislative power of the State is vested in a senate and house of delegates. This power would be supreme in all cases were it not limited by the state and National constitutions. The restrictions inserted in the constitution now proposed, to prevent the abuse and the unnecessary use of this power, cannot be enumerated in this address. Your attention, however, is called to the fact, that in all practicable cases, the legislature is required to act by general laws. This obviates, to a great extent, the necessity for special legislation, and discourages that private solicitation of the members, the tendency of which is to introduce corruption and bribery as elements of legislation. It will also tend to shorten the sessions, and thus economize expenditure.

The system presented for your adoption contemplates, as before remarked, that the people of each township will, to a certain extent, have the personal superintendence and direction of the public business relating exclusively to their township; the county boards of that which concerns two or more townships of their county, and of the general county affairs; while all that concerns two or more counties, or the State at large, will devolve on the legislature, as under the national constitution that which concerns two or more states, or the whole Union, is confided to Congress.

There are no fundamental changes in the executive and judiciary besides those already noticed. The three great departments of government are practically kept separate and distinct, so that neither can exercise the powers belonging to either of the others, and no person can be invested with, or exercise the powers of more than one of them at the same time. These rules are applied to the county as well as to the state organization.

In the proposed system of taxation and finance, an attempt is made to equalize the burdens of the people, and to prevent extravagant, wasteful and profligate expenditures. Besides a small capitation tax on white males over the age of twenty-one years, taxes are to be laid on property of every kind in proportion to its value, so that no one species of property can be taxed higher than another of equal value. No debt is to be contracted except for merely temporary purposes, or in cases of great exigency, such as war or public danger; and the credit of the State is to be loaned only in the latter contingency. The State cannot become a stockholder in a bank on any terms, or in any internal improvement company for an amount greater than can be paid for out of funds in hand, or by a tax levied the ensuing year.

The experience of the re-organized government makes it morally certain that, in a time of peace, the amount to be raised by taxation within the new State will be greatly below former experience, even after it has assumed its equitable proportion of the debt of the State of Virginia, contracted before January, 1861. On the other hand, the expansion which will certainly be given to the population, business and value of property of the new State by legislation adapted to its wants and condition, and tending to the development of its resources, will greatly augment the ability of the people to pay such taxes as may be found necessary.

Not the least beneficial feature of the proposed constitution is that which relates to forfeited and unappropriated lands. The land office, so often denounced, even by eastern men, for its iniquitous operation and demoralizing tendency, and as the source of gen-

eral and interminable litigation in the West, is finally and forever closed. All private rights and interests in land derived from the State of Virginia, including entries that have been perfected, are secured. Tracts of land forfeited for non-payment of taxes not exceeding twenty dollars, or for the non-entry on the books of the Commissioner of the Revenue where the quantity does not exceed one thousand acres, are, by the constitution itself, exonerated from forfeiture and from the payment of the taxes and damages charged or chargeable against them. Lands forfeited prior to 1832, and not again forfeited or sold, or by subsequent forfeiture or purchase at the sheriff's sales vested in the State, unless exonerated as above, or redeemed within five years, will be condemned and sold under proceedings to be instituted in the circuit courts, and a perfect title given to the purchaser, while the former owners will be entitled to receive the excess of the purchase money over the taxes, damages and expenses of condemnation and sale.

Provision is made for the education of the children of the State by the establishment, at no distant day, of a system of free schools, and the accumulation of a school fund, to be derived from the extraordinary revenues of the State, or from other sources than taxation. The division of the counties into townships, makes such a system, heretofore thought impracticable by many on account of the sparseness of our population, entirely possible if the people desire it. It will be for the voters of each township to determine how efficient the system shall be within their boundary by their voluntary taxation of themselves for the purpose.

Among the miscellaneous provisions of the proposed constitution is one intended to aid the development of all the material resources of the State. It provides that any number of persons associated for a purpose useful to the public, except the issuing of bills to circulate as money or the construction of a work of internal improvement, may become a corporation under general laws to be passed by the legislature, and amendable at their pleasure by like laws. This takes away from such corporations the character of monopolies, and avoids the occasion for that personal solicitation of the members of the legislature, which, as above remarked, has been the fruitful source of evil. The confinement of the action of the legislature to general laws in reference to those practical matters which concern every citizen and every section of the State, gives assurance that, if not at first, yet speedily, those laws will receive that form which is most in accordance with the united wisdom and experience of the whole population. This illustrates the true theory and object of representative government.

The changes in the fundamental law above noticed, and others, perhaps not less beneficial, prove the necessity of our separation from the East if we would promote our moral and material prosperity. In the sight of God and man this is our sacred duty to ourselves, to those now dependent upon us, and to those who will hereafter occupy our places. Inequality of representation and taxation, had that been all, we might have borne until increased population gave us the power to correct it. But when the legislation of the eastern majority was directed to our injury; when we were heavily taxed for the construction of eastern improvements, and repeatedly denied the legal power to make them in our own section without the pecuniary or other assistance of the State, when there were open and avowed endeavors to prevent, or at least discourage, our increase in population; when, in short, we found we were not considered or treated as equals in the commonwealth of which we were part, we should have been more or less than men if we had submitted to the intended degradation, and not resolved to right ourselves when the opportunity occurred.

Since so many of the other portion of the State embraced the cause of secession and rebellion, they have been more bold in their denunciations and more open in their exhibitions of hostile feelings, and have avowed their intention to subject us to a moral subjugation or to drive us into exile. Our offense has always been our devotion to those principles of free government which we learned from the fathers of the commonwealth, but which they have repudiated, and is aggravated by the fact that we still cling to that Union which their fathers and ours assisted in forming. They declare their intention, whatever may be the issue of the rebellion, to destroy the line of railroad constructed through our section without their assistance, and maintained, notwithstanding their adverse legislation, in order to destroy with it our business and personal intercourse with other states, and to prevent the increase of our population. They have recently attempted to repeal the more liberal provisions engrafted in the present Constitution, mainly by the efforts of western statesmen, and to renew the provisions of the constitution repudiated by the people of the west in 1830 with almost entire unanimity, and again to govern us by a centralized oligarchy.

Fellow-citizens, while so many of you were witnesses of the indefatigable exertions of our Doddridge, our Summers, our Campbell, and so many others, who, nobly but in vain, fought for our political enfranchisement in 1820 and 1830, are you prepared to repudiate their principles and condemn their conduct by a voluntary

subserviency to those by whom you have been oppressed? We trust there are none among us capable of such self degradation.

There are considerations of a different character which also make the separation of the two sections desirable if not indispensable. There is little in common between them. Their views and policy in reference to various matters are diverse, if not antagonistic. The characteristics and social conditions of the two populations are different. The west is hilly, or mountainous, is for the most part in a state of nature, and may be made to afford a variety and abundance of mineral products; while the section occupied by those who have always, by their power or their influence, ruled the State, is, for the most part, easy of cultivation and has been cultivated for many years, and its leading products are agricultural. The directions of the channels of trade and the commercial relations of the two sections, divided as they are by a lofty range of mountains impassable by the rail car or canal boat, are necessarily not the same. In the west there are few enjoying acquired fortunes or hereditary wealth; few who are exempt from personal labor of the hand or head, and the equality of condition of the people is most remarkable. In the east great diversities exist. The men of wealth and their descendents and connections fill the offices and occupy the seats in the legislature, thus excluding their poorer neighbors from all actual participation in the government. How is it possible that with such diversities the citizens of either section can acquire that practical knowledge of the wants and condition of the other, without which they cannot, if ever so well disposed, intelligently legislate for them.

Under these circumstances it is surprising that any West Virginian should hesitate as to the course which both duty and interest now call upon him to pursue. There are, however, some who are indifferent, and some who openly oppose the formation of the proposed State; and among both classes are some who heretofore favored the separation. Various objections are urged against it, none of which, however, include a denial of the fact that West Virginia will be greatly benefited by taking the principal charge of her own affairs. The objections that would deter her from doing so, should be at least as weighty as the arguments that urge her on. Let us, therefore, candidly examine the objections that are made with a view of determining to which side duty should incline us.

The objection most insisted on relates to the change of the seventh section of the eleventh article of the Constitution. By some it is urged that the imposition of a condition by Congress on the admission of a new state into the Union is a dangerous prec-

edent, and derogatory to those accepting it. This objection comes too late. The precedent is already the rule rather than the exception, as few states have been admitted without the acceptance of some condition prescribed by Congress. Changes of boundary, the taxation of public lands, trial by jury, the use of the English language in public proceedings, as well as the prohibition of slavery, have been the subjects of these conditions. The admission of new states by Congress is not, under the United States constitution, obligatory, but merely discretionary. The words are: "New states *may* be admitted into the Union." It is as true in law as in mathematics, that the greater includes the less. If Congress can constitutionally refuse its consent to the admission of a state, it may certainly prescribe terms of admission within constitutional limits.

This objection would not probably be pressed if the alleged condition related to some other subject than slavery, or if that subject had not been for so many years an element of party strife. There is so much prejudice, both for and against its existence in any locality, that the merits of a particular case are overlooked or ignored, and the prejudices on the general subject are permitted to decide it. With the latter we shall not concern ourselves in this address, as we do not think the abstract question of the propriety of the continuance or abolition of slavery should affect the vote you are called upon to give. The true question for your decision is, whether the continuance of the slavery existing within the limits of the proposed State promises any practical benefit to its people, and if so, whether the promised benefit is sufficient to induce you to forego the many positive and decided advantages which you can not obtain unless the proposed State is erected?

There is one class of objectors whom we do not desire to conciliate while they retain their present views, and to whom, therefore, we have nothing to say. Of those who are traitors in heart, if not yet in act, and whose sympathy with rebels in arms has overcome their consciousness of duty to their country, it is sufficient to remark that their opposition is necessarily factious, and their object the injury and not the welfare of their loyal fellow-citizens. But there are others whom we are earnestly desirous to convince that the proposed State is worth greatly more than the price that will, in any event, be paid for it; and that the effort to secure it now, is not only sanctioned but demanded by every consideration of duty to themselves and their posterity.

The convention at its first session were nearly equally divided as to the propriety of inserting in the constitution a clause provid-

ing for gradual emancipation. There was at that time no one in or out of the convention who contended that the perpetuation of slavery, as it existed in the proposed State, would be of any practical importance. Some desired to avoid the contention the agitation of the question would inevitably engender, while others thought that without the insertion of such a clause the consent of Congress would not be given. It was admitted on all hands, and cannot be denied, that causes, unconnected with the rebellion, and beyond human control, were at work, which within a very few years must extinguish slavery within the proposed State. It was not denied that in a grain growing, manufacturing and commercial community, the labor of slaves is unprofitable, except perhaps as domestic servants. It was known that in twenty-seven of the forty-eight counties there had been a decrease in their respective numbers of slaves from 1850 to 1860, and in only thirteen counties an actual increase. The numbers in the years given were 14,210 and 12,783. The decrease was 2661, and the increase including those in the eight counties formed after 1850, was 1234; giving a net decrease of ten per cent, or 1427, to which should be added a number equal to the whole natural increase. Those therefore who opposed the emancipation clause, did not contend that its insertion would injuriously affect the proposed State; but, on the contrary, insisted, that the causes mentioned above would extinguish slavery more rapidly and surely than any system of gradual emancipation could, if their operation was withdrawn.

Under these circumstances a compromise clause was agreed on, received the unanimous vote of the Convention,¹ and was inserted in the Constitution. It provided, simply, that slaves should not be brought into the State for permanent residence, and was accepted and ratified by the vote adopting the Constitution in April 1862. Thus both the Convention and the people have signified their willingness, that the natural causes tending to the extinction of slavery should not be counteracted in their operation. There were slaveholders both in the Convention and among the people, who voted for this compromise, and they must be allowed to be as able to determine what their interests require or permit, as many among the most vociferous of the objectors who have no personal interest in slavery. That it is doomed to rapid diminution, whether aided by law or constitution, or not, must be apparent to every intelligent citizen.

1. There was one vote against compromise, that cast by William W. Brumfield of Wayne County. See Vol. III, page 436; Convention, *Journal*, page 168.

The question then presents itself for your consideration, whether the great and important advantages you are sure to derive from the erection of the proposed State, shall be postponed until slavery dies the natural death to which it is hastening? This is what you are called upon to do when asked to reject the amendment proposed by Congress. Slavery cannot be perpetuated by its rejection; and, as it exists among us, it cannot be of any service in a public point of view. With or without emancipation, the proposed State will be to all intents and purposes a free state, and its legislation and social condition will necessarily be controlled by that fact.

The amendment proposed by Congress strikes out the whole of the seventh section of the eleventh article of the Constitution, including the clause prohibiting the immigration of free negroes. The objectors allege that this opens the State to that class of population. Had they looked at the section immediately following, they would have seen that the laws of Virginia will remain in force within the proposed State until altered by its own legislature; and they cannot be ignorant that a law forbidding such immigration is in the Code. Almost all the northern states prohibit it, but only two or three by constitutional provisions. The rest, like Virginia are content with legislative enactments on the subject, and the power of the legislatures of the States to pass such laws has not been seriously questioned. The act of Congress declares that West Virginia shall be "admitted into the Union on an equal footing with the original states in all respects whatever." The so called condition imposed by Congress cannot, by even a forced construction, be tortured into a prohibition of the exclusion of free negroes. It requires no more than that the emancipation clause proposed by them shall be inserted in the Constitution.

These keen eyed objectors, many of whom find in the United States Constitution a warrant for the alleged right of secession, have constitutional scruples about the power of Congress to admit the proposed State into the Union under any circumstances. By separating a clause from its context, they make that instrument absolutely forbid the formation and erection of a new state within the jurisdiction of any other state. They have the misfortune to differ with Mr. Madison; who, in the forty-third number of the *Federalist*, while commenting on the section of the United States Constitution now in question, observes, that "the particular precaution against the erection of new states, by the partition of a state without its consent, quiets the jealousy of the larger states; as that of the smaller is quieted by a like precaution against a

junction of states without their consent." But if the contemporary exposition of "the father of the constitution" is not sufficient to convince these very strict constructionists, this objection, like another noticed above, comes too late. Congress many years since consented to the formation and erection of the States of Vermont, Kentucky and Maine, within the jurisdiction of other states, the second having been formed and erected within the jurisdiction of Virginia.

But the objection most relied on is that which denies that any competent legislative consent has been given to the erection of the State of West Virginia. This objection implies that the usurping body sitting at Richmond, and pretending to exercise legislative authority, but in open rebellion against the United States, is the true legislature of Virginia, one of those states; or that the State is without a legitimate government. Those who uphold the first alternative uphold rebellion and are secessionists and traitors, with whom, as before observed, we, and we trust our constituents, have nothing to do until they divest themselves of that character. The second may be honestly entertained by some who are not familiar with the history of similar events, or with the verdict of all free nations in similar cases; or by those who have not sufficiently examined the subject. Sincerely desirous to vindicate the authority under which we have been and are now acting, we ask your further attention while, as briefly as possible, we relate the events which led to the restoration of the state government, and cite the precedents which sanction that most solemn and formal proceeding.

Soon after the secession of the planting states, the then Legislature of Virginia was called to meet in extra session at Richmond early in January 1861. Among their first proceedings, was the passage of an act directing an election to be held on the ensuing fourth of February for delegates to a convention, which was directed to assemble at Richmond on the thirteenth of the same month, and to "proceed to adopt such measures as they may deem expedient for the welfare of the commonwealth." What this meant was easily understood, as the same act provided that at the time of the election of the delegates, a separate poll should be opened "to take the sense of the qualified voters as to whether any action of the said convention dissolving our connection with the federal Union, or changing the organic law of the state, shall be submitted to the people for ratification or rejection." A large majority of the delegates elected were professedly opposed to secession, thus indicating that at least a proportional majority of the

people, distributed in nearly every section of the state, were also opposed to it. A majority of nearly sixty thousand demanded that any action of the convention contemplating secession should be submitted to the people and receive their ratification before it became of force.

It is not intended to discuss here the alleged right of secession which has been amply elucidated by abler pens. We plant ourselves upon the doctrine asserted by Virginia herself, in her ratification of the Constitution of the United States. In that instrument, speaking by the mouths of some of her ablest statesmen ("there were giants in those day") she says, "that the powers granted under the Constitution, being derived from *the people of the United States*, may be resumed *by them* whensoever the same shall be perverted to their injury or oppression." There is no mistaking the force and import of this language. It, in express terms, asserts, that the Union can be dissolved only by those who made it, the people of all the states, and by them only in the extreme case of a palpable perversion of the powers granted, to their injury or oppression. The act of ratification has for Virginia all the force of a declaration of rights, or a constitutional provision. The act calling the convention for the purpose avowed on its face, and all the proceedings and ordinances of that assemblage in reference to "dissolving our connection with the federal Union," whether by peaceable means or by force, being in derogation of an organic law, are therefore illegal, null and void, and no ratification by the people of a single state can give them validity or effect.

But admitting, for the moment, that without even an allegation that the powers of the federal Union had been perverted to the injury or oppression of the people, a legislative act could give authority to a convention to dissolve the connection of the state with the Union, and that an ordinance fairly passed by the latter in due parliamentary form and ratified by the votes of a majority of the qualified voters, would be effective for the purpose, we deny that any such ordinance has been so passed or ratified. When the convention assembled, the hired ruffians brought from states farther south for the purpose, who until that time had beset the legislature, began their work of intimidation within and without the hall where the convention held its sessions. Western members were threatened and spit upon from the galleries while in their seats, and mobbed and assaulted on their egress from the hall.

Under such circumstances, the so called secession ordinance was passed in secret session and directed to be submitted to the voters. But before the fact of its passage was allowed to be made

known, or its provisions had been published, the convention, which by that time, with the consent of a subservient governor and other state officers, had practically usurped the powers of both the legislature and executive, dispatched their armed emissaries to take possession of the National Armory at Harper's Ferry and to obstruct the entrance to the Gosport Navy Yard, and had begun to levy troops with a view to the capture of the national capital, and the overthrow of the national government. Thus was the state plunged into rebellion and its consequences, without the sanction and even without the previous knowledge of the people. In the black catalogue of crime which disgraces humanity, these acts of the iniquitous and perjured leaders of the secession movement in Virginia, will be forever prominent.

But these were not all. Again before the vote to ratify or reject their traitorous ordinance was taken, they entered into a league with the so called Confederate States looking to the accession of Virginia to that rebellious organization. By a special provision, to take effect immediately, "the whole military force and military operations of the state," were placed under the control and direction of the pseudo confederacy "for offensive as well as defensive purposes." Allow that their whole proceedings were revolutionary in the best sense of that word, it would nevertheless seem that no such steps should have been taken without the previously expressed direction of the people; but even after their accomplishment they did not pretend to submit these measures to the voters. They merely directed that if the secession ordinance was negatived, these should be deemed and taken to be annulled.

At length the day appointed to take the vote of the people for or against the secession already in operation, arrived. Every means of intimidating the voters who had not already been driven from their homes, and who still clung to the Union, was used. The military, a portion of which was brought from other seceding states, beset the polls; threats of personal violence were made, and intimations were broadly given that those who would not acquiesce in secession would be compelled to leave the state. Whatever may have been the result of that vote, we repudiate it on account of this intimidation, as well as on account of the illegality of the convention and its acts. That which was wrong in its inception, could not be made right by subsequent proceedings which did not change its character.

These high handed and violent acts of the usurpers compelled the people to abjure their allegiance to the United States, or to denounce the authority of the Richmond oligarchy. Those charged

with the administration of the state government, had voluntarily submitted to a jurisdiction unknown to the convention and laws, and had thus practically vacated the offices with which they had been charged. With great unanimity the people of West Virginia determined to remain faithful to the state and national constitutions and laws to which they had been accustomed. If they remained loyal, and could prevent their section of the state being occupied by the rebel forces, it was a necessity, in order to avoid a state of anarchy, that some government should be constituted to take the place of that which had been subverted.

On the 13th of May 1861, by a movement almost spontaneous, the loyal people of the northwestern counties assembled in mass meeting at the city of Wheeling, to deliberate on their condition and the steps it behoved them to take. After much discussion, the result was that they invited the loyal people of the whole state to assemble in convention at the same city, on the eleventh of June then next, "to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand." This convention was formal in every respect. It was to be composed of the members of the legislature previously duly elected under the existing constitution and laws, and of delegates proportioned to the population of the counties, each being entitled to at least one.

The convention duly assembled, having delegates from counties situated to the east as well as to the west of the Alleghanies. On the 13th of June, 1861, they unanimously adopted a Declaration of Right, in which, after briefly reciting the acts of the usurping convention and executive, "in the name and on the behalf of the good people of Virginia," they solemnly declare "that the preservation of their dearest rights and liberties, and their security in person and property, imperatively demand the reorganization of the government of the commonwealth; and that all acts of the convention and executive tending to separate this commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said constitution and executive, whether legislative, executive or judicial, are vacated." Is there a loyal man anywhere who will dissent from the operative part of this declaration?

The loyal convention then proceeded to appoint for a limited period a governor and other executive officers, and to pass such ordinances as the circumstances in which their constituents were placed required, but carefully abstained from any alteration of the state constitution not imperatively demanded by the exigencies

of the time. They directed the legislature, elected under the old regime, to assemble at Wheeling within a month, requiring the members to take an oath to support the re-organized government; which body, in due time, provided for an election by the people of the officers temporarily appointed by the convention and elective under the constitution, and re-appointed the others. Since then the government has been administered under the constitution and laws theretofore in force. The courts of justice have been open in every part of the state not occupied by the rebels; taxes have been levied and collected, and, in short, all the powers of a regularly organized government have been exercised and respected.

The gravamen of the charge preferred by the loyal people of the state through their convention is that the powers of the state government, granted for the promotion of the welfare and the protection and security of the people, had been, by those formerly charged with their administration, perverted to their injury and oppression. This is the very case which the Act of Ratification of Virginia declares would justify a resumption by the people of the United States of the powers granted under their constitution. The principles established by the great revolutions of the sixteenth, seventeenth and eighteenth centuries—the Dutch, the English and the American—are confidently appealed to for example and justification wherever free government, or the love of it, finds a resting place. To those principles and to the acts which led to and accompanied their promulgation, the loyal people of Virginia confidently appeal for the vindication of the measures they solemnly, and with a due sense of their responsibility, adopted, in the difficult circumstances in which they were placed.

On the 26th of July, 1581, the United Provinces of the Netherlands, having then passed through fifteen of the eighty years of their war of independence, renounced their allegiance to Phillip II of Spain by a solemn act of abjuration. In that instrument they set forth the grievances they had suffered at his hands for a quarter of a century, and declared "that they were sufficiently justified in forsaking a sovereign who for more than twenty years had forsaken them." In the preamble they say: "All mankind know that a prince is appointed by God to cherish his subjects, even as a shepherd his sheep. When, therefore, the prince does not fulfill his duty as protector; when he oppresses his subjects, destroys their ancient liberties, and treats them as slaves, he is to be considered, not a prince, but a tyrant. As such, the estates of the land may lawfully and reasonably depose him, and elect another in his room."

A little more than a century later, on the 12th of February, 1688-9, the Lords and Commons of England, sitting, not in Parliament, but in a convention of two houses, published a Declaration of Right, by which they deposed their king, James II, and called William and Mary to the throne. "The Declaration," says Macaulay, "began by recapitulating the crimes and errors which made a revolution necessary. James had invaded the province of the legislature; had treated modest petitioning as a crime; had oppressed the church by means of an illegal tribunal; had, without the consent of Parliament, levied taxes and maintained a standing army in time of peace; had violated the freedom of elections, and perverted the course of justice. Proceedings which could lawfully be questioned only in Parliament had been made the subjects of prosecution in the King's Bench. Partial and corrupt juries had been returned. Excessive bail had been required from prisoners; excessive fines had been imposed; barbarous and unusual punishments had been inflicted; the estates of accused persons had been granted away before conviction. He, by whose authority these things had been done, had abdicated the government."

It is unnecessary to quote at length from the Declaration of Independence by which our sires declared themselves absolved from all allegiance to the British crown and claimed their political independence. They too set forth their grievances, and plainly declared that, whenever a government becomes destructive of the ends for which it was instituted, it is the right of the people to alter or abolish it, and to provide new guards for their future security. This principle was the basis of action in the preceding resolutions, as it was of the proceedings of the loyal people of Virginia in 1861.

In the first two cases there was no change in the form of government, although the United Provinces subsequently became a republic; nor has any such change been made or attempted by the loyal people of Virginia. A simple deposition of the officers who had perverted the powers with which they had been intrusted was made, and the vacancies filled by new appointments, and then the new constitution of 1850-51 and the laws made under it were again in force. If it was a revolution, it was produced by intolerable grievances, and was conducted with all the formalities of the world-approved and time-honored precedents we have cited. The complaint was not that oppressive laws had been passed in legal form; but that the measures inaugurated by the usurpers, and which they were attempting to enforce, tended to the overthrow of the

very foundations of the government, and the substitution of an oligarchy or military despotism.

The reorganized government has been formally recognised by the executive, by the Congress, and in one instance at least by the judiciary of the United States. Elections, under its authority, for Representatives in Congress, have been held in the east as well as in the west, and those elected have been admitted to seats in that body. Its legislature is the legislature of the whole state, and is competent to do what any previous legislature could have done. The fact, that in a large portion of the state the citizens are in open rebellion, cannot affect its constitutionality or the extent of its powers, although the exercise of the latter is temporarily circumscribed. Nor does it detract from its authority to do all that the Constitution permits, that there are numerous vacancies in its membership. Are not the two houses sitting at Washington the constitutional Congress of the United States, although the exercise of its authority is also temporarily circumscribed and many of its seats are unoccupied? There can be but one reply to this question; and the same reply must be given when a similar inquiry is made as to the legislature recently in session at Wheeling.

If that legislature is legally competent to do any act whatever, it was competent to give the consent of the State of Virginia to the formation and erection of the State of West Virginia within the jurisdiction of the former. Say that it was ungenerous or unwise to act upon the question at a time like this, still the consent given was a legal and constitutional consent; and that, with the approbation of a majority of the voters voting on the subject, and the consent of Congress, is all that is required to place West Virginia by the side of Vermont, Kentucky and Maine. But we contend that the movement was neither ungenerous nor unwise. Are we expected to seek the approbation of those who have disfranchised themselves by their disloyalty? The reorganized government will remain the constitutional government of the residue of Virginia, with power to extend its operations as fast and as far as the progress of the Union armies will permit; and in whatever way the national difficulties may be adjusted, the reorganized and the proposed governments must be recognised as the governments of states of the United States, on an equal footing with the original states.

We have thus disposed of the last, and, as our opponents profess to think, the most formidable objection to the erection of the proposed State. We have dwelt upon it at more length than was necessary simply to confute it. We embraced this opportunity to show upon what impregnable foundations the reorganized govern-

ment of Virginia has been reared. It was due to those who composed the Convention of June 1861, and to the people who have approved and ratified what they proposed, to vindicate their bold, but deliberate and well considered act, against the aspersions by which it has been recently assailed.

We deem it superfluous to urge you to use your best exertions to secure a full vote in favor of the amended Constitution. You are too well aware of the numerous advantages a separate organization will secure to you and your posterity, to yield to objections preferred, for the most part, by those whose sympathies are with the rebels who are seeking your destruction. These objections, however plausibly urged, do not relate to matters which can have any practical effect upon your welfare, or the prosperity of the proposed State. Your duty in all cases is to promote the moral and material interests of yourselves, your children, your fellow-citizens, and your country. No case can be presented for your consideration and action where the opportunity to secure that result is more certainly in your power. A unanimous, or nearly unanimous, vote of the people, accepting the amended constitution, will be the most effectual refutation of all the objections that have been or can be urged.

By order of the Convention,

A. D. SOPER,
President of the Convention.

Ellery R. Hall, Secretary.

MINUTES OF
THE EXECUTIVE COMMITTEE

appointed by

THE CONSTITUTIONAL CONVENTION OF 1861-63
OF WEST VIRGINIA.

At a meeting of the members of the Executive Committee of the West Virginia Constitutional Convention held at the McLure House, in the city of Wheeling, on the 20th day of February 1863, present Daniel Lamb, Ephraim B. Hall, Elbert H. Caldwell, and P. G. Van Winkle, absent James W. Paxton.

Mr. Lamb was unanimously appointed chairman and L. A. Hagans, secretary, when the committee was declared duly organized for the transaction of business.

The following resolutions were then unanimously adopted:

RESOLVED, That the money placed at the disposal of this committee by the Convention, be drawn from the Treasury of Virginia by the orders or checks of the acting chairman, countersigned by their secretary.

RESOLVED, that a duly certified copy of the resolution of the Convention placing the residue of the \$7000 appropriated by the legislature for the use of that body, after paying the expenses of its late session, at the disposal of this committee, and also a copy of the foregoing resolution signed by all the members of this committee, be furnished to the Auditor and Treasurer of Virginia.

RESOLVED, That the chairman is hereby authorized to draw upon the Treasury of Virginia for the expenses incurred by the late commissioners of the Convention, of whom this committee are the successors, either in favor of the respective parties, or by placing in the hands of the secretary, a sum sufficient for the purpose, with instructions to pay or remit to those entitled to the same at the earliest opportunity.

RESOLVED, That pursuant to the ninth section of the ordinance, passed by the Convention on the 16th of February, 1863, commissioners be appointed to take the vote on the Amended Constitution, of such persons, qualified to vote, as may be at the time in the service of the United States as soldiers or officers of the Virginia Militia, within the following districts:

1st District:—The counties of Taylor and Preston in Virginia, and Allegheny and Washington in Maryland; and in the valley of Virginia lying between the Allegheny mountains, and the Blue Ridge.

2nd District:—The valley of the Little Kanawha river and of the streams flowing into the same, including the counties of Upshur

and Randolph, and all of the State of West Virginia lying north of the said valley and of said counties, except Taylor and Preston counties and the counties lying East of the Alleghany mountains.

3rd District:—West Virginia south of the valley of the Little Kanawha river and of the streams flowing into the same, and South of Upshur and Randolph counties.

4th District:—The States of Virginia, Maryland and the District of Columbia, east of the Blue Ridge.

5th District:—The State of Kentucky and other states south thereof.

RESOLVED, That four commissioners be appointed for the first district, to be divided under the direction of the chairman of this committee into two commissioners; and that two commissioners be appointed for each of the other districts.

RESOLVED, that the chairman of this committee be authorized to fill any vacancies that may occur in the said commissions;

The following appointments were then made by the committee:

For the 1st District:—John S. McDonald, John W. Bonar, Henry Startzman, Matthew B. Reed.

For the 2nd District:—John Parker, Robert Ferrel.

For the 3rd District:—Nelson B. Coleman, J. P. R. B. Smith, John Bowyer.

For the 4th District:—Sanford G. W. Morrison, John Gandy.

For the 5th District:—Dudley S. Montague, Sylvanus W. Hall.

The chairman proposed the following instructions to the said commissions:

To the Messrs.

THE EXECUTIVE COMMITTEE, pursuant to the ordinance passed by the Constitutional Convention of West Virginia on the 16th of February, 1863, entitled "An Ordinance to provide for submitting to the people of West Virginia, the Amended Constitution adopted by this Convention," do hereby appoint you commissioners to take, at any time from the twelfth to the twenty-sixth day of March, 1863, including both of the said days, the votes, for or against the said Amended Constitution, of such persons, qualified to vote, as may be at that time, in the service of the United States as soldiers or officers of the Virginia Militia, within the.....

In the discharge of this trust you will govern yourselves by the following directions:

You will not enter on the discharge of your duties, until you have taken the oath or affirmation prescribed by the seventh section of the said ordinance; and you will, as soon as possible, furnish the chairman of this committee, proper evidence of your having complied with this direction.

Every white male citizen, who has been a resident of the terri-

tory included within the boundaries of West Virginia, for one year, and of some county thereof for thirty days, next preceding the time he offers to vote, will be entitled to vote for or against the said amended Constitution, unless he be a minor, pauper, or of unsound mind, or be under conviction of treason, felony or bribery at an election. But persons who were residents of the state or county, at the time they entered the service of the United States as soldiers or officers of the Virginia Militia, do not, by entering such service, forfeit their residence. They are to be considered residents of the county where they lived when they volunteered.

You will carefully exclude from voting all persons not entitled to do so. You are authorized to swear any person to answer questions in relation to any right to vote which is claimed. If any vote be rejected by you, you will, if required by the person who offered it, enter the same on a separate list in the manner prescribed by the fifth section of said ordinance.

The vote will be taken *viva voce*, and be entered on the poll books as directed by the first section of said ordinance. The entry thereof should be made by one of yourselves, or by some other person under your direction and in your presence, such person having first been sworn according to the seventh section. With the name of every voter, you will cause to be entered on the poll books, the county in which he resided at the time he entered the service of the United States as aforesaid, and the company and regiment of Virginia Militia to which he belongs. Any votes you may take beyond the boundaries of West Virginia, must, according to the ninth section of said ordinance, be distinctly so stated in the certificate of the returns thereof. You will therefore keep the poll books in such manner as to show the several places which the votes have been taken.

When the polls to be taken by you are finally closed, which must be on or before the twenty-sixth day of March, 1863, you will immediately count the names of the voters entered in the column headed For the Amended Constitution, and set down the number, in words written out at length and also in figures, at the foot of that column, and subscribe your names thereto; and proceed in the same manner in regard to the column headed Against the Amended Constitution. You will then make, and subscribe your names to a certificate to the following effect:

"We, the undersigned, commissioners to take the vote for or against the Amended Constitution of West Virginia, of persons, being qualified voters, the service of the United States as soldiers or officers of the Virginia Militia, do hereby certify that we have fairly and impartially taken the said vote, between the twelfth and twenty-sixth day of March, 1863, including both of said days, and that the result thereof, as more fully shown by the poll books herewith returned, is as follows, that is to say: Of the votes taken at _____ in the county of _____ and State of _____ there are _____ votes for the said Amended Constitution and _____ votes against the same; of the votes taken at _____ in the county of _____ and State of _____, there are _____ votes for, and _____ votes against the same." (And so on, according to the truth, specifying the num-

ber of votes for, and the number against the same," at every place where any votes were taken, and concluding as follows:) "making in all, of the votes taken by us,.....votes for the said Amended Constitution, and.....votes against it. Given under our hands, this.....day of March, 1863."

You will then seal up your poll books and certificate, endorse your names on the envelope or cover across the place where the same is sealed or fastened, and cause the same to be returned, with all convenient speed, to the chairman of this committee at the city of Wheeling; transmitting to him by mail, separately, an accurate copy of the certificate.

In inserting the number of votes in your certificate, let the same in every case be written out in words at length, and also in figures.

You will keep an accurate account of your expenses, and certify the same under oath to the chairman of this committee.

By order of the Executive Committee,
.....Chairman.

Wheeling,.....1863.

On motion, the foregoing instructions were adopted and 100 copies ordered to be printed.

On motion, the committee adjourned.

L. A. Hagans

D. Lamb, Chairman

Tuesday, April 7, 1863

Pursuant to notice given by the chairman of the Executive Committee of the West Virginia Constitutional Convention, the Hon. A. D. Soper, President of said Convention and Daniel Lamb, James W. Paxton and Elbert H. Caldwell of the said Executive Committee met together, this day, at the Banking House of the North Western Bank of Virginia in the city of Wheeling.

The returns of the vote on the question of the ratification of the Amended Constitution of West Virginia made to the President of the Convention under a pursuant to the ordinance of the Convention, passed February 16, 1863, entitled "An Ordinance to provide for submitting to the People of West Virginia the Amended Constitution," were then opened by the President and the result in part ascertained in the presence of the Executive Committee.

But it appearing that no returns had as yet been received from several counties included within the limits of the proposed State of West Virginia, in which a vote had been taken on the said question of ratification, it was, on motion,

RESOLVED, that the President of the Convention, and the Executive Committee meet again at the said Banking House on Thursday, the sixteenth day of this month, to complete the opening and examination of the returns pursuant to said ordinance, and trans-

act such other business as may properly be brought before them.
The meeting then adjourned.

A. D. SOPER, President
DANIEL LAMB, Chairman.

Thursday, April 16, 1863.

Pursuant to adjournment, the Hon. Abraham D. Soper, President of the Constitutional Convention of West Virginia, and all the members of the Executive Committee of the said Convention, met together this day at the Banking House of the North Western Bank of Virginia in the city of Wheeling.

And the additional returns of the vote on the question of the ratification of the Amended Constitution of West Virginia made to the said President under a pursuant to the ordinance of the Convention entitled, "An Ordinance to provide for submitting to the People of West Virginia the Amended Constitution," were then opened by the President and the result ascertained in the presence of the Executive Committee; and a certificate of the whole returns including as well those opened and ascertained on the seventh day of the present month, so the returns opened and ascertained, this day, was made and signed by the said President and by all the members of the said Executive Committee, in the words and figures following,:

We, Abraham D. Soper, *President*, and Daniel Lamb, Peter G. Van Winkle, Elbert H. Caldwell, Ephrain B. Hall and James W. Paxton, *Executive Committee*, of the Constitutional Convention of West Virginia. Do hereby certify, that we have examined the returns of the vote on the question of the ratification or rejection of the Amended Constitution of the Said State, taken under and pursuant to the ordinance of the said Convention entitled "An Ordinance to provide for Submitting to the People of West Virginia the Amended Constitution"; and upon such examination, we find there were *twenty eight thousand three hundred and twenty one* votes given for the said Amended Constitution, and *five hundred and Seventy two* votes given against it, as more particularly specified in the list or schedule hereto annexed, exclusive of *four hundred and twenty two* votes for, and *none* against, the said Amended Constitution rejected as having been irregularly taken or certified. Given under our hands this sixteenth day of April, 1863.

(Signed) A. D. Soper, President

Daniel Lamb
E. B. Hall
J. W. Paxton

E. H. Caldwell
P. G. Van Winkle
(Executive Committee)

VOTE ON THE AMENDED CONSTITUTION

Counties	For	Against	Counties	For	Against
Barbour	471	0	Monongalia	1,415	128
Boone	57	0	Monroe	.....	.....
Braxton	120	1	Morgan	362	0
Brooke	448	1	Nicholas	155	1
Cabell	106	0	Ohio	1,850	8
Calhoun	.....	.....	Pendleton	181	0
Clay	64	0	Pleasants	253	0
Doddridge	463	5	Pocahontas	.....	.....
Fayette	30	0	Preston	1,737	70
Gilmer	383	1	Putnam	275	0
Greenbrier	.....	.....	Raleigh	.....	.....
Hampshire	75	7	Randolph	167	13
Hancock	373	5	Ritchie	753	2
Hardy	76	0	Roane	159	0
Harrison	1,074	7	Taylor	639	12
Jackson	499	10	Tucker	45	1
Kanawha	1,050	6	Tyler	738	5
Lewis	596	4	Upshur	742	4
Logan	.....	.....	Wayne	85	2
Marion	965	3	Webster	.....	.....
Marshall	1,430	56	Wetzel	275	77
Mason	1,112	2	Wirt	180	6
McDowell	.....	.....	Wood	1,222	1
Mercer	.....	.....	Wyoming	.....	.....
				20,625	440

	For	Against
Vote in thirty-eight counties as above stated.....	20,625	440
Soldiers votes taken within West Virginia.....	6,007	94
Total votes taken within West Virginia.....	26,632	534
Soldiers votes taken out of West Virginia.....	1,689	38
Whole amount of votes duly taken and returned.	28,321	572
Rejected votes, viz. Soldiers		
379 for, none against		
Rejected votes, viz. Citizens	total	422
43 for, none against		0

A certificate under the hand of the President of the Convention, and countersigned by the said Executive Committee, that the people of West Virginia, through their said Convention, and by a vote taken at an election held within the limits of the said State,

at the time provided by the said Convention, had made and ratified the change in the Constitution for the said State of West Virginia, proposed by the Act of Congress, entitled "An Act for the admission of the State of West Virginia into the Union and for other purposes" approved December 31, 1862, was made, signed by the said President of the Convention, and countersigned by the members of the said Executive Committee; which certificate is in the words and figures following, to wit:

To His Excellency Abraham Lincoln,
President of the United States.

I, Abraham D. Soper, President of the Convention which first assembled at the city of Wheeling in the State of Virginia, on the twenty-sixth day of November in the year one thousand eight hundred and sixty-one, and again assembled in the said city on the twelfth day of February in the year one thousand eight hundred and sixty-three, and which is the Convention referred to in an act of the Congress of the United States, approved December 31, 1862, entitled "An Act for the admission of the State of West Virginia" into the Union, and for other purposes, DO HEREBY CERTIFY that the said Convention did, on the eighteenth day of February in the year one thousand eight hundred and sixty-three, make the change in the Constitution theretofore framed and proposed by them mentioned in the Act of Congress aforesaid, that is to say: The said Convention did unanimously strike out the seventh section of the eleventh article of the Constitution so therefore framed and proposed by them, and did insert in the said Constitution, in lieu thereof, the following:

"7. The children of slaves born within the limits of the State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein."

And I, the said Abraham D. Soper, President as aforesaid, do hereby FURTHER CERTIFY, that the said Constitution so changed and amended, and without any other change or amendment whatever, was submitted for the ratification or rejection of the people of the forty-eight counties of the State of Virginia comprised within the limits of the proposed State of West Virginia, and

named in the preamble of the Act of Congress aforesaid, at an election held within the said limits under the authority of the said Act of Congress and in conformity with an ordinance of the said Convention, entitled "An Ordinance to provide for Submitting to the People of West Virginia the Amended Constitution"; at which election all persons qualified under the said Amended Constitution being permitted to vote on the question of its ratification or rejection there were cast "For the Amended Constitution," twenty-six thousand six hundred and thirty-two (26,632) votes, and "Against the Amended Constitution," five hundred and thirty-four votes, as appeared by the return of the officers conducting and superintending the said election duly certified and made to me in conformity with the said ordinance; whereby the people of West Virginia did ratify the change in the said Constitution made by the said Convention, as proposed by the said Act of Congress.

Given, in duplicate, under my hand at the city of Wheeling aforesaid this sixteenth day of April in the year one thousand eight hundred and sixty-three.

(Signed) A. D. Soper

Countersigned by

Daniel Lamb
J. W. Paxton
P. G. Van Winkle
E. B. Hall
E. H. Caldwell

Executive Committee of the said Convention.

And it was ordered that said certificate be transmitted to the President of the United States by the hands of the Hon. Abraham D. Soper, President of the Convention and James W. Paxton, member of the Executive Committee; and that the chairman of this committee to defray the expenses out of the money at the disposal of the committee.

The form of the proclamation to be issued by this committee under the third section of the Convention passed February 19, 1863, entitled "An Ordinance to provide for the organization of the State of West Virginia," was submitted, agreed to and signed by all the members of the Executive Committee, as follows.

A proclamation by the Executive Committee of the Constitutional Convention of West Virginia.

The President of the United States having issued his proclamation under the Act of Congress approved December 31, 1862, entitled "An act for the admission of the State of West Virginia into

the Union, and for other purposes," which proclamation bears date on the *twentieth* day of *April* in the year of our Lord *One thousand Eight Hundred and Sixty-three*.

Now, therefore, the undersigned Daniel Lamb, Peter G. Van Winkle, Elbert H. Caldwell, Ephraim B. Hall and James W. Paxton, the Executive Committee of the Constitutional Convention of West Virginia, do hereby, pursuant to the ordinance passed by the said Convention on the nineteenth day of February, 1863, entitled "An Ordinance to provide for the organization of the State of West Virginia" make known that an election will be held on Thursday, the *twenty-eighth*—day of *May next*—being the Thursday, the next succeeding the thirty-fifth day from the date of the said proclamation of the President, at the several places of voting in the forty-eight counties to be included in the said State, for the election, under the Amended Constitution thereof, of senators and delegates, a governor, secretary of the state, treasurer, auditor and attorney general, three judges of the Supreme Court of Appeals, a judge for each circuit; and the following officers for each county, that is to say, a clerk of the circuit court, a sheriff, prosecuting attorney, surveyor of lands and recorder: and that the said election is to be held, and the results thereof ascertained, certified and returned, according to the directions contained in the above mentioned ordinance. Given under our hands, this *twenty-second* day of *April* in the year *1863*.

(Signed)

Daniel Lamb

James W. Paxton

P. G. Van Winkle

E. H. Caldwell

E. B. Hall

Executive Committee.

And it was ordered that the chairman of this committee, as soon as he shall be informed that the President of the United States has issued his proclamation under the said Act of Congress, do fill the blanks in the above mentioned form with the proper dates, and then cause the same to be published as the proclamation of this committee.

Ordered that poll books with proper forms of oaths and returns for the election, so to be held forthwith prepared under the direction of the chairman and secretary of this committee.

Ordered that the chairman and secretary of this committee be authorized to pay out of the money at the disposal of the committee the following bills:

James W. Paxton—balance.....	No. 1	\$ 58.43
Expenses of taking soldiers votes		
1st District.....	No. 2	261.17
2nd " 	No. 3	150.00
3rd " 	No. 4	51.75
4th " 	No. 5	124.80
5th " 	No. 6	231.35
S. K. Hombrooks bill.....	No. 7	10.75
Premiums, postage by D. Lamb, Chairman.....		4.50
Advertising election and proclamation in the press		
Allen Gettings—3 bills—\$14.—\$12.—\$9.63	No's. 9, 10, 11	35.63
Advertising proclamation in Point Pleasant Register		
Geo. W. Tippet.....	No. 12	7.00
Advertising proclamation in Ritchie Press—		
D. F. Shriver.....	No. 13	8.00
Advertising proclamation in Wellsburg—		
Herald—J. G. Jacob.....	No. 14	6.00
Campbell O. M. Dermott. 3 bills for—		
Advertising and printing.....	No. 15	873.00
" " 	No. 16	181.00
" " 	No. 17	16.00
E. H. Caldwell, expenses of 2 trips to—		
Washington city and 2 trips to Wheeling	No. 18	80.00
P. G. Van Winkle, expenses of 3 trips to—		
Wheeling	No. 19	30.00
E. B. Hall—Expenses trip to Washington		
City and 3 trips to Wheeling.....	No. 20	83.43
Advertising Proclamation in Fairmont—		
National—Ritchie and Boyd.....	No. 21	6.00
Certified expenses of election on the question of the ratification of the Amended Constitution, viz.....		\$1077.17
In Barbour County \$ 25.00	Nicholas	16.51
Braxton 18.00	Ohio	148.30
Cabell 20.00	Pendleton	10.00
Clay 10.00	Pleasant	29.50
Doddridge 29.25	Preston	77.57
Gilmer 21.50	Putnam	48.00
Hampshire-New Creek 4.00	Randolph	27.75
Piedmont 10.00	Ritchie	24.00
Hancock 42.50	Roane	22.06
Hardy-Greenland 5.00	Taylor	70.00
Lewis 40.22	Tucker	27.75
Marion 43.25	Tyler	60.00
Marshall 67.18	Upshur	78.49
Monongalia 32.75	Wood	42.50
Morgan 36.09		
	27 Counties	\$1077.17

Abraham D. Soper, President on all expenses to Washington City with certificate for President Lincoln.....	No. 22	\$ 75.37
Expenses of election in Clay County on Amended Constitution	No. 23	10.00

Daniel Lamb, *Chairman*

A. D. Soper, *President*.

Thursday, June 11, 1863.

The Executive Committee met at residence of D. Lamb, in the city of Wheeling. Present, D. Lamb, chairman, Messrs. Paxton and E. H. Caldwell.

The committee proceeded to examine, in part, the returns and evidences received, and requested the chairman to prepare a final report to be presented to the Legislature of West Virginia.

On motion the committee adjourned to meet at the residence of the Chairman, on Friday the 19th.

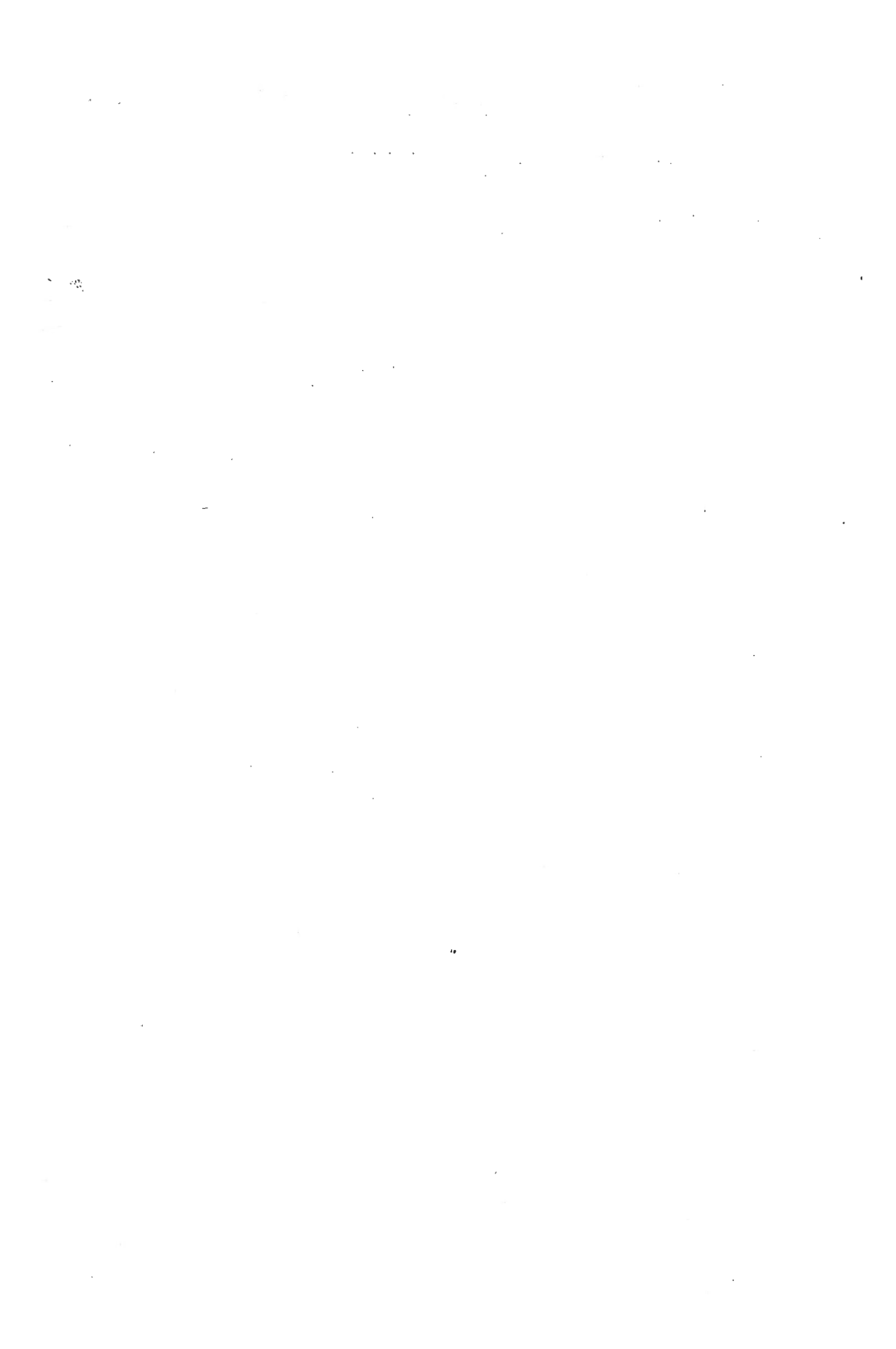
Friday, June 19, 1863.

Pursuant to adjournment, the committee met at the residence, of the chairman in the city of Wheeling, present, Messrs. Lamb, Van Winkle, Paxton and E. B. Hall.

The committee examined the additional returns and evidence of election received.

The chairman submitted a report, which being amended, was approved and signed by the member present, and ordered to be laid before the legislature.

On motion the committee adjourned.



CONSTITUTION

OF

WEST VIRGINIA.

ARTICLE I.

THE STATE.

1. The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The following counties, formerly parts of the State of Virginia, shall be included in, and form part of, the State of West Virginia, namely: the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe.

And if a majority of the votes cast at the election or elections held, as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire and Morgan, shall be in favor of the adoption of this Constitution, the said four counties shall also be included in, and form part of, the State of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections, in the district composed of the counties of Berkeley, Jefferson and Frederick shall be in favor of the adoption of this Constitution, then the three last mentioned counties shall also be included in, and form part of, the State of West Virginia.

The State of West Virginia shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the State of Virginia; and the territorial rights and property in, and the jurisdiction of whatever nature over, the said bed, banks and shores heretofore reserved by, or vested in, the State of Virginia, shall vest in, and be hereafter exercised by, the State of West Virginia.

3. The powers of Government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.

4. The Legislative, Executive and Judicial Departments of the government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time.

5. Writs, grants and commissions, issued under State authority, shall run in the name of, and official bonds shall be made payable to, The State of West Virginia. Indictments shall conclude "against the peace and dignity of the State of West Virginia."

6. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

7. Every citizen shall be entitled to equal representation in the Government, and in all apportionments of representation, equality of numbers of those entitled thereto shall, as far as practicable, be preserved.

ARTICLE II.

BILL OF RIGHTS.

1. The privilege of the writ of *habeas corpus* shall not be suspended, except when in time of invasion, insurrection or other public danger, the public safety may require it. No person shall be held to answer for treason, felony or other crime not cognizable by a Justice, unless on presentment or indictment of a grand jury. No bill of attainder, *ex post facto* law, or law impairing the obligation of a contract, shall be passed.

2. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall be compelled to be a witness against himself, or be twice put in jeopardy for the same offence.

3. The right of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

4. No law abridging freedom of speech or of the press shall be passed; but the Legislature may provide for the restraint and punishment of the publishing and vending of obscene books, papers and pictures, and of libel and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel or defamation. Attempts to justify and uphold an armed invasion of the State, or an organized insurrection therein, during the continuance of such invasion or insurrection, by publicly speaking, writing or printing, or by publishing or circulating such writing or printing, may be, by law, declared a misdemeanor, and punished accordingly.

5. In prosecutions and civil suits for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the verdict shall be for the defendant.

6. Private property shall not be taken for public use without just compensation. No person, in time of peace, shall be deprived of life, liberty or property without due process of law. The military shall be subordinate to the civil power.

7. In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury, if required by either party, shall be preserved. No fact tried by a jury shall be otherwise re-examined in any case than according to the rules of the common law.

8. The trial of crimes and misdemeanors, unless herein otherwise provided, shall be by jury, and shall be held publicly and without unreasonable delay, in the county where the alleged offence was committed, unless upon petition of the accused and for good cause shown, or in consequence of the existence of war or insurrection in such county, it is removed to, or instituted in, some other county. In all such trials the accused shall be informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have the assistance of counsel for his defence, and compulsory process for obtaining witnesses in his favor.

9. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or

pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support, such private contract as he shall please.

10. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court. Treason shall be punished, according to the character of the acts committed, by the infliction of one or more of the penalties of death, imprisonment, fine, or confiscation of the real and personal property of the offender, as may be prescribed by law.

ARTICLE III.

ELECTIONS AND OFFICERS.

1. The white male citizens of the State shall be entitled to vote at all elections held within the election districts in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote for thirty days, next preceding such offer, shall be permitted to vote while such disability continues.

2. In all elections by the people the mode of voting shall be by ballot.

3. No voter, during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process, or be liable to attend any court or judicial proceeding as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service.

4. No persons, except citizens entitled to vote, shall be elected or appointed to any State, county or municipal office. Judges must have attained the age of thirty-five years, the Governor, the age of thirty years, and the Attorney General and Senators the age of twenty-five years, at the beginning of their respective terms of service, and must have been citizens of the State for five years next

preceding, or at the time this Constitution goes into operation.

5. Every person elected or appointed to any office or trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, make oath or affirmation that he will support the Constitution of the United States, and the Constitution of this State; and every citizen of this State may, in time of war, insurrection or public danger, be required by law to make the like oath or affirmation, upon pain of suspension of his right of voting, and holding office under this Constitution.

6. All officers elected or appointed under this Constitution may be removed from office for misconduct, incompetence, neglect of duty, or other causes, in such manner as may be prescribed by general laws; and unless so removed, shall continue to discharge the duties of their respective offices, until their successors are elected or appointed and qualified.

7. The general elections of State and County officers, and of members of the Legislature, shall be held on the fourth Thursday of October. The terms of such officers and members, not elected or appointed to fill a vacancy, shall, unless herein otherwise provided, begin on the first day of January next succeeding their election. Elections to fill vacancies shall be for the unexpired term. Vacancies shall be filled in such manner as may be prescribed by law.

8. The Legislature, in cases not provided for in this Constitution, shall prescribe by general laws the terms of office, powers, duties and compensation of all public officers and agents, and the manner in which they shall be elected, appointed and removed.

9. No extra compensation shall be granted or allowed to any public officer, agent or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

10. Any officer of the State may be impeached for maladministration, corruption, incompetence, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the sole power of impeachment. The Senate shall have the sole power to try impeachments. When sitting for that purpose, the Senators shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judg-

ment and punishment according to law. The Senate may sit during the recess of the Legislature for the trial of impeachments.

11. Any citizen of this State, who shall, after the adoption of this Constitution, either in or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do; or who shall act as a second, or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit under this State.

12. The Legislature may provide for a registry of voters. They shall prescribe the manner of conducting and making returns of elections, and of determining contested elections; and shall pass such laws as may be necessary and proper to prevent intimidation, disorder or violence at the polls, and corruption or fraud in voting.

ARTICLE IV.

LEGISLATURE.

1. The Legislative power shall be vested in a Senate and House of Delegates. The style of their acts shall be, "*Be it enacted by the Legislature of West Virginia.*"

2. The Senate shall be composed of eighteen, and the House of Delegates of forty-seven, members, subject to be increased according to the provisions hereinafter contained.

3. The term of office of Senators shall be two years, and that of Delegates one year. The Senators first elected shall divide themselves into two classes, one Senator from every district being assigned to each class; and of these classes, the first, to be designated by lot in such manner as the Senate may determine, shall hold their offices for one year, and the second for two years; so that after the first election one-half of the Senators shall be elected annually.

4. For the election of Senators, the State shall be divided into nine Senatorial Districts; which number shall not be diminished, but may be increased as hereinafter provided. Every district shall choose two Senators, but after the first election both shall not be chosen from the same county. The districts shall be equal, as nearly as practicable, in white population, according to the returns of the United States census. They shall be compact, formed of contiguous territory, and bounded by county lines. After every such census the Legislature shall alter the Senatorial Districts, so far as may be necessary to make them conform to the foregoing provisions.

5. Any Senatorial District may at any time be divided, by county lines or otherwise, into two sections, which shall be equal, as nearly as practicable, in white population. If such division be made, each section shall elect one of the Senators for the district; and the Senators so elected shall be classified in such manner as the Senate may determine.

6. Until the Senatorial Districts are altered by the Legislature after the next census, the counties of Hancock, Brooke and Ohio shall constitute the first Senatorial District; Marshall, Wetzel and Marion the second; Monongalia, Preston and Taylor the third; Pleasants, Tyler, Ritchie, Doddridge and Harrison the fourth; Wood, Jackson, Wirt, Roane, Calhoun and Gilmer the fifth; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph the sixth; Mason, Putnam, Kanawha, Clay and Nicholas the seventh; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell the eighth; and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe the ninth.

7. For the election of Delegates, every county containing a white population of less than half the ratio of representation for the House of Delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a Delegate District.

8. When two or more counties are formed into a Delegate District, the Legislature shall provide by law that the Delegates to be chosen by the voters of the District shall be, in rotation, residents of each county, for a greater or less number of terms, proportioned, as nearly as can be conveniently done, to the white population of the several counties in the District.

9. After every census the Delegates shall be apportioned as follows:

The ratio of representation for the House of Delegates shall be ascertained by dividing the whole white population of the State by the number of which the House is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

Dividing the white population of every Delegate District, and of every county not included in a Delegate District, by the ratio thus ascertained, there shall be assigned to each a number of delegates equal to the quotient obtained by this division, excluding the fractional remainder.

The additional Delegates necessary to make up the number of which the House is to consist, shall then be assigned to those Delegate Districts, and counties not included in a Delegate District, which would otherwise have the largest fractions unrepresented. But every Delegate District and county not included in a Delegate

District, shall be entitled to at least one Delegate.

10. Until a new apportionment is declared, the counties of Pleasants and Wood shall form the first Delegate District; Calhoun and Gilmer the second; Clay and Nicholas the third; Webster and Pocahontas the fourth; Tucker and Randolph the fifth; and McDowell, Wyoming and Raleigh the sixth. The first Delegate District shall choose two Delegates, and the other five, one each.

11. The Delegates to be chosen by the first Delegate District shall, for the first term, both be residents of the county of Wood, and for the second term, one shall be a resident of Wood, and the other of Pleasants county; and so in rotation. The Delegate to be chosen by the second Delegate District shall, for the first term, be a resident of Gilmer, and for the second, of Calhoun county. The Delegate to be chosen by the third Delegate District shall, for the first two terms, be a resident of Nicholas, and for the third term of Clay county. The Delegate to be chosen by the fourth Delegate District shall, for the first two terms, be a resident of Pocahontas, and for the third term of Webster county. The Delegate to be chosen by the fifth Delegate District shall, for the first three terms be a resident of Randolph, and for the fourth term of Tucker county. And the Delegate to be chosen by the sixth Delegate District shall, for the first term be a resident of Raleigh, for the second term of Wyoming, for the third term of Raleigh, for the fourth term of Wyoming, and for the fifth term of McDowell county; and so, in each case, in rotation.

12. Until a new apportionment is declared, the apportionment of Delegates to the counties not included in Delegate Districts, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one Delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia, and Preston counties, two Delegates each.

To Ohio county, three Delegates.

To Greenbrier and Monroe counties together, three Delegates; of whom, for the first term, two shall be residents of Greenbrier, and one of Monroe county; and for the second term, two shall be residents of Monroe and one of Greenbrier county; and so in rotation.

13. If the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, they shall, until the next apportionment, constitute the tenth Senatorial District, and choose two

Senators. And if the counties of Frederick, Berkeley and Jefferson become part of this State, they shall, until the next apportionment, constitute the eleventh Senatorial District and choose two Senators. And the number of the Senate shall be, in the first case, twenty, and in the last, twenty-two, instead of eighteen.

14. If the seven last named counties become part of this State, the apportionment of Delegates to the same shall, until the next apportionment, be as follows: to Pendleton and Hardy, one each; to Hampshire, Frederick and Jefferson, two each; and the counties of Morgan and Berkeley shall form the seventh Delegate District, and choose two Delegates; of whom, for the first term, one shall be a resident of Berkeley and the other of Morgan county; and for the second term, both shall be residents of Berkeley county; and so in rotation.

But if the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, and Frederick, Berkeley and Jefferson do not, then Pendleton, Hardy and Morgan counties shall each choose one Delegate and Hampshire two, until the next apportionment.

The number of the House of Delegates shall, instead of forty-seven, be in the first case, fifty-seven, and in the last, fifty-two.

15. The arrangement of the Senatorial and Delegate Districts, and apportionment of Delegates, shall hereafter be declared by law, as soon as possible after each succeeding census taken by authority of the United States. When so declared, they shall apply to the first general election for members of the Legislature to be thereafter held, and shall continue in force, unchanged, until such districts are altered and Delegates apportioned under the succeeding census.

16. Additional territory may be admitted into and become part of this State with the consent of the Legislature. And in such case, provision shall be made by law for the representation of the white population thereof in the Senate and House of Delegates, in conformity with the principles set forth in this Constitution. And the number of members of which each branch of the Legislature is to consist, shall thereafter be increased by the representation assigned to such additional territory.

17. No person shall be a member of the Legislature who shall not have resided within the district or county for which he was chosen one year next preceding his election; and if a Senator or Delegate remove from the district or county for which he was chosen, his office shall be thereby vacated.

18. No person holding an office of profit under this State or the United States, shall be a member of the Legislature.

19. No person who may have collected, or been entrusted with public money, whether State, county, township or municipal, shall be eligible to the Legislature, or to any office of honor, trust or profit, until he shall have duly accounted for and paid over such money according to law.

20. The Legislature shall meet once in every year, and not oftener, unless convened by the Governor. The regular sessions shall begin on the third Tuesday of January.

21. The Governor may convene the Legislature by proclamation, whenever, in his opinion, the public safety or welfare shall require it. It shall be his duty to convene them on application of a majority of the members elected to each branch.

22. The Seat of Government shall be at the city of Wheeling, until a permanent Seat of Government be established by law.

23. When, for any cause, the Legislature, in the opinion of the Governor, cannot safely meet at the Seat of Government, the Governor, by proclamation, may convene them at another place.

24. No session of the Legislature, after the first, shall continue longer than forty-five days, without the concurrence of three-fourths of the members elected to each branch.

25. Neither branch, during the session, shall adjourn for more than two days, without the consent of the other. Nor shall either, without such consent, adjourn to any other place than that in which the Legislature is then sitting.

26. Each branch shall be the judge of the elections, qualifications and returns of its own members.

27. A majority of each branch shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner as shall be prescribed by law.

28. The Senate shall choose from their own body a President, and the House of Delegates one of their own number as Speaker. Each branch shall appoint its own officers and remove them at pleasure; and shall determine its own rules of proceeding.

29. Each branch may punish its own members for disorderly behavior; and, with the concurrence of two-thirds of the members present, expel a member, but not a second time for the same offence.

30. Each branch shall have the power necessary to provide for its own safety, and the undisturbed transaction of its business, and may punish, by imprisonment, any person not a member, for dis-

respectful behavior in its presence; obstructing any of its proceedings, or any of its officers in the discharge of his duties; or for any assault, threatening or abuse of a member for words spoken in debate. But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offence by the ordinary course of law.

31. For words spoken in debate, or any report, motion or proposition made, in either branch, a member shall not be questioned in any other place.

32. Members of the Legislature shall, in all cases except treason, felony and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same.

33. Senators and Delegates shall receive for their services a compensation not exceeding three dollars a day during the session of the Legislature, and also ten cents for every mile they shall travel in going to and returning from the place of meeting, by the most direct route. The President of the Senate and Speaker of the House shall, respectively, receive an additional compensation of two dollars a day.

34. Bills and resolutions may originate in either branch, to be passed, amended or rejected by the other.

35. No bill shall become a law until it has been fully and distinctly read on three different days in each branch; unless, in cases of urgency, three-fourths of the members present dispense with this rule.

36. No law shall embrace more than one object, which shall be expressed in its title.

37. On the passage of every bill, the vote shall be taken by yeas and nays, and be entered on the journal; and no bill shall be passed by either branch without the affirmative vote of a majority of the members elected thereto.

38. The presiding officer of each branch shall sign, before the close of the session, all bills and joint resolutions passed by the Legislature.

39. Each branch shall keep a journal of its proceedings, and cause the same to be published from time to time; and the yeas and nays on any question, if called for by one-fifth of those present, shall be entered on the journal.

ARTICLE V.

EXECUTIVE.

1. The chief Executive power shall be vested in a Governor, who shall be elected by the voters of the State, and hold his office for the term of two years, to commence on the fourth day of March next succeeding his election. The person acting as Governor shall not be elected or appointed to any other office during his term of service.

2. The Governor shall reside at the seat of Government; shall receive two thousand dollars for each year of his service, and during his continuance in office shall receive no other emolument from this or any other Government.

3. The Governor shall be Commander-in-Chief of the military forces of the State; shall have power to call out the militia to repel invasion, suppress insurrection and enforce the execution of the laws; shall conduct in person, or in such manner as may be prescribed by law, all intercourse with other States; and during the recess of the Legislature shall fill temporarily all vacancies in office, not provided for by this Constitution or the Legislature, by commissions to expire at the end of thirty days after the commencement of the succeeding session of the Legislature. He shall take care that the laws be faithfully executed; communicate to the Legislature at each session thereof the condition of the State, and recommend to their consideration such measures as he may deem expedient. He shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment, and, except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; but he shall communicate to the Legislature, at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons for remitting, commuting or granting the same.

4. The Governor may require information in writing from the officers of the Executive Department, upon any subject pertaining to their respective offices; and also the opinion in writing of the Attorney General upon any question of law relating to the business of the Executive Department.

5. Returns of the election of Governor shall be made, in the manner and by the persons designated by the Legislature, to the Secretary of the State, who shall deliver them to the Speaker of the

House of Delegates on the first day of the next session of the Legislature. The Speaker shall, within ten days thereafter, in the presence of a majority of each branch of the Legislature, open the said returns, when the votes shall be counted. The person having the highest number of votes, if duly qualified, shall be declared elected; but if two or more have the highest and an equal number of votes, one of them shall thereupon be chosen Governor by the joint vote of the two branches. Contested elections for Governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

6. In case of the removal of the Governor from office, or of his death, failure to qualify within the time prescribed by law, resignation, removal from the Seat of Government, or inability to discharge the duties of the office, the said office with its compensation, duties and authority, shall devolve upon the President of the Senate; and in case of his inability or failure from any cause to act, on the Speaker of the House of Delegates. The Legislature shall provide by law for the discharge of the Executive functions in other necessary cases.

7. A Secretary of the State, a Treasurer and an Auditor shall be elected at the same time, and for the same term, as the Governor. Their duties shall be prescribed by law. The Secretary of the State shall receive thirteen hundred, the Treasurer fourteen hundred, and the Auditor fifteen hundred dollars per annum.

8. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint all military officers above the rank of colonel.

ARTICLE VI.

JUDICIARY.

1. The judicial power of the State shall be vested in a Supreme Court of Appeals and Circuit Courts, and such inferior tribunals as are herein authorized.

2. The State shall be divided into nine Circuits. The counties of Hancock, Brooke, Ohio and Marshall shall constitute the first; Monongalia, Preston, Tucker and Taylor, the second; Marion, Harrison and Barbour the third; Wetzel, Tyler, Pleasants, Ritchie, Doddridge and Gilmer, the fourth; Randolph, Upshur, Lewis, Braxton, Webster and Nicholas, the fifth; Wood, Wirt, Calhoun, Roane, Jackson and Clay, the sixth; Kanawha, Mason, Putnam and Fayette, the seventh; Cabell, Wayne, Boone, Logan, Wyoming and Ra-

leigh, the eighth; and Pocahontas, Greenbrier, Monroe, Mercer and McDowell, the ninth. If the counties of Pendleton, Hardy, Hampshire and Morgan become a part of the State, they shall constitute another Circuit, to be called the tenth. And if the counties of Frederick, Berkeley and Jefferson become a part of this State, they shall constitute the eleventh Circuit.

3. The Legislature may, from time to time, rearrange the Circuits; and after the expiration of five years from the time this Constitution goes into operation, and thereafter, at periods of ten years, may increase or diminish the number of Circuits, or the number of Courts in a year, as necessity may require.

4. For each Circuit a Judge shall be elected by the voters thereof, who shall hold his office for the term of six years. During his continuance in office he shall reside in the Circuit of which he is Judge.

5. A Circuit Court shall be held in every county at least four times a year, unless otherwise provided by law, in pursuance of the third section of this Article. The Judges may be required or authorized to hold the Courts of their respective Circuits alternately, and a Judge of one Circuit to hold a Court in any other Circuit.

6. The Circuit Courts shall have the supervision and control of all proceedings before Justices and other inferior tribunals, by *mandamus, prohibition or certiorari*. They shall, except in cases confided exclusively by this Constitution to some other tribunal, have original and general jurisdiction of all matters at law, where the amount in controversy exclusive of interest exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors. They shall have appellate jurisdiction in all cases civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal. They shall also have such other jurisdiction, whether supervisory, original, appellate or concurrent, as may be prescribed by law.

7. The Supreme Court of Appeals shall consist of three Judges, any two of whom shall be a quorum. They shall be elected by the voters of the State, and shall hold their offices for the term of twelve years; except that of those first elected, one, to be designated by lot in such manner as they may determine, shall hold his office for four years; another, to be designated in like manner, for eight years, and the third for twelve years; so that one shall be elected every four years after the first election.

8. The Supreme Court of Appeals shall have original jurisdiction in cases of *habeas corpus, mandamus and prohibition*. It shall have appellate jurisdiction in civil cases where the matter in con-

troversy, exclusive of costs, is of greater value or amount than two hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, road, way, ferry, or landing, or the right of a corporation or county to levy tolls or taxes; and also in cases of *habeas corpus*, *mandamus* and *prohibition*, and cases involving freedom, or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases where there has been a conviction for felony or misdemeanor in a Circuit Court, and such other appellate jurisdiction in both civil and criminal cases as may be prescribed by law.

9. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, every point made and distinctly stated in writing in the cause, and fairly arising upon the record of the case, shall be considered and decided, and the reasons therefor shall be concisely and briefly stated in writing, and preserved with the records of the case.

10. When any judge of the Court of Appeals is so situated in regard to any case pending before it as to make it improper for him to aid in the trial of the same, or is under any other disability, the remaining Judges may call to their assistance a Judge of the Circuit Court, who shall act as a Judge of the Court of Appeals in the cases to which such disability relates.

11. Judges shall be commissioned by the Governor. The salary of a Judge of the Supreme Court of Appeals shall be two thousand, and that of a Judge of a Circuit Court eighteen hundred dollars per annum, and each shall receive the same allowance for necessary travel as members of the Legislature.

12. No Judge, during his term of service, shall hold any other office, appointment or public trust, under this or any other government, and the acceptance thereof shall vacate his judicial office; nor shall he, during his continuance therein, be eligible to any political office.

13. Judges may be removed from office for misconduct, incompetence or neglect of duty, or on conviction of an infamous offence, by the concurrent vote of a majority of all the members elected to each branch of the Legislature, and the cause of removal shall be entered on the journals. The Judge, against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the Legislature shall act thereon.

14. The officers of the Supreme Court of Appeals shall be appointed by the Court, or by the Judges thereof in vacation. Their duties, compensation and tenure of office, shall be prescribed by law.

15. The voters of each county shall elect a Clerk of the Circuit Court, whose term of office shall be four years. His duties and compensation, and the mode of removing him from office, shall be prescribed by law; and when a vacancy shall occur in the office, the Judge of the Circuit Court shall appoint a Clerk, who shall discharge the duties of the office until the vacancy is filled. In any case, in respect to which the Clerk shall be so situated as to make it improper for him to act, the Court shall appoint a substitute.

16. At every regular election of a Governor, an Attorney General shall also be elected. He shall be commissioned by the Governor; shall perform such duties, and receive such compensation as may be prescribed by law, and be removable in the same manner as the Judges.

17. The Legislature may establish courts of limited jurisdiction within any incorporated town or city, subject to appeal to the Circuit Courts.

ARTICLE VII.

COUNTIES AND TOWNSHIPS.

1. Every County shall be divided into not less than three, nor more than ten townships, laid off as compactly as practicable, with reference to natural boundaries, and containing, as nearly as practicable, an equal number of white population, but not less than four hundred. Each Township shall be designated, "The Township of _____ in the county of _____," by which name it may sue and be sued.

2. The voters of each Township, assembled in stated or special Township meeting, shall transact all such business relating exclusively to their Township as is herein, or may be by law, required or authorized. They shall annually elect a Supervisor, Clerk of the Township, Surveyor of Roads for each precinct in their Township, Overseer of the Poor, and such other officers as may be directed by law. They shall also, every four years, elect one Justice, and if the white population of their Township exceeds twelve hundred in number, may elect an additional Justice; and every two years shall elect as many Constables as Justices. The Supervisor, or, in his absence, a voter chosen by those present, shall preside at all Township meetings and elections, and the Clerk shall act as clerk thereof.

3. The Supervisors chosen in the Townships of each county shall constitute a Board, to be known as "the Supervisors of the County of.....," by which name they may sue and be sued, and make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of the State. They shall meet statedly at least four times in each year at the court house of their county, and may hold special and adjourned meetings. At their first meeting after the annual Township election, and whenever a vacancy may occur, they shall elect one of their number President of the Board, and appoint a Clerk, who shall keep a journal of their proceedings, and transact such other business pertaining to his office as may be by them or by law required, and whose compensation they shall fix by ordinance and pay from the county treasury.

4. The Board of Supervisors of each County, a majority of whom shall be a quorum, shall, under such general regulations as may be prescribed by law, have the superintendence and administration of the internal affairs and fiscal concerns of their County, including the establishment and regulation of roads, public landings, ferries and mills; the granting of ordinary and other licenses; and the laying, collecting and disbursement of the county levies; but all writs of *ad quod damnum* shall issue from the Circuit Courts. They shall from time to time appoint the places for holding elections in the several Townships of their County: and shall be the judges of the election, qualifications and returns of their own members, and of all County and Township officers.

5. The voters of every county shall elect a Sheriff, Prosecuting Attorney, Surveyor of Lands, Recorder, one or more Assessors, and such other county officers as the Legislature may from time to time direct or authorize; the duties of all of whom shall be prescribed and defined, as far as practicable, by general laws. All the said county officers shall hold their offices for two years, except the Sheriff, whose term of office shall be four years. The same person shall not be elected Sheriff for two consecutive full terms, nor shall any person who has acted as deputy of any sheriff be elected his successor; nor shall any Sheriff act as the deputy of his successor; but the retiring Sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. The duties of all the said officers shall be discharged by the incumbents thereof in person, or under their superintendence. The Board of Supervisors shall designate one or more Constables of their respective counties to serve process and levy executions, when the Sheriff thereof is a party

defendant in a suit instituted therein, or is under any other disability.

6. The Recorder, in addition to the duties incident to the recording of inventories, and other papers relating to estates, and of deeds and other writings; the registering of births, marriages and deaths, and the issuing of marriage licenses, shall have authority, under such regulations as may be prescribed by law, to receive proof of wills and admit them to probate, to appoint and qualify personal representatives, guardians, committees and curators, to administer oaths, take acknowledgments of deeds and other writings, and relinquishments of dower.

7. The Legislature shall, at their first session, by general laws, provide for carrying into effect the foregoing provisions of this article. They shall also provide for commissioning such of the officers therein mentioned as they may deem proper, and may require any class of them to give bond with security for the faithful discharge of the duties of their respective offices, and for accounting for and paying over, as required by law, all money which may come to their hands by virtue thereof. They shall further provide for the compensation of the said officers by fees, or from the county treasury; and for the appointment, when necessary, of deputies and assistants, whose duties and responsibilities shall be prescribed and defined by general laws. When the compensation of an officer is paid from the county treasury, the amount shall be fixed by the Board of Supervisors, within limits to be ascertained by law.

8. The civil jurisdiction of a Justice shall extend to actions of assumpsit, debt, detinue and trover, if the amount claimed, exclusive of interest, does not exceed one hundred dollars, when the defendant resides, or, being a non-resident of the State, is found, or has effects or estate within his Township, or when the cause of action arose therein; but any other Justice of the same county may issue a summons to the defendant to appear before the Justice of the proper Township, which may be served by a Constable of either Township. In case of a vacancy in the office of Justice or Constable in any Township having but one, or of the disability to act of the incumbent, any other Justice or Constable of the same county may discharge the duties of their respective offices within the said Township. The manner of conducting the aforesaid actions, and of issuing summonses and executions, and of executing and making return of the same, shall be prescribed by law; and the Legislature may give to Justices and Constables such additional civil jurisdiction and powers, within their respective townships, as may be deemed expedient.

9. Every Justice and Constable shall be a conservator of the peace throughout his county, and have such jurisdiction and powers in criminal cases therein as may be prescribed by law. Jurisdiction of all misdemeanors and breaches of the peace, punishable by fine not exceeding ten dollars, or by imprisonment for not more than thirty days, may be, by law, vested in the Justices.

10. Either party to a civil suit brought before a Justice, where the value in controversy, or the damages claimed, exceeds twenty dollars, and the defendant, in such cases of misdemeanor or breach of the peace as may be made by law cognizable by a single Justice, when the penalty is imprisonment or a fine exceeding five dollars, shall be entitled to a trial by six jurors, if demanded, under such regulations as may be prescribed by law.

11. In all cases an appeal shall lie, under such regulations as may be prescribed by law, from the judgment or proceedings of a Justice or recorder, to the Circuit Court of the county, excepting judgments of Justices in assumpsit, debt, detinue and trover, and for fines, where the amount does not exceed ten dollars exclusive of interest and costs, and where the case does not involve the freedom of a person, the validity of a law, or the right of corporation or county to levy tolls or taxes.

12. No new county shall be formed having an area of less than four hundred square miles; or if another county be thereby reduced below that area; or if any territory be thereby taken from a county containing less than four hundred square miles. And no new county shall be formed containing a white population of less than four thousand; or if the white population of another county be thereby reduced below that number; or if any county containing less than four thousand white inhabitants be thereby reduced in area. But the Legislature may, at any time, annex any county containing less than four thousand white inhabitants to an adjoining county or counties as part thereof.

13. The Board of Supervisors may alter the bounds of a Township of their county, or erect new Townships therein, with the consent of a majority of the voters of each Township interested, assembled in stated Township meeting, or in a meeting duly called for the purpose, subject to the provisions of the first section of this article.

14. Nothing contained in this article shall impair or affect the charter of any municipal corporation, or restrict the power of the Legislature to create or regulate such corporations.

ARTICLE VIII.

TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempted from taxation.

2. A capitation tax of one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, shall levy a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the Treasury but in pursuance of appropriations made by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. The Legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full.

8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking-fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.

ARTICLE IX.

FORFEITED AND UNAPPROPRIATED LANDS.

1. All private rights and interests in lands in this State, derived from or under the laws of the State of Virginia prior to the time this Constitution goes into operation, shall remain valid and secure, and shall be determined by the laws heretofore in force in the State of Virginia.

2. No entry by warrant on land in this State shall be hereafter made; and in all cases where an entry has been heretofore made and has been or shall be so perfected as to entitle the locator to a grant, the Legislature shall make provision by law for issuing the same.

3. The Legislature shall provide for the sale of all lands in this State heretofore forfeited to the State of Virginia for the non-payment of the taxes charged thereon for the year one thousand eight hundred and thirty-one, or any year previous thereto, or for the failure of the former owners to have the same entered on the land books of the proper county and charged with the taxes due thereon for the said or any year previous thereto, under the laws of the State of Virginia, and also of all waste and unappropriated lands, by proceedings in the Circuit Courts of the county where such lands are situated.

4. All lands within this State, returned delinquent for non-payment of taxes to the State of Virginia since the year one thousand eight hundred and thirty-one, where the taxes, exclusive of damages, do not exceed twenty dollars; and all lands forfeited for the failure of the owners to have the same entered on the land books of the proper county, and charged with the taxes chargeable thereon since the year one thousand eight hundred and thirty-one, where the tract does not contain more than one thousand acres, are hereby released and exonerated from forfeiture, and from the delinquent taxes and damages charged thereon.

5. All lands in this State heretofore vested in the State of Virginia by forfeiture, or by purchase at the Sheriffs' sales for delinquent taxes, and not released or exonerated by the laws thereof, or by the operation of the preceding section, may be redeemed by the former owners, by payment to this State of the amount of taxes and damages due thereon at the time of such redemption, within five years from the day this Constitution goes into operation; and all such lands not so released, exonerated or redeemed, shall be treated as forfeited, and proceeded against and sold as provided in the third section of this article.

6. The former owner of any tract of land in this State sold under the provisions of this article, shall be entitled to receive the excess of the sum for which such tract may be sold over the taxes and damages charged and chargeable thereon, and the costs, if his claim be filed in the Circuit Court which decreed the sale, within two years thereafter.

ARTICLE X.

EDUCATION.

1. All money accruing to this State, being the proceeds of forfeited, delinquent, waste and unappropriated lands; and of lands heretofore sold for taxes and purchased by the State of Virginia, if hereafter redeemed, or sold to others than this State; all grants, devises or bequests that may be made to this State for the purposes of education, or where the purposes of such grants, devises or bequests are not specified; this State's just share of the Literary fund of Virginia, whether paid over or otherwise liquidated, and any sums of money, stocks or property which this State shall have the right to claim from the State of Virginia for educational purposes; the proceeds of the estates of all persons who may die without leaving a will or heir, and of all escheated lands; the proceeds of any taxes that may be levied on the revenues of any corporation hereafter created; all monies that may be paid as an equivalent for exemption from military duty, and such sums as may from time to time be appropriated by the Legislature for the purpose, shall be set apart as a separate fund, to be called the School Fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State; and the interest thereof shall be annually applied to the support of free schools throughout the State, and to no other purpose whatever. By any portion of said interest remaining unexpended at the

close of a fiscal year, shall be added to, and remain a part of, the capital of the School Fund.

2. The Legislature shall provide, as soon as practicable, for the establishment of a thorough and efficient system of free schools. They shall provide for the support of such schools by appropriating thereto the interest of the invested school fund; the net proceeds of all forfeitures, confiscations and fines accruing to this State under the laws thereof; and by general taxation on persons and property, or otherwise. They shall also provide for raising, in each township, by the authority of the people thereof, such a proportion of the amount required for the support of free schools therein as shall be prescribed by general laws.

3. Provision may be made by law for the election and prescribing the powers, duties, and compensation of a General Superintendent of free schools for the State, whose term of office shall be the same as that of the Governor; and for a County Superintendent for each county, and for the election, in the several townships, by the voters thereof, of such officers, not specified in this Constitution, as may be necessary to carry out the objects of this article, and for the organization, whenever it may be deemed expedient, of a State Board of Instruction.

4. The Legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; they shall, whenever it may be practicable, make suitable provision for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand.

ARTICLE XI.

MISCELLANEOUS.

1. No lottery shall be authorized by law; and the buying, selling or transferring of tickets or chances in any lottery shall be prohibited.

2. No charter of incorporation shall be granted to any church or religious denomination. Provision may be made by general laws for securing the title to church property, so that it shall be held and used for the purposes intended.

3. The Circuit Courts shall have power, under such general regulations as may be prescribed by law, to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, but relief shall not be granted by special legislation in such cases.

4. Laws may be passed regulating or prohibiting the sale of intoxicating liquors within the limits of this State.

5. The Legislature shall pass general laws whereby any number of persons associated for mining, manufacturing, insuring, or other purpose useful to the public, excepting banks of circulation and the construction of works of internal improvement, may become a corporation, on complying with the terms and conditions thereby prescribed; and no special act incorporating, or granting peculiar privileges to any joint stock company or association, not having in view the issuing of bills to circulate as money or the construction of some work of internal improvement, shall be passed. No company or association, authorized by this section, shall issue bills to circulate as money. No charter of incorporation shall be granted under such general laws, unless the right be reserved to alter or amend such charter, at the pleasure of the Legislature, to be declared by general laws. No act to incorporate any bank of circulation or internal improvement company, or to confer additional privileges on the same, shall be passed, unless public notice of the intended application for such act be given under such regulations as shall be prescribed by law.

6. For the election of representatives to Congress, the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties and be compact. Each district shall contain, as nearly as may be, an equal federal number, to be determined according to the rule prescribed in the second section of the first article of the Constitution of the United States.

(7. No slave shall be brought, or free person of color be permitted to come into this State for permanent residence.)*

8. Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature. All offenses against the laws of Virginia heretofore committed within the boundaries of this State shall be cognizable in the Courts of this State in the same manner they would be if hereafter committed within this State. All civil and criminal suits and proceedings pending in the County or Circuit Courts of the State of Virginia, held within the said boundaries, shall be docketed and thereafter proceeded in before the Circuit Court of the proper county; and all such suits and proceedings pending in the Supreme and District Courts of Ap-

*This section 7 was deleted and a substitute provided by the Willey Amendment. See Vol. III, pp. 473, 474, 528.

peals of the State of Virginia, if the defendant in the court below resides within the said boundaries, or the subject of the suit is land or other property situated or being therein, and the plaintiff is entitled to prosecute in this State, shall be docketed, and thereafter proceeded in before the Supreme Court of Appeals thereof.

9. The records, books, papers, seals and other property and appurtenances of the former Circuit and County Courts, within the State of West Virginia, shall be transferred to, and remain in, the care and custody of the Circuit Courts of the respective counties, to which all process outstanding at the time this Constitution goes into operation shall be returned, and by which new process in suits then pending, or previously determined, in the said former Courts, may be issued in proper cases. Copies and transcripts of the records and proceedings of the said former Courts shall be made and certified by the Courts having the care and custody of such records and proceedings, or the proper officers thereof, and shall have the same force and effect as if they had been heretofore properly made and certified by the said former Courts.

ARTICLE XII.

AMENDMENTS.

1. No Convention shall be called, having authority to alter the Constitution of the State, unless it be in pursuance of a law passed by the affirmative vote of a majority of the members elected to each branch of the Legislature, and providing that polls shall be held throughout the State, on some day therein specified, which shall be not less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a Convention. And such Convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall members be elected to such Convention, until at least one month after the result of the polls shall be duly ascertained, declared and published. And all acts and ordinances of said Convention shall be submitted to the voters of the State for ratification, or rejection, and shall have no validity whatever until they are ratified, and in no event shall they, by any shift or device, be made to have any retrospective operation or effect.

2. Any amendment to the Constitution of the State may be proposed in either branch of the Legislature; and if the same, being read on three several days in each branch, be agreed to on its third reading, by a majority of the members elected thereto, the pro-

posed amendment, with the yeas and nays thereon, shall be entered on the journals, and referred to the Legislature at the first session to be held after the next general election; and shall be published, at least three months before such election, in some newspaper in every county in which a newspaper is printed. And if the proposed amendment be agreed to during such session, by a majority of the members elected to each branch, it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the State, for ratification or rejection. And if a majority of the qualified voters, voting upon the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State. If two or more amendments be submitted at the time time, the vote on the ratification or rejection, shall be taken on each separately.

JOHN HALL, *President of the Convention.*

ELLERY R. HALL, *Secretary.*

SCHEDULE.

1. The President of this Convention, shall authenticate by his signature, attested by the Secretary, three originals of the foregoing Constitution with this Schedule annexed, and shall deliver one of them to the Governor of Virginia, and the others to the Commissioners hereinafter appointed.

2. It shall be the duty of John Hall, James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell and Ephraim B. Hall, who are hereby appointed Commissioners, and a majority of whom may act, to cause this Constitution and Schedule to be published in such newspapers, printed within the proposed State of West Virginia as they may deem proper, and to distribute the printed copies of the Constitution provided by this Convention.

3. Poll books, with the oaths and forms of returns herein required, attached thereto, shall be prepared under the direction of the Commissioners, for each place of voting in the fifty-one counties proposed to be included in the said State, which book shall contain two separate columns, one to be headed "For the Constitution," and the other "Against the Constitution." The Commissioners and officers who superintended and conducted the election in October last, for Delegates to this Convention, or such other persons as the Governor of Virginia, or the Commissioners hereby ap-

pointed, may appoint, shall attend at their respective places of holding elections, and superintend and conduct the election herein provided for; and if they fail to attend or act, any two freeholders present may act as Commissioners, administer to each other the prescribed oaths, and appoint and qualify a conducting officer and clerks to record the votes.

4. Said election shall be held on the first Thursday of April next, and for the causes prescribed in the code of Virginia, the polls may be kept open three days; and if, at the time of said election, there be in any of the said counties any military or hostile assemblage of persons, or other cause to interfere with a free expression of the will of the voters, they may assemble at any other place within, or convenient to, their respective counties and hold an election as herein provided for; and if from any cause the said election be not held in and for any of the said counties, at the time named, the same may be held at such subsequent time or times as the Commissioners hereby appointed may approve, if so done as not to delay the submission of the result to the Legislature for its action.

5. The persons who shall hold the elections as aforesaid shall each, before entering on the duties of his office, take, in addition to the oaths now prescribed by law, the following oath or affirmation, namely: "I solemnly swear (of affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the ordinances of the Convention which assembled at Richmond on the thirteenth day of February, one thousand eight hundred and sixty-one, to the contrary notwithstanding."

As early as practicable after the said elections, the persons holding the same shall ascertain the number of votes cast and recorded *for*, and the number *against*, this Constitution, and the expenses of such elections; and shall certify and return the same as soon as practicable, by mail or otherwise, to the persons conducting the election at the Court House of their county, who shall ascertain and certify the result for their county to the Commissioners hereby appointed. The certificate and returns of the persons holding elections shall be to the following effect: "We..... and....., Commissioners, and....., conducting officer, do certify that we caused an election to be held at..... in the county of....., at which we permitted all persons to vote who desired, and were entitled to do so, and none other, and

that we have carefully added each column of our poll books and find the following result:

For the Constitution.....votes.

Against the Constitution.....votes.

Given under our hands this.....day of....., 1862.

To which shall be added the following affidavit:

..... County, to-wit:

I,, a Justice, (or other officer authorized to administer oaths, or one of the acting Commissioners,) in and for said county, do hereby certify that the above named conducting officer this day made oath before me that the above certificate is correct and true.

Given under my hand this.....day of....., 1862.

6. All persons qualified to vote under this Constitution shall be entitled to vote on the question of its adoption or rejection. The Commissioners hereby appointed shall provide for taking the vote of such of the voters as may, at the time of the said election, be in the armies or service of the United States, whether within or beyond the boundaries of the proposed State; and any voters who may be prevented by peril or other cause from voting in their respective counties, may vote at any place of voting in any other county, upon making oath that they have not elsewhere voted on the question.

7. The officers and Commissioners conducting the elections shall deposit their poll books with the Clerk of their County Court, subject to the order of the authorities of the State of West Virginia. The Commissioners hereby appointed shall ascertain and certify to the Governor of Virginia the result of the said election; and if the same result in the adoption of this Constitution by the voters of the forty-four counties first mentioned in the second section of the first article thereof, they shall request him, as provided in the eighth section of the ordinance convening this Convention, to convene, and lay before the General Assembly of the State of Virginia, for its consent according to the Constitution of the United States, a certified original of this Constitution, with the result of the said election in all the counties voting; and to request the General Assembly, as provided in the tenth section of the said ordinance, to give its consent to the formation and erection of the State of West Virginia, as proposed, and forward to the Congress of the United States such consent, together with an official copy of this Constitution, with the request that the State of West Virginia may at once be admitted into the Union.

8. The Commissioners hereby appointed shall take such steps, and do all such things as they shall deem expedient, to procure, as

soon as possible, the consent of the General Assembly and Congress, to the formation and erection of the State of West Virginia. The Legislature thereof, at its first session, shall provide for reimbursing the expenses incurred by the Commissioners in the discharge of the duties of their appointment, and may make them a reasonable compensation for their services.

9. When the General Assembly of the State of Virginia, and the Congress of the United States shall severally give their consent to the formation and erection of the State of West Virginia, as proposed, the Commissioners hereby appointed shall forthwith issue their proclamation, which shall be inserted for three or more successive weeks in the newspapers published within the limits of this State, declaring this Constitution in operation, and directing an election to be held in every county thereof, at the usual places of holding elections, on such day, not less than forty nor more than sixty days after the consent of Congress shall be obtained as aforesaid, as they shall appoint, and under the superintendence of such persons or former county officers as they shall designate, by name or otherwise, for the choice and election of Judges of the Circuit Courts, and all the State and county officers to be elected under this Constitution, except Supervisors, and shall cause to be done all things necessary for holding such election and ascertaining and certifying the result.

10. The duties to be performed by the persons holding and conducting said election, and the privileges of the voters shall be, in all things, as now prescribed by law, and in this Schedule.

11. The Commissioners hereby appointed shall have power, if deemed necessary, to reconvene the members of this Convention, on such day as they may prescribe; and if this Convention be so reconvened, the said Commissioners shall take the necessary steps to secure a representation therein from the counties proposed to be included in the new State, not at present represented, and to fill any vacancies which may occur.

12. If the first election of Senators, Delegates, Judges, and State and County officers is held within six months before the first day of January in any year, or within six months thereafter, their respective terms of service shall begin twenty days after such election, but shall end on the day they would have ended had they begun on the first day of January, except that the term of the Governor shall be counted from the fourth day of March next after the said first day of January.

13. The Legislature elected under this Schedule shall meet at the Seat of Government on the twenty-first day after their election.

14. All officers elected or appointed and qualified by authority of the State of Virginia, who shall remain in the exercise of the functions of their respective offices within the limits of this State, until this Constitution goes into operation, may continue to exercise the same within their respective counties, under the authority and in the name of this State, until the officers first elected or appointed under this Constitution for the discharge of similar duties are qualified.

JOHN HALL, *President of the Convention.*

ELLERY R. HALL, *Secretary.*

THE END.

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urer

Rejected

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Sec. 10, Amend; agreed to

Take up on second reading; agreed to

Substitute for Sec. 9

Lay on table and print

Submitted

EXECUTIVE POWER

Chief executive power vested in governor

EXPENSES OF CONVENTION

Request legislature to place amount at disposal of convention

Adopted

EX POST FACTO LAWS

Not to be passed

EXTRA COMPENSATION

Not allowed on contract after completion

FACT TRIED BY JURY

Reexamination

FAIRFAX, COUNTY OF

Include in boundary

Rejected

Include in boundary

Rejected; vote recorded

FAITH OF STATE

Not to be pledged

FERREL, ROBERT

Commissioner to take soldier vote

FIFTH WARD PUBLIC SCHOOL

Invitation from

Laid on table and accepted

Date of visit set

FISHER, REV. D. W.

Prayer by

FORFEITED, WASTE AND UN-APPROPRIATED LANDS

Disposition of if not redeemed

How proceeded against

Redemption

Sale

Special Committee

Appoint

Named

Report

Adopted

Referred to Committee on Revision and Engrossment

Sections read; adopted

Submitted

Take up section by section; agreed to

Take up on second reading; agreed to

FORMATION OF NEW STATE, RESOLUTIONS

1 Consent of legislature of Virginia to formation of new state; effect

Adopted; vote recorded

Amend; agreed to

Lay on table and print; agreed to

2 Request legislature of Virginia to consent to formation of new state and to provide for submission of constitution

Adopted

Amend; agreed to

Amend; rejected

Amend amendment; rejected

Lay on table and print; agreed to

3 Committee on Schedule is instructed to report suitable provision that in the event of the formation of new state, all expenses attending the premises shall be refunded to the State of Virginia

Adopted

Lay on table and print; agreed to

Read

4 Request legislature of Virginia to make appropriation to defray expenses of convention, submit constitution and transmit same to congress

Adopted

Lay on table and print; agreed to

Read

Rescind; agreed to

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